

The London School of Economics and Political Science

Humanitarian Intervention: From *Le Droit d'Ingérence*
to the *Responsibility to Protect*

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Declaration

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Abstract

The thesis addresses the question of whether the Responsibility to Protect (R2P) can be considered a consolidated norm in international society today. A consolidated norm in international society is defined here as a regularised pattern of behaviour that is widely accepted as appropriate within a given social context. The analysis is premised on the assumption that R2P could be regarded as a consolidated norm if it was applied consistently when genocide and other mass atrocities occur; and if international responses would routinely conform to core principles inherent in R2P: seeking government consent; multilateralism; prevention; and regionalism. Finnemore and Sikkink's norm lifecycle model is used to determine the putative norm's degree of consolidation. The analysis shows that R2P had fully emerged as a prospective norm by 2005. In-depth case studies of the international responses to crises in Darfur and Kenya serve to illuminate the findings. The author concludes that the Responsibility to Protect has not, as yet, fully consolidated as an international norm. The Responsibility to Protect has been remarkably successful at pervading the international discourse but has, as yet, been somewhat less successful at consistency in implementation in terms of adherence to its core principles as outlined above (the qualitative dimension of R2P); and it has been least successful, to date, in terms of consistency across cases in terms of resolve and tenacity. The consistency-gap may, however, gradually close – which is possible, if not likely, if R2P continues on its current trajectory.

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Chapter One: Introduction

The 'Responsibility to Protect' (R2P)

The 'responsibility to protect' is an idea that was first codified in a 2001 report of the International Commission on Intervention and State Sovereignty (ICISS).¹ The aim of the commission, according to Gareth Evans, co-chair together with Mohamed Sahnoun, was to bring together supporters and sceptics of humanitarian intervention in an effort to address the central issues at stake from a fresh perspective. In particular, commissioners argued, this meant looking closely at the role of state sovereignty as a fundamental ordering principle in international society.² State sovereignty and the norm of non-intervention are traditional pillars of international society – could state sovereignty be re-conceived as entailing a further set of responsibilities in relation to human rights?

The report thematised the idea of 'responsibility'. The architects of the report argued that sovereignty ought to be seen as constituted by responsibility, promoting the idea of 'sovereignty as responsibility'. The report argued that '[s]overeignty as responsibility has become the minimum content of good international citizenship'.³ The idea of 'sovereignty as responsibility' owed much to Francis Deng's work on Internally Displaced Persons (IDPs) in the 1990s⁴ – Deng had argued that states were responsible for protecting IDPs within their territory, despite the fact that international law provisions to protect refugees (who crossed borders) did not apply to IDPs who did not cross international borders but were equally vulnerable. Continuing the theme of responsibility and responsible statehood, the ICISS commission set itself the aim of laying out individual states' responsibility toward their own citizens, as well as the responsibility of the international community towards citizens of states. The commission's aim was to spell out precisely what this would mean in practical terms, and what criteria for military intervention could look like.

In thematising 'responsibility', the 2001 ICISS commission developed a distinct approach to large-scale, systematic human rights violations, or, in short, 'mass atrocities'. The task was to balance a need to protect state sovereignty (against illegitimate foreign interference) with the need to protect human rights (from direction violation by a government within a given territory; from government-sponsored violation; or from violations resulting from a lack of ability or will of relevant authorities to prevent mass atrocities). The commission referred to this as the 'dual responsibility' of the state.⁵ The 'responsibility to protect' that resulted from months of deliberations was built on four central tenets: the importance of multilateralism; a preference for prevention and non-coercive measures; a

¹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,' (Ottawa 2001)

² Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, D.C.: Brookings Institution Press, 2008) pp. 31-54

³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 8

⁴ Francis M. Deng, 'Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Action,' in *Africa in World Politics: Post-Cold War Challenges*, ed. John W. Harbeson and Donald Rothchild (Boulder, Colo.: Westview, 1995); Francis Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: The Brookings Institution, 1996)

⁵ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 8

reaffirmation of state sovereignty and the central role of individual governments; and the promotion of regional conflict resolution mechanisms.

The commission held that a 'modern understanding of the meaning of sovereignty' provides an approach that 'bridges the divide between intervention and sovereignty'.⁶ The commission's articulation of the responsibility to protect was broad in scope, ranging from prevention (including political, economic, legal, and security sector-related), to reaction (including military intervention as a last resort), to post-conflict peace-building (again covering not just security, but a broad range of interrelated issues such as good governance, justice and reconciliation, and economic development).⁷ The 'responsibility to protect' comprised the 'responsibility to prevent' and the 'responsibility to rebuild', as well as the 'responsibility to react' (which had been the traditional focus of humanitarian intervention).⁸ The broad scope of the 'responsibility to protect' thus conceived set it apart from traditional accounts of humanitarian intervention that understand intervention as an ad-hoc response to acute situations of human suffering, and employing military means.⁹ Humanitarian intervention, as framed within the 'responsibility to protect', had implications for an array of policy areas, from the security sector, to economic development, to justice.¹⁰

Although the ICISS commission took great pains to emphasise its respect for the traditional value placed on state sovereignty, it was, in fact, advancing a very progressive agenda. The idea that atrocity prevention should become an international responsibility – building on the Genocide Convention – and that this responsibility ought, in future, to become institutionalised in a growing system of global governance, was novel and, to some extent, revolutionary. The report certainly stirred the controversy around humanitarian intervention. In 2004, the High-Level Panel Report 'A More Secure World' referred to the responsibility to protect.¹¹ One year later, in 2005, UN Secretary-General Kofi Annan's report, 'In Larger Freedom', explicitly endorsed the responsibility to protect.¹² In the same year, in 2005, the 'responsibility to protect' was endorsed in the outcome document of the World Summit.¹³

⁶ Ibid. p. 8; p. 17

⁷ Ibid.

⁸ Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*; Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009) See also Noële Crossley, 'Book Review: Gareth Evans, the Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All (Washington, DC: Brookings Institution Press, 2008). Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009),' *Millennium: Journal of International Studies* 39, no. 3 (2011)

⁹ See also Chris Brown, 'On Gareth Evans the Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All (Brookings Institute, 2008),' *Global Responsibility to Protect* 2, no. 1 (2010)

¹⁰ In terms of its comprehensiveness, a parallel can be drawn here between the 'responsibility to protect' and human security. Although comprehensive, the 'responsibility to protect' is still more circumscribed than human security. Human security is comprehensive in both the issues it addresses as well as its suggested remedies for tackling these. The 'responsibility to protect', as articulated in the ICISS report, is comprehensive in terms of suggested measures, but addresses a much narrower set of issues. On human security see Roland Paris, 'Human Security: Paradigm Shift or Hot Air?,' *International Security* 26, no. 2 (2001) and Taylor Owen, 'Human Security - Conflict, Critique and Consensus: Colloquium Remarks and a Proposal for a Threshold-Based Definition,' *Security Dialogue* 35, no. 3 (2004)

¹¹ United Nations, 'A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change,' (2004), p. 3, p. 9

¹² 'In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General,' (2005), p. 35

¹³ 'World Summit Outcome,' (General Assembly Resolution A/60/L.1, 2005). However, the 'responsibility to protect' as endorsed in the outcome document lacked the intervention criteria the ICISS report had contained,

The Research Question

The responsibility to protect has been described as ‘the most important and imaginative doctrine to emerge on the international scene for decades’¹⁴; as ‘one of the most powerful and promising innovations on the international scene’¹⁵; as ‘a major paradigm shift for the protection of victims worldwide’.¹⁶ Whilst it is not difficult to agree with the notion that the responsibility to protect is imaginative or even promising, the suggestion that it constitutes a ‘major paradigm shift’ is one that deserves closer attention. Is the responsibility to protect, as Gareth Evans suggests, a doctrine that has the power to ‘end mass atrocity crimes once and for all’?¹⁷ Ending mass atrocities once and for all, with immediate effect, is an idea that anyone would endorse without hesitation. However, is Evans’ claim that the responsibility to protect provides a solution to a difficult problem credible? This is an important question and not to be taken lightly, not least because of the seriousness with which this proposal has been made, and the intellectual and political stature of the leading actors involved. The campaign to promote the responsibility to protect effectively amounted to earnest and determined norm entrepreneurship.

There are various angles from which the responsibility to protect has been considered. A number of evaluations have focused on the legal dimension, assessing R2P’s potential impact on international law.¹⁸ Others have considered implications for international criminal justice and the work of the ICC.¹⁹ Other scholars have focused on the ethical or normative dimension of the responsibility to protect: whether the assumptions and ethical claims inherent in the idea are persuasive and whether, consequently, the responsibility to protect doctrine deserves to be supported.²⁰ Yet others

and has therefore been referred to as ‘R2P lite’. Thomas Weiss coined the phrase, see Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Polity Press, 2007) p. 117. On this and continued usage of the phrase see Alex J. Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention,’ *International Affairs* 84, no. 4 (2008)

¹⁴ Louise Arbour, UN High Commissioner for Human Rights, 2004-2008, quoted in Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, appraisals

¹⁵ Francis Deng, UN Special Adviser for the Prevention of Genocide, 2007-2012, quoted in *ibid.*, appraisals

¹⁶ Bernard Kouchner, Foreign Minister of France, 2007-2010, quoted in *ibid.*, appraisals

¹⁷ ‘Ending Mass Atrocity Crimes Once and For All’ is the subtitle of Gareth Evans’ book, *ibid.*

¹⁸ Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’, *American Journal of International Law* 101(2007); Louise Arbour, ‘The Responsibility to Protect as a Duty of Care in International Law and Practice,’ *Review of International Studies* 34, no. 3 (2008); Anne Orford, ‘Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect,’ *Michigan Journal of International Law* 30, no. 3 (2009); Maria Banda and Jennifer M Welsh, ‘International Law and the Responsibility to Protect: Clarifying or Expanding States’ Responsibilities?’, *Global Responsibility to Protect* 2(2010); Alex J. Bellamy and Ruben Reike, ‘The Responsibility to Protect and International Law,’ *ibid.*, no. 3 ; Jonah Eaton, ‘Emerging Norm: Determining the Meaning and Legal Status of the Responsibility to Protect,’ *Michigan Journal of International Law* 32, no. 4 (2010-2011)

¹⁹ Benjamin N. Schiff, ‘Lessons from the ICC for ICC/R2P Convergence,’ *The Finnish Yearbook of International Law* 21, no. 1 (2010); Mark Kersten, ‘The ICC and R2P - Bridging the Gap,’ *Justice in Conflict*, <http://justiceinconflict.org/2011/03/28/the-icc-and-r2p-bridging-the-gap/>

²⁰ David Chandler, ‘R2P or Not R2P? More Statebuilding, Less Responsibility,’ *Global Responsibility to Protect* 2, no. 1 (2010); Luke Glanville, ‘In Defense of the Responsibility to Protect,’ *Journal of Religious Ethics* 41, no. 1 (2013)

focused on the problem of agency: the responsibility to protect is all well and good, but responsible actors need to be identified.²¹

A number of scholars discuss prospects for success, probing into the doctrine's ability to effect changes in international behaviour.²² This is where the present research is situated. This thesis engages with the question to what extent the idea of a responsibility to protect, if implemented successfully, can prevent genocide and other mass atrocities. In effect, the question is whether the responsibility to protect is, or has the potential to become, an international norm. Consequently, the research question is phrased as follows:

To what extent is the Responsibility to Protect (R2P) a consolidated norm in international society today?

In what follows I use the term 'responsibility to protect' (lower case) to represent the idea as outlined in the 2001 report of the International Commission on Intervention and State Sovereignty, with all of its wider implications and connotations, as well as subsequent modifications of the idea over time. When I use the term 'Responsibility to Protect', or its acronym, 'R2P', I am specifically referring to the 'responsibility to protect' as outlined in the 2005 World Summit Outcome Document (WSOD). This document, because of its status as a UN General Assembly resolution, better reflects an emerging international consensus about what the concept entails, and as such better reflects what the responsibility to protect is, or what states think it ought to be.

As is evident from the way the question is phrased, the concept of 'norm' is central to this research. The question implicitly recognises the importance of beliefs and practices in constituting identities and shaping behaviour. It is based on an assumption that international proclamations or treaties are essentially meaningless unless there is intersubjective agreement on their validity, on how they are to be interpreted, and unless this is evidenced by repeated and consistent practice. Rarely will one find absolutes in the social sciences, and so it is with norms: they are fluid, they emerge, diffuse, consolidate, fluctuate, erode, or disappear. To make matters worse, they may be practiced consistently but for some exceptions. They may apply unequally. The relationship between norms and other factors in politics is complicated – but this does not make them any less important or relevant in understanding social behaviour.

The aim of this research is to probe deeply into the question of norm consolidation and the Responsibility to Protect. In order to answer the research question introduced above it is necessary to address a range of sub-questions: Does R2P even qualify as a potential norm? If so, where does it stand in the so-called 'norm-lifecycle'?²³ If R2P is consolidating as a norm, what of implementation?

²¹ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010) ; Melissa T. Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection,' *International Journal of Human Rights* 16, no. 7 (2012)

²² Cristina G. Badescu and Thomas G. Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?,' *International Studies Perspectives* 11(2010); Andy W. Knight, 'The Development of the Responsibility to Protect: From Evolving Norm to Practice,' *Global Responsibility to Protect* 3, no. 1 (2011); Noha Shawki, 'Responsibility to Protect: The Evolution of an International Norm,' *ibid.*; Amitav Acharya, 'The R2P and Norm Diffusion: Towards a Framework of Norm Circulation,' *ibid.* 5, no. 4 (2013); Jennifer M Welsh, 'Norm Contestation and the Responsibility to Protect,' *ibid.*

²³ Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change,' *International Organization* 54, no. 4 (1998)

As Alex Bellamy points out, there is an intimate link between norm consolidation and implementation: ‘...it is not possible to separate “norm building” from “operationalization”, because the building of real capacity depends on agreement about the desirability of committing the necessary resources and political will.’²⁴ Furthermore, international practice is not one-directional, in the sense that international practice is not simply the result of policies that are ‘implemented’. The experience of the so-called processes of ‘implementation’, in turn affects the general discourse and is likely to affect processes of norm emergence, diffusion, and consolidation.²⁵ Therefore, the core chapters of this thesis address the following sub-questions:

- 1) *What is a ‘norm’ and is R2P, ontologically, a potential norm?*
- 2) *Where does R2P stand in the norm-lifecycle? Has it emerged / diffused / consolidated?*
- 3) *What does the application of R2P to particular cases tell us about R2P’s status as an international norm?*

The thesis addresses each of these questions in turn. Chapter two introduces the analytical framework and engages with question one, providing a definition of ‘norm’ and engaging with the question of whether R2P fits categorically, and what type of norm it could be. Chapters three, four, and five address question two, tracing the development of R2P with a view to determining whether R2P can be said to have emerged or even consolidated. Chapters six, seven, and eight address question three, exploring a number of case studies in an effort to shed further light on the relationship between the existence of R2P and international practice. The overall objective is to provide a firm answer to the principal research question, the extent to which the Responsibility to Protect can be considered a consolidated norm in international society today.

The Theoretical and Methodological Approach

The thesis is situated within Global Ethics as a research field in International Relations,²⁶ although the methodological approach chosen here is non-normative: the thesis explores the genesis and consolidation process of a putative international norm, but refrains from a discussion of ethical positions in support or in opposition to R2P. For the purpose of this research and of answering this particular research question, the present author has attempted to adopt an ethically neutral position on R2P. This approach is non-normative in the sense that I refrain from making ethical judgments; it falls within the remit of normative theory in so far as the study of norms falls under ‘normative theory’. The broader definition of ‘normative theory’ regards normative theory as a form of theorising that addresses the moral dimension of international relations, or the ‘ethical nature of the

²⁴ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 131.

²⁵ On feedback in relation to R2P’s diffusion process, see Acharya, ‘The R2P and Norm Diffusion: Towards a Framework of Norm Circulation’

²⁶ For a definition of ‘Global Ethics’ see Kim Hutchings, *Global Ethics: An Introduction* (Cambridge: Polity Press, 2010) pp. 1-27. Hutchings defines Global Ethics as ‘a field of theoretical inquiry that addresses ethical questions and problems arising out of the global interconnection and interdependence of the world’s population’ (p. 1)

relations between communities/states'.²⁷ In this sense, the label is an appropriate description of the approach taken here, because this broader definition encompasses both the process of ethical standard-setting on one hand, as well as the study of standard-setting – who sets them, what, and how – on the other.²⁸ This thesis is concerned with the latter, the study of standard-setting, or norm emergence. The thesis aims to elucidate the emergence process of a particular norm and its potential role in altering the normative structure of contemporary international society.

The theoretical approach of choice is constructivist, i.e. based on the assumption that ideas, practices, discourse, and identities matter. On the basis of interpretations of observed behaviour, this thesis seeks to identify structural changes in the organisation of norms in international society. The aim is to understand how changed perceptions of appropriateness, and changed expectations about 'normal' behaviour affects international practice.²⁹ In order to do so, the thesis draws on insights gleaned from the body of work that has established the field of theorising on norm emergence, diffusion, and consolidation.³⁰ The concept of the 'norm-lifecycle',³¹ developed by Finnemore and Sikkink, is one of the central pillars of the analytical framework guiding the analysis.

Two in-depth case studies (on Darfur, and the post-election violence in Kenya in 2007-2008) are used to illustrate the overall argument in relation to R2P's status as a norm; and to illuminate the findings of chapters three, four, and five, on R2P's position in the norm life-cycle. A survey of post-2005 cases is used to test whether international behaviour has been consistent (or sufficiently so – more on this in chapter two, on the analytical framing of the thesis). I define 'case study' as 'an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident'.³²

Since the end of the Cold War there have been many situations in which R2P would have been applicable if it had already been articulated. A possible approach, therefore, could have been to trace international responses to these cases and to gauge whether the narrative has changed gradually with the emergence of the idea of a responsibility to protect. However, such an approach would have lacked the in-depth exploration needed to understand the relationship between changing norms and the effect on particular cases; and vice versa, the influence of individual cases on the development of the R2P norm. Sub-question three – *What does the application of R2P to particular cases tell us about R2P's status as an international norm?* – requires a close-up view of a select few cases.

Another possibility – at the other extreme – would have been a single case study which could have provided a greater extent of detail. A single case study would have allowed for an in-depth study of

²⁷ Chris Brown, 'Theory and International Relations,' in *International Relations Theory: New Normative Approaches* (New York and Oxford: Columbia University Press, 1992) p. 3

²⁸ Chris Brown notes that theory that describes itself as non-normative is in fact based on certain normative assumptions, and suggests the term 'interpretive' theory might therefore be more suitable.

²⁹ For a standard constructivist work in this area see, for instance, Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (New York: Cornell University Press, 2003)

³⁰ Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, Cambridge Studies in International Relations (Cambridge University Press, 1989) ; Ann Florini, 'The Evolution of International Norms,' *International Studies Quarterly* 40, no. 3 (1996); Peter J. Katzenstein, ed. *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996); Finnemore and Sikkink, 'International Norm Dynamics and Political Change'

³¹ 'International Norm Dynamics and Political Change'

³² See Robert K. Yin, 'Introduction,' in *Case Study Research: Design and Methods, Applied Social Research Methods Series* (Thousand Oaks, London, and New Delhi: Sage Publications, 2003), p. 13

the impact of changing discourse with thick description of one illustrative case. However, this would have precluded the possibility of surveying the putative norm's development over time and across cases; in particular, it would have foreclosed the possibility of drawing comparisons and saying anything about consistency, which, as I argue in chapter two, is an important attribute of stable norms. For these reasons, I strike a balance between in-depth, illustrative case studies on the one hand³³ (chapters six and seven, on Darfur and Kenya, respectively) and an overall survey of a much wider range of cases since 2005 (chapter eight surveys a further three cases as well as provides an overview of international responses to a much larger set of cases in which R2P has been invoked in some form since 2005).

Darfur and Kenya were the first two cases in which R2P had been successfully invoked. The case studies discuss the application of the R2P label to these cases, and explore subsequent international responses and the extent to which these conformed to core R2P tenets. In response to atrocities in Darfur, the UN set up an AU/UN hybrid mission in Darfur (UNAMID).³⁴ In response to an escalating crisis in Kenya, an AU-led mediation process was set up. Both case studies explore how R2P language has been used. Both cases also explore whether international responses conformed to emerging R2P practice.

I lay out a set of key R2P tenets in chapter two, where, amongst other things, I outline why I identify R2P as based on four basic principles: an emphasis on multilateral authorisation through the UN Security Council; government consent where possible; a preference for prevention; and local participation through the contribution of regional and sub-regional organisations. The case studies use these principles to frame the analysis of R2P application to these two cases. The study is comparative in so far as I sometimes draw out similarities and differences between international responses to the two cases in relation to these key components or in the overall response, but I do not aim at a systematic cross-case comparison based on formal comparative methodology, for the reasons outlined earlier. The purpose of the case studies is to illustrate my argument and illuminate conclusions drawn from the earlier chapters.

A word on the choice of in-depth case studies. Today R2P has pervaded the international discourse and is argued to be applicable to a very large number of cases. Several years earlier, however, the number of formal, successful invocations of R2P was limited. By 2011, R2P had been invoked with success on four occasions: in the crisis in Darfur from 2003 onwards; in Kenya's post-election violence of 2007/2008; to justify intervention in Libya in 2011; and in the case of Côte D'Ivoire in 2011. A methodology focusing on cases where R2P had actually been invoked or used as a 'prism' (at some point in time, even if retroactively) was chosen over one taking into consideration cases in which R2P could have been applied, for the simple reason that it facilitated analysis of the effect of the label on subsequent international responses. However, there were numerous other cases to which R2P could have been applied – ongoing conflict and strife in the DRC and Somalia serve as examples here. R2P practices may have shaped international responses to these crises as well (I

³³ On comparative case study research methodology see, for instance, 'Comparative Research Design: Case and Variable Selection,' in *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques*, ed. Charles C. Ragin and Benoît Rihoux, *Applied Social Research Methods Series* (SAGE, 2009). This text outlines the 'most similar different outcomes (MSDO)' and 'most different similar outcomes (MDSO)' systems design. Outcomes were considerably different in the cases of Darfur and Kenya, and, incidentally, the case selection therefore resembles a MSDO systems design rather than an MDSO design, which is also better suited to very small-n studies. However, I am not using a formal comparative research design – rather the role of the cases is to illustrate the overall argument.

³⁴ United Nations, 'Darfur – UNAMID – Facts and Figures,' <http://www.un.org/en/peacekeeping/missions/unamid/facts.html>.

discuss this in more detail in chapter eight). The two in-depth case studies focus on cases in which R2P was invoked, and of these, Darfur and Kenya. The latter two, Libya and Côte D'Ivoire were, at the time of writing, too recent to make research practicable: access was difficult due to local instability, and it was difficult to draw firm conclusions.

However, I pick up both cases again at the end of chapter eight, taking a cursory glance at the international responses and assessing to what extent it appears that – based on the information available today – R2P shaped international responses in these two crises. Also, chapter eight looks at the issue of non-invocation or unsuccessful invocation, to assess to what extent R2P-conforming international behaviour is tied to the use of R2P language. Hence chapter eight also briefly discusses the cases of Myanmar and Sri Lanka.

A combination of literature review and case study was regarded as the most suitable methodological approach. Chapter two, outlining the analytical framework of the thesis, and chapter eight, surveying post-2005 cases, are based purely on literature review. As a starting point in my literature review, I consulted a number of standard texts on humanitarian intervention,³⁵ as well as recent more policy-oriented texts,³⁶ and statements and policy papers by governments, policy-makers, NGOs, and other groups.³⁷ The other chapters – three, four and five, on the development of the putative norm; and chapters six and seven on Darfur and Kenya, respectively – all draw on qualitative interviews conducted at different stages throughout this research.

Interviews were conducted in Khartoum in July and August 2010, in New York in March and April 2011, and in Nairobi in December 2011. Expert interviews with key actors were conducted in each of these locations. Interviewees in Sudan and Kenya included academics, diplomats, civil UNAMID staff, NGO staffers, as well as journalists. Fieldwork in New York included interviews with the then UN Special Adviser on R2P, Edward Luck, as well as diplomats serving at permanent missions, academics, scholars working for think tanks, as well as NGO staffers. Interviews were based on open-ended questions, and although they were loosely structured they were tailored to the interviewees. Interviews in Khartoum and Nairobi focused on case-specific discourse and implementation; the interviews with academics and policy-makers in New York focused on the wider (mostly case-unspecific) discourse as well as institutionalisation.

³⁵ These included Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force*; Eric A. Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention* (Albany: State University of New York Press, 2009); J.L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003); Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977); Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World* (Cambridge: Polity Press, 2007); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000)

³⁶ See, for example, Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*; Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*; or the new journal edited by Alex Bellamy and Sara Davies, *Global Responsibility to Protect* (Nijhoff, first volume 2009).

³⁷ Most importantly the R2P report itself: International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', as well as other follow-up documents such as: United Nations, 'A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change'; 'In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General'; 'World Summit Outcome'; and Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General,' (United Nations General Assembly, A/63/677, 2009)

Key challenges included keeping up to date with rapid changes in the international discourse on the responsibility to protect; as well as the emergence of new crises and the need to constantly keep abreast of new developments and what this meant for R2P's prospects as an emerging and potential norm in international society. As chapter two elaborates further, the thesis is based on an analytical binary that distinguishes between pre-R2P and post-R2P cases. On the other hand, the analytical framing recognises the fluidity of norm emergence, diffusion, and consolidation, and so it was necessary to analyse the cases in view of the fact that they occurred at different moments throughout the putative norm's diffusion and consolidation process. The genesis of R2P was a protracted process, progressing out of a debate on humanitarian intervention, and rooted to a large extent in the reactions to peacekeeping efforts in the 1990s and especially the events in Rwanda and Kosovo. Similarly, the period since the formulation of the doctrine cannot be seen in an entirely undifferentiated way. The popularity of the concept was not steady, but prone to fluctuation, and different states supported or rejected R2P more or less vehemently at different times. Therefore, although a broad categorisation into pre-2005 and post-2005 cases is possible, it was important to be aware of the case-specific (and cross-case specific) historical context that produced smaller vacillations in R2P's popularity in order to avoid the production of an over-simplified narrative of R2P's emergence and consolidation process.

The Structure of the Thesis

The thesis begins by drawing up an analytical framework in chapter two. This framework is then used in chapters three, four, and five to assess R2P's status as an international norm. Based on tentative conclusions regarding R2P's status as a norm drawn from these chapters, I proceed in chapters six through eight to discuss the role of individual cases in R2P's emergence and consolidation process. In what follows below I provide a detailed outline.

Chapter two lays out a framework for analysis. I begin the chapter with a discussion of the term 'norm'. I discuss what an international norm is, how it comes about, and what 'consolidation' means. Using key literature on norms, I establish how I use this terminology for the purposes of this research. The introductory section of chapter two discusses the following topics:

- Types of norms: social norms; international norms
- The creation process of norms: civil society mobilisation, campaigns
- The diffusion of norms: emulation and/or imposition
- Transformation: the process of adaptation, internalisation, and institutionalisation
- Obstacles for norm consolidation: multiple and conflicting norms
- A working definition of the term 'consolidated norm'

I lay out a framework for analysis in which I discuss R2P's status as a norm. I discuss the obstacles R2P faces and, tentatively, the extent to which R2P works in a way one would expect of a consolidated norm. I discuss the importance of acceptance and consensus, and explain why I think it

is questionable whether levels of acceptance and consensus around R2P are sufficient to qualify R2P as a norm. I relate this to the problem of conflicting norms, and that it may be difficult for R2P to take root as it contradicts a core norm in international society, state sovereignty (R2P contradicts human rights norms as well, but no state or NGO objects to R2P on the grounds that it counteracts human rights). I then discuss ways in which we could measure the extent to which a norm has consolidated successfully in terms of what is observed in practice. I suggest a framework for assessing norm consolidation based on the assumption that the application of a successful norm will be consistent, principled, and – to varying degrees – effective. I then outline how I will use the framework outlined above to assess the extent to which R2P is a consolidated norm in international society.

In chapters three through five I discuss the mobilisation campaign around R2P and how R2P developed as a concept. I link this with the efforts to overcome the human rights versus sovereignty debate, outlining how R2P proponents thought that ‘sovereignty as responsibility’ could provide a key for doing this, just as the idea of ‘sustainable development’ was an attempt to overcome the dilemma environmental degradation resulting from economic development.

Chapter three – the first of the chapters on mobilisation – discusses the antecedents of R2P, and contrasts R2P with ideas about humanitarian intervention since the establishment of the UN. It outlines the various ideas that influenced R2P, including Bernard Kouchner’s ‘droit d’ingérence’ in the 1960s, Francis Deng’s work on IDPs and his notion of ‘sovereignty as responsibility’ in the 1990s; the Human Security Agenda; the Blair Doctrine; and Kofi Annan’s ‘Two Concepts of Sovereignty’.

Chapter four goes on to discuss Kofi Annan’s ‘individual sovereignty’, and the various debates and influences surrounding the drafting of the 2001 ICISS report. The chapter outlines the ICISS’ report framework of R2P incorporating a responsibility to ‘prevent’, to ‘react’ and to ‘rebuild’, and its use of criteria to establish when coercive measures (military or non-military) can be taken. The chapter discusses R2P advocacy efforts in the years immediately following the publication of the report and leading up to the endorsement of R2P in the 2005 World Summit Outcome Document.

Chapter five outlines the various initiatives to promote R2P since the World Summit in 2005, making use of a range of primary sources, including resolutions and formal statements, and drawing on interviews conducted in New York and Washington DC in March and April 2011. It discusses efforts to operationalise R2P, such as the establishment of the post at the UN of Special Adviser to the Secretary-General on R2P, and the creation of two NGOs in New York working exclusively on R2P (the Global Centre for the Responsibility to Protect, and the International Coalition for the Responsibility to Protect). It also discusses continued debate in recent years, for example on the UN Secretary General’s 2009 report on the implementation of R2P and the three-pillar approach outlined therein; the formulation of a ‘narrow but deep’ approach to address the four R2P crimes (genocide, ethnic cleansing, war crimes, and crimes against humanity); and Brazil’s proposal of a ‘Responsibility While Protecting’ (RwP). The chapter outlines states’ positions on R2P, which traditionally fall into one of three categories: supporters, states which strongly support R2P and play a leading role in R2P advocacy, especially at the UN in New York; sceptics, states careful about endorsing R2P, often distrustful of interventionist policies and concerned about the institutionalisation of neo-imperialist practices; and rejectionists, states directly opposed to R2P.

Chapters six through eight illustrate the ways in which R2P has affected international responses to situations in which R2P crimes are occurring or may be imminent. Power politics and state interests continue to weigh heavily on international responses to genocide and other mass atrocities, but the consolidating R2P norm appears to have a significant impact on international practice. Using the

framework laid out in chapter two, I proceed in chapters six through eight to illustrate in what ways international responses conform to key R2P principles. I use the cases of Darfur and Kenya to make the argument that this is the case for both R2P prevention as well as R2P reaction.

In chapter six, on Darfur, the analysis focuses on examining the politics of intervention. Darfur was the first case in which R2P was invoked. The humanitarian response was facilitated through the UN and the AU in the form of the United Nations – African Union Operation in Darfur (UNAMID). Interviews conducted in Khartoum in July and August 2010 support the analysis. Questions asked of the empirical material include: First, was the application of R2P based on a common international consensus that Darfur qualified as an R2P case, or was this in fact a label applied by governments and NGOs advocating more robust international action on Darfur? I outline the initiative of a range of international actors, and illustrate how reference is made to R2P. Second, was the intervention sufficiently robust to allow the conclusion that international responsibility trumped state sovereignty once it had been determined the R2P threshold had been met? And, third, did the format of the measures taken in response conform to the core R2P principles? I look at the role of multilateralism, prevention, coercion, and regionalism to determine the extent to which the practice of humanitarianism conformed to R2P.

Chapter seven analyses the R2P prevention efforts following the outbreak of the post-election violence in Kenya in 2007. Kenya's post-election violence was regarded as the first case of 'R2P prevention'. Contested elections in 2007 led to an escalation of conflict along ethnic lines, with over 1,000 dead and up to 600,000 displaced, giving rise to the fear of large-scale ethnic conflict. International mediation efforts by the African Union Panel of Eminent Personalities, under the leadership of the former UN Secretary-General Kofi Annan, and with the support of the UN, neighbouring states, donors, and civil society, were successful at bringing about an agreement between Mwai Kibaki and Raila Odinga, and resolving the conflict without the use of coercive measures. Kenya was seen as R2P's success story – multilaterally orchestrated action to prevent an escalation of conflict, with heavy reliance on regional actors. This chapter questions to what extent this account holds true, and whether the Kenyan case really was a successful instance of 'R2P prevention'. Research involved interviews in Nairobi in December 2011. The chapter analyses to what extent the application of R2P was related to the success of the conflict mitigation efforts. The Kenyan context was favourable to the success of the mediation, and it is questionable whether the mediation would have succeeded without these contingent factors. As with Darfur, the analysis is focused on three broad themes: discourse; robustness of international responses; and the extent to which the chosen measures were in line with core R2P principles.

Chapter eight looks at international practice since 2005. The chapter explores three dimensions of consistency in international practice since 2005: consistency in terms of invoking R2P (rhetorical consistency); consistency in terms of the robustness of international responses and a willingness to subjugate sovereignty where necessary (substantive consistency); and consistency in the way actors choose to respond (procedural consistency). The chapter provides a general overview of cases since 2005 and then engages with the three most recent cases in which R2P had been invoked and how these have, in turn, affected R2P's consolidation as norm. The case of Myanmar following Cyclone Nargis was cited as one in which a failed attempt at R2P invocation sharpened the conceptual meaning of R2P by delineating clear limits of applicability, and consequently, as was argued, facilitated the acceptance of the concept by some of its sceptics. References to R2P in UN Security Council resolutions 1970 and 1973 on Libya, and resolution 1975 on Côte D'Ivoire in February and March 2011, it was argued, provided evidence for a consolidating norm. Not only did the Council set a precedent with the Libya case – it also reaffirmed it with its invocation of R2P in the case of Côte

D'Ivoire. However, the resulting intervention in Libya was deeply controversial. I apply the same framework, in a more condensed form, to illustrate my argument.

In chapter nine I provide a recap of the entire thesis and identify central conclusions that can be drawn from the preceding chapters. I conclude that, although R2P cannot be said to have consolidated fully, it appears as though a process of consolidation is underway. I recap the mobilisation campaign around R2P discussed in chapters three through five. I explain why I think R2P's progress and beginning consolidation mean that R2P has become an important variable explaining international behaviour (albeit not the only one). I summarise my empirical findings and what I have observed in practice in relation to norm consolidation. I conclude that R2P's progress as a consolidating norm has had a mixed record so far: although its impact on international discourse has been profound, R2P has not been successful at consistently subjugating sovereignty where the 'manifest failure' threshold has been met. On the other hand, substantial progress has been made in terms of qualitative consistency. International practice does reflect extensive institutionalisation of processes and procedures for appropriately responding to cases in which mass atrocities are occurring or may be imminent.

Chapter Two: An Analytical Framework for Assessing the Consolidation of R2P as an International Norm

Introduction

R2P is variously referred to as an 'idea',³⁸ a 'concept',³⁹ a 'doctrine'⁴⁰ or 'ideology',⁴¹ a 'framework'⁴² or a 'principle'.⁴³ Humanitarian crises are routinely viewed through an 'R2P prism'⁴⁴ or 'lens',⁴⁵ and 'R2P language'⁴⁶ or 'rhetoric'⁴⁷ is used to inform the wider public and encourage a humanitarian response. Whereas an idea or concept is merely a theoretical proposition, the terms 'framework' and 'principle' suggest a greater degree of elaboration and acceptability than an 'idea' or a 'concept'. Terms such as 'doctrine' or 'ideology' connote a political agenda and are usually avoided by R2P advocates. Proponents have begun referring to R2P as a 'practice',⁴⁸ and more recently as an emerging 'norm'.⁴⁹ The variation in terminology reflects the contested status of R2P – as yet there is no academic consensus on the extent to which R2P has been accepted by states and international civil society actors, and the extent of its institutionalisation. It remains unclear to what extent R2P has consolidated as a norm, if at all, and what this means in practice in terms of international responses to egregious human rights violations. This chapter develops a framework to assess to what extent R2P has indeed become a consolidated norm in international society.

In the pages that follow I introduce an analytical framework to assess R2P's normative consolidation. The analytical framework I suggest is comprised of two components: first, a comparison of R2P's genesis with the general processes by which international norms emerge and consolidate; and, second, assessing the extent of R2P's consolidation as norm based on a set of indicators specific to

³⁸ Anonymous, 'An Idea Whose Time Has Come—and Gone?', *The Economist* 23 July 2009

³⁹ United Nations University, 'The Responsibility to Protect,' <http://unu.edu/publications/articles/responsibility-to-protect-and-the-protection-of-civilians.html>

⁴⁰ Jayshree Bajoria, 'Libya and the Responsibility to Protect,' Council on Foreign Relations, <http://www.cfr.org/libya/libya-responsibility-protect/p24480>

⁴¹ Anonymous, 'Editorial: What Is U.S. National Interest in Libya?,' *Investor's Business Daily*, <http://news.investors.com/ibd-editorials/032311-566997-editorial-what-is-us-national-interest-in-libya-.htm>

⁴² Sheri P. Rosenberg, 'Responsibility to Protect: A Framework for Prevention,' *Global Responsibility to Protect* 1(2009)

⁴³ Juan Garrigues, 'The Responsibility to Protect: From an Ethical Principle to an Effective Policy,' FRIDE, <http://www.responsibilitytoprotect.org/files/responsibilidad.proteger.pdf> For a discussion of the terms applied to R2P see also Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* pp. 4-7

⁴⁴ 'The Responsibility to Protect—Five Years On,' *Ethics & International Affairs* 24, no. 2 (2010)

⁴⁵ Global Centre for the Responsibility to Protect, 'R2P Monitor,' http://www.globalr2p.org/our_work/r2p_monitor

⁴⁶ Kristen Boon, 'The Responsibility to Protect,' *Opinio Juris*, <http://opiniojuris.org/2012/11/13/the-responsibility-to-protect/>

⁴⁷ Noam Chomsky, 'Statement by Professor Noam Chomsky to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect, 23 July 2009,' (New York: United Nations, 2009)

⁴⁸ Julia Hoffmann and André Nollkaemper, eds., *Responsibility to Protect: From Principle to Practice*(Amsterdam: Amsterdam University Press, 2012)

⁴⁹ Gareth Evans, 'The Responsibility to Protect: From an Idea to an International Norm', Keynote Opening Address to the Chicago Council on Global Affairs Conference on 'the Responsibility to Protect: Engaging America', Chicago, 15 November 2006,' <http://www.gevans.org/speeches/speech202.html>; Jennifer Welsh regards R2P as a contested norm, see Welsh, 'Norm Contestation and the Responsibility to Protect'

R2P. To begin with, however, it is useful to discuss the meaning of the term 'norm' and to define the way this term will be used in the thesis.

Norms in International Society: R2P as a Prospective International Norm

The term 'norm' gained popularity in the 1990s in the context of the expanding influence of constructivist scholarship.⁵⁰ The term 'norm' is not confined to constructivist scholarship,⁵¹ but realists and liberals use the term in a very different way. When realists and liberals refer to norms, they are usually describing regularised patterns of behaviour that help maximise utility. Most realists and liberals regard norms as dependent variables that have no causal force of their own. In contrast, the more sociologically inclined scholarship that emerged in the 1990s argued that a norm can be used as an analytical device to account for behaviour that could not be explained otherwise. Norms became independent and intervening variables.

Although the research that emerged from this perspective shares a number of basic assumptions about social construction, the usage of the term 'norm' varies considerably. In fact, the way in which this term has been used by a range of scholars (Finnemore, Barnett, Kratochwil, Katzenstein, Sikkink, Klotz, Florini) is so diverse that it is impossible to distil the essential characteristics of a norm from their scholarship, without doing injustice to one or the other of these accounts.⁵² Although they do frequently overlap in their accounts of essential characteristics of norms, there is no one definition that can capture all of the qualities suggested as constituting a norm. In the following sections, therefore, I list the (essential) qualities attributed to norms, accepting some and rejecting others. I define how I will use the term 'norm' here, and my understanding of the role of norms in international relations. I outline what type of norm R2P could become if it were on track to consolidation. This forms the basis for a framework for analysing norm emergence and for assessing the consolidation of a potential norm such as R2P.

Ontology. According to Jepperson, Wendt, and Katzenstein 'Norms are collective expectations about proper behaviour for a given identity.'⁵³ Similarly, Finnemore and Sikkink define a norm as 'a standard of appropriate behaviour for actors with a given identity.'⁵⁴ The norms literature recognises the fluidity of norms. Norms need to be practiced to emerge, consolidate, and retain their status as norm – hence 'norms are what states make of them'.⁵⁵ Antje Wiener, for example, argues that

⁵⁰ See Jeffrey Checkel, 'The Constructivist Turn in International Relations Theory,' *World Politics* 50, no. 2 (1998)

⁵¹ See also *ibid.* and see also Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, 'Norms, Identity, and Culture in National Security,' in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (Columbia University Press, 1996)

⁵² Martha Finnemore, *National Interests in International Society* (Ithaca and London: Cornell University Press, 1996) ; Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Cornell University Press, 2011) ; Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*; Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* ; Finnemore and Sikkink, 'International Norm Dynamics and Political Change'; Audie J. Klotz, *Norms in International Relations: The Struggle against Apartheid*, ed. Peter J. Katzenstein, Cornell Studies in Political Economy (Cornell University Press, 1995) ; Florini, 'The Evolution of International Norms'

⁵³ Jepperson, Wendt, and Katzenstein, 'Norms, Identity, and Culture in National Security' p. 54

⁵⁴ Finnemore and Sikkink, 'International Norm Dynamics and Political Change'

⁵⁵ Vaughn P. Shannon, 'Norms Are What States Make of Them: The Political Psychology of Norm Violation,' *International Studies Quarterly* 44, no. 2 (2002)

norms derive their 'meaning in use'.⁵⁶ According to this account, therefore, a norm is a norm if the subjects to whom the norm applies accept that the behaviour the norm postulates is appropriate (for a given actor in a certain context). Furthermore, this intersubjective understanding of the delineations of normality and transgression must be constantly re-enacted through practice to continue to persist.

Teleology. Friedrich Kratochwil suggests a definition of 'norm' based on its purpose: for Kratochwil, norms are a means of maintaining social order.⁵⁷ Their role is to 'simplify choices for actors with non-identical preferences facing each other in a world characterized by scarcity.'⁵⁸ They have a social function within a given group. However, whilst this may be the function of norms at the domestic level, the same reasoning is persuasive at the international level only if we presume that a similar form of community is possible internationally despite the absence of a world government. This requires a theoretical perspective premised either on a cosmopolitan belief in universal values,⁵⁹ or on the idea that there is an international society which may happen to be all-encompassing – for example, there is no part of the world today that is not subsumed by a territorial state – but historically has extended to certain parts of the world only owing to 19th century European 'standards of civilization'.⁶⁰ The understanding of the role of norms as maintaining social order must therefore be premised either on moral universalism, or on the English School conception of an international society.⁶¹ In any case, this approach regards norms as providing order, and if a proclaimed rule does not provide order it does not qualify as a norm.

An alternative teleological account of norms is the idea that norms 'constitute states/agents, providing them with understandings of their interests', which prevails in much of the constructivist literature on norms.⁶² In some ways this is compatible with the above – imposing identities and interests upon actors is certainly one way of ordering social relationships and maintaining social order, but it works differently and Kratochwil therefore suggests distinguishing between 'regulative' and 'constitutive' norms.⁶³

Regulative norms prescribe or proscribe behaviour (they order and constrain), whereas constitutive norms define identities (they create new actors, interests, or categories of action).⁶⁴ Jepperson et al use the example of the constitutive role of universities in defining the identities of both students and professors. At the international level, states' identities and interests are premised on the existence of the Westphalian state system predicating state sovereignty and territorial integrity,⁶⁵ which

⁵⁶ Antje Wiener, 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations,' *Review of International Studies* 35, no. 1 (2009); see also Acharya, 'The R2P and Norm Diffusion: Towards a Framework of Norm Circulation'

⁵⁷ Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, p. 1

⁵⁸ *Ibid.* p. 8

⁵⁹ Martha Nussbaum, *In Defense of Universal Values*, vol. 16, Occasional Paper Series (University of Notre Dame, The Joan B. Kroc Institute for International Peace Studies, 1999)

⁶⁰ Gerrit W. Gong, *The Standard of Civilization in International Society* (Oxford University Press, 1984)

⁶¹ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 3rd ed. (Palgrave, 2002); 'The Grotian Conception of International Society,' in *Diplomatic Investigations: Essays in the Theory of International Politics*, ed. Herbert Butterfield and Martin Wight (Cambridge, MA: Harvard University Press, 1966)

⁶² Checkel, 'The Constructivist Turn in International Relations Theory', p. 326

⁶³ Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, pp. 69-94

⁶⁴ Katzenstein, *The Culture of National Security: Norms and Identity in World Politics*, p. 5.; Finnemore and Sikkink, 'International Norm Dynamics and Political Change'

⁶⁵ Jepperson, Wendt, and Katzenstein, 'Norms, Identity, and Culture in National Security' p. 42

makes state sovereignty a constitutive norm in international society. Regulative norms, in contrast, affect state behaviour but do not constitute their identities in the way that constitutive norms such as state sovereignty do. For example, a state may choose to join the Kyoto Protocol, but retains its status as sovereign state if it chooses not to.

If R2P were to become a regulative norm, R2P would widely be regarded as legitimate and consistent international reaction would ensue if a state was unable or unwilling to uphold its responsibility. If R2P were to become a constitutive norm, R2P would change states' identities and interests. In this case, if R2P were to become a consolidated international norm, it would fundamentally change the way governments all over the world perceive their sovereignty. Responsibility would become internalised and states would seek to conform to a new practice of responsibility to retain their legitimate status as sovereign state. A state that acted irresponsibly – both domestically as well as internationally – would be deprived of its legitimate statehood.

If R2P were to consolidate as a norm in international society it would be a constitutive norm, so that if a state fails to meet its protection responsibilities it would lose its claim to legitimate statehood. However, it seems appropriate here to distinguish between a state's primary responsibility to protect, and the international responsibility to protect. Whereas the former can be conceived of as a potential constitutive norm, the latter cannot – after all, which entity would such a constitutive norm apply to? However, the primary responsibility to protect could become a constitutive norm – at least in theory – with pillar three responsibilities constituting a form of international policing of individual states' protection responsibilities.

Actors. Some analyses are state-centric (Wendt),⁶⁶ some are not (Finnemore 1993 on international organisations; Keck and Sikkink 1998 on advocacy networks). Accounts leaning more towards sociological explanations focus on network-analysis and emphasise the importance of norm entrepreneurs and civil society campaigns. In effect, there is a divide between approaches that take the personified state as the core unit, and approaches that continue the sociological tradition of focusing on the relationship between individual and society.

For the purpose of this study, it appears preferable to avoid a state centric approach. The sociological approach to norm consolidation seems better suited to the analysis here, because non-state actors are crucial for an analysis of the norm emergence and diffusion stages – discussing R2P's status as norm is impossible without taking into account the campaigns of a range of sub-state actors including individuals, think tanks, NGOs, and other civil society groups. Although states do play a central role in terms of providing an institutional locus for the mobilisation of support for R2P as well as for taking a stand against R2P, an analysis overly concerned with foreign policy would be devoid of the most crucial aspects of norm entrepreneurship, norm diffusion and contestation, as well as of successful consolidation or a norm's eventual demise. A more sociologically inclined analysis is therefore more promising and appears better suited to the research question.

Ethicality. Some accounts view norms as any regularised pattern of behaviour, regardless of any moral worth attributed to this regular pattern of behaviour – indeed, according to this understanding, norms can be 'bad' and perpetuate social inequalities, in which case they are relative to the cultural context of the time and place in which they exist.⁶⁷ Others regard norms as reflecting universal values that hold true in different contexts. Local variations of perceived appropriateness

⁶⁶ Alexander Wendt, 'The State as Person in International Theory,' *Review of International Studies* 30, no. 2 (2004)

⁶⁷ See, for instance, Checkel, 'The Constructivist Turn in International Relations Theory', p. 339

are defined as custom, not as norms. According to this account, therefore, as opposed to the cultural relativist account, there is something intrinsically 'good' about norms and they hold ethical value. According to this view, a rule is a norm if it is of universal ethical value.

I refrain from an understanding of norm that predicates moral value here because this unnecessarily complicates the analysis. A neutral approach also avoids exposure to the critique of 'moral cosmopolitanism' levied against the early literature on norms diffusion.⁶⁸ The question of whether regularised patterns of behaviour, or patterns of behaviour that are accepted as moral but are not necessarily regularised patterns of behaviour, should be considered ethically valid is a different question, and although this would certainly make for an interesting avenue for research, should not be conflated with observable practice, or with levels of acceptance (although the latter could constitute a relevant criterion for assessing the moral worth of a proposition – but this is a different research agenda). The argument here will not attempt to take a position on the ethical merits or critique of R2P, focusing instead on the levels of acceptance of R2P and observable international practice and what this says about the consolidation of R2P as a norm. The analysis presented here will therefore be based on two assumptions: 1) norms are not necessarily moral, and 2) norms are potentially, though not necessarily, immoral: they may perpetuate inequalities, and they may serve to justify structural violence.

Subjectivity. A further disagreement is between the behaviouralist as opposed to the constructivist accounts: a norm can be defined as norm if it corresponds to the behaviour most widely displayed, or it can qualify as such based on perceived appropriateness for a given actor with a given identity. Thus if a norm is seen as a regularised pattern of behaviour (as in customary international law; Keck and Sikkink say that norms need to be 'practised'; Checkel argues that norms do not necessarily change interests) in a given group this gives the term 'norm' a different quality than if it refers to the perceived appropriateness of this behaviour.⁶⁹ The latter understanding of the term allows for the existence of norms that are not necessarily the dominant form of behaviour. This may occur when everyone within a group agrees that this this behaviour is desirable (*ought*) although this is not followed as a rule (*is*).

In order to assess to what extent R2P is a consolidated norm at present it seems unhelpful to adopt a behaviouralist definition whereby almost any form of regularised collective behaviour counts as a 'norm', because the threshold for the status as a norm is then low, and too many mundane social phenomena would qualify as a norm. Thus an analysis based on the assumption that regularity (*is*) alone suffices is not particularly useful for the purpose of this analysis. More is needed – a norm needs to be something qualitatively different. On the other hand, a norm that would only count as a norm if the behaviour is widely accepted as appropriate (*ought*) would lead to an analysis focusing exclusively on attitudes towards R2P, and the analysis would fail to engage with the effects of these sentiments on actual international practice.

Sanction. Definitions of norms differ on whether norms require reaction to deviant behaviour. An essential attribute of a norm may be its ability to generate a rule-like response to deviance. If a social rule is breached without punishment, and there is no accountability and no identifiable (collective) obligation for sanction (which must not necessarily be direct punishment, but may include other forms of sanction such as shaming or shunning), this rule may not qualify as a norm. For example, Adler-Nissen outlines the role that stigmatisation plays in promoting social order. She

⁶⁸ Acharya, 'The R2P and Norm Diffusion: Towards a Framework of Norm Circulation', p. 468

⁶⁹ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Cornell University Press, 1998) ; Checkel, 'The Constructivist Turn in International Relations Theory'

suggests that ‘Stigmatization helps clarify the boundaries of acceptable behaviour and identity and the consequences of nonconformity, that is, shame, exclusion or other forms of punishment.’⁷⁰ Therefore, a defining characteristic of a norm is that it can be enforced, either formally or informally.

Florini suggests that norms are obeyed not because they are enforced, but because they are regarded as legitimate.⁷¹ However, norms are in fact always enforced in one way or another. They may not be considered legitimate and they may be contested, but solid norms are always, without exception, enforced when transgressions are discovered, although the type of response may vary. This is why levels of enforcement work well as indicators for the extent of the consolidation of norms. If a rule is not being enforced in one way or another, it is unlikely to qualify as a norm, or it may be an eroding or declining norm. One must also distinguish between norms and virtues – whereas norms need to be practiced and may be enforced, virtues are not necessarily practised or enforced.

The international responsibility to protect could be regarded as a ‘second-tier’ or punitive measure, which applies if a norm is breached.⁷² ‘Collective action’ in self-defence could be regarded as a corresponding measure in defence of sovereignty. However, sanctioning would need to be applied consistently. If R2P were to become a consolidated norm, therefore, we would expect to see a consistent response in line with the basic R2P principles as a rule when genocide and other mass atrocities occur.

Institutionalisation. Jepperson et al highlight institutional implementation as one of the key characteristics of consolidated norms.⁷³ Norms have in common that they depend on institutions. They can be seen both as constituting institutions, as well as being constituted by institutions. Wiener describes norms as ‘soft institutions’, as opposed to hard institutions such as international organisations.⁷⁴ From this perspective, a norm can be defined as such if it has given rise to institutional changes mainstreaming the new norm into existing institutional frameworks and practices, or if it has successfully established new institutions.

The extent of a norm’s institutionalisation can therefore work as a key indicator of its consolidation, although institutionalised norms are not immune to contestation.⁷⁵ The fluid nature of norms means that they are susceptible to contestation, and need to be practiced consistently to retain their normative status. With this caveat in mind, however, the degree of institutionalisation, as a reflection of international consensus, can work as a reliable indicator of the extent of a norm’s consolidation.

Norms as Causal Explanations. An important question is the extent to which norms shape behaviour, and whether an actor’s behaviour depends on norms alone or partially. Does a norm work as the sole independent variable and causal explanation, or as an intervening variable that constrains or permits action for an actor with a particular identity in a given situation? Norms are often distinguished from material self-interest in the analysis of this question. For example, Audie Klotz’s

⁷⁰ Rebecca Adler-Nissen, ‘Stigma Management in International Relations: Transgressive Identities, Norms, and Order in International Society,’ *International Organization* 68, no. 1 (2014), quote p. 149.

⁷¹ Florini, ‘The Evolution of International Norms’

⁷² Jennifer Welsh refers to R2P as a ‘complex’ norm. See Welsh, ‘Norm Contestation and the Responsibility to Protect’, p. 384

⁷³ Jepperson, Wendt, and Katzenstein, ‘Norms, Identity, and Culture in National Security’ p. 65

⁷⁴ Wiener, ‘Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations’

⁷⁵ For instance, Jennifer Welsh regards the 2005 Outcome Document as evidence that R2P has become institutionalized, although it remains contested. See Welsh, ‘Norm Contestation and the Responsibility to Protect’

research on the anti-apartheid movement shows that international norms rather than material self-interest led to the sanctions policy that contributed to the end of apartheid in South Africa, by isolating South Africa internationally.⁷⁶ A different study also supportive of the idea that norms work as independent variables focuses on the role UNESCO played in promoting a certain form of state policy on science internationally.⁷⁷ Here Finnemore demonstrates that UNESCO's advocacy represented a new global norm pertaining to science policy. She shows that other factors, such as domestic demand for a science policy bureaucracy, do not explain the establishment of science bureaucracies internationally. A better explanation is an emerging norm that the coordination of science is a necessary task of a modern state. UNESCO actively supported governments in setting up science bureaucracies.

Both Finnemore and Klotz's studies are therefore based on the assumption that norms are separable from other interests that are not governed by norms. Isolating the norm from other factors allowed for an analysis of the effect of one particular norm on state practice.⁷⁸ This is useful because it shows that norms (however one theorises their genesis) can be analysed as independent variables. This is important for the development of a framework assessing norm consolidation because a prospective norm's ability to affect international behaviour can be considered an indicator of norm consolidation. If norms work as independent variables, their associated effects on state practice can work as an indicator of the extent of their consolidation.

Kratochwil, in contrast, argues that norms should be seen as guidance devices that simplify choices and impart 'rationality'. Kratochwil does not subscribe to the positivist epistemology that treats norms as causes. Instead, we need to look closely at the role of language in social interaction: it makes a difference whether we advise or assert, demand or claim, consent, contract, or promise, warn or threaten, criticise or suggest, pressure or persuade, praise or grade. These are different communicative acts that play a significant role in social interaction, and norms provide meaning to these actions.⁷⁹ However, to investigate the level of consolidation of R2P a measure of positivism is unavoidable, despite the obvious drawback that research co-produces the reality it strives to make sense of.⁸⁰ For the purpose of assessing R2P's consolidation as a norm, therefore, it makes sense to adopt an approach that regards norms as social phenomena that work as independent variables with causal effects.

There are, therefore, a range of different ways of defining *norm*, based on different understandings about the ontology and teleology of norms; about the actors to whom norms apply; whether any objective ethicality applies; whether norms can only be ascertained through subjective measures of appropriateness; and whether norms need to be enforced to qualify as such. For the purpose of this thesis, I define 'norm' as *a regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*. This definition encompasses both levels of acceptance as well as the extent to which the principles upon which the norm rests are reflected in international practice.

⁷⁶ Klotz, *Norms in International Relations: The Struggle against Apartheid*

⁷⁷ Martha Finnemore, 'International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy,' *International Organization* 47, no. 4 (1993)

⁷⁸ See also Audie J. Klotz, 'International Legitimation of Social Movements: The Rise and Decline of Ethnic Nationalism in South Africa,' *International Politics* 43, no. 2 (2006); Keck and Sikkink, *Activists Beyond Borders*

⁷⁹ Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, pp. 1-20

⁸⁰ Maja Zehfuss, *Constructivism in International Relations: The Politics of Reality* (Cambridge University Press, 2002)

The novelty about R2P is that, if it were a norm, it would require a consistent and robust response *that adheres to certain principles* to states' failure to meet their primary responsibility to protect. A consistent pattern of robust response alone would not suffice to say that R2P has consolidated as a norm, if the format of this response was not in line with the R2P ethos. R2P should therefore be seen as a prospective norm that proscribes a particular type of response to a state's violation of their responsibility towards the populations within their territory.

R2P is being promoted as a means of mediating between human rights norms and state sovereignty by reconceptualising state sovereignty, rather than redefining human rights norms. R2P becomes relevant when a state violates human rights norms – it is not activated to underpin the protection of state sovereignty and territorial integrity, despite the fact that supporters have taken great pains to underline the integral role of sovereignty in R2P. In effect, R2P is usually seen as an attack on traditional state sovereignty, which is itself part of a particular configuration of a set of norms relating to order in international society. R2P is an alternative conception of how international relations should be structured, and as such could be seen as directly challenging an important set of existing norms. R2P attempts to re-constitute state sovereignty in promoting a more consistent and robust response to genocide and other mass atrocities.

Therefore, the emergence of R2P could be regarded as a form of norm contestation – the norm being contested being the traditional interpretation of state sovereignty. Norm transgression is a form of norm contestation. An actors' noncompliance with an existing norm can mean either of two things: this can be a selfish act wherein an actor works for their own advantage, violating the norm in question covertly and in the hope of not being discovered. Alternatively, the transgression may be open and serve the purpose of attempting to transform a norm that is perceived as objectionable.⁸¹ R2P's challenge of the traditional interpretation of state sovereignty obviously falls under the latter category, humanitarian intervention being difficult to undertake covertly. R2P as a prospective norm aims to put a check on government authority.

Discursive practices are important and say much about how a particular norm functions. Threats and inducements are both discursive practices, and Kratochwil suggests that threats and inducements basically work according to the same logic, although 'threats are cheap when they work and expensive when they fail (because one has to make good on one's threat)' whilst 'inducements are expensive when they work and cheap when they fail'.⁸² R2P hardly works as an inducement, because states are already equipped with sovereignty. R2P could, however, work as a threat, by making sovereignty conditional on states' ability and willingness to meet their primary responsibility to protect, incentivising states to ensure they comply with human rights norms. Indeed, promoting the R2P principles is the easy part – implementing R2P has been much harder. The threat must not necessarily be articulated, because a successfully consolidated R2P norm would mean that it would become internationally understood that sovereignty was conditional on the protection of human rights. The threat would then work a priori and without need of explicit case-by-case articulation, although as with all norms, it would need to be practised consistently.

The Norms Lifecycle: How International Norms Emerge, Diffuse, and Consolidate

⁸¹ Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, pp. 249-262

⁸² *Ibid.* pp. 69-94, quotation p. 70

A range of scholars have theorised the creation process of norms, carefully documenting the role that civil society mobilisation and campaigns play. The process whereby norms wax and wane has been termed the ‘norm lifecycle’ and has been illustrated in the literature with reference to a number of classic examples. Behaviour is usually emulated, and sometimes imposed, before it becomes regularised behaviour that is accepted as appropriate. Prospective norms need to achieve ‘critical mass’ before a cascade effect – that can lead to very swift changes of behaviour – happens and patterns of behaviour and altered perceptions of appropriateness have been internalised.⁸³

The ‘norm lifecycle’ suggested by Finnemore and Sikkink theorises the emergence and demise of norms. This comprises three stages: 1) norm emergence, 2) imitation and norm entrepreneurship, with the effort of socialising others (this is where norms ‘cascade’), and 3) norm internalisation, where the new norm is no longer subject to debate.⁸⁴ However, many potential norms fail to reach the tipping point and are ultimately unsuccessful. Finnemore and Sikkink suggest that both norm entrepreneurs as well as organisational platforms for campaigning and institutionalisation are essential for the successful consolidation of a prospective norm. The table below illustrates the various stages in the norm lifecycle.⁸⁵ I have adapted this to suggest indicators for assessing the extent to which R2P has emerged, cascaded, and/or become internalised. The table shows that actors involved in the diffusion of norms are both producers as well as recipients of norms.⁸⁶

<i>Table 1</i>	Norm emergence	Norm cascade	Internalisation
Actors	Norm entrepreneurs with organisational platforms	States, international organisations, networks	Law, professions, bureaucracy
	Individuals promoting R2P through the UN, through state agencies, or through non-governmental platforms	The UN, NGOs, think tanks, academia	UN resolutions, institutionalisation, mainstreaming into existing UN and foreign policy practice
Motives	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
	Individuals with a cosmopolitan, liberal outlook promoting human rights norms	States and other actors seek to associate themselves with R2P as part of the liberal agenda	States and other actors behave in accordance with R2P principles because others do, deviations are rare

⁸³ On the ‘life cycle’ of norms, see Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, pp. 892-893

⁸⁴ Ibid. pp. 895-909

⁸⁵ The table is based on the table in *ibid.*, p. 898

⁸⁶ Richard Price, ‘Transnational Civil Society and Advocacy in World Politics,’ *World Politics* 55, no. 4 (2003), p. 596

Dominant Mechanisms	Persuasion	Socialisation, institutionalisation, demonstration	Habit, institutionalisation
	Norm entrepreneurs campaign to make R2P known and to generate support	More actors adopt R2P language and apply the R2P framework to cases in which mass atrocities occur	States routinely respond to mass atrocities through an R2P prism. There is a collective expectation that R2P applies in these cases.

By breaking down the process of norm diffusion and consolidation into three stages, and by defining actors, motives, and mechanisms, the table above offers a useful framework for analysing the emergence and potential consolidation of R2P. However, these stages give little information about precisely when the tipping point has been reached and a norm can be declared consolidated. Jepperson, Wendt, and Katzenstein suggest that there are thresholds that are relevant in terms of levels of endorsement, conventionalisation, and institutionalisation, but refrain from elaborating more on possible thresholds.⁸⁷

Keck and Sikkink, focusing their research on the role of transnational advocacy networks further elaborate on the process of norm emergence.⁸⁸ Their research shows how advocacy networks – when they are successful – are an important source of new ideas that may influence the normative structure of international society.⁸⁹ Such networks are comprised of interactions between states and international organisations, but may also include other actors, such as think tanks, foundations, the media, religious organisations, trade unions, firms, intellectuals, scientists, or experts. Activist members of these networks are motivated by ideas and values, and they promote norm implementation through pressuring authorities to adopt new policies and by monitoring compliance with new policies once adopted. Ultimately, these advocacy networks seek to change the discourse and redefine identities. Keck and Sikkink identify five distinct stages of network influence: 1) issue creation and agenda setting, 2) influence on discourse, 3) influence on institutional procedures, 4) influence on policy change, and 5) influence on state behaviour.⁹⁰

Examples of successful advocacy campaigns include the anti-slavery movement as well as the campaign for universal female suffrage. Antislavery campaigning in the mid-nineteenth century included extensive communication between organisations advocating the abolition of slavery.⁹¹ Networks of norm entrepreneurs exchanged letters, published on the issue, drew up petitions, and eventually the anti-slavery movement became a mass movement in Britain, with religious groups including the Quakers, Methodists, Presbyterians, and Unitarians forming the backbone of the movement. Two antislavery conferences were held in London in 1840 and 1843. Slavery was formally abolished in the US and in Britain in 1807. Mauritania was the last state to outlaw slavery, abolishing the practice in 1981. Keck and Sikkink have analysed the movement for women's suffrage

⁸⁷ Jepperson, Wendt, and Katzenstein, 'Norms, Identity, and Culture in National Security' p. 64

⁸⁸ Keck and Sikkink, *Activists Beyond Borders*, pp. 1-38

⁸⁹ It is noteworthy that such campaigns are not always successful. Keck and Sikkink provide the example of the transnational campaign to end female circumcision, which was not successful (see ch. 2, pp. 39-78).

⁹⁰ Keck and Sikkink, *Activists Beyond Borders*, p. 25

⁹¹ *Ibid.* pp. 39-78

as another example of successful norm consolidation. This also depended crucially on network advocacy. The campaign developed out of women's involvement in the antislavery movement, and was initially embedded in the demand for a wider set of rights for women. Today women have the right to vote worldwide, Saudi Arabia being an exception.

These examples illustrate the process of norm emergence and diffusion, and the stages suggested by Keck and Sikkink (issue creation; influence on discourse; influence on institutional procedures; influence on policy; and influence on state behaviour) can – together with the table above – be applied to an analysis of the campaign to promote R2P to give a fuller picture of the extent of successful advocacy and norm diffusion so far.

However, norm diffusion is never a smooth process, and would-be norms are not always successful. The norms literature outlines the main obstacles for the successful diffusion and consolidation of norms: the fact that social interactions are governed by a wide range of multiple and potentially conflicting norms. Florini suggests that patterns of norm evolution can be compared to biological evolution and the reproduction of genes.⁹² Florini's analysis is based on the examples of the abolition of slavery; the replacement of colonialism with the norm of self-determination; and the emergence of the norm of non-aggression. However, the analogy seems overstretched – norms are not genes – and potentially ethically problematic if misinterpreted to mean that 'better' norms prevail in a Darwinian struggle. As I have emphasised earlier, the definition of norms adopted here is devoid of any ethical judgment. Despite these caveats, aspects of Florini's reasoning about patterns of compatibility and competition between norms are interesting, and if taken as a theoretical analogy only can offer some useful insights into why some norms consolidate successfully, while others do not.

Florini suggests that norms change when there is social change. For example, revolutions may lead to very rapid social change and consequently may give rise to radical normative changes. According to Florini, a norm must be compatible with the norm-system it is part of. Using the genes analogy, she compares this to the organisms of herbivores and carnivores, which have digestive systems made up of parts that are adapted to eating either plants or meat. This analogy appears to work for international social interactions. For instance, the international norm of transparency – the idea that states must be truthful in their statements about, for example, their nuclear weapons stockpiles – fits with the norm of multilateralism, promoting solutions to collective problems in which more than one state are involved, even where this reduces effectiveness.

Certain norms therefore lump together more readily, whereas other norms require a range of changes to the norm system they are a part of and are therefore more likely to be resisted. This raises the question of how norms change and what the dynamics are for change in norms and patterns of norms. Although the analysis presented here is not focused on exploring the causes for changes in patterns of norms, understanding why some norms succeed while others fail is important for determining to what extent R2P is on the road to either success or failure.⁹³

One of the factors contributing to successful norm consolidation, according to Florini, is whether they are promoted by powerful actors.⁹⁴ She argues that norms promoted by powerful actors are more influential because these 'simply have many more opportunities to reproduce through the greater number of opportunities afforded to powerful states to persuade others of the rightness of

⁹² Florini, 'The Evolution of International Norms'

⁹³ See *ibid.*

⁹⁴ *Ibid.*

their views'.⁹⁵ The status of the relevant actor is important. A comparison could be made with speech act theory imported into IR through the Copenhagen School's application of speech act theory to explain processes of securitization.⁹⁶ According to Buzan et al there are facilitating factors that allow for the success of a speech act, which are 1) appropriate procedures for executing a speech act; and 2) the actor making the speech act must hold a position from which a speech act can be made.

'A successful speech act is a combination of language and society, of both intrinsic features of speech and the group that authorizes and recognizes that speech.'⁹⁷ In the realm of security, therefore, a speech act must follow an internal logic, by which it relates to security by proposing an existential threat, as well as fitting in with the logic of the various sectors in which securitization is currently possible (for instance sovereignty in the political sector, or sustainability in the environmental sector). In terms of the external aspect of a speech act, there are again two main conditions: the authority of the securitizing actor, and second, the actual credibility of the threat that is being securitized.

All of the above can be applied to the successful diffusion and consolidation of norms. The new norm must follow an internal logic, by which it fits with an existing pattern of well-established norms. Second, it needs to be promoted by persons of authority (not necessarily formal authority), and it must be accepted as legitimate by the targeted audience. Buzan et al suggest that things that constitute actual threats are more likely to be accepted by the audience, however this seems contradictory if we adopt a constructivist logic. According to this logic, there are no 'real' threats, just as there are no 'real' norms. They are socially constructed, and as such their existence is conditional upon the intersubjective consensus. For the purpose of this study, therefore, the idea of 'real' legitimacy as a factor influencing the success of norm diffusion and consolidation is rejected, and the analysis that follows here will take the approach that factors affecting the successful emergence and consolidation of norms are first, the extent to which the prospective norm fits with existing patterns of norms, and, second, whether the prospective norm is promoted by actors of authority. These two factors are likely to affect levels of acceptance of a prospective norm and ultimately its consolidation and its integration into the normative fabric of the existing social structure.

A norm's prospects for consolidation are therefore determined by the obstacles it is likely to face in terms of the strengths of contending norms and the levels of amenability or hostility of existing patterns of norms. The extent and levels of advocacy for the new norm are further facilitating factors. R2P should be regarded as consolidated only if it has successfully stipulated the circumstances in which it applies, and therefore no longer directly conflicts with other norms. Therefore, successful consolidation depends both on whether the existing normative setup is changing, as well as the extent and level of advocacy to promote the new norm.

The sections above have theorised the emergence of prospective norms, the facilitating role of authoritative actors and the role of advocacy networks in the diffusion of norms, as well as the obstacles prospective norms may encounter in terms of resistance to normative adaptation. This is important because it allows for hypothesising on the success of R2P as a consolidating norm based on an assessment of likely impediments, as well as for an assessment of the diffusion process so far.

⁹⁵ Ibid. p. 375

⁹⁶ Barry Buzan, Ole Waever, and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner, 1997) pp. 32-33

⁹⁷ Ibid. p. 32

Norm Consolidation: International Practice and Institutionalisation

As outlined above, the process of norm diffusion can say only so much about the actual extent of a norm's consolidation. Although it is certainly indicative of whether a norm may be a candidate for consolidation, it says little about the prospective norm's actual position in the norm lifecycle and its effects on international practice. The campaigning around R2P could qualify as norm diffusion, but it is questionable to what extent this has facilitated the implementation of R2P. Whilst proponents argue that 'norm talk'⁹⁸ at the UN in New York and elsewhere has led to 'R2P socialisation', objective criteria are needed to determine whether the advocacy has really been effective in terms of R2P's institutionalisation.

If R2P were a consolidated norm, one would expect the qualitative dimension of differing forms of international responses to R2P crimes to conform to the principles upon which R2P rests. In other words, one would not expect *any* type of reaction to genocide or mass atrocities, because the 2005 World Summit Outcome Document sets out a number of conditions determining the appropriate format for reaction when R2P is deemed applicable. Based on a discussion of R2P's ideological origins, the following section identifies a set of principles that make up R2P, suggesting that if R2P were a consolidated norm, we would expect to see a qualitatively different, novel form of international response to R2P crimes.

R2P develops the debate on humanitarian intervention in a number of distinct ways. It aims to reconcile sovereignty with human rights protection by means of a reconceptualisation of sovereignty as responsibility (rather than as a right); and it emphasises non-coercive, non-forceful, incremental approaches to interference or intervention on humanitarian grounds. However, R2P also provides ideological continuity: it restates and continues to emphasise multilateralism and the norm that where necessary, a breach of the ban on the international use of force should occur only if sanctioned by the UN Security Council; and it endorses regional approaches to conflict prevention and resolution. Taken together, one could describe this – based on Florini's norms-genes analogy – as the DNA of R2P.

Prevention. One of the things meant to differentiate R2P from the idea of humanitarian intervention with its many negative connotations and perceived emphasis on a 'right to intervene' and the use of force is R2P's explicit avoidance of coercive measures. The Just War-like 'precautionary principles' and the 'prevention-reaction-rebuilding continuum' with its emphasis on prevention, contained in the ICISS report (also called the '3 Rs' approach: the responsibility to prevent, to react, and to rebuild), are designed to guide decision-making.⁹⁹ The 2001 ICISS report emphasised the importance of preventing the causes that may give rise to R2P crimes in the first place – this would reduce the number of instances in which 'reaction' – coercive or non-coercive – became necessary.¹⁰⁰ The use

⁹⁸ See, for instance, Mónica Serrano, 'Implementing the Responsibility to Protect: The Power of R2P Talk,' *Global Responsibility to Protect* 2, no. 1 (2010), p. 174

⁹⁹ For a historical account of the origins of the theory see James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200-1740* (Princeton, N.J.: Princeton University Press, 1981)

¹⁰⁰ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'

of force is a last resort only, however this does not preclude a range of non-military measures that can be taken to exert pressure on a government that is seen to be failing its responsibility to protect.

Consent. Government consent was emphasised in R2P in response to the suspicion that R2P would serve to legitimise interventionist policies that were not motivated by humanitarianism. However, the suspicion of R2P as a Trojan horse remains widespread.¹⁰¹ Therefore, states agreed at the World Summit in 2005 that the responsibility rested with states themselves, and only if a state was 'unable or unwilling' would the responsibility to protect fall to the international community.¹⁰²

The Special Adviser for the Responsibility to Protect elaborated on this in a report of the Secretary-General, suggesting an approach based on three pillars.¹⁰³ Pillar one stands for 'the protection responsibilities of the state', pillar two for 'international assistance and capacity-building', and pillar three for 'timely and decisive response' from the international community. In the first instance, states were responsible to protect their populations; in the second, if states were unable or unwilling to do so, the international community had a responsibility to assist them. Finally, the third pillar referred to situations in which states are unable or unwilling to protect and are unwilling to accept assistance or this is not sufficient to remedy the situation.

The '3 pillars approach' in the Secretary-General's report emphasises government cooperation and consent, suggesting that only if a situation is such that a state is unable or unwilling to protect its population *and* outside support is ineffective or denied, the responsibility falls to the international community. Where a state willingly accepts outside support, intervention or interference in domestic affairs is not a breach of state sovereignty. In practice, however, it is not inability that poses a problem, but unwillingness. Where large-scale, systematic rights abuses that amount to mass atrocities occur or appear to be imminent, the government of the state concerned is usually directly implicated in the violence or itself party to the conflict and is, therefore, likely to reject outside involvement (unless this would be in its favour). A capable government in a stable political system will prevent internal political violence and protect its population.

However, given the centrality of the 2005 outcome document, and as outlined earlier, much depends on the interpretation of what constitutes what it refers to as a 'manifest failure' to protect, to determine at which point government consent is no longer deemed necessary. The document fails to provide further elaboration. Nevertheless, the emphasis on states' primary responsibility to protect underlines the importance of consent, and an effort to work in co-operation with affected governments constitutes one of the key elements of R2P.

Multilateralism. Historically, military interventions justified on humanitarian grounds have often been multilateral, although not always. In the 19th century states invoked humanitarian justifications even when they intervened unilaterally. Today, however, states do not claim humanitarian justifications for interventions that are not multilateral.¹⁰⁴

Multilateral action is usually associated with impartiality and neutrality, based on the assumption that that collective action reduces the likelihood that an action is undertaken for purely self-

¹⁰¹ The term is sometimes used in connection with R2P. See, for instance, Alex J. Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq,' *Ethics & International Affairs* 19, no. 2 (2005)

¹⁰² United Nations, 'World Summit Outcome'

¹⁰³ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General,' (United Nations General Assembly, A/63/677, 12 January 2009)

¹⁰⁴ Martha Finnemore, 'Constructing Norms of Humanitarian Intervention,' in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (Columbia University Press, 1996), p. 176

interested motives. This theme underpins much of the ethos of the UN. In his writings during his two terms at the UN, former UN Secretary-General Dag Hammarskjöld formulated the ideology of collective legitimation.¹⁰⁵ His reflections underscored the importance of independence, impartiality, and neutral civil service. He postulated that this defined the UN as the proper authority to rule the decolonised world.¹⁰⁶ Hammarskjöld believed that international civil servants could act 'without subservience to a particular national or ideological attitude'.¹⁰⁷

At present, multilateralism is certainly an ideal many states subscribe to, and the R2P paragraphs in the outcome document refer to the Security Council as the designated authority for deciding appropriate measures when states are manifestly failing to meet their responsibility to protect.¹⁰⁸ The ICISS report stated that '[t]here is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes'.¹⁰⁹ Security Council authorisation of humanitarian intervention has become a norm in international society today, and even R2P's critics have not attempted to unravel this international consensus. Most of the R2P sceptics are more concerned with the interpretation of Security Council resolutions once these have been passed; with interests motivating actions in circumvention of the Security Council, even when humanitarian justifications are given, as was the case in the Iraq War; or with the Council's indecisiveness, as in the case of Rwanda.

Criticism of the Council usually focuses not on a questioning of the idea of a multilateral organ making decisions on behalf of others, but on the way it is set up. The main critique of the Council regards the distribution of power within it, rather than a critique of the desirability of Security Council authorisation per se. With the establishment of the UN dating back nearly seventy years, the permanent membership on the Council no longer reflects the actual distribution of power internationally and the Council's legitimacy is subject to ongoing contestation.¹¹⁰ The debate on Security Council reform continues, and although no progress has been made so far, the topic is likely to remain on the agenda for the foreseeable future.

John Ruggie distinguishes between nominal and qualitative multilateralism, and this distinction is useful for establishing the multilateral quality of interventions. Whereas nominal multilateralism refers to the number of parties and whether the action formally qualifies as multilateral, qualitative multilateralism refers to the kind of relations instituted between them.¹¹¹ Ruggie suggests that

¹⁰⁵ Hammarskjöld's thinking and his push towards a more independent UN during the Cold War is described in detail in Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press, 2011) pp. 47-52

¹⁰⁶ Wilder Foote, ed. *The International Civil Servant in Law and in Fact*, *The Servant of Peace: A Selection of the Speeches and Statements of Dag Hammarskjöld* (London: 1962)

¹⁰⁷ *Ibid.* p. 346

¹⁰⁸ 'In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.' Paragraph 139, United Nations, 'World Summit Outcome'

¹⁰⁹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. XII. On multilateralism, see also Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Tokyo: United Nations University, 2006) pp. 1-24

¹¹⁰ See also Jennifer M Welsh, 'The Responsibility to Protect: Dilemmas of a New Norm,' *Current History*, no. November (2012), pp. 296-297

¹¹¹ John Gerard Ruggie, 'Multilateralism: The Anatomy of an Institution,' *International Organization* 46, no. 3 (1992)

‘multilateralism is an institutional form which coordinates relations among three or more states on the basis of “generalized” principles of conduct – that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence.’¹¹² Applied to R2P, qualitative multilateralism implies that multilateral approaches to intervention have been institutionalised and structure international responses to intervention in a way that ad-hoc, nominal multilateralism does not.

Finnemore has shown that the norm of multilateralism has had a profound effect on the way states intervene. She demonstrates that states use coalitions when they intervene on humanitarian grounds, and that contemporary intervention is characterised by extensive joint planning and force integration, despite the obvious drawbacks in terms of efficiency.¹¹³ An assessment of R2P’s consolidation as a norm therefore needs to explore whether states consistently acted through the Security Council or through other multilateral institutions, and whether the resulting action is qualitatively multilateral, i.e. whether it is the result of institutionalised multilateral responses. The extent to which qualitative multilateralism has grown serves as one of the indicators of R2P’s consolidation as norm.

Regionalism. Regionalism plays an increasingly important role in the way international society is structured. The role of regional organisations, as Hedley Bull put it, is to ‘occupy the middle ground between states on the one hand, and global organisation on the other’.¹¹⁴ Regional organisations play an important role in implementing policies set by international institutions, but increasingly, they have become formalised and institutionalised, such as in the case of the European Union, the African Union, Association of Southeast Asian States, the Arab League, and the Organization of American States. The institutionalisation of regionalism goes hand in hand with the increasingly multilateral nature of international politics. Referring back to Florini’s analogy, one could regard regionalism and multilateralism as part of a group of a related set of norms.

R2P promotes regional organisations as the institutional locus of conflict prevention and resolution. The 2005 World Summit Outcome Document states that in fulfilling their responsibility to protect, states should work ‘in cooperation with relevant regional organizations as appropriate’. The 2011 report of the Secretary-General on ‘The Role of Regional and Sub-regional arrangements in Implementing the Responsibility to Protect’ further elaborated on this.¹¹⁵ Also, The 2001 ICISS report had suggested two alternative sources of authorisation if the Security Council remains deadlocked and there is a humanitarian emergency: first, consideration of the issue by the General Assembly, under a ‘Uniting for Peace’ formula, or second, action by regional or sub-regional organisations under Chapter VIII of the Charter, ‘subject to their seeking subsequent authorization from the Security Council’.¹¹⁶ According to this logic, regional organisations can offer an alternative source of authorisation, with or without a UN mandate.¹¹⁷

¹¹² Ibid. p. 571

¹¹³ On multilateral operations, see Finnemore, ‘Constructing Norms of Humanitarian Intervention’

¹¹⁴ On regionalism see Bull, *The Anarchical Society: A Study of Order in World Politics*, pp. 294-299, quotation p. 294

¹¹⁵ United Nations, ‘The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General, A/65/877-S/2011/393,’ (2011); ‘World Summit Outcome’, para. 139

¹¹⁶ International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty’, p. XIII

¹¹⁷ Historical examples may include the intervention in Liberia in 1990 by ECOWAS, which was authorised by the UN in retrospect, as well as the 1999 NATO intervention in Kosovo, which was not authorised by the UN.

Whereas the ethical justifications given for the other distinctive features of R2P relate to Just War theory in some way – government consent (last resort), prevention (last resort), multilateralism (right authority, right intention) – regionalism differs from the others in that it draws on ideas not linked to traditional Just War thinking associated with Christian moral philosophy. The ideological roots of regionalism stem from a reaction to inequalities between North and South in a post-colonial international system.¹¹⁸ Regionalism as an ideology promotes regional organisations as a form of emancipation from great power dominance.

The adaptation of regionalism in R2P de-emphasises the emancipatory aspect of regionalism – regionalism is not regarded as a means of standing up to powerful states or even to attempt to recast the system in a more equitable form. Instead, regionalism in R2P focuses on the regional organisations' local expertise and better comprehension of the finesses of the situation and the political context of the conflict. Indeed, Badescu suggests that regional actors may find it difficult to take action that is not in line with the policy objectives and interests of major regional or international powers.¹¹⁹

A look at recent history shows that regionalism is important in shaping actors' perceptions about the appropriateness of intervention. The African Union endorsed intervention in Darfur and was heavily involved in the mediation process in Kenya following the outbreak of the post-election violence in 2007 and 2008. In the wake of the Arab Spring in March 2011, Hilary Clinton stated that the Arab League's endorsement of multilateral action through the UN was necessary before the US would be prepared to take action on Libya.¹²⁰ Syria's expulsion from the Arab League in 2011 in protest against the Syrian government was a powerful gesture condemning the Assad regime.

Recent history therefore seems to suggest that regionalism plays a significant role in international society today, and as such would support the idea that R2P as a norm has good prospects for consolidation. However, as with multilateralism, the focus needs to go beyond the nominal dimension of regionalism to encompass an assessment of the qualitative dimension of regionalism. What matters is not just whether regional institutions are involved at all, but the way in which they are involved. Qualitative regionalism as an element of R2P would imply that intervention – both coercive and non-coercive – habitually resorts to the institutional framework provided by regional institutions and/or that regional institutions integrate R2P into their own normative systems (for example by incorporating protection responsibilities into regional statutes). Defined in this way, regionalism provides a good indicator – along with the other core features outlined above – for assessing the extent of R2P's consolidation as a norm.

The degree of institutionalisation of these core principles can serve as indicators for assessing the qualitative dimension of R2P's consolidation as a norm. However, it helps to complement this with a set of more specific benchmarks against which this institutionalisation can be measured. The 2009 report of the Secretary-General's on implementing R2P provides the most detailed survey of

See also Cristina G. Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights*, ed. Alex J. Bellamy, Sara E. Davies, and Monica Serrano, Global Politics and the Responsibility to Protect (Routledge, 2011) pp. 50-52

¹¹⁸ Touko Piiparinen, 'Norm Compliance by Proximity: Explaining the Surge of Regional Actors in Responsibility to Protect,' *Conflict, Security and Development* 12, no. 4 (2012)

¹¹⁹ Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights*, p. 68

¹²⁰ Ryan Lizza, 'How the Arab Spring Remade Obama's Foreign Policy,' *The New Yorker* (2011)

potential measures.¹²¹ It is useful to group the various measures for implementation suggested in the 2009 report according to the four features of R2P identified above.

Prevention. First, the report outlines ways in which the development of domestic prevention capacities can be supported. The report specifically refers to international assistance and capacity building (pp. 15-22), but also to confidential or public suasion, education, and training, through the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the Emergency Relief Coordinator, the Special Adviser for the Prevention of Genocide, and other officials, agencies, and institutions (para. 30). Second, the report emphasises early warning and assessment (pp. 31-33). R2P principles should be integrated and mainstreamed into ongoing work (annex para. 1). There should be a regularisation of the two-way flow of information between the UN and regional and sub-regional organisations (annex para. 2). Local and international civil society groups are sources of information that support early warning and assessment (para. 3).

Consent. The report outlines a range of ways in which international actors can work with states to prevent R2P crimes from happening, as well as of working with governments to support them in meeting their primary responsibility when R2P crimes are imminent or already occurring. In terms of prevention, the report suggests working with governments in the transfer of best/good practices, for example through the African Peer Review Mechanism under the New Partnership for Africa's Development, or through the standards established for gaining membership in the European Union (para. 22). Other preventative measures include efforts to strengthen indigenous mediation capacities; the building of infrastructure for local dispute resolution (para. 45); strengthening states' security sectors (para. 46); and offering rule of law assistance to UN member states (para. 47). In terms of reaction, the report states that military units can be employed with the consent of the host government in peacekeeping missions. The report states that 'Non-state actors, as well as States, can commit egregious crimes relating to the responsibility to protect. When they do, collective international military assistance may be the surest way to support the State in meeting its obligations relating to the responsibility to protect and, in extreme cases, to restore its effective sovereignty.' (para. 40).

Multilateralism. The report refers to the creation of a standing or standby rapid response civilian and police capacity for emergencies (para. 39) and collective international military assistance through consent-based peacekeeping (para. 40) including preventive deployment (para 41). The report refers to timely and decisive response under pillar three (pp. 22-28); non-coercive measures under chapter VI and VIII of the Charter (para. 51); the role of the ICC (para. 54); sanctions or coercive military action authorised by the Security Council under articles 41 or 42 of the Charter, by the General Assembly through the Uniting for Peace procedure, or by regional arrangements under article 53 of the Charter, with the authorisation of the Security Council (para. 56); diplomatic sanctions whereby a state ceases to be eligible for election in international or regional bodies and targeted sanctions on travel, financial transfers, luxury goods, and arms (para. 57). The report states that permanent members of the Security Council should refrain from employing or threatening to employ their veto to bloc humanitarian action; and all UN member states should be aware of shared responsibilities and should make the General Assembly an effective instrument for advancing the responsibility to protect (para. 61).

Regionalism. The report states that regional and sub-regional organisations should receive help in strengthening their civilian capacities through the United Nations 10-year Capacity-Building Programme (para. 38). The UN, together with regional organisations, should undertake region-to-

¹²¹ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General'

region learning and lessons-learned processes (para. 47). Representatives of states in which violations related to R2P have occurred should not be eligible for election to leadership posts in sub-regional or regional bodies (para. 57). Regional organisations can administer sanctions such as arms embargos, without explicit UN Security Council authorisation (para. 58). The report states that 'Global-regional cooperation is a key plank of our strategy for operationalizing the responsibility to protect, including for establishing the early warning capability mandated in paragraph 138 of the Summit Outcome...' (para. 65).

These measures can serve as good benchmarks for the degree of institutionalisation of the qualitative dimension of R2P. Case study research can shed light on the extent to which states have chosen to respond to genocide and other mass atrocities in the ways described above. If international actors today prefer multilateral, regionally coordinated, preferably non-violent measures to prevent or respond to R2P crimes, then the conclusion could be drawn that R2P's normative consolidation is beginning to shape contemporary humanitarian practice.

A Framework for Assessing the Consolidation of R2P as an International Norm

From a range of different ways of defining 'norm' – ontologically, normatively, and analytically – I develop a definition of 'norm' to analyse to what extent R2P can be considered a consolidated norm in international society today. Based on a definition of 'norm' as *a regularized pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*, the analytical emphasis here is both on behaviour as well as on intersubjective understandings of appropriate responses to genocide and other mass atrocities. The study focuses on R2P's progress so far in re-prioritising international norms, and the extent to which an international consensus favouring a new interpretation of sovereignty has emerged. In effect, the thesis is as much about a new norm of a primary responsibility to protect, as about the status of this norm and the robustness of its policing via an international responsibility to protect (pillar three). The framework I develop from this definition is based on the following theoretical assumptions:

- a) Norms can be regarded as independent variables with causal effects
- b) If a norm is consolidated, its violation will be sanctioned
- c) Institutional transformation reflects the degree of a norm's consolidation
- d) Norms need to be practised and can erode over time
- e) Norms are not necessarily ethical

I suggest that tracing R2P's creation process using an approach that focuses on norm creation and diffusion, as part of the norm lifecycle suggested by Finnemore and Sikkink, can serve as a useful method for speculating about R2P's current status in the norm lifecycle. The norm lifecycle serves as a useful analytical device in describing the origins and advocacy efforts of a prospective norm. Applying this to R2P, it makes sense to begin with a discussion of advocacy efforts around R2P – what R2P's ideological roots are, which other norms R2P is associated with, and who the norm entrepreneurs were. Looking at the history of R2P's development can help to glean a deeper

understanding about the ways in which this prospective norm has diffused, who the authoritative actors were, and where resistance has come from.

As suggested by much of the constructivist scholarship surveyed, the greatest obstacles to norm consolidation are competing norms. These competing norms, although abstract and intangible, become manifest in reality as deeply held beliefs and values. It is wrong to regard resistance to R2P as an invisible barrier to the realisation of R2P – just as there are individuals and organisations that tirelessly work to promote R2P, there are individuals and groups that genuinely despise the idea of R2P, regarding R2P as a proposal intent on diluting state sovereignty. It therefore makes sense to tell the story of R2P's development not just in terms of steps taken to promote the idea, but also scrutinising the narrative provided by organisations and individuals sympathetic to R2P. A critical engagement with R2P's history is underrepresented in the literature. Retelling the story from a more critical perspective, with a particular focus on resistance to R2P, can help to correct a possibly distorted narrative.

Revisiting R2P's recent history may show that R2P does in fact remain more controversial than R2P proponents like to admit, which may suggest that – at least for the time being – levels of acceptance are not sufficient to qualify R2P as a consolidated norm in international society. The question is whether the R2P advocacy has resulted in a major overhaul of the normative fabric of international society and whether it has successfully re-organised the prioritisation of international norms. To assess to what extent any reshuffling has indeed taken place and created a new norm of responsibility, we need to look at recent state practice. The norm lifecycle is limited insofar as it does not define thresholds for norm consolidation or criteria for consolidated norms, but the degree of institutional adaptation can indicate whether R2P is being implemented in a way that suggests consolidation is underway.

The framework introduced here posits that R2P could be regarded as a consolidated norm if it was applied consistently when genocide and other mass atrocities occur; and that the qualitative dimension of this application would be in line with related norms that constitute R2P (seeking government consent, multilateralism, prevention, and regionalism). For an assessment of consistency, I suggest applying Labonte's methodology on assessing states' responses to the 'manifest failure' threshold. This can be applied to further, more recent cases, to gauge whether R2P has been successful at depoliticising decision-making.¹²²

Regarding the qualitative dimension of R2P as a practice, I suggest analysing state practice by breaking down R2P into the various components of which it is comprised. I suggest an assessment of R2P as a practice based on the assumption that if R2P were a consolidated norm, government consent, multilateralism, prevention, and regionalism would be reflected in an institutionalised pattern of response to genocide and other mass atrocities, in which case the intersubjective meaning of R2P would converge to the extent that one could say that a stable consensus on the appropriateness of R2P exists. Empirical case study work on cases in which R2P has been applied can help shed light on the success of R2P as a norm in qualitative terms. For example, if states avoid unilateral military intervention, instead favouring multilateral, preferably non-coercive measures, which are routinely implemented in collaboration with regional organisations, then the qualitative dimension of R2P as a practice could be gaining ground.

¹²² For a discussion of R2P as an attempt to de-politicize humanitarian intervention, see Chris Brown, 'The Antipolitical Theory of Responsibility to Protect,' *Global Responsibility to Protect* 5, no. 4 (2013)

Above I have suggested Florini's norms-genes analogy as a framework for understanding norms as related to wider systems of norms. Based on the assumption that norms form part of wider systems of norms, it makes sense, for each of the case studies, to take a look at the role of R2P within these wider systems of norms. To that end, the case studies will also include a discussion of the role of the International Criminal Court. R2P and the ICC are related – they share liberal assumptions and are focused on the individual rather than the state. The case studies will therefore look at the intersections and overlaps (as well as possible contradictions). Presumably, a growing international commitment to the ICC would signal that the wider system of norms structuring international society is changing. These changes could be both a precondition for R2P's consolidation as an international norm; as well as the result of systemic accommodation to R2P as a new international norm.

Conclusions

The purpose of this chapter was to provide a working definition for the term 'norm', and to devise a framework for assessing to what extent, based on this understanding of 'norm', R2P is on track to consolidation. I defined 'norm' as *a regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*. I regard norms as independent variables capable of providing causal explanations, but highlight their fluidity and their predisposition to change over time or to disappear. I understand R2P as encompassing both the prospective norm of a states' primary responsibility to protect, as well as efforts to collectively enforce it internationally as stipulated in pillar three of the Secretary-General's report on Implementing the Responsibility to Protect.

In order to fully understand norm contestation around R2P and implications for international humanitarian practice, I suggested a two-pronged approach. The empirical chapters of the thesis will therefore be composed of, first, a detailed study of the emergence of the idea of R2P and the advocacy surrounding it (chapters 3-5). Importantly, however, these chapters will challenge the conventional understanding of R2P as a concept that, although subject to a number of decisive setbacks at various stages, has made steady progress over the years and is now close to international recognition as a consolidated norm. These chapters will apply the idea of a norm lifecycle suggested by Finnemore and Sikkink, but also supplement the advocate's narrative of steady progress with a discussion of R2P rejectionism and the ways in which R2P's consolidation as a norm has been obstructed over the years. In effect, these chapters provide a fuller, more critical perspective on R2P's diffusion as a norm. Chapters 6-8 then look at the qualitative dimension of R2P in practice since 2005, questioning to what extent R2P's normative diffusion has affected actual humanitarian policies in individual cases, and exploring the extent to which R2P has changed the way states choose to interfere or intervene today.

Chapter Three: The Antecedents of the Responsibility to Protect (1945-2001)

Introduction

Chapter two laid out a theoretical framework for assessing to what extent R2P can today be considered a consolidated international norm. ‘Norm’ was defined as a *regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*. I build my analysis on the assumption that R2P could be considered a consolidated norm if states and other relevant actors felt responsible for the prevention of, and reaction to, genocide and other mass atrocities; and that the way in which they decided to prevent or react to R2P crimes was in line with the qualitative dimension of R2P as enshrined in the 2005 outcome document paragraphs. Inaction, in contrast, would be regarded as inappropriate by states and international civil society. In other words, a ‘pillar three’ response would ensue consistently when states fail to meet their protection responsibilities, and would enjoy the full backing – and face little, if any, disagreement – of a majority of authoritative international actors.

The previous chapter outlined the importance of the qualitative dimension of the R2P norm, and that intervention undertaken for humanitarian purposes would need to be seen as conforming to certain principles to qualify as legitimate meddling in internal affairs justified with a responsibility to protect. This is not to say that responses need to be identical in terms of sequencing or measures chosen, as there is no one-size-fits all approach to preventing or halting mass atrocities. However, the measures taken would need to be seen to conform to certain principles inherent in the prospective norm. The previous chapter highlighted four features that bestow legitimacy upon international responses in cases where mass atrocities may be imminent or are already occurring: to seek government consent; to undertake direct prevention measures; to use a multilateral approach; and to collaborate with regional organisations. These characteristics are essential: more could be added to this list in terms of what can be associated with R2P, but any intervention genuinely in line with these four principles will not be considered an ‘appropriation’ of R2P for other purposes.¹²³

This chapter is the first of three that uses an empirical enquiry into the history of the development of R2P to determine R2P’s position in the norm lifecycle. This involves telling the story of the development of R2P. However, the history of the development of R2P as told in the three chapters that follow recognises that the history of R2P, by and large, is more focused on what R2P has achieved so far in terms of its development as a norm. Critics of R2P have challenged R2P on ethical grounds, or questioned its effectiveness¹²⁴ — but have not critically engaged with the historical

¹²³ For example, Russia’s use of R2P rhetoric to justify its intervention in Ukraine, as well as its intervention in 2008 in Georgia, has been referred to as an ‘appropriation’ of R2P. See, for instance Mark Kersten, ‘Does Russia Have a ‘Responsibility to Protect’ Ukraine? Don’t Buy It,’ *The Globe and Mail*, 4 March 2014

¹²⁴ For critical objections on ethical grounds, see Mahmood Mamdani, ‘Responsibility to Protect or Right to Punish?’, *Journal of Intervention and Statebuilding* 4, no. 1 (2010); Chandler, ‘R2P or Not R2P? More Statebuilding, Less Responsibility’; Chomsky, ‘Statement by Professor Noam Chomsky to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect, 23 July 2009’. For objections on the grounds that R2P does not ‘work’, see, for example Aidan Hehir, ‘The Responsibility to Protect: ‘Sound and Fury Signifying Nothing’?’, *International Relations* 24, no. 2 (2010). These two criticisms of R2P are not mutually exclusive – some critics dislike R2P for both reasons. See, for instance, Philip Cunliffe, ‘Dangerous

development of R2P and the history of thought underpinning the promotion of the principles it stands for. 'Ineffectiveness' in this context can mean a number of things. For example, that R2P is conceptually unsound in terms of its inability to reconcile state sovereignty with human rights protection; that it has not added anything new to the existing corpus of international law; that it has not been successful at mainstreaming its recommendations into humanitarian policies; or that its implementation has been difficult.

Consequently, most of the accounts of the development of R2P provide a teleological account of the development of ideas underpinning R2P. Obstacles, rejection, and setbacks are ignored or, where they are not bracketed out, presented as helpful in clarifying what R2P does or does not stand for,¹²⁵ and as strengthening the legitimacy of R2P. In effect, the histories provided are incomplete, and need revision before they can be used to assess R2P's position in the norm lifecycle and the extent to which R2P can be considered a consolidated norm.

The chapters that follow aim to cast a light on underexplored aspects of the development of the putative R2P norm. The aim is to provide a fuller, richer account of the development of R2P and the history of ideas underpinning it.¹²⁶ I therefore discuss R2P in relation to the settled norms of state sovereignty and territorial integrity that it challenges, and I discuss humanitarian advocacy and norm entrepreneurship in relation to conservative policy and the rejection of R2P. Rather than just point fingers at sources of R2P rejectionism, however, these chapters will engage with the reasons for objections to R2P, in an effort to understand its origins and the values it prioritises. The aim is to provide an account that focuses not only on the development of R2P, but also on the norms that stand in opposition to it, in order to situate the development of R2P in a wider context of changes in the normative fabric of international society.

The chapters proceed chronologically. Chapter three discusses the antecedents of R2P from 1945 until the publication of the ICISS report in 2001. R2P's ideological antecedents are important because they provide insight into the normative tensions that have accompanied humanitarian efforts over the decades, and are deeply entrenched in the structure of modern international society. Early efforts at reinterpreting existing norms on intervention are important because they have facilitated a discourse on humanitarianism and human rights. The humanitarian discourse developed out of a diverse set of issues, but these always had in common that, ultimately, the successful realisation of humanitarian objectives would result in a reconceptualisation of the relationship between human rights protection and state sovereignty, in effect promoting the idea that state sovereignty ought to be less absolute, and that international law and norms should be more accommodating to humanitarian issues.

Duties: Power, Paternalism and the 'Responsibility to Protect', *Review of International Studies* 36, no. special issue (2010)

¹²⁵ For example, Badescu and Weiss argue that R2P was misrepresented in the cases of the US war on Iraq, the Russian intervention in South Ossetia, or France's invocation of R2P in relation to Myanmar. See Badescu and Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?'

¹²⁶ For existing accounts of the development of R2P see, for example Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, ed. Alex J. Bellamy, Sara E. Davies, and Monica Serrano, Global Politics and the Responsibility to Protect (Oxon: Routledge, 2011) or Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, pp. 31-38. Evans' version focuses on the influence of Kouchner, Blair, Deng, Annan, and the emergence of the Human Security agenda. Bellamy's antecedents discuss Deng's work on IDP protection and 'sovereignty as responsibility', Annan's norm entrepreneurship at the end of the 1990s, and the impact of US and British justifications for the NATO intervention in Kosovo.

The following chapter begins with a discussion of the role of human rights considerations in the drafting of the UN Charter with the establishment of the United Nations in 1945. The remainder of the chapter then proceeds broadly chronologically, looking at early ideological origins of R2P in the 1960s, beginning with Bernard Kouchner's conception of a 'right to intervene' in cases of humanitarian crisis. From then on, the history is more condensed as there are more overlaps between individual strands of humanitarian and human rights initiatives, but, for the purpose of analysis, they are discussed separately here. The chapter highlights the previously underexplored role of Boutros Boutros Ghali's 'Agenda for Peace'; before discussing the more conventional elements of the existing accounts of R2P's ideological antecedents, including Mahbub ul Haq's conceptualisation of 'human security' in 1994; Francis Deng's coining of 'sovereignty as responsibility' in 1995; Blair's 'Doctrine of the International Community' presented at a speech to the Chicago Economic Club in April 1999, laying out criteria for intervention, drawn up to defend the NATO intervention in Kosovo; and Kofi Annan's concept of 'individual sovereignty', to balance 'national sovereignty', the ultimate precursor to R2P. The chapter discusses the impact of these initiatives on thinking about humanitarian intervention, and their role in laying the groundwork for an international norm of a responsibility to protect.

The United Nations Charter, State Sovereignty, and Human Rights

The drafting of the UN Charter and the gradual development of an ever-widening international regime for the promotion of human rights norms are a part of a history that, according to Andy Knight, forms a narrative that 'connects those events in a coherent manner – similar to the recounting of a story that has a specific plot – and shapes the meaning and texture of the story that is being told.'¹²⁷ Historical accounts of the antecedents of R2P can be seen in this light. The story of the development of R2P usually encompasses a similar set of key events – the Universal Declaration of Human Rights, the Genocide Convention, the Geneva Conventions, changes to what constitutes a 'threat to the peace', and so on – and serves as a useful guide to the history of the development of the norms R2P is embedded in. The following sections are structured around this narrative, but will supplement it with an account of the ways in which human rights advocacy has been impeded by the defence of pluralist values.

State sovereignty, its origins, and its status as a constitutive norm in international society has been and continues to be theorised by a host of scholars.¹²⁸ A distinction is usually made between a 'traditional' understanding of state sovereignty – as an unconditional quality essential to a

¹²⁷ Knight, 'The Development of the Responsibility to Protect: From Evolving Norm to Practice', quotation fn. 5, p. 5

¹²⁸ F.H. Hinsley, *Sovereignty*, 2 ed.(Cambridge University Press, 1986) ; Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge University Press, 1995) ; Thomas J. Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construct*(Cambridge University Press, 1996); Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth,' *International Organization* 55, no. 2 (2001); Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*, LSE Monographs in International Studies (Cambridge University Press, 2002) ; Robert Jackson, *Sovereignty: The Evolution of an Idea* (Polity, 2007) ; Orford, 'Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect', pp. 996-997; Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (The University of Chicago Press, 2014)

sovereign, autonomous, and independent state¹²⁹ – or a new or reformed understanding of state sovereignty that challenges the traditional account, which entails both rights and responsibilities, discussed in more detail later on in this chapter.¹³⁰ Luke Glanville questions this dichotomy, disagreeing with the ‘tale’ that it is only in recent years that sovereigns’ indefeasible traditional rights are under attack.¹³¹ Instead, he argues, the idea that sovereignty entails responsibilities is not new, but has been an enduring feature in the social construction of state sovereignty. He shows that with the beginning of the Westphalian system in the seventeenth century, the idea that the state should enjoy absolute rights of autonomy and non-intervention was not yet ingrained. It was with the rise of the modern nation-state and its spread to the non-Western world that sovereignty came to be understood ‘traditionally’, largely driven by anti-colonial politics.¹³²

The roots of the contemporary human rights movement go back to the period between the two world wars.¹³³ Efforts towards the development of the idea of human rights took shape at the Paris Peace Conference in 1919, at which the Constitution of the International Labour Organization was drafted. The post-war ‘minorities treaties’ that guaranteed civil, political, and social rights of minorities in Europe and the Balkans is another source of early ideas leading towards the contemporary human rights regime. However, the Covenant of the League of Nations, the precursor to the United Nations, did not include a reference to human rights – Japan had led an initiative to include a guarantee against discrimination on grounds of race or religion, but the UK and the US opposed the proposal.

In 1941, the *Atlantic Charter* foresaw a world order in which people would enjoy a range of rights, including the right to self-government and ‘freedom from want and fear’.¹³⁴ The Declaration of the United Nations in January 1942 included a similar reference to rights. As the Second World War approached its end, however, the great powers became more sceptical about an internationally applicable set of rights, and proposals at the Dumbarton Oaks conference in 1944 for the establishment of an international organisation included no more than one reference to human rights, without a definition or reference to enforcement. China had advocated a more elaborate inclusion of human rights considerations, supported by several small states, especially from Latin America. Many states however, including the UK, the US, and the USSR, were only prepared to accept reference to human rights in the Charter with a recognition of every state’s exclusive domestic jurisdiction. Ultimately, several references to human rights were inserted into the UN Charter, but without a clear definition or enforcement mechanisms. In addition, they were contravened by the Charter’s prohibition on intervention ‘in matters which are essentially within the

¹²⁹ Michael Byers and Adriana Sinclair, ‘When U.S. Scholars Speak of “Sovereignty”, What Do They Mean?’, *Political Studies* 55(2007)

¹³⁰ See Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 15-27

¹³¹ Glanville, *Sovereignty and the Responsibility to Protect: A New History*, quotation p. 213

¹³² See also Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*, esp. pp. 120-144 and Jackson, *Sovereignty: The Evolution of an Idea*, esp. pp. 144-149

¹³³ For a history of the development of human rights norms see Jack Donnelly, ‘The Social Construction of International Human Rights,’ in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge University Press, 1999) and Philip Alston, Ryan Goodman, and Henry J. Steiner, *International Human Rights in Context: Law, Politics, Morals*, 3 ed.(Oxford University Press, 2007) ch. 2. See also Jack Donnelly, *International Human Rights*, 4 ed.(Westview Press, 2013) ch. 1. For a detailed account of ideas leading up to the UDHR, see Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009) pp. 14-27

¹³⁴ Winston S. Churchill and Franklin D. Roosevelt, ‘The Atlantic Charter,’ (1941)

domestic jurisdiction of any state', effectively institutionalising tensions between state sovereignty and the promotion of human rights.¹³⁵

The adoption of the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of Genocide, both in 1948, were milestones in the development of human rights norms. Prior to the Nuremberg War Crimes Tribunal, which introduced the subject of gross violations of human rights, international practice had lacked even the language with which to condemn political violence that today constitutes crimes against humanity. Today, the Universal Declaration of Human Rights (UDHR), together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), make up what is conventionally called the 'International Bill of Rights'. Together with a set of other treaties, most importantly the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC), this constitutes the core of the international human rights doctrine.¹³⁶

The Geneva Convention of 1949 laid the groundwork for modern international humanitarian law, which applies in time of war, as opposed to human rights law, which applies at all times, unless governments choose not to uphold their human rights obligations during time of war. It incorporates four previously established conventions on the treatment of victims of war.¹³⁷ The first convention resulted from the work of Henri Dunant, founder of the International Red Cross Movement. It stipulates basic rules for the treatment of wounded soldiers and prisoners of war as well as the safeguarding of civilians. The second convention (1899) pertains to the care by the Red Cross of the wounded at sea. The third convention (1929) settled international standards for the treatment of prisoners of war, monitored by the Red Cross. Finally, the fourth convention (1946) concerns the protection of civilians in time of war.

As outlined above, however, the tensions between human rights norms and state sovereignty, built into the UN Charter, limit the enforcement of human rights and humanitarian law. The UN Charter prohibits the use of force between states except in self-defence or when authorised by the Security Council.¹³⁸ The Charter determines that 'primary responsibility for the maintenance of international peace and security' shall be given to the Security Council.¹³⁹ Nevertheless, the Charter leaves scope

¹³⁵ United Nations, 'Charter of the United Nations,' (1945), article 2(7)

¹³⁶ Beitz, *The Idea of Human Rights*, p. 26

¹³⁷ Jan Palmowski, 'Geneva Conventions,' in *A Dictionary of Contemporary World History* (Oxford University Press, 2008)

¹³⁸ Article 2(4) of the UN Charter states '[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations' and Article 2(7) states 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII'.

¹³⁹ United Nations, 'Charter of the United Nations', Article 24(1). International legal scholars, including Koskenniemi, Brownlie, and Chesterman have affirmed this responsibility of the Council. Martti Koskenniemi, for instance, argues that although the UN Security Council cannot assess and enforce conditions of the good life, it is nevertheless a 'technician of peace, the [international] police'. Martti Koskenniemi, 'The Police in the Temple. Order, Justice and the UN: A Dialectical View,' *European Journal of International Law* 6, no. 1 (1995), p. 344. See also Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963)

for humanitarian intervention through article 55, which states that the UN shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all', with enforcement measures at the disposal of states outlined in Chapter VII.¹⁴⁰ Article 39 states that the Security Council can take action where there is a 'threat to the peace, breach of the peace, or act of aggression'.

A look at recent history shows that the sovereignty norm and the non-interference principle have frequently been used by states to justify inaction in the face of mass atrocities.¹⁴¹ For example, the Security Council has privileged non-interference over the protection of human rights in the cases of Bosnia, Kosovo, Darfur, Rwanda, Bangladesh, and Cambodia. In 1979, the Security Council even condemned Vietnam for invading Cambodia, although the intervention halted a genocide that had already killed 1.5 million people. China sponsored the resolution, describing Vietnam's intervention as an act of aggression, and the US agreed, arguing that this constituted a violation of Cambodian sovereignty that could not be allowed to pass in silence as it would 'only encourage other Governments in other parts of the world to conclude that there are no norms, no standards, no restraints.'¹⁴²

The Security Council began to give real attention to humanitarian crises and became more open to a broader reading of 'threats to the peace' after the end of the Cold War.¹⁴³ The first indication of this was the naming as a threat to the peace of the refugee crisis caused by the Iraqi government's oppression of Kurds and Shiites in Security Council resolution 688 in April 1991. Although there was no threat of enforcement and although not adopted under Chapter VII of the Charter, this meant a departure from the previous understanding of what could be seen as a 'threat to the peace'. In a statement at its 1992 Summit Meeting, the Council declared 'new favourable international circumstances under which the Security Council has begun to fulfil more effectively its primary responsibility for the maintenance of international peace and security ... [t]he ending of the Cold War has raised hopes for a safer, more equitable and more humane world ...' and noted that 'United Nations peace-keeping tasks have increased and broadened considerably in recent years. Election monitoring, human rights verification and the repatriation of refugees have in the settlement of some regional conflicts ... been integral parts of the Security Council's effort to maintain international peace and security.'¹⁴⁴ Resolutions during the 1990s were seen as a re-interpretation of the literal text of Chapter VII, but not as an outright violation of the UN Charter's prohibition of the use of force, and they were not seen as impinging on central principles of state sovereignty,

ch. 6, and Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001)

¹⁴⁰ See Adam Roberts, 'The United Nations and Humanitarian Intervention,' in *Humanitarian Intervention and International Relations*, ed. Jennifer M Welsh (Oxford University Press, 2004)

¹⁴¹ See also Mark Gibney, 'Universal Duties: The Responsibility to Protect, the Duty to Prevent (Genocide) and Extraterritorial Human Rights Obligations,' *Global Responsibility to Protect* 3, no. 2 (2011)

¹⁴² Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, pp. 90-91, quoted in Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, p. 3

¹⁴³ See Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, part 3.; 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,' in *Humanitarian Intervention and International Relations*, ed. Jennifer M Welsh (Oxford University Press, 2004); Jennifer M Welsh, 'Introduction,' *ibid.*; Orford, 'Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect'

¹⁴⁴ United Nations Security Council, 'Note by the President of the Security Council S/23500, 31 January 1992,'

territorial integrity, and self-determination.¹⁴⁵ Intervention was still regarded as an exception in exceptional circumstances.

The idea of 'smart sanctions' constitutes a further important development in the area of human rights promotion.¹⁴⁶ Sanctions imposed on Iraq following the Gulf War were largely counterproductive to the humanitarian cause because they failed to discriminate between perpetrators of human rights abuses and the civilian population,¹⁴⁷ which promoted the development of the idea of 'targeted sanctions', including arms embargoes, financial sanctions on the assets of individuals and companies, travel restrictions on identified key individuals, and trade sanctions on particular goods. The adoption of smart or targeted sanctions contributed to changing perceptions about the means at states' disposal to intervene in other states without breaching international law.

Another decisive event was the case of *Bosnia v. Serbia* at the International Court of Justice, where the International Court of Justice concluded that the Genocide Convention establishes a duty to prevent genocide internationally.¹⁴⁸ Bosnia had wanted to secede from former Yugoslavia, to create an independent state, which the Serbian government resisted. The ICJ concluded that genocide had indeed occurred following the fall of Srebrenica, with the targeting of part of the Bosnian Muslim male population. The Court held that Serbia was not legally responsible, neither for carrying out the genocide itself, nor for aiding and assisting in acts of genocide, but ruled that the Serbian government had failed to take the necessary steps to prevent genocide. The Court noted that 'for a State to be held responsible for breaching its obligation of prevention, it does not need to be proven that the State concerned definitely had the power to prevent the genocide; it is sufficient that it had the means to do so and that it manifestly refrained from using them'.¹⁴⁹

Finally, the establishment of an International Criminal Court, to replace the system of ad-hoc tribunals, is regarded as a cornerstone of the modern international human rights regime. Its establishment is significant because it prosecutes individuals rather than states. Its jurisdiction covers genocide, crimes against humanity, and war crimes, so has a very similar focus to R2P. The establishment of the court was regarded as a milestone by enthusiasts, as a universalisation of human rights norms, and a means to promote peace through justice.¹⁵⁰ However, since coming into effect in 2002, the court has been criticised for its politicisation, and has been called a neo-colonial project because of its intense focus on African conflicts.¹⁵¹

The preceding paragraphs have outlined the emergence of human rights norms, in an international system of sovereign states, illustrating the normative context that serves as a backdrop for efforts to advance the human rights regime. The promotion of human rights provided fertile ground for new

¹⁴⁵ Orford, 'Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect', p. 997

¹⁴⁶ Joy Gordon, 'Smart Sanctions Revisited,' *Ethics & International Affairs* 25, no. 3 (2011)

¹⁴⁷ However, the concept of sanctions emerged earlier, during the Cold War. For a historical overview of the development of international sanctions, see Carina Staibano, 'Trends in UN Sanctions: From Ad Hoc Practice to Institutional Capacity Building,' in *International Sanctions: Between Words and Wars in the Global System*, ed. Peter Wallensteen and Carina Staibano (Routledge, 2005)

¹⁴⁸ International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina V. Serbia and Montenegro): Summary of the Judgment of 26 February 2007,' (The Hague 2007)

¹⁴⁹ Ibid.

¹⁵⁰ Vesselin Popovski, 'International Criminal Court: A Necessary Step Towards Global Justice,' *Security Dialogue* 31, no. 4 (2000)

¹⁵¹ See, for instance, Kirsten Ainley, 'The International Criminal Court on Trial,' *Cambridge Review of International Affairs* 24, no. 3 (2011)

norms – such as R2P – to take root. However, it took another half century before humanitarian intervention was debated and R2P was formulated conceptually. The following sections will outline the ideological antecedents of R2P as a prospective norm advocating a prioritisation of human rights norms and the idea of ‘sovereignty as responsibility’.

Bernard Kouchner and ‘Le Droit d’Ingérence’

Whilst the UN Charter formalised both sovereignty and human rights norms, it took another two decades for the idea of ‘humanitarian intervention’ to emerge. The idea was first discussed in France in the 1960s, in the context of the Biafra War (1967-1970), as the *droit d’Ingérence* – which can be translated as a right, or a duty, to intervene or to interfere in humanitarian crises. Following Nigeria’s independence in 1960, civil war broke out between two rival ethnic factions, the Hausas and Igbos. Igbos, located mainly in the southeast of Nigeria, demanded to secede from Nigeria, creating a separate state – Biafra. Both the US and Britain supported the Nigerian government against the separatists, in the form of military assistance. The war led to a humanitarian catastrophe, publicised widely in the international press, and the Nigerian government was charged with deliberately attempting to bring about a famine in the south-eastern part of the country, with the intention of destroying the Igbo as an ethnic group.¹⁵²

The French debate on a *droit d’ingérence* revolved around the question of whether humanitarian intervention – defined here as the provision of humanitarian aid – was legal or legitimate where the government of the state in question did not consent.¹⁵³ The stance of INGOs, for example the International Committee of the Red Cross (ICRC), had traditionally been to adopt a strict line of impartiality, neutrality, and independence, as a means of securing access to conflict zones.¹⁵⁴ Increasingly, however, humanitarians such as Bernard Kouchner began to criticise this approach, pointing out that adopting a strict line of neutrality could, in certain cases, be counterproductive and further aggravate human suffering. The ICRC upheld its principle of neutrality, despite the fact that the government’s blockade of the region had caused severe human suffering.¹⁵⁵

As a result, humanitarian workers began to doubt whether a strict line of neutrality was in fact the best approach to humanitarian work, or whether, in some cases, it was necessary to take sides in order to avoid inadvertent complicity in causing human suffering. Spearheaded by Bernard Kouchner, humanitarian workers pushed for humanitarian relief that would operate without government consent if necessary. In 1971 Kouchner co-founded Médecins Sans Frontières (MSF), which operates under the principle of *sans frontiérisme* (without borders).¹⁵⁶ Kouchner argued that adhering to the traditional approach relegated human rights to a purely voluntary concept because they depend on governments to give them meaning in practice, within their jurisdiction. In an

¹⁵² See Chima J. Korie, ed. *The Nigeria-Biafra War: Genocide and the Politics of Memory* (Amherst and New York: Cambria Press, 2012) ; for an alternative account of the war, see Michael Gould, *The Struggle for Modern Nigeria: The Biafran War 1967-1970* (London and New York: Tauris, 2012) ; for a discussion of politicised characterisations of the war and the meaning of the term ‘genocide’ in the context of this war, see Lasse Heerten and A. Dirk Moses, ‘The Nigeria - Biafra War: Postcolonial Conflict and the Question of Genocide,’ *Journal of Genocide Research* 16, no. 2-3 (2014)

¹⁵³ For a discussion of Kouchner’s influence, see Tim Allen and David Styan, ‘A Right to Interfere? Bernard Kouchner and the New Humanitarianism,’ *Journal of International Development* 12, no. 6 (2000), pp. 825-842

¹⁵⁴ Barnett, *Empire of Humanity: A History of Humanitarianism* esp. p. 2

¹⁵⁵ See David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (Simon & Schuster, 2003) esp. pp. 19-20

¹⁵⁶ See chapter V of Bernard Kouchner, *Les Guerriers De La Paix* (Grasset & Fasquelle, 2004) pp. 391-480

interview with Tim Allen in 1999 Kouchner said 'I invented MSF to go where the others were not able to go.'¹⁵⁷

The Biafra War popularized *le droit d'ingérence* in France. Kouchner, when speaking in English, translated the expression as 'the right to interfere'.¹⁵⁸ Droit can be translated as both 'law' or as a 'duty', but in any case, in the French debate *le droit d'ingérence* was clearly perceived as more than just a right to intervene. At the time, *interference* was not directly associated with military intervention, but rather with non-military interference in the internal affairs of a state that was experiencing humanitarian crisis, regardless of the consent of the government concerned. However, the fact that it did not explicitly suggest military intervention did not mean that it precluded it. Interference, in the French understanding, included a military option where necessary.

Consequently, it was in the context of the Nigeria-Biafra war that the idea of conditional sovereignty was first brought up. A 'law' or 'duty' became an established part of French humanitarian discourse in the decades that followed. However, this thinking was largely contained within France until the 1990s – the Anglophone world continued to view intervention as an exceptional policy in exceptional instances of grave human suffering.

The literature on the development of R2P usually recognises the French debate and the emergence of MSF as a landmark event in the history of humanitarianism, because it signalled a departure from a traditional understanding of state sovereignty. *Le droit d'ingérence*, although the doctrine had been hotly contested in France, was interpreted as a departure from requirements of both neutrality and government consent, impacting on international discourse and building the groundwork for the conceptual work of norm entrepreneurs such as Francis Deng and Kofi Annan. It was also regarded as a precursor to an Anglophone version of the earlier French debate, this time in relation to the NATO intervention in Kosovo in 1999, with Tony Blair's use of humanitarian vocabulary to justify NATO's air campaign against Milosevic.

Non-governmental aid organisations are divided on humanitarian relief without the consent of the host government, and on the whole are reluctant to recognise themselves as political actors.¹⁵⁹ MSF's *sans frontiérisme* can be viewed as an early precursor of 'new humanitarianism'¹⁶⁰ – as opposed to classic humanitarianism that is based on the principles of impartiality, neutrality, and independence – challenging the traditional principles underpinning humanitarian work.¹⁶¹ To this day, the granting of access to NGOs remains a highly politicised question, as crises in Burma/Myanmar or Syria have shown.

Undeniably, the debate on *le droit d'ingérence* constitutes an important precursor to later developments that facilitated the emergence of the idea of a Responsibility to Protect – Kouchner later endorsed R2P, arguing that it conveys the same idea as *le droit d'ingérence*.¹⁶² The French debate on *le droit d'ingérence* constitutes an important precursor to subsequent efforts to reconceptualise state sovereignty for the purpose of advancing other issue areas, such as IDP

¹⁵⁷ Allen and Styan, 'A Right to Interfere? Bernard Kouchner and the New Humanitarianism', p. 839

¹⁵⁸ Ibid. fn. 1

¹⁵⁹ For a case study illustrating the political nature of humanitarian relief work, see Andy Storey, 'Non-Neutral Humanitarianism: NGOs and the Rwanda Crisis,' *Development in Practice* 7, no. 4 (1997)

¹⁶⁰ See 'Humanitarianisms in Brief', in Madalina Elena Nan 2010, <http://sites.tufts.edu/jha/archives/780>

¹⁶¹ See Michael Barnett and Thomas G. Weiss, eds., *Humanitarianism in Question: Politics, Power, Ethics* (Cornell University Press, 2008), esp. pp. 1-48 and Barnett, *Empire of Humanity: A History of Humanitarianism*, esp. pp. 107-131

¹⁶² Kouchner, *Les Guerriers De La Paix*, ch. V

protection. However, with humanitarian relief its primary concern, it addressed the issues of government consent and state sovereignty from a particular angle, one perhaps more akin to a broader human security approach (although human security did not emerge until the mid-1990s). In any case, it is evident that the vast majority of NGOs still operate under the assumption that it is possible to carve out a neutral humanitarian space for relief aid in internal conflicts, although MSF's questioning of 'neutrality' has had considerable traction within the NGO community. Still, 'independence' and 'impartiality' remain cornerstone norms underpinning the ethos of humanitarian work. The roots of conflict prevention, mitigation, and resolution, core ideas on which R2P builds, are to be found elsewhere.¹⁶³ Boutros-Ghali's 'Agenda for Peace', discussed in the section below, is more focused on intervention, and arguably a more significant antecedent to R2P.

Boutros Boutros-Ghali and 'An Agenda for Peace'

An 'Agenda for Peace' is usually associated with the emergence of a new approach to peacekeeping, referred to as 'second-generation peacekeeping'.¹⁶⁴ Whereas traditional peacekeeping positioned UN troops between warring parties with a chapter VI mandate and the consent of the parties concerned (for example UNTSO in the Middle East or UNFICYP in Cyprus), and were bound to the three key principles of consent, impartiality, and minimum force, second-generation peacekeeping missions saw the UN in a more active role, intervening in ongoing civil wars. Second-generation peacekeeping differed both in terms of objectives as well as in terms of measures.

Arguably, Boutros Boutros-Ghali's 'Agenda for Peace' had a much stronger impact on the discourse about humanitarian intervention than developments in humanitarian relief work did. The Secretary-General had been commissioned to write a report suggesting ways for advancing conflict resolution in a post-Cold War, potentially veto-free era. Boutros-Ghali's report, published in June 1992, put forward a set of recommendations to strengthen the UN's capacity for preventive diplomacy, peacemaking (through peaceful measures), and peacekeeping (with the consent of all parties concerned).¹⁶⁵ The report saw in the end of the Cold War an 'opportunity ... to achieve the great objectives of the Charter' (para. 3).

Although the report contains some ideas that must have appeared progressive at the time, its tone overall was conservative in regard to state sovereignty, and it avoided mention of any measures that would today be regarded as 'peace enforcement' with a Chapter VII mandate, and without consent of all parties concerned. The report declared that 'the time of absolute and exclusive sovereignty has passed' (para. 17), but this was immediately qualified in paragraph 19, which stated that '[t]he sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for peoples, both of great value and importance,

¹⁶³ Michiel Hofman suggests that even UN integrated peacekeeping missions obstruct humanitarian relief work because they impede the impartial delivery of aid to all those affected by the conflict. See Michiel Hofman, 'The Evolution from Integrated Missions to 'Peace Keepers on Steroids': How Aid by Force Erodes Humanitarian Access' *Global Responsibility to Protect* 6, no. 2 (2014)

¹⁶⁴ For a discussion of *An Agenda for Peace* in the context of developments in the practice of UN peacekeeping, see Hugo Slim, 'Military Humanitarianism and the New Peacekeeping: An Agenda for Peace?', *IDS Bulletin* 27, no. 3 (1996) and Thomas G. Weiss, 'New Challenges for UN Military Operations: Implementing an Agenda for Peace,' *The Washington Quarterly* 16, no. 1 (1993)

¹⁶⁵ Boutros Boutros-Ghali, 'Report of the UN Secretary-General: "Agenda for Peace"', (United Nations, 1992)

must not be permitted to work against each other in the period ahead.’ The overall tone of the report remained cautious in regard to state sovereignty.

The report emphasised the importance of prevention. It stated that UN member states should aim to identify potential conflict early on and address these with preventive diplomacy; continue traditional peacekeeping efforts to monitor peace agreements and ceasefires; partake in peacebuilding activities; and address root causes of conflict (para. 15). Paragraph 16 explicitly mentions regional organisations, and also refers to the concept of ‘human security’ (despite the fact that the emergence of ‘human security’ as a distinct approach to international security is usually associated with the 1994 UNDP report, discussed below).

The report gives a detailed account of measures available under the rubric of ‘prevention’, including fact-finding missions, early warning, preventive deployment, and demilitarised zones. It is also based on the idea of a prevention-reaction-post-conflict peacebuilding continuum on which R2P builds. Chapter VII (paragraphs 60-65) emphasises the role of regional organisations, stating that ‘regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs’ (para. 64).

Not long before the publication of the report in June 1992, Boutros Boutros-Ghali, in his capacity as UN Secretary-General, began overseeing peacekeeping missions in Somalia, UNOSOM I (April 1992 – March 1993), UNITAF (led by the US, December 1992 – May 1993) and UNOSOM II (March 1993 – March 1995). The intervention in Somalia illustrated both the initial optimism about UN peacekeeping, and the immense disappointment about the way it unfolded and its ultimate failure. The objective of UNOSOM I had been to oversee the ceasefire in Mogadishu and provide security for humanitarian relief work. However, the UN’s involvement in Somalia proved a slippery slope from securing humanitarian access to outright military intervention. The mandate of UNOSOM II, authorised by Security Council resolution 814 (1993), included Chapter VII enforcement measures, ostensibly to establish a secure environment for humanitarian relief work.

In June 1993, following the massacre of 24 Pakistani peacekeepers, UN Security Council resolution 837 reaffirmed the Secretary-General’s authorisation to ‘take all necessary measures against all those responsible for the armed attacks’.¹⁶⁶ Boutros-Ghali subsequently authorised the hunt for Aidid, which he claimed the Security Council had obliged him to do. He pursued this goal obsessively, to the detriment of the success of the initial mission objectives.¹⁶⁷ In his memoirs, in his defence, Boutros-Ghali claimed senior UN officials had lacked real ‘understanding’ of Somali politics,¹⁶⁸ and attacked Mohamed Sahnoun, Special Representative for Somalia at the time, who resigned from his post in October 1992, at the height of the ongoing crisis. Sahnoun subsequently argued that the UN should have intervened earlier, prior to the collapse of the Barre regime in January 1991.¹⁶⁹ ‘An Agenda for Peace’ had emerged in the context of the crisis in Somalia and must be seen in this light. The crisis in Somalia represented a test case for an emerging doctrine of ‘humanitarian intervention’.

¹⁶⁶ United Nations, ‘Security Council Resolution 837,’ (1993)

¹⁶⁷ For a discussion of the role of the Secretary-General during the crisis in Somalia, see Mats Berdal, ‘Boutros-Ghali’s Ambiguous Legacy,’ *Survival* 41, no. 3 (1999)

¹⁶⁸ Boutros Boutros-Ghali, *Unvanquished: A U.S. - U.N. Saga* (Random House, 1999) pp. 95-96

¹⁶⁹ Mohamed Sahnoun, *Somalia: The Missed Opportunities* (Washington, D.C.: United States Institute of Peace, 1994) Sahnoun would go on to serve as co-chair of the International Commission on Intervention and State Sovereignty, which oversaw the drafting of the ICISS report introducing R2P.

It was also afflicted by the same issues around peacekeeping that affected missions in former Yugoslavia (UNPROFOR, 1992-1995) and Rwanda (UNAMIR, 1993-1996).

Throughout the 1990s, the changed practice of UN peacekeeping, and the willingness to provide peacekeeping operations with a chapter VII mandate, was regarded with scepticism, potentially a form of 'militarization of the international relief system'.¹⁷⁰ The NGO community in particular was sceptical, fearing that a new approach to peacekeeping could further escalate conflicts and do more harm than good. Aid organisations, for whom the main priority has always been access, feared that where peacekeeping missions did not seek the consent of all parties involved, relief could suffer. Humanitarians argued at the time that 'the management of consent' was the 'art of peacekeeping', and that UNOSOM in Somalia had crossed the line of consent and 'slipped into a peace-enforcement and war-fighting situation'.¹⁷¹ NGOs' initial scepticism towards second-generation peacekeeping casts doubts on the role of humanitarian relief work in the emergence of R2P as a prospective norm – humanitarian relief agencies and peacekeepers operate according to a different logic.

Despite the report's very cautious formulations affirming the norm of state sovereignty, it subtly shifted the meaning of the concept, moving away from the idea of 'absolute sovereignty.' 'An Agenda for Peace' was an important step forward in the discourse on humanitarianism and intervention on humanitarian grounds, precisely because of the fact that it was contentious – both for moving the debate forward, as well as for remaining conservative on key issues such as sovereignty. The mere fact that the report re-emphasized state sovereignty firmly seemed to suggest that it did not want to be seen as challenging state sovereignty, at least rhetorically – when unquestionably the measures it proposed were doing just that.

Furthermore, the report resembles later thinking on humanitarian intervention – ideas subsequently picked up on in the 2001 ICISS report. The report proposes new, more robust measures, whilst emphasising the importance of the norm of state sovereignty – a precursor to the ICISS report, which tried to do the same, but with 'sovereignty as responsibility' as a formula, and a willingness, in principle, to forfeit the principle of sovereignty if certain conditions are met. An 'Agenda for Peace' laid the groundwork for these ideas, very subtly questioning established international norms. Furthermore, the report bears all the hallmarks of principles associated with R2P, emphasising the importance of multilateralism, prevention, consent, and the involvement of regional organisations or conflict resolution mechanisms. The report outlines a continuum from preventive diplomacy, to peacemaking, to peacekeeping – which bears close resemblance to both the ICISS report (and its prevention – reaction – rebuilding continuum), as well as the 2009 report on Implementing the Responsibility to Protect (and its three pillars: primary responsibility – assistance in meeting primary responsibility – collective action).

In this sense, an 'Agenda for Peace' should be regarded as a precursor to R2P, although it has been largely overlooked in existing accounts of the concept's ideological antecedents. Part of the reason for this is, perhaps, the report's focus on military aspects of peacekeeping. R2P advocates want to avoid associating R2P with the use of force, emphasising prevention and non-coercive, non-military measures. However, the use of force as a last resort is a core element of R2P, and so 'An Agenda for Peace', formulated in the context of the immediate post-Cold War euphoria about the role of the UN in a system of collective security, deserves a place in the history of the antecedents of R2P.

¹⁷⁰ Slim, 'Military Humanitarianism and the New Peacekeeping: An Agenda for Peace?' p. 86

¹⁷¹ Ibid. p. 92

Mahbub ul Haq and 'Human Security'

Whilst efforts to promote IDP protection, discussed earlier on this chapter, resulted in the 'sovereignty as responsibility' formula that lies at the core of R2P, and an 'Agenda for Peace' advanced the discourse on UN peacekeeping, 'human security' was significant because of its role in re-shaping perceptions about international security. Human Security is a broad concept that spans a wide range of threats that may affect individuals, and human security as an approach attempts to understand and address the causes for these threats. R2P is much narrower in scope, focusing solely on genocide, ethnic cleansing, war crimes, and crimes against humanity. Despite its broader approach, however, human security was significant in the development of thinking about human rights protection and intervention because it meant that, conceptually, a wider range of factors causing a climate of political unrest that could give rise to R2P crimes could now be considered, which is particularly important in view of R2P's emphasis on prevention.

Mahbub ul Haq is widely credited with having coined 'human security' in the 1993 and 1994 United Nations Development Programme reports, although the phrase is actually used in 'An Agenda for Peace' in 1992. The reports advocated focusing not on the security of the state, but instead on the security of the individual.¹⁷² Haq intended 'human security' as a supplement to his 'human development' concept. The aim of human security was therefore to offer a new approach to both security and development, with the security of the individual conceived widely, not just concerning itself with the physical safety of the individual, but also its basic economic wellbeing. The report argued that security should be reconceptualised, away from an understanding of security as territory free from the threat of external aggression, or the protection of national foreign policy interests, towards an understanding of security as the protection of people.

The report identified seven elements that together constitute human security: economic security; food security; health security; environmental security; personal security; community security; and political security.¹⁷³ In this way, human security combines the human rights and human development agendas. The individual's and the community's needs, rather than those of the state, are at the centre of the analysis.¹⁷⁴ At the same time, the concept of human security is not simply a combination of human rights and human development. It focuses on a smaller subset of fundamental concerns in both policy areas, focusing on core rights, like human survival or the natural dignity of people.¹⁷⁵

In the meantime, the idea of human security has been picked up as an academic approach in international security studies, focussing on problem-solving and the drawing up of policy recommendations to inform the work of policy-makers and practitioners. Scholarly use of the term has resulted in conceptual refinement of what human security is and what it stands for. Mary

¹⁷² United Nations Development Programme, 'Human Development Report 1994,' (New York / Oxford 1994). For an overview of Haq's role in promoting the concept, see Des Gasper, 'Securing Humanity: Situating 'Human Security' as Concept and Discourse,' *Journal of Human Development* 6, no. 2 (2005) and 'Pioneering the Human Development Revolution: Analysing the Trajectory of Mahbub Ul Haq,' *Journal of Human Development and Capabilities* 12, no. 3 (2011)

¹⁷³ A good summary of the concept is provided in Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Cambridge and Malden, MA: Polity, 2007) pp. 182-197

¹⁷⁴ See Barry Buzan and Lene Hansen, *The Evolution of International Security Studies* (Cambridge University Press, 2009) pp. 202-204

¹⁷⁵ See Amartya Sen's conceptualisation of Human Security in Commission on Human Security, 'Human Security Now: Protecting and Empowering People,' (New York 2003), pp. 8-9

Kaldor, in 'Human Security', establishes five core principles for the implementation of human security:¹⁷⁶ First, the primacy of human rights, including not just political and civil rights, but also economic and social rights; second, legitimate political authority – any intervention would therefore need to aim to stabilise the situation to allow for a peaceful political process; third, multilateralism – the human security is global in scope, and implementation of international initiatives are most effective if undertaken multilaterally; fourth, a bottom-up approach to security; and, fifth, a non-state centric approach that recognised that the consequences of conflict (refugee flows, displacement, criminal networks) are not contained within state boundaries.

Although a 'security-development nexus' is now well established in the literature,¹⁷⁷ recent developments have shown a rift in the way different groups interpret 'human security'.¹⁷⁸ Since the emergence of 'human security' in 1994, proponents have tended to emphasize *either* its political, human rights, and civil liberties components *or* its emphasis on development and just distribution of international wealth and resources. For example, the 'Human Security Report',¹⁷⁹ published in 2005, reflecting the Canadian government's interpretation of the term, emphasises the 'freedom from fear' over 'freedom from want', being more concerned with political violence as a threat to human security, and giving comparatively less attention to other threats to human security such as disease and malnutrition. 'Human security' understood in this way has more in common with R2P. The more authentic UNDP approach, on the other hand, is reflected in the report of the UN High-Level Panel on Threats, Challenges and Change, *A More Secure World*, as well as *In Larger Freedom*, which both emphasised the interrelatedness of issues affecting people's security.¹⁸⁰

Ronald Behringer outlines the important role middle powers have played in promoting human security.¹⁸¹ Behringer defines 'middle powers' using a functional definition, whereby middle powers are states that prefer to act multilaterally, and that usually concentrate diplomatic efforts on niche issues and the opportunity to assume roles. According to Behringer's definition, states like Austria, Canada, Denmark, the Netherlands, Norway, Poland, or Sweden qualify. For example, middle powers successfully advocated for a Multinational Standby High Readiness Brigade for United Nations Operations (SHIRBRIG); the Anti-Personnel Landmine Ban; and the International Criminal Court. Behringer suggests that middle power advocacy in the run-up to the 2005 World Summit was influential in R2P's endorsement in the outcome document. Whilst Behringer uses a definition of 'middle power' that at first glance may seem somewhat counterintuitive as it uses the term 'power' in a rather unconventional way, it is true that states traditionally in favour of promoting human security issues also tend to support R2P.

Human security and R2P share a number of commonalities, but are also different to each other in important ways. Human security is applicable to a much broader range of issues, but shares with R2P its concern for individuals, or populations, rather than the state – human security opened the door to non-state centric accounts. Human security concerns inform R2P, especially in relation to

¹⁷⁶ Kaldor, *Human Security: Reflections on Globalization and Intervention*, chapter 7

¹⁷⁷ Joakim Ojendal and Maria Stern, 'Mapping the Security-Development Nexus: Conflict, Complexity, Cacophony, Convergence?', *Security Dialogue* 41, no. 5 (Special Issue) (2010)

¹⁷⁸ Kaldor, *Human Security: Reflections on Globalization and Intervention*, chapter 7

¹⁷⁹ Human Security Centre, 'Human Security Report: War and Peace in the 21st Century,' (Oxford: University of British Columbia, 2005)

¹⁸⁰ United Nations, 'A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change'; 'In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General'

¹⁸¹ Ronald Behringer, 'The Dynamics of Middlepowermanship,' *Seton Hall Journal of Diplomacy and International Relations* 14, no. 2 (2013)

prevention, and vice versa, human security concerns encompass political violence that may give rise to R2P crimes. Like R2P, human security endorses multilateralism and regionalism as core principles. Therefore, crudely put, one could probably regard R2P as concerned with a particular subset of human security issues.

Still, to many using human security as an approach, R2P is simply too militaristic. Human security avoids any further violence at all costs, and R2P's association with the use of force has led to scepticism amongst scholars and policy-makers adopting a human security approach. The academic body of work focusing on human security issues is driven by different sorts of research agendas. So, whilst human security and R2P are both concerned with the individual, and both emphasise the importance of prevention, human security's role in promoting ideas that ultimately led to the emergence of R2P should not be overemphasised. In conclusion, human security's primary contribution in relation to R2P lies in its promotion of a discourse that shifts the conceptual focus away from the security of the state, focusing instead on the security of the individual.

Francis Deng and 'Sovereignty as Responsibility'

The scholarship of Francis Deng, former Sudanese minister of state for foreign affairs, UN Special Adviser for the Prevention of Genocide between 2007 and 2012, and currently South Sudan's ambassador to the United Nations, gave rise to the idea of 'sovereignty as responsibility', the key idea upon which R2P is based. Deng's conceptual framework called for international protection of the growing number of Internally Displaced Persons (IDPs).¹⁸² Deng's research addressed the problem that agencies seeking to aid IDPs require permission from the very political authorities that are responsible for their displacement. Refugees – exiles who flee across borders – are protected by international law provisions, like the United Nations High Commissioner for Refugees (UNHCR). IDPs, in contrast, are migrants who do not cross borders. IDPs are even more vulnerable than refugees, as they are not protected by the same international law provisions or cared for by institutional frameworks in place to support refugees. As a result of the shift from inter-state to intra-state war as the prevailing form of conflict, the ratio of refugees to IDPs has changed significantly over the last two decades and today stands at two IDPs for every refugee.¹⁸³ A 1992 Center for Disease Control (CDC) study estimated that death rates of IDPs are 60 times higher than those of non-displaced populations.¹⁸⁴

In 1992, at a time when internal displacement became a much-discussed issue, then UN Secretary-General Boutros Boutros Ghali submitted a first analytical report on the problem at the UN Commission on Human Rights (CHR) in Geneva.¹⁸⁵ The commission, after some controversy, approved resolution 1992/73, which authorised Boutros-Ghali to appoint a representative tasked with gathering views and information on human rights issues related to IDPs. A number of states

¹⁸² Deng's contribution to the debate on intervention for human protection purposes is described in depth in Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, pp. 89-95 and *Humanitarian Intervention: Ideas in Action*, 2 ed.(Cambridge: Polity, 2012) pp. 98-104

¹⁸³ In 2012, 6.5 million people were newly displaced by conflict and violence. The total number of people displaced in 2012 was 28.8 million. See Internal Displacement Monitoring Centre, 'Global Overview 2012: People Internally Displaced by Conflict and Violence,' (Norwegian Refugee Council, 2013)

¹⁸⁴ Center for Disease Control, 'Famine-Affected, Refugee, and Displaced Populations: Recommendations for Public Health Issues,' in *Morbidity and Mortality Weekly Report*(1992)

¹⁸⁵ Weiss, *Humanitarian Intervention: Ideas in Action*, p. 100

objected on the grounds that this could justify intrusion in their domestic jurisdiction, foretelling the kinds of objections that would be raised in relation to R2P. Nevertheless, Francis Deng was appointed Special Representative on Internally Displaced People in 1993. His mandate was repeatedly extended until July 2004.

Deng authored the first comprehensive book on the topic of displacement, published in 1993.¹⁸⁶ During the course of his collaboration with William Zartman and Roberta Cohen¹⁸⁷ he formulated the idea of 'sovereignty as responsibility' in 1995.¹⁸⁸ 'Sovereignty as responsibility' is considered the key formula for R2P. In 2003, Lloyd Axworthy – Canada's Minister of Foreign Affairs until 2000 – wrote that 'the first time I heard the notion of "responsibility to protect" was when Deng visited me in Ottawa and argued for a clear commitment by the international community to deal with the IDP issue.'¹⁸⁹ Deng argued that the norm of sovereignty made access to IDPs difficult,¹⁹⁰ and suggested rethinking the meaning of state sovereignty. He argued that sovereignty should be understood as entailing responsibility, and that if a state were unable to protect its own citizens, it should invite foreign aid. This, in turn, would strengthen its own sovereignty. In 1998, Deng produced two further volumes on IDP protection, co-authored with Roberta Cohen.¹⁹¹

Deng also pushed for an accommodation of IDP issues in international law. After five years of difficult negotiations the Guiding Principles on Internal Displacement were published.¹⁹² This was not a convention or treaty, but a compilation of generally agreed principles. The development from an idea to a set of principles in such a short time was a substantial achievement, especially given that several states had been sceptical about the idea, fearing that the Guiding Principles would represent an expansion of international obligations, rather than a restatement of these.¹⁹³ After the publication of the Guiding Principles, Walter Kälin, then UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons, and his team headed by Roberta Cohen based at the Brookings Institution, worked to promote the implementation of the Guiding Principles, translating them into different languages, providing training, and undertaking further research.

The literature on the development of R2P regards the norm entrepreneurship around the promotion of the Guiding Principles on IDPs as an important milestone, because it seemed to suggest a changing pattern of norms regarding interference within sovereign states for humanitarian purposes. The aims and agendas of IDP protection and R2P are closely related, and the publication of

¹⁸⁶ Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington, DC: Brookings Institution, 1993)

¹⁸⁷ Deng's collaboration on this is summarised in Ramesh Thakur and Thomas G. Weiss, 'R2P: From Idea to Norm - and Action?', *Global Responsibility to Protect* 1, no. 1 (2009) For the original texts see, for example, Francis M. Deng and I. William Zartman, eds., *Conflict Resolution in Africa* (Washington, DC: Brookings Institution, 1991); Francis M. Deng and Terrence Lyons, eds., *African Reckoning: A Quest for Good Governance* (Washington, DC: Brookings Institution, 1998); Deng, 'Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Action'; and Roberta Cohen, *Human Rights Protection for Internally Displaced Persons* (Washington, DC: Refugee Policy Group, 1991)

¹⁸⁸ Francis Deng, 'Frontiers of Sovereignty,' *Leiden Journal of International Law* 8, no. 2 (1995)

¹⁸⁹ Lloyd Axworthy, *Navigating a New World: Canada's Global Future* (Vintage Canada, 2003) p. 414

¹⁹⁰ Francis Deng, 'The Impact of State Failure on Migration,' in *Mediterranean Quarterly* (2004), p. 18

¹⁹¹ Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, DC: Brookings Institution, 1998); Roberta Cohen and Francis M. Deng, eds., *The Forsaken People: Case Studies of the Internally Displaced* (Washington, DC: Brookings Institution, 1998)

¹⁹² United Nations, 'Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2,' (1998)

¹⁹³ On advocacy efforts see Walter Kalin and Rhodri C. Williams, 'Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges: Chapter 1 (Introduction),' *Studies in Transnational Legal Policy* 41(2010), p. 3

the Guiding Principles and Deng's formulation of 'sovereignty as responsibility' were direct precursors to R2P. As such, efforts to promote policies that do more to protect IDPs face similar challenges – balancing access to vulnerable populations with consent of the host government – as do international actors working to promote the implementation of R2P.

At the same time, however, the impact of efforts to promote IDP protection on the emergence of R2P needs to be put into perspective. 'Sovereignty as responsibility' represents the key formula for R2P, but both the problems it addresses, as well as the means for addressing them, vary considerably. As earlier sections on humanitarian relief work and human security have shown, academics and proponents promoting R2P have tended to associate R2P with dimensions of humanitarianism that are generally regarded as benign, non-military, or apolitical. This literature overlooks a history of Just War theorising or a history of ideas on the ethics of war, discussed in further detail in what follows below.

Tony Blair and the 'Doctrine of the International Community'

Blair's 'Doctrine of the International Community' in the context of the Kosovo crisis usually features in accounts of the emergence of R2P, although framed more as an effort, according to Gareth Evans, to 'identify, in a way that had not been part of the debate until then, specific criteria for military intervention.' However, Evans dismisses the Blair Doctrine as 'not much more than a hodge-podge of sound bites'. R2P advocates did not particularly like the Blair Doctrine – 'the checklist was incomplete' (presumably because UN authorisation was not on it), and 'entirely military'. Above all, however, it was not based on an international consensus: 'Blair knew how to rally the North, but his doctrine fell on very deaf ears in the South'.¹⁹⁴ But the debates inspired by the Blair Doctrine and the Kosovo intervention are undeniably direct precursors to R2P – the criteria for intervention contained in the 2001 report could be read as a direct response to the Blair Doctrine.

Whilst Deng's formulation of 'sovereignty as responsibility' laid the conceptual groundwork for R2P, the political impetus for the emergence of R2P came from the Kosovo War.¹⁹⁵ NATO's intervention in Kosovo in 1999 moved the question of *military* intervention on humanitarian grounds centre stage. NATO's intervention in Kosovo was the first time force was used, justified on humanitarian grounds, without the consent of the government concerned, and without UN Security Council authorisation. Writing at the time, Adam Roberts¹⁹⁶ argued that '*Operation Allied Force* marked a high point in the increasing emphasis on human rights and humanitarian issues'.

NATO's intervention aimed to avert the impending 'ethnic cleansing' of Kosovar Albanians following an escalation of confrontations between the Kosovo Liberation Army (KLA) and the Yugoslav army. NATO stated five objectives in Kosovo: to ensure all fighting ceased and killings ceased; a withdrawal of Serb forces from Kosovo; the deployment of an international military force; the return of refugees and access for humanitarian aid; and the realisation of a political agreement building on the Rambouillet Accords.¹⁹⁷ Lacking a clear UN mandate, the moral and legal justifications for the intervention were hotly debated. Reflecting these differences, the Independent Commission on

¹⁹⁴ Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, quotations p. 34

¹⁹⁵ See also Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* p. 33

¹⁹⁶ Adam Roberts, 'Nato's 'Humanitarian War' over Kosovo,' *Survival* 41, no. 3 (1999), p. 102. The article provides a comprehensive account of the war.

¹⁹⁷ *Ibid.* p. 103

Kosovo came to the conclusion that NATO's use of force in Kosovo had been 'illegal but legitimate'.¹⁹⁸

Blair justified the intervention on humanitarian grounds, providing a set of criteria establishing when it was right to intervene – without UN backing if necessary. At a speech given to the Economic Club of Chicago – based largely on a document drafted by Lawrence Freedman, Professor at King's College London¹⁹⁹ – Tony Blair argued that in the post-Cold War era, foreign policy decisions 'are guided by a ... subtle blend of mutual self-interest and moral purpose in defending the values we cherish ... If we can establish and spread the values of liberty, the rule of law, human rights and an open society, then that is in our national interest.'²⁰⁰ The question that arose in this context was related to when and for which purposes military intervention in defence of those values was justified, when non-interference in the affairs of other states was a fundamental norm in international relations. In his speech, Blair laid out under which circumstances the principle of non-interference should yield to other principles. Blair said regarding non-interference:

Non-interference has long been considered an important principle of international order. And it is not one we would want to jettison too readily. ... But the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter. When oppression produces massive flows of refugees which unsettle neighbouring countries then they can properly be described as 'threats to international peace and security'.²⁰¹

In the speech, Blair listed five criteria for the use of force for humanitarian purposes. They resemble the criteria usually associated with the Just War tradition (right intention; last resort; reasonable prospects). Beyond this, the doctrine recognises a need for a long-term commitment to post-conflict peace-building, and regards the existence of national interest as a further facilitating factor:

First, are we sure of our case? War is an imperfect instrument for righting humanitarian distress; but armed force is sometimes the only means of dealing with dictators. Second, have we exhausted all diplomatic options? We should always give peace every chance, as we have in the case of Kosovo. Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and prudently undertake? Fourth, are we prepared for the long term? In the past we talked too much of exit strategies. But having made a commitment we cannot simply walk away once the fight is over; better to stay with moderate numbers of troops than return for repeat performances with large numbers. And finally, do we have national interests involved? The mass expulsion of ethnic Albanians from Kosovo demanded the notice of the rest of the world. But it does make a difference that this is taking place in such a combustible part of Europe.²⁰²

¹⁹⁸ Independent International Commission on Kosovo, 'The Kosovo Report: Conflict, International Response, Lessons Learned,' (Oxford2000)

¹⁹⁹ Peter Lee, *Blair's Just War: Iraq and the Illusion of Morality* (Palgrave Macmillan, 2012) p. 17

²⁰⁰ Tony Blair, 'Doctrine of the International Community - Speech Given to the Economic Club of Chicago in 1999,' (http://www.pbs.org/newshour/bb/international/jan-june99/blair_doctrine4-23.html accessed 17 February 2010)

²⁰¹ Ibid.

²⁰² Ibid.

Bellamy suggests that with his speech 'Blair anchored sovereignty as responsibility into the changing nature of international order',²⁰³ placing his demand for reconceptualising sovereignty not just in the immediate context of the unfolding Kosovo crisis, but also within the broader intellectual debate on humanitarianism. The Blair Doctrine cannot be seen as a direct ideological precursor to R2P (it was not premised on UN authorisation), but it was significant because of the impact it had on the debate on military intervention justified on humanitarian grounds. Blair's Chicago speech was covered widely in the Anglophone press and international media.²⁰⁴ The use of criteria rekindled an age-old debate on Just War.

Blair's speech was not the only attempt to set out clear criteria for humanitarian interventions. A report by the Danish Institute for International Affairs discussed criteria for humanitarian intervention in 1999.²⁰⁵ The report aimed to determine the legitimacy of intervention on humanitarian grounds, suggesting that 'there seems to be a general agreement on the content of criteria for humanitarian intervention on an abstract level'. First, 'only the most serious and massive violations of human rights and international humanitarian law' justify intervention (genocide, crimes against humanity, and war crimes); second, unilateral intervention is justified only when the Security Council fails to react effectively; and, third, the use of force as a last resort only. The report further added that 'while relative disinterestedness of the intervening state(s) is preferable, complete disinterestedness is utopian and cannot be required.'

In 2000, a Dutch report noted that UN debates would lead one to conclude that 'it is above all Western countries that are seeking a justification for unauthorised humanitarian intervention.'²⁰⁶ The report specifically referred to the Kosovo crisis and concluded that it was vital 'to pursue efforts aimed at generating the broadest possible support within the international community.'²⁰⁷ However, the report stated that if all else fails, authorisation should be sought through the General Assembly by way of the Uniting for Peace procedure.²⁰⁸ In this case, however, the legitimacy of the proposed intervention would need to be determined using an 'assessment framework'.²⁰⁹ The framework suggested that the intervention should be conducted multilaterally and through regional organisations where possible, in situations where 'fundamental human rights are being or are likely to be seriously violated on a large scale.'²¹⁰

Similarly, in 2000 the Independent International Commission on Kosovo, sponsored by the Swedish government, tasked with exploring the legitimacy of the Kosovo intervention, devised a set of 'threshold principles' and 'contextual principles' to assess the legitimacy of interventions.²¹¹ The 'threshold principles' state that there are two valid triggers to intervention: 'the severe violations of

²⁰³ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 25

²⁰⁴ See for instance Tom Buerkle, 'Blair Grabs Role as Alliance Hawk,' *The New York Times* 24 April 1999; Madeleine Bunting, 'Future Imperfect,' *Guardian* 4 October 2001); and Matthias Naß, 'Die Schocktherapie,' *Die Zeit* 10 June 1999).

²⁰⁵ Danish Institute of International Affairs, 'Humanitarian Intervention: Legal and Political Aspects,' (Copenhagen 1999) pp. 125-126

²⁰⁶ Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, 'Humanitarian Intervention,' (The Hague 2000) p. 22

²⁰⁷ *Ibid.* p. 23

²⁰⁸ *Ibid.* p. 26

²⁰⁹ *Ibid.* p. 28

²¹⁰ *Ibid.* p. 29

²¹¹ Independent International Commission on Kosovo, 'The Kosovo Report: Conflict, International Response, Lessons Learned' pp. 293-294

international human rights or humanitarian law on a sustained basis' or the suffering of civilians in a failed state situation. Furthermore, protection should be the overriding aim of the intervention; and intervening forces should 'avoid collateral damage to civilian society'. The list of 'contextual principles' is extensive, including: If the Security Council is deadlocked, a two thirds majority would suffice; the use of force should be used as a last resort only; preferably interventions should be multilateral; the intervention should not pursue political objectives beyond specified humanitarian objectives; and there should be a commitment to post-conflict peacebuilding.

Without doubt the debate on a universal set of criteria or principles to guide decision-making on the use of force for the protection of civilians – especially when the Security Council is deadlocked – inspired the work of the International Commission on Intervention and State Sovereignty. However, whilst the ICISS report included criteria for the legitimate use of force, the 2005 consensus, tellingly, did not, for a variety of reasons. Powerful states feared criteria could unnecessarily limit their foreign policy options, or give rise to new international obligations. Some states feared criteria could legitimise powerful states to intervene at will. The debate on the inclusion of criteria in the Outcome Document of the 2005 World Summit struck at the heart of R2P, and will be revisited again in more detail in chapter four.

Kofi Annan and 'Two Concepts of Sovereignty'

Not only did the Kosovo Crisis spark an international debate on military intervention justified on humanitarian grounds, it also had a major impact on internal policy debates at the UN. This was the point at which the conceptual debate on protection responsibilities really started to get rolling.²¹² R2P emerged as a potential new norm over the course of Kofi Annan's period in office as UN Secretary-General, between 1997 and 2006. The Kosovo Crisis ignited heated internal debate within the Secretary-General's office:²¹³ John Ruggie (Chief Advisor for Strategic Planning at the time), Iqbal Riza (then Chief of Staff), and Edward Mortimer (then Director of Communications) supported the intervention and were in favour of support for the intervention by the Secretary-General, but Kieran Prendergast, (then Head of the Department for Political Affairs), and Sashi Tharoor, (then Under-Secretary-General for Communications and Public Information), criticised the intervention on the grounds that it violated Article 2(4) of the UN Charter. This was a watershed moment, because it was the first time the UN considered promoting a new way of thinking about the relationship between human rights protection and state sovereignty. It was a time of intra-organisational reflection on whether it was right to depart from previously held convictions about the sanctity of absolute state sovereignty and non-interference.

However, the UN's shift in thinking was a gradual process, rather than an abrupt rift with the past. One day after NATO's bombing of Kosovo began, Annan made an even-handed statement, reflecting the UN's internal divisions on the appropriate response to the intervention. In his 1999 Annual Report to the General Assembly Annan suggested that although the intervention was justifiable on humanitarian grounds, it could set 'dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances'.²¹⁴ Annan's call

²¹² See also Thakur and Weiss, 'R2P: From Idea to Norm - and Action?', and Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 27-31

²¹³ See *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 29-30

²¹⁴ United Nations, 'Secretary-General Presents His Annual Report to General Assembly,' (1999)

for clear criteria to guide decision-making on interventions prompted the subsequent debates on threshold criteria as part of the drafting process of the ICISS report, discussed in further detail in chapter four.

Annan gave a series of speeches between 1998 and 1999, placing humanitarian intervention prominently on the international agenda, and laying the groundwork for R2P. The first three of these speeches was delivered at Ditchley Park (a conference centre in England), the next in Geneva, and then The Hague. In them Annan juxtaposed the relative value of state versus individual sovereignty. The speech delivered at Ditchley Park in 1998, which became known as the 'Ditchley Formula', contained two key elements: first, it contained the idea that certain responsibilities are inherent to sovereignty and embedded in the UN Charter. Second, it argued that a failure to act collectively risked legitimising unilateral intervention. Annan stated that 'state frontiers ... should no longer be seen as a watertight protection for war criminals or mass murderers',²¹⁵ arguing that the protection of human rights outweighed the importance of state sovereignty. In effect, the UN was advocating a re-interpretation of state sovereignty as contingent on human rights protection.

An opinion piece by Annan entitled 'The Two Concepts of Sovereignty' appeared in *The Economist* shortly before the opening of the General Assembly on 20 September 1999.²¹⁶ This was hugely controversial at the time. Adopting Deng's approach to state sovereignty, Annan challenged the traditional understanding of state sovereignty by arguing that there needed to be a new balance between states and people as the source of legitimacy and authority. He argued that a new understanding of sovereignty, encompassing rights as well as responsibilities, was emerging:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties -- has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.²¹⁷

In this article, Annan also raised four issues, which bear a clear resemblance to the debate that ensued in the following years:

First, 'intervention' should not be understood as referring only to the use of force ... Second ... [a] new, broader definition of national interest is needed in the new century, which would induce states to find greater unity in the pursuit of common goals and values. In the context of many of the challenges facing humanity today, the collective interest is the national interest. Third, in cases where forceful intervention does become necessary, the Security Council – the body charged with authorizing the use of force under international law – must be able to rise to the challenge. ... Fourth, when fighting stops, the international commitment to peace must be just as strong as was

²¹⁵ Kofi A. Annan, 'The Question of Intervention: Statements by the Secretary-General,' (New York: United Nations, 1999), p. 7

²¹⁶ Kofi Annan, 'Two Concepts of Sovereignty,' *The Economist* 18 (1999)

²¹⁷ *Ibid.*

the commitment to war ... The aftermath of war requires no less skill, no less sacrifice, no fewer resources than the war itself, if lasting peace is to be secured.²¹⁸

At his opening address to the General Assembly shortly afterwards, Annan argued passionately that human rights transcended a traditional understanding of state sovereignty. His speech, entitled 'Balance State Sovereignty with Individual Sovereignty!'²¹⁹ intended to further promote a reframing of sovereignty, arguing once again that state sovereignty, in the traditional meaning of the term, should not stand higher than human rights.

Annan's efforts were instrumental in laying the groundwork for the conceptualisation of R2P. The *New York Times* at the time described Annan's efforts at reconceptualising sovereignty as 'a doctrine with profound implications for international relations in the new millennium', according to which human rights would take precedence over concerns of state sovereignty from now on, as the air strikes against Yugoslavia had shown.²²⁰ The Secretary-General was reported to have embraced an evolving international norm that was challenging fundamental principles of the United Nations, described as 'an erosion of sovereignty when it conflicts with human rights standards'.²²¹ Annan's efforts were immensely controversial at the time, and set the tone for the subsequent debates about humanitarian intervention and the formulation of R2P. Although Annan's conceptualisation of sovereignty did not challenge existing international law or propose anything radically new – instead drawing on the Charter and its references to human rights – it did suggest breaking with the previous discourse and opened the door to discussions that ultimately led to the formulation of R2P.

In March 2000, Annan commissioned the Brahimi report (named after the Commission's Chair, Lakhdar Brahimi). Building on 'An Agenda for Peace', the commission – the 'Panel on United Nations Peace Operations' – was tasked with devising a list of recommendations for improving peace operations. It was comprised of a number of prominent practitioners (including Klaus Naumann and Cornelio Sommaruga, both of whom would later serve as ICISS commissioners).²²² Underexplored and largely ignored in the history of the antecedents of R2P, but arguably with a strong direct link to R2P, its outlook was interventionist, squarely defying realist ideas about intervention. The central idea in the report is its advocacy for military enforcement, and a willingness to depart, where necessary for the protection of civilians, from the UN's strict orthodoxy of impartiality and consent. The report referred to Security Council Resolution 1296 (2000), which stated that both the direct targeting of civilians, as well as the denial of access for humanitarian aid, constitute threats to international peace and security.

²¹⁸ Ibid.

²¹⁹ 'Balance State Sovereignty with Individual Sovereignty!', (General Assembly: United Nations, 20 September 1999)

²²⁰ Judith Miller, 'The World: Checkered Flags; Sovereignty Isn't So Sacred Anymore,' *The New York Times* (18 April 1999), <http://www.nytimes.com/1999/04/18/weekinreview/the-world-checkered-flags-sovereignty-isn-t-so-sacred-anymore.html?scp=8&sq=international+commission+on+intervention+and+state+sovereignty&st=nyt>

²²¹ Ibid.

²²² For a discussion of the Brahimi report see Sorpong Peou, 'The UN, Peacekeeping, and Collective Human Security: From an Agenda for Peace to the Brahimi Report,' *International Peacekeeping* 9, no. 2 (2002)

Conclusions

This chapter charted R2P's normative roots, drawing on, and critically engaging with the existing literature on the antecedents of R2P. The establishment of the UN sets the scene because of the Charter's embrace of the norms of sovereignty, territorial integrity, and non-interference on the one hand, and human rights protection on the other. Despite a number of interventions motivated on humanitarian grounds in the decades that followed the establishment of the UN in 1945, it was not until the emergence of a debate within France on a *droit d'ingérence* that intervention justified on humanitarian grounds began to be contemplated, but this debate was largely in relation to government consent and humanitarian relief work. The chapter showed that developments within the humanitarian domain were, however, largely self-contained, based on a different outlook.

The chapter then explored changes in the practice of UN peacekeeping. Gradually, arguments promoting a more proactive form of peacekeeping, formulated in 'An Agenda for Peace', envisioning a more emboldened form of peacekeeping based on a broader interpretation of what constitutes a 'threat to international peace and security', gained momentum. The chapter illustrated how the gradual shift from peacekeeping to peace enforcement, with the UN's routine granting of chapter VII mandates, is underrepresented in the literature detailing the emergence of R2P, although the UN's internal debate in response to the Kosovo Crisis, as well as changes in the practice of UN peacekeeping, reflected in the Brahimi report, fundamentally changed the discourse on intervention and arguably had the greatest impact on R2P's emergence.

In the years immediately preceding the publication of the 2001 ICISS report, norm entrepreneurship played a crucial role. Annan's era as Secretary-General was a decisive moment for the development of R2P. His formulation of UN policy on humanitarian intervention during this period can be considered a prime example of norm entrepreneurship – Blair's framing of the Kosovo War as humanitarian forced the UN to take a position, but also gave the Office of the Secretary-General the opportunity to promote the rethinking of firmly entrenched beliefs on state sovereignty. Drawing on the idea of 'sovereignty as responsibility', developed by Deng in the context of IDP protection, and commissioning the 'Brahimi Report', Annan spearheaded an initiative promoting a fresh debate on intervention and the prioritisation of norms underpinning international society.

These deliberations formed the context out of which the work of the International Commission for Intervention and State Sovereignty (ICISS) developed. Up until that point, conservative rejection of ideas pushing for a prioritisation of human rights concerns were limited, probably because these ideas had not yet been drawn together within one coherent, distinct framework that really set out to challenge the status quo in a way that could threaten the traditional understanding of state sovereignty. This changed abruptly with the publication of the ICISS report, discussed in more detail in the following chapter. The publication of the ICISS report and the debates that ensued prior to the 2005 World Summit constitutes the point at which various strands of thinking, discussed in this chapter, converged in a particular way, giving rise to the idea of a responsibility to protect.

Chapter 4: The Emergence of the Responsibility to Protect as a Prospective International Norm (2000-2005)

Introduction

The previous chapter discussed the various strands of thinking on humanitarianism and humanitarian intervention as antecedents to R2P. It evaluated the role of a number of individuals – Bernard Kouchner, Boutros Boutros-Ghali, Mahbub ul Haq, Francis Deng, Tony Blair, and Kofi Annan – in articulating ideas that would subsequently serve as building blocks for a potential R2P norm. The chapter questioned the prevailing account – that Kouchner’s *droit d’ingérence*, Francis Deng’s ‘sovereignty as responsibility’ and Kofi Annan’s idea of ‘two concepts of sovereignty’ alone are responsible for the emergence of R2P – highlighting the importance of the ‘Agenda for Peace’, and the concept of ‘human security’ in shifting the focus from the state to the individual.

Granted, Kouchner, Deng, and Annan were the most important norm entrepreneurs in relation to R2P, because of their direct efforts to promote a new understanding of state sovereignty. However, these attempts were disparate and – with the exception of Kofi Annan’s ‘Two Concepts of Sovereignty’ – did not aim to promote a new norm to govern the relationship between sovereignty and intervention on humanitarian grounds comprehensively and at the international level. Kouchner’s *droit d’ingérence* was limited to French foreign policy, even if it was intended to affect the global debate. Francis Deng’s work on IDPs in the 1990s was not constrained by Cold War Security Council deadlock, but was focused exclusively on IDPs, and ‘sovereignty as responsibility’ did not have meaning beyond this issue area at the time. The rationale for ‘human security’ was to bring Development into Security, and although it did much to promote awareness for humanitarian concerns beyond traditional security issues, it did not discuss responsibilities tied to state sovereignty and what ought to happen when human security was at risk. The Blair Doctrine was a direct result of the Kosovo crisis and must be seen in this context. It provided justification for the NATO intervention, with the broader objective of suggesting a blueprint for assessing the legitimacy of interventions. However, it was concerned about military intervention, but one of the measures R2P entails.

Arguing that the importance of developments in the practice of UN peacekeeping has been neglected in the literature, the chapter then outlined the impact of Boutros-Ghali’s ‘Agenda for Peace’ in the context of expanded peacekeeping activities after the Cold War, and the impact of experiences such as the failed intervention in Somalia, the tragedy of Rwanda, and the NATO intervention in Kosovo. The chapter concluded that the debates this triggered in relation to the use of force on humanitarian grounds were much more relevant to the formulation of R2P, and much more directly linked to Annan’s ‘Two Concepts of Sovereignty’ that set the stage for R2P, openly promoting a move away from the traditional, absolutist interpretations of state sovereignty.

This chapter continues the critical inquiry into the actual ideological building blocks of R2P, covering the period immediately preceding the publication of the ‘The Responsibility to Protect’ until the endorsement of R2P at the World Summit in 2005. The International Commission on Intervention and State Sovereignty (ICISS) that drew up ‘The Responsibility to Protect’ built on Annan’s work. Lloyd Axworthy, Canada’s foreign minister (Canada sponsored the commission), recalls discussing the matter with Annan, ‘who was very supportive but didn’t think it would work under UN

auspices'.²²³ The report coined the idea of a 'responsibility to protect', clearly spelling out what the commissioners thought this responsibility entailed, 'to try to develop a global political consensus on how to move from polemics – and often paralysis – towards action within the international system, particularly through the United Nations.'²²⁴

The output of the work of the Commission was intended to convince a global audience. An international commission, working with input from scholars around the world, was meant to provide legitimacy to the recommendations. But the ideas contained within the report were regarded as contentious – progressive for supporters, radical for opponents – at the time. It was outspoken, more so than would have been possible had the commission been part of the UN.

The following chapter discusses the ICISS report vis-à-vis its meaning for the development of R2P as a norm. It connects the emergence of R2P with earlier antecedents, illustrates the ICISS report's distinct understanding of the 'responsibility to protect', and outlines the role the report played in shaping subsequent discourse on the protection of civilians in the run-up to the 2005 World Summit. I discuss the role of norm entrepreneurship during this crucial period, the meaning of R2P's inclusion in the Summit Outcome Document, and R2P's status as a prospective norm by the end of 2005.

The chapter critically engages with the narrative portraying the ICISS report as the articulation of a formula that was the result of genuinely international collaboration building on shared ideas about the meaning of sovereignty in relation to human rights, intervention for human protection, and criteria for just intervention.²²⁵ It also questions the meaning of the endorsement of the 'responsibility to protect' at the World Summit in 2005, which this literature regards as evidence of R2P's consolidation as norm. The chapter demonstrates that the ICISS report did not, in fact, reflect any international consensus. The Russian and Chinese ICISS roundtables showed deep scepticism about the 'responsibility to protect', and the architects of the report did little to address the concerns raised – precisely because they contradicted the core idea of the 'responsibility to protect', conditional sovereignty. The responsibility to protect was, from the very beginning, a political effort.

The subsequent sections analyse each of these stages of the articulation, and re-articulation of the responsibility to protect, applying the idea of a 'norm lifecycle' discussed in chapter two. The chapter critically engages with the claims of norm entrepreneurs and supporters regarding the extent of consensus on the principles underpinning the responsibility to protect, suggesting that the process of norm emergence was more protracted, contentious, and less conclusive than its advocates have suggested.²²⁶ The chapter discusses the political implications of criteria, their non-inclusion in the outcome document of the 2005 World Summit, and other ways in which the responsibility to protect had been 'watered-down'²²⁷ by the time of its endorsement at the World Summit in 2005. The chapter concludes with a discussion of the implications of this for the status of R2P as a prospective norm by the end of 2005.

²²³ Axworthy, *Navigating a New World: Canada's Global Future* p. 191

²²⁴ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' p. 2

²²⁵ Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*; Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*

²²⁶ For a critical discussion of significant stages during this period, see also Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?'; Eaton, 'Emerging Norm: Determining the Meaning and Legal Status of the Responsibility to Protect'; and Shawki, 'Responsibility to Protect: The Evolution of an International Norm'

²²⁷ Alex J. Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit,' *Ethics and International Affairs* 20, no. 2 (2006), p. 161

ICISS: A Canadian Initiative

Advocates believed the ICISS report reflected the 'international state of mind'.²²⁸ The ICISS report was portrayed as a formula for overcoming the sovereignty versus human rights protection conundrum. The aim of the commission was to devise a framework for improving the international community's response mechanism to humanitarian disasters – not a one size fits all formula, but a set of guidelines on policy options that could be applied case-specific to prevent atrocities and alleviate human suffering, without eroding the norm of state sovereignty and territorial integrity. Ramesh Thakur, one of the ICISS commissioners, explained that 'R2P is not an interveners' charter ... it does not provide a checklist against which decisions can be made with precision'. Thakur suggested it was meant to provide clarity about the circumstances in which the responsibility to protect applies and criteria for intervention, because 'the probability of international consensus is higher under conditions of due process, due authority and due diligence.'²²⁹ The ICISS co-chairs sought to follow the Brundtland example,²³⁰ where the aim had been to overcome the divide between economic growth on the one hand, and environmental protection on the other, leading to the idea of 'sustainable development'.²³¹ The aim was 'to re-frame a concept in order to build consensus on a divisive issue'.²³²

The ICISS commission was convened by Canada's prime minister, Jean Chrétien, and established by the Canadian foreign minister Lloyd Axworthy.²³³ It had an advisory board, chaired by Lloyd Axworthy, and, following Gareth Evans' suggestion, a research directorate led by Thomas Weiss at the City University of New York. The research directorate was responsible for drafting the supplementary research volume of the report. It was entitled 'Research, Bibliography, Background'²³⁴ and contained a detailed summary of the roundtable meetings, as well as a summary of research of more than 50 scholars who had been commissioned to contribute to the report.²³⁵ This was intended to lend academic credibility to the commission's proceedings, but the recommendations contained therein were not binding on the commission in any way.

²²⁸ Anthony Lewis, 'The Challenge of Global Justice Now,' *Daedalus* 132, no. 1 (2003), p. 8, quoted in Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, p. 89.

²²⁹ Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* p. 247.

²³⁰ Weiss, *Humanitarian Intervention: Ideas in Action* p. 108

²³¹ For the Brundtland report see World Commission on Environment and Development, 'Our Common Future,' (Oxford 1987)

²³² Canadian Centre for Foreign Policy Development, 'Report from the Ottawa Roundtable for the ICISS, 1011.9e, 15 January 2001,' (2001)

²³³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', pp. 82-83. See also Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*; International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', pp. 98-112

²³⁴ 'The Responsibility to Protect: Research, Bibliography, Background,' (Ottawa 2001)

²³⁵ Interview with Thomas Weiss, Professor of Political Science at the CUNY Graduate Center and Director of the Ralph Bunch Institute for International Studies, New York, 30 March 2011. See also Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, pp. 98-112. The supplementary volume was authored by Thomas Weiss and Don Hubert, who completed the work between March and June 2001, with a final re-working of the text ready in August 2001.

The commission met five times, in Ottawa (November 2000), Maputo (March 2001), New Delhi (June 2001), Wakefield, Canada (August 2000), and Brussels (September 2001). The commission organised eleven regional roundtables and national consultations during 2001 'to stimulate debate and ensure that the Commission heard the broadest possible range of views'.²³⁶ These were held, in chronological order, in Ottawa (15 January), Geneva (30-31 January), London (3 February), Maputo (10 March), Washington, DC (2 May), Santiago (4 May), Cairo (21 May), Paris (23 May), New Delhi (10 June), Beijing (14 June), and St. Petersburg (16 July). Consultative meetings were held to brief interested governments in capitals and diplomatic missions in Ottawa, Geneva, and New York.

Thakur argued that the commission had 'six distinguishing features':²³⁷ balance (in composition, commissioners having diverse professional and geographic backgrounds, and differing initial convictions regarding intervention); outreach (via commission meetings and roundtables); independence (the Canadian government had no 'secret agenda'); comprehensiveness (addressing prevention and post-conflict peacebuilding as well as the use of force; and addressing normative, conceptual, and operational questions); innovativeness (this refers to the 'responsibility to protect' formula), and political realism (addressing a narrow agenda).

The idea of a 'responsibility to protect' was innovative in the sense that it attempted to push the debate forward, and it was 'realistic' in the sense that it narrowed the focus of intervention to the 'large scale loss of life' and 'large scale "ethnic cleansing"'. The report was 'comprehensive' because it underscored the importance of prevention and post-conflict peacebuilding, although, as subsequent sections will demonstrate, the final report still prioritised a discussion of military intervention, and threshold criteria for the use of force.

However, the commission was perhaps not as independent, and certainly not as 'balanced', as suggested by Thakur. Nominally, the commission was 'independent', but the organisations that funded it were all located in North America. The initiative was funded by the Canadian government with the support of five American foundations: the Carnegie Corporation, the Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, and the Simons Foundation.²³⁸ Initially, Canada had suggested funding a programme under UN auspices, but this met with objections both from within the UN, as well as from other states,²³⁹ which is revealing because it illustrates the political nature of the initial efforts to promote a new way of thinking about intervention.

The composition of the commission was not balanced – women were underrepresented (there was only one female commissioner)²⁴⁰ and in terms of international representation, the commission was less diverse than appeared at first sight.²⁴¹ Most of the commissioners came from Western

²³⁶ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' p. 83

²³⁷ Ramesh Thakur, 'Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS,' *Security Dialogue* 33, no. 3 (2002)

²³⁸ Gareth Evans and Mohamed Sahnoun, 'Intervention and State Sovereignty: Breaking New Ground,' *Global Governance* 7, no. 2 (2001), see footnote 9.

²³⁹ Barbara Crossette, 'Canada Tries to Define Line between Human and National Rights,' *New York Times* (14 September 2000), [http://www.nytimes.com/2000/09/14/world/canada-tries-to-define-line-between-human-and-national-](http://www.nytimes.com/2000/09/14/world/canada-tries-to-define-line-between-human-and-national-rights.html?scp=1&sq=international+commission+on+intervention+and+state+sovereignty&st=nyt)

[rights.html?scp=1&sq=international+commission+on+intervention+and+state+sovereignty&st=nyt](http://www.nytimes.com/2000/09/14/world/canada-tries-to-define-line-between-human-and-national-rights.html?scp=1&sq=international+commission+on+intervention+and+state+sovereignty&st=nyt)

²⁴⁰ Jennifer Bond and Laurel Sherret, 'A Sight for Sore Eyes: Bringing Gender Vision to the Responsibility to Protect Framework,' ed. United Nations International Research and Training Institute for the Advancement of Women (March 2006)

²⁴¹ See also Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* p. 37-38

countries, or had spent a significant amount of time in the West. Gareth Evans, co-chair together with Mohamed Sahnoun,²⁴² had been Australian foreign minister; Mohammed Sahnoun was a former Algerian diplomat who had also served as UN special adviser on the Horn of Africa and special representative in Somalia and the Great Lakes of Africa. The remainder of the commission was composed of Canadians Gisele Côte-Harper and Michael Ignatieff; German Klaus Neumann; Guatemalan Eduardo Stein Barillas; Ramesh Thakur from India (Thakur is also an Australian citizen); Fidel Ramos from the Philippines; Russian Vladimir Lukin; South African Cyril Ramaphosa; Swiss Cornelio Sommaruga; and former US congressman Lee Hamilton.

In terms of 'outreach', the true impact of the 'road show' is questionable. The first commission meeting (Ottawa) and the first three consultative roundtables were held in Western cities late in 2000 and early in 2001 (Ottawa, Geneva, London).²⁴³ At their first meeting in Ottawa, commissioners considered the central questions, identified key issues, and agreed on a general approach. After this meeting, a draft outline was developed and circulated. The outline was discussed at the Geneva meeting. Eleven regional roundtables and national consultations were held between January and July 2001. The first time the venue actually shifted to the Global South was at the commission meeting and roundtable in Maputo in March 2001, by which time much of the conceptual groundwork had been accomplished. For example, the core idea of reframing the debate as a 'responsibility to protect' came to Gareth Evans between the Ottawa and the Geneva roundtables.²⁴⁴

Regional Roundtables and National Consultations: First Reactions to the Idea of a 'Responsibility to Protect'

The eleven regional roundtables and national consultations are significant both because they illustrate the regional differences in attitudes towards intervention and opinions about what constitutes legitimate intervention, as well as because they allow tracing of the political dynamics surrounding the conceptualisation of the idea of a 'responsibility to protect'. The roundtables were meant to give an input to the work of the commission, but actually provided platforms for advocacy relating to the broad set of ideas the commission had been created to refine and represent. The ICISS report states that at least one of the commission's co-chairs attended the regional roundtables, 'for the most part with some other Commissioners as well.'²⁴⁵ Full attendance lists for each of the roundtables are provided in the supplementary volume to the report. However, according to the attendance lists for each of the roundtables,²⁴⁶ either of the co-chairs was only actually present at the Geneva I and Beijing meetings, so it is not possible to verify this with certainty. According to these same attendance lists, none of the other commissioners attended any of the regional roundtables. The composition of the roundtables was different at each of the roundtables. Some

²⁴² The position had been offered to the Algerian Lakhdar Brahimi first, Chair of the UN Special Panel on Peace Operations, but he had declined due to personal concerns about intervention into the domestic affairs of states.

²⁴³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 82-83

²⁴⁴ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 43

²⁴⁵ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 83

²⁴⁶ 'The Responsibility to Protect: Research, Bibliography, Background', pp. 349-398

were comprised mainly of government officials and parliamentarians, whilst others had almost exclusively academic audiences. Most were made up of a mixture of officials, academics, and NGOs.

The discussions at the roundtables were framed around an agenda set by the commission, and as such were not free brainstorming sessions on intervention. While this may have helped facilitate a more structured – and, for the purpose of gradually building the conceptual foundations of the ‘responsibility to protect’, productive – debate, it also limited the scope for the innovation that the commissioners were seeking. Based on the conceptual work accomplished at the earlier meetings, commissioners steered the discussion at the various roundtables towards four core issues: language; criteria; authority; and prevention.²⁴⁷ Other important themes included: the relationship between the ‘responsibility to protect’ and the norm of non-intervention into the domestic affairs of states; how a ‘responsibility’ might translate into a ‘duty’, and whether this was feasible; the role of the ‘responsibility to protect’ in conflict resolution more broadly; as well as the role of regional actors.

In terms of language, all roundtables agreed that shifting the terminology from ‘humanitarian intervention’ to the ‘responsibility to protect’ was a positive move, mainly because it was seen as more successful at disassociating itself with military intervention, but was much broader in scope, including prevention and post-conflict peacebuilding. Prevention was a fairly uncontroversial aspect of the debate, with participants at all of the roundtables agreeing that prevention was crucial. Criteria for intervention, on the other hand, proved a more divisive issue. Over the course of the meetings it gradually became clear that some regions tended to support the idea of criteria, whilst others did not. On the authorisation of intervention, there was broad agreement that the UN Security Council should be the primary source of authority, with participants at the roundtables in Cairo, New Delhi, and Beijing arguing that the Security Council was the *sole* source of authority. At other roundtables, participants regarded the ‘Uniting for Peace’ procedure as a viable alternative. The strongest objections to the idea that the Security Council was the sole source of authority were raised at the roundtable in Washington, DC. What follows below is a summary of the various roundtables and the main points raised in response to the commission’s agenda.

The Ottawa roundtable (15th January) prepared much of the conceptual groundwork for the subsequent meetings. The meeting was attended by a mix of academics, civil society representatives, and Canadian civil servants. Participants suggested that the term ‘humanitarian’ should be dropped from ‘intervention’, because of its association with military intervention (although one of the participants suggested that the term was also useful because of its association with neutrality, impartiality and independence as fundamental principles of humanitarian work). Participants also discussed threshold criteria for intervention, as well as non-military forms of intervention, which subsequently became key components of the report. Participants also agreed that intervention should not be undertaken to reinstate democratically elected governments, but instead the aims of the intervention should be focused narrowly on human rights and humanitarian concerns. Participants also discussed the suggestion that middle powers such as Canada, based on their expertise in the field of humanitarian aid ‘should carry out the interventions, and that major powers should support the initiative from behind the scenes’.²⁴⁸

The Geneva roundtable was split into two separate meetings (30–31 January): one with the UN and international organisations representatives; the other with NGOs and other interested organisations.

²⁴⁷ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* pp. 45–49. Bellamy identifies four core issues discussed in these meetings: criteria; institutions; authority, and modalities.

²⁴⁸ International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect: Research, Bibliography, Background’ pp. 349–353

These were more structured than the Ottawa roundtable had been.²⁴⁹ An outline document was circulated in advance of the meeting, to 'help frame the discussion', and a number of papers were presented to which participants were given an opportunity to respond. A number of individual suggestions were made, but the overall tenor appears to have been one of sympathetic receptiveness.

The London roundtable (3 February) was attended by mainly British academics (including Adam Roberts and Nicholas Wheeler), as well as a number of British civil servants, civil society representatives, as well as a media representative. The meeting followed a similar sort of pattern.²⁵⁰ Participants were prompted to respond to key thematic issues, so the discussion that followed was largely pre-determined. Participants appeared largely pessimistic about the scope for real normative change. They supported the view that ICISS should in fact reinforce the idea of the non-intervention rule, and that intervention should continue to be seen as an extraordinary exception in extraordinary circumstances. The majority welcomed the language of duty the responsibility to protect alludes to, rather than a doctrine that would be headed in the direction of instating a right of intervention. However, participants raised doubts as to the prospects for such a duty to materialise. One participant suggested amending the UN Charter, but this was not deemed feasible in the foreseeable future.

The roundtable in Maputo (10 March) – the first roundtable to be held in the Global South – was the first roundtable that actually brought in the Southern perspective.²⁵¹ Again, attendees came from academia, civil society, or the public sector. The responses of the participants were markedly different to those generated in Geneva and London. The views expressed at the roundtable added the perspective of the intervenee to the debate, and, unsurprisingly, foreshadowed the region's ambiguous attitude towards R2P.²⁵² Participants were particularly concerned about the practical implications of intervention, and an exit-strategy that would leave a state on a path towards political stability and economic development, addressing the root causes of a conflict rather than just its symptoms. Participants highlighted the role of poverty as a root cause of conflict, and the nexus with conflict prevention. More specifically – and innovatively – participants suggested that the role of Bretton Woods institutions in conflict resolution should be brought into the picture. Participants lamented that despite the international rhetoric on 'trade not aid' the terms of trade were deteriorating, adding to the economic hardship of already struggling economies. Participants also reflected on the meaning of sovereignty in the African context, and suggested that the sovereignty of most African states was 'superficial' and 'not deeply rooted in society'. Furthermore, participants emphasised that foreign actors should avoid imposing their views, and instead encourage local initiatives and leadership. The overall framework should give preference to regional conflict resolution mechanisms – Article 4 of the Constitutive Act of the African Union was mentioned in this context.

The roundtable held in Washington, DC (2 May), mostly reflected the opinion that 'the US could not be expected to do everything'.²⁵³ A primary concern of participants was that the 'responsibility to protect' would raise expectations about US response levels that the US could not meet everywhere,

²⁴⁹ Ibid. pp. 354-358

²⁵⁰ Ibid. pp. 358-361

²⁵¹ Ibid. pp. 362-365

²⁵² Paul D. Williams, 'The "Responsibility to Protect", Norm Localisation, and African International Society,' *Global Responsibility to Protect* 1(2009)

²⁵³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Research, Bibliography, Background' pp. 366-369

in every particular case. Participants reasoned that double standards and selectivity would remain an unavoidable reality. The roundtable also reflected American scepticism about UN Security Council decisions, with some participants doubting whether the Council was the best source of authority for legitimising interventions. The views of the participants foreshadowed the objections the US would raise in relation to the responsibility to protect in the run-up to the World Summit in 2005.

At the roundtable in Santiago (4 May), which was unusual in its composition because most of the participants represented ministries for foreign affairs of states in the region,²⁵⁴ the overwhelming response to the idea of a 'responsibility to protect' was positive, with participants coming to a consensus that a legitimate intervention on humanitarian grounds was one which was multilaterally endorsed, undertaken as a last resort only, and was unlikely to make a bad situation worse.²⁵⁵ The participants underscored the importance of multilateral authorisation. This concern, it was argued, was rooted in Latin American and Caribbean states' historical experiences with intervention, as well as their concern about the influence of the US in the region. Participants also discussed whether reinstating a democratically elected government should qualify as a just cause for intervention – participants came to a consensus that this should not serve as a justification for military intervention, but that non-military measures could be taken.

Participants in Cairo (21 May) were particularly concerned about what they saw as an institutional system inherently biased against states in the region.²⁵⁶ In particular, they were concerned with the makeup of the Security Council, which was regarded as unrepresentative and insufficiently democratic, lacking accountability, and displaying double-standards in relation to the Israeli-Palestinian conflict, Iraq, and Sudan. Consequently, it was argued, it was of utmost importance that any political mechanism that was established in relation to humanitarian intervention ensured impartial decision-making. Participants were concerned about the misuse of the protection of human rights as a pretext for the pursuit of other interests.

At Paris (23 May), as in Geneva, two separate roundtables were held – one attended by French government officials and parliamentarians (as part of the effort to engage P5 states), the second by NGOs and other organisations.²⁵⁷ At the first of these two meetings, the discussion centred on military intervention. Participants argued that whilst there was international agreement about what constitutes legal intervention, legitimacy was far more ambiguous and the commission could make its mark on the debate on humanitarian intervention by suggesting a firm set of guiding principles. On the whole, participants were extremely sympathetic towards the idea of intervention, but noted that intervention was inherently political, and that any 'rhetoric about the impartial nature of interventions' was 'deceptive and counterproductive'. At the second meeting, attended by NGOs and other organisations, participants, predictably, argued that 'military intervention is seldom the best way to deal with humanitarian crises'²⁵⁸ and that a comprehensive approach, involving non-military actors at every stage, was necessary. Participants also discussed the doctrine of the 'droit d'ingérence', and highlighted the ways in which the individual has become a distinct subject of international law in recent decades.

²⁵⁴ State representatives came from Chile, Panama, El Salvador, Nicaragua, Ecuador, Honduras, Uruguay, Colombia, Argentina, Mexico, Bolivia, Venezuela, Costa Rica, Peru, Brazil, Dominican Republic, and Guatemala.

²⁵⁵ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Research, Bibliography, Background' pp. 369-373

²⁵⁶ Ibid. pp. 374-378

²⁵⁷ Ibid. pp. 378-386

²⁵⁸ Ibid. p. 385

Participants at the roundtable in New Delhi (10 June) were broadly supportive of the idea of a 'responsibility to protect' and efforts to devise a set of criteria for legitimate intervention on humanitarian grounds.²⁵⁹ At the same time, they acknowledged the deep-rooted scepticism of many Asian states towards interventionism in general. Participants also emphasised the need for Security Council reform.

The roundtable held in Beijing (14 June), attended by a smaller group made up of academics and diplomats, was probably the most difficult for the commission to digest.²⁶⁰ Essentially, the views of the participants amounted to outright rejection of the idea of intervention on humanitarian grounds, or anything vaguely associated with it. Participants were of the view that 'the conceptualization of humanitarian intervention is a total fallacy', and that in practice 'actions of humanitarian intervention posed grave problems for international laws and international relations.' Participants concluded that '[t]he theorization of the doctrine of humanitarian intervention is flawed in several respects', lacking a legal basis, being morally questionable, and counterproductive in practice. Furthermore, it was argued, the idea of human rights transcending state sovereignty 'is highly politicized thinking with ulterior political motives.' Instead, participants suggested, efforts should be concentrated on purely humanitarian concerns based on a respect for state sovereignty.

Finally, at the St Petersburg (16 July) roundtable, participants – mainly Russian academics – were asked to comment on an already relatively firm conception of what the report would entail.²⁶¹ Thus, the scope for innovation was limited. Interestingly, whilst participants admitted the Russian government's scepticism about interventionism, Russian academics were far more sympathetic to the idea of humanitarian intervention. However, despite being prompted by the commissioners present at the meeting, participants did not pick up and engage with the idea of a 'responsibility to protect'. The debate revolved around military intervention only. Participants argued that prospects for intervention on purely humanitarian grounds were dim: 'this might be a "nice goal," but it does not reflect current realities.'

The roundtables reflected a diverse set of views, and it is unreasonable to expect that they could have done more than inform the deliberations of the commission during the conceptualisation phase. Ultimately, the commission had to make choices about which perspective on intervention to promote. The views were so diverse and contextually determined that the report could not have claimed to be built on a complete consensus in each of the issue areas. The ICISS report was contentious by definition, despite commissioners' claims to the contrary. The final report was much more detailed and elaborate than it could have been had it originated from within the UN.

The Commission's Report: Formulating the 'Responsibility to Protect'

The commission formulated its recommendations less than a year after its establishment. The final report was largely authored by three of the commissioners, Gareth Evans, Michael Ignatieff, and Ramesh Thakur.²⁶² It is perhaps helpful to refer back to the four major themes discussed at the roundtables summarised above. Unsurprisingly, the report's main contribution lies in progressing the debate in the four areas the commissioners had urged roundtable participants to discuss:

²⁵⁹ Ibid. pp. 387-391

²⁶⁰ Ibid. pp. 391-394

²⁶¹ Ibid. pp. 394-398

²⁶² Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* p. 38

language, criteria, authority, and prevention. In terms of the overarching aim of the commission, to shift the term of the debate, the ICISS report articulated the idea of 'sovereignty as responsibility', which constitutes the central formula of the report. This advocacy was significant in terms of norm entrepreneurship, because it did suggest a departure from the traditional understanding of state sovereignty. The report squarely suggested that state sovereignty is conditional on the ability and willingness to protect:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.²⁶³

Roundtable participants had not been particularly opposed to altering the discourse, away from 'humanitarian intervention' to a discourse centred on 'responsibility', but the way responsibility was framed in the final report went beyond simply promoting a different vocabulary. By making sovereignty contingent on a state's ability or willingness to protect, it challenged the international consensus on the meaning of state sovereignty.

In the report, the 'responsibility to protect' came to comprise three sets of responsibilities: to prevent, to react, and to rebuild. Military intervention became just one part of a much wider continuum of response options, between the 'responsibility to prevent' and the 'responsibility to rebuild'. Within the 'reaction' pillar of the 'responsibility to protect' in the ICISS report, the commissioners suggested a range of measures short of the use of force, for example sanctions, to compel responsible governments:

The responsibility to prevent: to address both the root causes and the direct causes of internal conflict and other man-made crises putting populations at risk.

The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.²⁶⁴

However, conceptually the report was still focused on military intervention as a core aspect of the responsibility to protect, reflected in the attention given to threshold criteria for military intervention. The chapter outlining measures under the 'responsibility to react' is focused mainly on military intervention – the sub-section on 'measures short of military action' serves as a mere prelude to a much longer discussion on criteria for the legitimate use of force and its

²⁶³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', pp. x-xiii.

²⁶⁴ *Ibid.* pp. x-xiii

authorisation.²⁶⁵ The commission proposed six criteria for military intervention: *right authority, just cause, right intention, last resort, proportional means, and reasonable prospects*. A separate chapter of the report was dedicated to a discussion of *right authority*. Assessing the legitimacy of interventions requires criteria, so it would have been difficult for the commission to avoid discussing criteria for the legitimate use of force even if it had wanted to (although clearly it did not). Criteria are always variations of broadly the same themes, rooted in Just War theorising.²⁶⁶

The report discusses *just cause* in more detail than the other criteria, under a separate sub-heading. The report states that military intervention is justified to halt or avert large scale loss of life and large scale 'ethnic cleansing':

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

large-scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.²⁶⁷

Although *just cause* thus defined does not include human rights abuses that do not lead to large-scale loss of life or 'ethnic cleansing', the addition of 'actual or apprehended' does mean that action is permissible when large-scale loss of life or ethnic cleansing are deemed imminent.²⁶⁸ Depending on one's interpretation, this may also encompass responding to the overthrow of a democratically elected government, or its absence in the first place. However, this being a more contentious issue, it is unsurprising that the commission steered well clear of any mention of this.

Chapter six of the report was dedicated entirely to the criterion of *right authority*. The chapter discussed sources of authority under the UN Charter, the role of the Security Council, and alternative routes for authorising military intervention through the General Assembly or through regional organisations in case the Security Council fails to act. Regarding the central criterion of *right authority*, the report stated:

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

²⁶⁵ 'Measures Short of Military Action' are discussed in pp. 29-31. The remainder of the chapter, 'The Decision to Intervene' pp. 31-32, 'Threshold Criteria: Just Cause' pp. 32-35, and 'Other Precautionary Criteria' pp. 35-37, is entirely dedicated to military intervention.

²⁶⁶ Picked up on by contemporary thinkers such as Michael Walzer, Michael Ignatieff, Simon Chesterman, Nicholas Wheeler, or Fernando Tesón. See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977); Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (New York: Henry, 1997); Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*; Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*; and Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 2 ed. (Irvington-on-the-Hudson: Transnational Publishers, 1997)

²⁶⁷ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 32

²⁶⁸ See also Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, pp. 98-112.

The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing; it should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.²⁶⁹

The report's willingness to consider alternative modes of authorisation through the General Assembly or regional organisations was characterised by Nicholas Wheeler as 'imaginative'.²⁷⁰ If realised they offered a viable path for overcoming the conundrum of Security Council deadlock or inaction. It was imaginative, but also politically charged, reflecting a continuation of the debate over NATO's intervention in Kosovo.

The report was published in December 2001, two months after the 9/11 attacks on the World Trade Centre in New York. Following this, media attention, as well as academic debates, focused mostly on terrorism, and then the 'War on Terror' and the Iraq War. This was unfortunate for advocates of the responsibility to protect, who wanted to avoid any association of the responsibility to protect with justifications for unilateral intervention without UN authorisation and aims that went beyond purely humanitarian ones. Commissioners were horrified at the idea of the responsibility to protect being used by coalition states to justify the war, once it became clear that weapons of mass destruction were nowhere to be found.²⁷¹

Shortly before the start of the war, Richard Haass, incumbent president of the Council on Foreign Relations, used 'sovereignty as responsibility' to argue that states have a responsibility to fight terrorism, and when they fail to do so, the US would act to hold them accountable, unilaterally if necessary.²⁷² The ICISS commission opposed applying the responsibility to protect to Iraq, and both Evans and Thakur took a clear stance on this.²⁷³ Michael Ignatieff argued the responsibility to protect could be applied to Iraq, but changed his opinion later.²⁷⁴ This is significant, because Ignatieff was one of the principal authors of the ICISS report. His obvious inclination towards a sympathetic view of interventionist policies, and the fact that he had been prepared – at the time – to endorse unilateral action, exposed a hawkish predisposition the commission as a whole tried its utmost to disassociate itself from.

The negative repercussions were so severe that Gareth Evans believed the humanitarian justification for the war 'almost choked at birth what many were hoping was an emerging new norm'.²⁷⁵ Although the Iraq War affected the responsibility to protect negatively in the sense that it stoked rejection of interventionism, it also promoted further discussion on the responsibility to protect precisely because of its extensive engagement with military intervention and criteria for the

²⁶⁹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 50

²⁷⁰ Nicholas J. Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit,' *Journal of International Law & International Relations* 2, no. 1 (2005-2006) p. 96

²⁷¹ Thakur and Weiss, 'R2P: From Idea to Norm - and Action?'

²⁷² Richard N. Haass, 'When Nations Forfeit Their Sovereign Privileges,' *International Herald Tribune*, 7 February 2003

²⁷³ Gareth Evans, 'Humanity Did Not Justify This War,' *Financial Times*, 15 May 2003; Ramesh Thakur, 'Iraq and the Responsibility to Protect,' *Behind the Headlines* 62, no. 1 (2004)

²⁷⁴ Thakur and Weiss, 'R2P: From Idea to Norm - and Action?' (see footnote p. 37); Michael Ignatieff, 'Getting Iraq Wrong,' *The New York Times Magazine*, 5 August 2007

²⁷⁵ Gareth Evans, 'When Is It Right to Fight?,' *Survival* 46, no. 3 (2004) p. 63

legitimate use of force. The Iraq War led to a renewed interest in criteria as a means of assessing the legitimacy of interventions.²⁷⁶

Despite widespread disapproval of the Iraq War and the resulting distaste for intervention justified on humanitarian grounds, the idea of a 'responsibility to protect' survived. Crises elsewhere, especially the escalation of the conflict in Darfur, rekindled the debate on humanitarian intervention. However, the responsibility to protect did not survive unscathed – the war took its toll on the concept in a number of distinct ways, changing it rather substantially by the time it was endorsed at the World Summit in 2005. The following section discusses the ways in which the responsibility to protect was transformed over the course of these four years.

Advocating for the 'Responsibility to Protect': 'A More Secure World' and 'In Larger Freedom'

A number of scholars saw the publication of the ICISS report as a significant event, although most recognised that – as a set of recommendations of an independent commission – its impact was limited. Burke-White argues the ICISS report was a 'significant normative statement about both the transformation of sovereignty and the legal obligations of the territorial state and international community'.²⁷⁷

What followed after the publication of the ICISS report was what some describe as a 'process of persuasion',²⁷⁸ or others as the 'selling of the responsibility to protect'.²⁷⁹ Advocacy for the responsibility to protect began shortly after the publication of the ICISS report. The Security Council's discussion of the ICISS report at its annual retreat in May 2002 constituted the first post-ICISS opportunity for a debate and first responses to the idea of a 'responsibility to protect'.²⁸⁰ At the meeting, the P5 expressed reservations about the idea of intervention criteria. Echoing statements made at the ICISS roundtable held in Washington, D.C., the US stated that it could not commit to intervene in all cases in which threshold criteria have been met, and did not want to be constrained in its policy options if it did choose to act. Russia and China were adamant that questions relating to the use of force needed to be settled by the Security Council. The UK and France were more positive about the responsibility to protect, but were concerned that criteria might not result in the necessary political will necessary for an effective response to humanitarian crises.

Nevertheless, advocates continued promoting the 'responsibility to protect'. Amongst the strongest advocates were Gareth Evans and Lloyd Axworthy. Towards the end of 2002 Canada put forward a draft General Assembly resolution which would have obliged the Assembly to deliberate on the ICISS report, but the initiative was blocked by the NAM.²⁸¹ Canada's government also mobilised civil society organisations, asking the World Federalist Movement-Institute for Global Policy (WFM-IGP)

²⁷⁶ See Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 68-70.

²⁷⁷ William W. Burke-White, 'Adoption of the Responsibility to Protect,' in *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, ed. Jared Genser and Irwin Cotler (Oxford University Press, 2011) p. 21

²⁷⁸ Jutta Brunnée and Stephen Toope, 'Norms, Institutions and UN Reform: The Responsibility to Protect,' *Journal of International Law & International Relations* 2, no. 1 (2005-2006) p. 131

²⁷⁹ Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' p. 151

²⁸⁰ *Ibid.* pp. 151-152

²⁸¹ *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 70-71

to host NGO roundtable discussions.²⁸² The initiative developed into the 'Responsibility to Protect-Engaging Civil Society' (R2P-CS), led by WFM-IGP together with Oxfam. R2P-CS was a major actor in advocating for the responsibility to protect, especially in terms of publicising the concept as well as in terms of attempting to persuade governments internationally to endorse the idea.

Two further reports were notable in terms of promoting the concept: 'A More Secure World', and 'In Larger Freedom'. 'A More Secure World' was the result of the work of the High-Level Panel on Threats, Challenges and Change (HLP), which had been established in preparation to the 2005 World Summit. It was chaired by Anand Panyarachun, former prime minister of Thailand. Gareth Evans also served on the panel. Stephen Stedman and Bruce Jones acted as research director and deputy research director, respectively. The panel's report, published one year prior to the summit, in 2004, was entitled 'A More Secure World: Our Shared Responsibility'.²⁸³ It argued that the world had changed dramatically, and that collective security was increasingly important.

The report stated that it endorsed 'the emerging norm that there is a collective international responsibility to protect'.²⁸⁴ In relation to state sovereignty the report stated that 'States not only benefit from the privileges of sovereignty but also accept its responsibilities.' At the same time, it argued, 'it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours', in which case 'some portion of those responsibilities should be taken up by the international community...'²⁸⁵ It also reaffirmed the importance of the terminological change away from what had been seen as the deeply divisive 'humanitarian intervention', to the concept of the 'responsibility to protect', contending that there was 'a growing recognition that the issue is not the "right to intervene" of any State, but the "responsibility to protect" of every State...'²⁸⁶ This responsibility, the report argued, spanned a continuum involving prevention, response (the use of force should be as a last resort only), and rebuilding.²⁸⁷ The report also proposed five criteria for legitimate intervention: *seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences*.²⁸⁸

Importantly, the HLP report omitted any discussion on alternative sources of authorisation if the Security Council was deadlocked or inactive, and Wheeler suggests that it was this move that enabled a consensus within the panel, allaying the doubts of panel members concerned about an erosion of the norm of state sovereignty.²⁸⁹

Kofi Annan's report, entitled 'In Larger Freedom', was also written in preparation for the World Summit, and, as had 'A More Secure World', endorsed the idea of a 'responsibility to protect'.²⁹⁰ The report continued the theme of the necessity of collective action in a changing world. It adopted a human security perspective, sub-dividing its sections into thematic blocs on 'freedom from fear' and 'freedom from want'. It urged states to 'move towards embracing and acting on the "responsibility

²⁸² Ronald M. Behringer, *The Human Security Agenda: How Middle Power Leadership Defied US Hegemony* (Continuum International Publishing Group, 2012) p. 148

²⁸³ United Nations, 'A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change'

²⁸⁴ Ibid. para 203, p. 66

²⁸⁵ Ibid. para. 29, p. 17

²⁸⁶ Ibid. para 201, p. 65

²⁸⁷ Ibid. para 201, p. 65

²⁸⁸ Ibid. para. 207

²⁸⁹ Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' p. 96

²⁹⁰ United Nations, 'In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General'

to protect” potential or actual victims of mass atrocities.²⁹¹ The report endorsed the legitimacy criteria for intervention contained in the ICISS report, without explicitly referring to the report (*seriousness of threat; proper purpose; last resort; proportional means; and reasonable prospects of success*), and recommended the Security Council adopt a resolution setting out these principles and expressing their commitment to be bound by them.²⁹² Annan argued that criteria would make Security Council decisions more likely to be respected by both governments and world public opinion by making its deliberations more transparent.²⁹³

The 2005 World Summit: A Different ‘Responsibility to Protect’

The 2005 World Summit, held between 14th and 16th September 2005, formally a celebration of the 60th anniversary of the UN, debated Secretary-General Annan’s reform package proposed in ‘In Larger Freedom’. The ‘responsibility to protect’ was adopted in the Outcome Document of the World Summit, committing 191 states, as members of the UN General Assembly, to the idea of a ‘responsibility to protect’. Edward Luck referred to the R2P paragraphs as ‘historic R2P language’.²⁹⁴ Jutta Brunnée and Stephen Toope described the consensus as a ‘normative innovation’.²⁹⁵ However, the version adopted in the 2005 Outcome Document was a truncated version of ICISS’ ‘Responsibility to Protect’, lacking much of the detail contained in the ICISS report, most significantly the threshold criteria for intervention. The Outcome Document paragraphs were, essentially, a trade-off and a lowest common denominator.

The US was deeply sceptical of the ‘responsibility to protect’ idea.²⁹⁶ The US’ scepticism about the ‘responsibility to protect’ stemmed from its neoconservative foreign policy at the time, geared towards avoiding any constraints imposed by the UN or international law. In 2002, Richard Haass argued that sovereignty should be conditional on human rights, similarly to a commitment to the non-proliferation of weapons of mass destruction or counter-terrorism,²⁹⁷ but this did not necessarily require the authorisation of the UN. This idea became part of the 2005 National Defense strategy, which was associated with interventions in Kosovo, Afghanistan, and Iraq in 2003 – a troublesome development for supporters of the responsibility to protect, whose aim was precisely to avoid the association of the responsibility to protect with the use of force without a Security Council mandate.²⁹⁸

Prior to the summit, the US Institute of Peace set up a task force on UN reform.²⁹⁹ The report of the task force was published in June 2005, and is known as the Mitchell-Gingrich report. It discussed the relationship between US interests and Annan’s reform agenda. One of the recommendations

²⁹¹ Ibid. para 132 pp. 34-35

²⁹² Ibid. para 126 p. 33

²⁹³ Ibid. paras. 122-135

²⁹⁴ Edward Luck, ‘The United Nations and the Responsibility to Protect,’ *Policy analysis Brief: Innovative Approaches to Peace and Security from the Stanley Foundation*, no. August (2008)

²⁹⁵ Brunnée and Toope, ‘Norms, Institutions and UN Reform: The Responsibility to Protect’ p. 122

²⁹⁶ For a detailed account of the discussions prior to the finalisation of the Outcome Document see Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 67-68 and 86-96

²⁹⁷ Richard N. Haass, ‘Defining US Foreign Policy in a Post-Post-Cold War World,’ (2002 Arthur Ross Lecture 22 April 2002, 2002)

²⁹⁸ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 24-25

²⁹⁹ Ibid. pp. 81-82

contained in the report was that states must act in case of massive human rights violations, but that this should not depend on Security Council authorisation in case the Council was deadlocked.

The summit deliberations on the responsibility to protect were intense and concluded in the final hour.³⁰⁰ Proponents advocating a wider conception of the 'responsibility to protect' were disappointed about the caveats attached to paragraph 139. Others believed a narrower definition of the cases to which the responsibility to protect applied provided more protection against the misuse of the concept and its appropriation for intervention driven by non-humanitarian motives.

At the summit, John Bolton, neoconservative and newly appointed Ambassador of the United States to the UN, demanded a redrafting of the R2P paragraphs in the Outcome Document.³⁰¹ He had three objections: first, the document should make clear that there was a difference between a host state's responsibility towards its populations and the responsibility of states towards citizens of other states – the US did not accept that 'either the US as a whole, or the Security Council, or individual states, have an obligation to intervene under international law';³⁰² second, Bolton objected to the use of criteria, arguing that the Security Council should make decisions on a case-by-case basis; and, third, he argued that a commitment to the responsibility to protect should not preclude action without the authorisation of the Security Council.

Britain and France were broadly in support of the responsibility to protect, but, like the US, objected to the inclusion of criteria, arguing that they would do nothing to conjure the necessary political will for decisive measures, a lack of which was so often to blame for inaction.

China and Russia were also concerned about the implications of a responsibility to protect, but for other reasons. China took the position that all questions related to the use of force should be settled by the Security Council.³⁰³ Russia argued that the responsibility to protect risked undermining the UN Charter, claiming that it envisions unauthorised use of force against another state. Together with India, Pakistan, and Egypt, China fought against the inclusion of a reference to collective action using 'Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations ... should peaceful means be inadequate and national authorities are manifestly failing to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity',³⁰⁴ but failed to gain sufficient support and ultimately agreed to this wording.

The NAM rejected the responsibility to protect on the grounds that existing modalities for discussing humanitarian crises through Security Council deliberations were sufficient. At an informal meeting of the General Assembly in June 2005, concerning the draft outcome document for the summit in September, the NAM's representative, Radzi Rahman of the Permanent Mission of Malaysia to the UN vehemently opposed the responsibility to protect, calling for further study of its implications on the principles of non-interference and non-intervention, territorial integrity, and national sovereignty. He stated the NAM 'reiterated the rejection by the Movement of the so-called "right" of

³⁰⁰ Luck, 'The United Nations and the Responsibility to Protect' p. 3

³⁰¹ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp. 85-87

³⁰² Letter from Ambassador John Bolton, Permanent Representative of the United States of America to the UN, to the United Nations, 30 August 2005, cited in Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' p. 101

³⁰³ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 87-89

³⁰⁴ Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' p. 101

humanitarian intervention' and 'observed similarities between the new expression "responsibility to protect" and "humanitarian intervention"'.³⁰⁵

There were two last-minute changes to the R2P paragraphs.³⁰⁶ First, the threshold for the passing of the responsibility from the host state to the international community changed. The wording was altered from 'unable or unwilling' to protect civilians to a 'manifest failure' to protect civilians. Both the US and the G77 demanded this change. The second change, demanded by the US, was to change the wording so that the text would include a responsibility to protect citizens of other states, but only with peaceful means, as well as a 'preparedness' to use other measures if necessary. The crucial aspect for Bolton, as well as China and Russia, was that the Outcome Document would contain no new legal requirements. For the emergence of R2P as a norm this is important, because it does suggest that states signed up to R2P based on an understanding that they were not agreeing to any new commitments, although it does not preclude that they may have anticipated that this could support the re-interpretation of existing law. In any cases, it demonstrated that states were very careful about endorsing the 'responsibility to protect', and ultimately chose not to accept the full version of it as laid out in the ICISS report.

Evans recalls that it was the persistent advocacy of sub-Saharan African states, led by South Africa, and some Latin American states, as well as personal efforts by Paul Martin, Canadian prime minister, that ultimately led to the endorsement of the responsibility to protect at the summit.³⁰⁷ The Outcome Document established that R2P consists of three main elements: First, a state has a responsibility to protect its own population from genocide, war crimes, ethnic cleansing, and crimes against humanity; second, the international community is committed to assisting states to meet these obligations; and, third, states have a responsibility to react when a state manifestly fails to provide protection to its own population, agreeing to do so in accordance with chapters VI, VII, or VIII of the UN Charter. The relevant paragraphs in the Outcome Document read:

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely

³⁰⁵ Permanent Mission of Malaysia to the United Nations in New York, 'Statement by Chairman of the Coordinating Bureau of the Non-Aligned Movement on Behalf of the Non-Aligned Movement at the Informal Meeting of the Plenary of the General Assembly Concerning the Draft Outcome Document of the High-Level Plenary Meeting of the General Assembly Delivered by H.E. Ambassador Radzi Rahman Charge D'affaires A.I. Of the Permanent Mission of Malaysia to the United Nations New York ' (2005) point (g) Responsibility to protect

³⁰⁶ Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 90

³⁰⁷ Gareth Evans, 'From Humanitarian Intervention to the Responsibility to Protect,' *Wisconsin International Law Journal* (2006)

and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.³⁰⁸

Thus, the 2005 consensus differed from the ICISS report in a number of ways, which says much about the type of prospective norm R2P became between 2000 and 2005. First, the ICISS report had been much broader in scope, applying not just to the four R2P crimes as laid out in the WSOD paragraphs, but also including state collapse, civil war, mass starvation, as well as situations where populations are affected by natural disasters and the state concerned is unable or unwilling to cope.³⁰⁹ Second, it foresaw alternative channels of authorisation if the Security Council is deadlocked, through the General Assembly under the 'Uniting for Peace Formula', or through regional organisations acting under Chapter VIII, 'subject to their seeking subsequent authorization from the Security Council'.³¹⁰ The 2005 consensus, in contrast, was much clearer about the need for Security Council authorisation. In this regard, the ICISS version of the responsibility to protect proposed more radical changes to international practice than the responsibility to protect as endorsed in the 2005 outcome did. Third, it raised the bar for intervention, so much so that Wheeler for instance argues that some states agreed to R2P in 2005 because they believed the outcome document paragraphs could actually be used rhetorically to advocate restraint in intervention and the use of force on humanitarian grounds, justified with states' primary responsibility to protect.³¹¹

Nevertheless, Ramesh Thakur and Thomas Weiss argued that the WSOD constituted a milestone in moving the responsibility to protect from an idea towards a norm.³¹² In the first edition of 'Global Responsibility to Protect', Thakur and Weiss argued that the emergence of R2P is '[p]ossibly the most dramatic normative development of our time – comparable to the Nuremberg trials and the 1948 Convention on Genocide in the immediate aftermath of World War II', with the result that it is no longer 'necessary to finesse the tensions between sovereignty and human rights in the Charter'.³¹³ In this context, Thakur spoke of a 'steady erosion of the once sacrosanct principle of national sovereignty'.³¹⁴ Evans even went so far as to argue that in just five years the 'responsibility to protect' had evolved 'from a gleam in a commission's eye to what now might be described as a broadly accepted international norm'.³¹⁵

³⁰⁸ United Nations, 'World Summit Outcome'

³⁰⁹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' p. 33

³¹⁰ Ibid. p. xiii

³¹¹ Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' p. 102

³¹² Thakur and Weiss, 'R2P: From Idea to Norm - and Action?'

³¹³ Ibid.

³¹⁴ Thakur, 'Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS' p. 330

³¹⁵ Evans, 'From Humanitarian Intervention to the Responsibility to Protect'

More critical voices regarded the higher 'manifest failure' threshold, and the absence of the threshold criteria for the use of force as a major setback. Consequently, the responsibility to protect as adopted in the WSOD was referred to as 'R2P lite'.³¹⁶ Bellamy argued that the 2005 consensus did little to increase the likelihood of preventing future mass atrocities, because it added no additional obligations, and because it did not include threshold criteria for the use of force or criteria for the legitimate use of force and so did not bring more clarity about what to do in particular cases.³¹⁷ Wheeler argued that the outcome document constituted an endorsement of the international community of a 'new norm', but that R2P still failed to address the problem of Security Council deadlock or inaction.³¹⁸ Similarly, Brunée and Toope's assessment of R2P was that of a 'candidate norm in international relations'.³¹⁹

Consequently, it is difficult to conceive R2P as a consolidated norm in 2005. States had made it very clear that the outcome document did not present a challenge to existing international law, and was not intended to weaken the norm of state sovereignty. At the same time, the outcome document was a sign that states were willing to adopt the language of 'responsibility', and to allow the debate on intervention to be shaped by a discourse on a 'responsibility to protect'. Although the outcome document was a major step in transforming the responsibility to protect into something that was realistically acceptable for a majority of states, as well as in establishing the responsibility to protect as a concept with the UN's seal of approval, it would take much more persuasion, advocacy, and attempts at institutionalisation for R2P to resemble anything vaguely comparable to a consolidating norm.

Conclusions

The preceding pages discussed R2P's conceptualisation and emergence as a prospective norm. The chapter described the coining of the 'responsibility to protect' formula in the ICISS report, and critically engaged with the commission's self-portrayal as balanced and independent. It discussed R2P's emergence as a prospective norm, arguing that the initial ICISS report was a necessary precursor to R2P as a prospective norm, but that the version of the 'responsibility to protect' endorsed in the 2005 Outcome is a better reference point for the emergence of the R2P norm. The chapter engaged with the process of articulating the 'responsibility to protect', pointing out that it was significant that the idea stemmed from an independent commission, rather than the UN.

R2P advocacy in the years that followed were overshadowed by the Iraq War, and the appropriation of humanitarian discourse to justify the war reflected negatively on R2P. At the same time, the war reinvigorated the debate on criteria for legitimate intervention. The Darfur crisis and calls for international intervention in Sudan further spurred the debate on R2P.

³¹⁶ Thomas Weiss coined the term, characterising the World Summit version as 'R2P lite' because of its foreclosure of the possibility of intervention without Security Council authorisation. For an explication of this term in relation to R2P, see Bellamy, 'The Responsibility to Protect and the Problem of Military Intervention' fn. 10.

³¹⁷ 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' p. 169

³¹⁸ Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' p. 95

³¹⁹ Jutta Brunnée and Stephen Toope, 'Norms, Institutions and UN Reform: The Responsibility to Protect,' *ibid.* p. 133

In terms of norm entrepreneurship, the period in the run-up to the World Summit in 2005, preceded by two reports, 'A More Secure World' and 'In Larger Freedom', were decisive, ensuring that the responsibility to protect would be debated at the summit. Although the version of the responsibility to protect in the outcome document paragraphs lacked the threshold criteria, and was more stringent than the responsibility to protect as outlined in the ICISS report, its endorsement by a majority of states at the summit was nevertheless a significant moment for the concept in terms of its status as an international norm. Edward Luck noted that by the time of the endorsement of the responsibility to protect at the summit, it was clear that 'R2P is not going to fade away like some passing fad,'³²⁰ and indeed, it is difficult to imagine an alternative history without a discourse on a 'responsibility to protect' after the summit in 2005.

It is at this point that one could speak of the emergence of a prospective norm on intervention, pending its inclusion in international discourse and its impact on state practice. Although the responsibility to protect as endorsed in the outcome document differed markedly from the 'responsibility to protect' as envisioned in the ICISS report, its inclusion in the outcome document did signify that states were willing to acknowledge that international practice in relation to intervention was changing. The paragraphs were sufficiently detailed to provide information about the qualitative dimension of this prospective new norm. The WSOD emphasised the necessity of Security Council authorisation, and made reference to the important role of regional organisations. It emphasised a state's primary responsibility to protect, which also entails prevention.

In sum, the publication of the ICISS report in 2001 was significant, but it took another four years of advocacy before international discourse began to pick up on the responsibility to protect in a way that would merit the label 'emerging norm'. The endorsement of the responsibility to protect at the World Summit in 2005 is much more significant in that regard, because it demonstrated that a majority of states were willing to accept the idea of 'sovereignty as responsibility'. Advocacy for the responsibility to protect did not, of course, stop there – the endorsement of the responsibility to protect at the 2005 World Summit was only the beginning of a gradual diffusion process, discussed in further detail in chapter five.

³²⁰ Luck, 'The United Nations and the Responsibility to Protect' p. 8

Chapter 5: Institutionalising R2P: The Responsibility to Protect Since the 2005 World Summit

Introduction

The previous chapter discussed the emergence of the idea of a 'responsibility to protect' with the ICISS report, and subsequent advocacy efforts in the run-up to the 2005 World Summit at which the responsibility to protect was endorsed.³²¹ Following on from this, this chapter discusses a wide range of R2P mainstreaming and implementation efforts since 2005. Previous chapters have shown that a diverse set of actors worked to promote the responsibility to protect since its inception of 2001, including governments, NGOs, think tanks, and academics. Since the endorsement of the responsibility to protect in the World Summit Outcome Document, efforts concentrated on institutionalising the responsibility to protect based on the outcome document paragraphs.

In a speech in Berlin in 2008, the UN Secretary-General Ban Ki-Moon defined the responsibility to protect and outlined his plans for its implementation. He stated that the responsibility to protect should not be equated with humanitarian intervention, nor that it should be confused with its conceptual cousin, human security. The Secretary-General re-iterated that the responsibility to protect rests on the three pillars outlined in his report, and that his conception of the responsibility to protect was that it has a narrow scope, focusing only on the four R2P crimes (genocide, ethnic cleansing, war crimes, and crimes against humanity), but that the response to these crimes should be deep, making use of the entire prevention and protection toolkit available to the UN system, its partners, and states.³²²

Institutionalisation efforts have been wide-ranging: the creation of the position of the UN Special Adviser on R2P; annual reports and discussions of the concept in the General Assembly since 2009; an annual Ministerial Meeting on R2P hosted by the Global Centre for the Responsibility to Protect;³²³ a UN Group of Friends on R2P; the creation of two think tanks and one NGO dedicated exclusively to R2P; and a plethora of academic work focusing on R2P and its application. The responsibility to protect has also become institutionalised as a form of discourse: references to the responsibility to protect are abundant today, and are increasingly found in formal documents, speeches, and policy papers. R2P language has become common vocabulary in policy documents, and sometimes UN resolutions as well. The language used in earlier resolutions in cases like Darfur shied away from explicitly invoking the 'responsibility to protect', preferring instead to speak of 'protection of civilians' without reference to a responsibility by a state or the international community. This has begun to change, with recent resolutions on Libya and Côte D'Ivoire making direct reference to affected states' responsibility to protect their populations.

This chapter discusses the various initiatives to promote R2P since the World Summit in 2005, making use of a range of primary sources, including resolutions and formal statements, and drawing on interviews conducted in New York and Washington, DC in March and April 2011. It also engages with the continued debate on R2P in recent years, for example on the UN Secretary General's 2009

³²¹ United Nations, 'World Summit Outcome'

³²² Department of Public Information, 'Secretary-General Defends, Clarifies "Responsibility to Protect" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World"', (United Nations, 2008)

³²³ Global Centre for the Responsibility to Protect, 'Annual R2P Ministerial Meeting,' http://www.globalr2p.org/our_work/annual_r2p_ministerial_meeting

report on the implementation of R2P and the three-pillar approach outlined therein, and the formulation of a 'narrow but deep' formula to address the four R2P crimes. It outlines states' positions on R2P in the years immediately following R2P's endorsement at the World Summit, recognising that positions do not remain static. Therefore, this chapter can only provide a snapshot of states positions at a certain point in time.

States attitudes towards R2P traditionally fall into one of three categories: supporters, states which strongly support R2P and play a leading role in R2P advocacy, especially at the UN in New York; sceptics, states that agree in principle but are distrustful of interventionist policies and concerned about the potential institutionalisation of neo-imperialist practices; and rejectionists, states directly opposed to R2P.

This chapter discusses R2P advocacy efforts in relation to its consolidation as a norm. It outlines R2P implementation efforts as a form of institutionalisation, and what this may – tentatively, and subject to closer inspection via the two case studies on Darfur and the post-election violence in Kenya – tell us about the extent of R2P's consolidation as a norm in international society. The chapter discusses the sources of continued R2P rejection, its consequences, and the impact on R2P's consolidation as a norm. It closes with a tentative assessment of R2P's current status as a norm and a discussion of how in-depth case study research can shed light on the extent to which the emergence of R2P as a norm has – or has not – begun to shape the practice of intervention to date.

Institutionalising R2P at the UN: The Secretary-General's Special Adviser on R2P

Since the endorsement of R2P at the World Summit in 2005, the UN has become the primary platform for the promotion of R2P. In his campaign for UN Secretary General, Ban Ki-moon stated that he strongly supported R2P. Throughout 2006 he repeatedly reaffirmed his support, stating that 'the concept of the international community's responsibility to protect, as endorsed by the World Summit last year, should be further substantiated',³²⁴ and pledged to continue supporting R2P.³²⁵ As Secretary-General he stated in a speech to African Union delegates that he was committed to keeping the momentum from the 2005 World Summit and would 'spare no effort to operationalise the responsibility to protect'.³²⁶

In August 2007 the Secretary-General submitted a letter to the President of the Security Council, appointing Francis Deng Special Adviser for the Prevention of Genocide and Mass Atrocities, and raising the post to the Under-Secretary-General level as well as proposing to make it full-time.³²⁷ This letter also contained the Secretary-General's intention to appoint Edward Luck as Special Adviser on the Responsibility to Protect at the Assistant Secretary-General level. The letter stated that '[g]iven the complementarity of the prevention of genocide and mass atrocities and the responsibility to

³²⁴ Federal News Service, 'Restoring the Vitality of the United Nations,' Council on Foreign Relations, http://www.cfr.org/publication/10833/restoring_the_vitality_of_the_united_nations_rush_transcript_federal_news_service_inc.html

³²⁵ 'Ban Ki-Moon's Positions on Human Rights, the Responsibility to Protect, International Criminal Court,' UNSGselection.org, <http://www.unsgselection.org/content/latest-developments/issue-34-19-october-2006-ban-ki-moon-s-positions-on-human-rights-the-responsibility-to-protect-international-criminal-court/173>

³²⁶ Ban Ki-Moon, 'Address to the Summit of the African Union,' UN News Centre, http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=180#

³²⁷ United Nations Security Council, 'Letter Dated 31 August 2007 from the Secretary-General Addressed to the President of the Security Council, S/2007/721,' (United Nations, 2007)

protect, Mr. Luck will work under the over-all guidance of Mr. Deng to ensure consistency in the United Nations approach' and that '[f]or reasons both of efficiency and of the complementarity of their responsibilities, they will share an office and support staff.'

The UN Secretary-General reiterated his intention to appoint a Special Adviser on R2P in October 2007, in a budget estimates report.³²⁸ The task of the Special Adviser would be '[t]o complement the work of the Special Adviser on the Prevention of Genocide and Mass Atrocities, to operationalize the concept and to develop the doctrine of the responsibility to protect, as elaborated in the 2005 World Summit Outcome and contained in paragraphs 138 to 140 of General Assembly resolution 60/1'. The Secretary-General proposed four new positions to be created in the office of the Special Adviser on the Prevention of Genocide and Mass Atrocities in addition to the existing positions.³²⁹

However, preliminary difficulties in the establishment of the post reflected continued scepticism about R2P. In December, the Council took note of Edward Luck's appointment to Special Adviser on the Responsibility to Protect, on a part-time basis.³³⁰ In this letter the Council also asked for further clarification on the proposed change in title for Mr Deng's post, which had been changed from 'Special Adviser on the Prevention of Genocide' to 'Special Adviser on the Prevention of Genocide and Mass Atrocities', to make it broader in scope. The Council raised questions about the newly proposed title, objecting to the phrase 'mass atrocities', Council members noting that this was not an identifiable legal term in international law. Ultimately, 'mass atrocities' was not added to Deng's title, and he remained simply 'Special Adviser for the Prevention of Genocide'. Deng and Luck wanted to call their office the 'Office of the Special Advisers for the Prevention of Genocide and the Promotion of the Responsibility to Protect', but did not proceed with this as some member states indicated their objection to the term 'promotion'.³³¹

In February 2008, the General Assembly approved three of the requested positions,³³² but did not approve the request for an additional P-5 post, implicitly denying the request for funding of the newly created post of Special Adviser on R2P.³³³ Deliberations within the responsible committees had become politicised, revealing which states supported R2P, and which states did not.³³⁴ Ultimately, the report by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) approved only the additional P-4 position, not the other positions. Consequently therefore, the post of Special Adviser on R2P had been created, but had not been granted funding by the General Assembly.³³⁵

³²⁸ United Nations General Assembly, 'Estimates in Respect of Special Political Missions, Good Offices and Other Political Initiatives Authorized by the General Assembly and/or the Security Council, A/62/512/Add.1, 30 October 2007,' (2007), para. 31

³²⁹ In addition to the new position of Under-Secretary-General, there were to be one additional P-5, one P-3, and one General Service post. The annual budget of the office would thus amount to approximately \$2,000,000. See *ibid.*, para. 37.

³³⁰ United Nations Security Council, 'Letter Dated 7 December 2007 from the President of the Security Council Addressed to the Secretary-General, S/2007/722,' (United Nations, 2007)

³³¹ Interview with Edward Luck, UN Special Adviser for R2P (12 April 2011)

³³² The upgrade of the Special Adviser on Genocide and an additional P-3 and General Service post. United Nations General Assembly, 'Special Subjects Relating to the Proposed Programme Budget for the Biennium 2008-2009, A/Res/62/238, 20 February 2008,' p. 4 (10)

³³³ *Ibid.* p. 4 (10)

³³⁴ Global Centre for the Responsibility to Protect, 'ACABQ and Fifth Committee Negotiations on the Joint Office,' <http://responsibilitytoprotect.org/GCR2P%20Report%20--ACABQ%20and%20fifth%20Committee%20negotiations%20on%20the%20Joint%20Office.pdf>

³³⁵ See Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* p. 32

In December 2010, Algeria, Cuba, Nicaragua, and Venezuela used the budgetary discussions at a meeting of the 5th Committee to challenge the Secretariat's authority to institutionalise the collaboration between the Special Adviser on the Prevention of Genocide and the Special Adviser for R2P.³³⁶ Venezuela proposed an amendment whereby all references to the four R2P crimes were to be removed from the document containing the Office of the Special Adviser for the Prevention of Genocide's (OSAPG) mandate and to re-establish the framework under which the office had worked previously. In the vote that followed, 17 countries voted for the amendment.³³⁷ 68 states, both from the global South as well as from the North, voted against the amendment proposed by Venezuela, effectively supporting R2P.³³⁸

Edward Luck, Special Adviser on R2P between 2008 and 2012, continued working full-time at the International Peace Institute (IPI) during his appointment.³³⁹ Luck saw his role as Special Adviser as encompassing three aspects of R2P advocacy: conceptual development; political development; and operational development.³⁴⁰ As part of the work on R2P as a concept, he developed the 'three pillars' framework in the 2009 report of the Secretary-General.³⁴¹ Luck considered it part of his role to revive R2P, which had fallen out of favour with some states at the time of his appointment. The operational aspect of his work involved setting up the joint office together with Francis Deng, and integrating R2P throughout the UN system. He worked closely with UN member states to promote R2P politically. In May 2010 the Special Adviser on the Prevention of Genocide and the Special Adviser on R2P began working on individual country situations. Edward Luck left the role of Special Adviser on R2P in 2012, and in 2013 was replaced by Jennifer Welsh, Professor in International Relations at Oxford University and Co-Director of the Oxford Institute for Ethics, Law, and Armed Conflict.

The establishment of the post was not a smooth process, and reflected continued opposition to R2P, despite the consensus in 2005. In that sense, the creation of the post and its maintenance constituted continued norm advocacy. The creation of the post and its attachment to the existing, and less controversial, post of the Special Adviser on the Prevention of Genocide reflected deep-rooted and persisting scepticism about R2P. At the same time, the efforts of the Joint Office have arguably been successful at promoting R2P, and further conceptually refining R2P in doing so. One of the ways in which the Special Adviser has contributed to R2P advocacy and institutionalisation is

³³⁶ Global Centre for the Responsibility to Protect, 'ACABQ and Fifth Committee Negotiations on the Joint Office'

³³⁷ Algeria, Cuba, Nicaragua, Venezuela, Bolivia, the Democratic Republic of Korea, Ecuador, Iran, Lao People's Democratic Republic, Libya, Mauritania, Myanmar, Qatar, Solomon Islands, Sudan, Syria, and Zimbabwe.

³³⁸ Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Benin, Bosnia-Herzegovina, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kazakhstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Poland, Portugal, South Korea, Moldova, Romania, Rwanda, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Macedonia, East Timor, Ukraine, United Kingdom, and the United States.

³³⁹ IPI is an independent think tank which is funded by government donors (70%), philanthropic foundations (22%), corporate sponsors, individuals, and the institute's board members. States contributing are Nordic states; many western European states; Canada; Australia; and some Gulf states. Most of the funding is for general purposes, although a small fraction of it is exclusively for R2P. Edward Luck provided this information in an interview in New York in April 2011. See also International Peace Institute, 'FAQs,' <http://www.ipacademy.org/about/faq.html>.

³⁴⁰ Edward Luck outlined his role as Special Adviser in an interview in April 2011.

³⁴¹ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General'

through the preparation of annual reports by the Secretary-General in preparation for the annual informal, interactive, dialogue, discussed below.

Elaborating the 2005 Consensus: The 2009 General Assembly Debate on Implementing R2P

The annual General Assembly debates on R2P have given both supporters as well as sceptics an opportunity to voice their opinions, but, in sum, have done more to promote R2P as a norm than to harm it. In 2009 the General Assembly discussed R2P for the first time. Since then, there has been an informal, interactive dialogue each year. Every one of these meetings is preceded by a report by the Secretary-General.³⁴² The Special Adviser for R2P authors the reports which then need to pass an inter-agency editing process. During the preparation period the Joint Office engages in informal discussions with member states to receive feedback on various ideas. The 2009 report on 'Implementing the Responsibility to Protect' was particularly important in the conceptual refinement of R2P, as it laid out the 'three pillars' approach which defines the circumstances in which the responsibility for protecting people shifts from a state to the international community.

The report stated that operationalising R2P is 'the best way to discourage States or groups of States from misusing the responsibility to protect for inappropriate purposes'.³⁴³ Operationalising was understood as developing the UN strategy, standards, processes, tools and practices for R2P. The report outlined a three-pillar strategy for promoting R2P: the first pillar being 'The protection responsibilities of the State'; pillar two 'International assistance and capacity-building'; and pillar three 'Timely and decisive response'.³⁴⁴ It emphasised that all three pillars are equally important.

The report also made an attempt at locating R2P within existing international law. It stated that the provisions of paragraphs 138 and 139 of the World Summit Outcome 'are firmly anchored in well-established principles of international law' as states have a legal obligation to prevent and punish genocide, war crimes, and crimes against humanity.³⁴⁵ Acts of 'ethnic cleansing' can constitute all three of these crimes. Also, there is a broader range of obligations that exist under international humanitarian law, international human rights law, refugee law, and international criminal law. The report argued that R2P does not alter, but reinforces, the legal obligations of states.

The report underscored four basic tenets.³⁴⁶ First, R2P should not be seen as an adversary to sovereignty, but that, on the contrary, it strengthens it by supporting states in meeting core protection responsibilities. Second, R2P applies only to the four specified crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. Going beyond this would not be in keeping with the 2005 consensus and would be detrimental to promoting R2P. Third, that although the scope of what R2P covers ought to be kept narrow, the response should be deep, employing the wide

³⁴² Ibid. and UN General Assembly, 'Early Warning, Assessment, and the Responsibility to Protect: Report of the Secretary-General, A/64/864,' (2010). These reports, as well the 2011 report: United Nations, 'The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General, A/65/877-S/2011/393' were written by Edward Luck. Later reports were entitled United Nations Secretary-General, 'Responsibility to Protect: Timely and Decisive Response,' (United Nations, 2012) and 'Responsibility to Protect: State Responsibility and Prevention,' (United Nations, 2013)

³⁴³ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', p. 1

³⁴⁴ Ibid. p. 2

³⁴⁵ Ibid. p. 5

³⁴⁶ Ibid. pp. 7-8

range of prevention and protection instruments available to states and other institutions – this was summarised as the ‘narrow but deep’ approach. And fourth, the idea that the UN should establish an early warning capability, to deal with information about the incitement, preparation, or perpetration of the four specified crimes.

The report offered a set of recommendations for operationalising R2P. Under pillar 1, the report recommended that states review what more they could do to implement their obligations under human rights law, in working together with the UN. For example, states could work on the advancement of the mandate of the United Nations High Commissioner for Human Rights, or the mandates of the Human Rights Council. Furthermore, the report recommended that all states become parties to relevant international instruments on human rights, international humanitarian law, refugee law, and the Rome Statute of the International Criminal Court, and that legal standards should be incorporated into national legislation. Under pillar 1, the report also encouraged developing further national human rights institutions. Local reconciliation and reconstruction initiatives following massive crimes and violations are also forms of preventative action. Training, learning, and education programmes such as the Advisory Service on International Humanitarian Law, established by the International Committee of the Red Cross (ICRC) in 1996, could support states in ratifying humanitarian conventions, facilitating state-to-state learning processes, and incorporating international humanitarian standards into national law.

For pillar two, international assistance and capacity-building, the report suggested that the following provisions were in line with the World Summit Outcome: first, encouraging states to meet their pillar one responsibilities; second, supporting states in exercising their responsibility; third, supporting states in building their capacity to protect; and fourth, assisting states under stress and where conflict is imminent. Pillar two encompasses military assistance, but could also mean other ‘persuasive measures and positive incentives’.³⁴⁷ Good offices, provided by, for example, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the Emergency Relief Coordinator, the Special Adviser on the Prevention of Genocide, other special advisers, special representatives or envoys of the UN Secretary-General, as well as other UN officials and other international officials, could play an important role. A strengthened Peacebuilding Commission could also help states meet their responsibilities.

Pillar three, ‘timely and decisive response’ describes how the WSOD should be interpreted regarding the means available to the international community to react to the four specified crimes and violations. Means available include peaceful, pacific measures specified in Chapter VI and in article 52 (chapter VIII), and could, in certain cases, involve coercive measures. The threshold for pillar three action must be higher than that for action under pillar two, and similarly, amongst pillar three measures, the threshold for Chapter VII measures is higher than that for Chapter VI measures. Many peaceful measures can be undertaken by the UN or regional bodies without explicit Security Council authorisation, as was the case in the international response to the post-election violence in Kenya in 2008.

In a speech delivered by Ban Ki-moon shortly before the General Assembly’s consideration of the report, Ban introduced the three pillars.³⁴⁸ He emphasised that prevention, for both practical as well as moral reasons, ‘should be job number one’. The Secretary-General pointed out that he saw

³⁴⁷ Ibid. pp. 15

³⁴⁸ UN News Centre, ‘Remarks to the General Assembly on the Responsibility to Protect (RtoP),’ http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=544

progress towards common ground regarding the first two pillars of his strategy (state responsibility and international assistance), but persisting differences on aspects of pillar three (response).

180 member states participated at the 2009 General Assembly debate on the Responsibility to Protect. Gareth Evans and Noam Chomsky also made statements, Chomsky vehemently critical of R2P.³⁴⁹ Of the 94 states that made statements, four states fundamentally opposed R2P (Cuba, Nicaragua, Sudan, and Venezuela), although there were other states that expressed concern about the implementation of R2P and expressed their preference for an approach that focuses on pillars one and two. States that explicitly objected to pillar three were Iran, North Korea, Pakistan, and Sri Lanka. Most states however agreed that R2P encompasses the three pillars and four crimes, as laid out in the 2005 World Summit Outcome Document and the 2009 report on implementing R2P.³⁵⁰

States' main concerns revolved around the relationship of R2P to existing international law; misuse of the concept for other than humanitarian purposes; selective application of the concept; and stretching the applicability of the concept to include a broader set of issues than had been agreed to in 2005.³⁵¹ The representative from Nicaragua, for instance, challenged the legal validity of R2P, arguing that all that states had agreed to in 2005 was further discussion of the concept. The Sudanese delegate expressed concern about misuse of the concept. The representative of Sri Lanka stated that the triggers for R2P needed to be defined more clearly, and that ideas for operationalising R2P needed further elaboration, as many states were sensitive about such matters due to their experience with colonial rule. Questions to address should include, for instance, who would determine whether a situation qualified as being an R2P case, who was responsible for collecting early-warning information, and how it would be ensured that the analysis of the information was not biased – harking back to the debate on criteria on intervention. The representative of Jamaica, who spoke on behalf of the Caribbean community (CARICOM), argued that authorisation of the use of force should be tied to Security Council reform, as this would help build confidence among states that the Security Council would act as an impartial body. The delegate of Myanmar insisted that R2P be applicable only to the four R2P crimes, not to other cases, such as natural disasters.

Several states, on the other hand, expressed their strong support for R2P.³⁵² The representative of Botswana for instance stated that the case of the Rwandan genocide had shown the need for effective prevention. Kenya's representative stated that the Kenyan people appreciated the UN's involvement in finding a peaceful solution to the election dispute in December 2007. She stated that Kenya's example showed that any conflict could be settled peacefully through timely diplomatic intervention and negotiations. The representative of Gambia, associating himself with the African Group, supported R2P as endorsed in the 2005 World Summit, and argued that more trust in the concept could be garnered if a depoliticised R2P architecture were developed.

³⁴⁹ International Coalition for the Responsibility to Protect, 'General Assembly Debate on the Responsibility to Protect and Informal Interactive Dialogue,' <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2493-general-assembly-debate-on-the-responsibility-to-protect-and-informal-interactive-dialogue->

³⁵⁰ Global Centre for the Responsibility to Protect, 'General Assembly Debate: Facts About the 2009 General Assembly Debate on the Responsibility to Protect,' (2009)

³⁵¹ United Nations Department of Public Information, 'Delegates Weigh Legal Merits of Responsibility to Protect Concept as General Assembly Concludes Debate: Speakers Question Its Effectiveness in Face of Security Council Veto Power,' (New York 28 July 2009)

³⁵² Ibid.

The 2009 debate was important because it reflected states' agreement with the overall idea as endorsed at the 2005 Summit, as well as the further elaboration and 'three pillars' approach contained in the 2009 report. The debate helped to dissociate R2P with purely coercive measures, especially armed intervention. R2P came to be regarded as a comprehensive approach that emphasised prevention and every state's 'primary responsibility to protect'.

R2P Supporters, R2P Rejectionists: A Snapshot of States' Views on R2P, 2005-2013

Despite progress in terms of conceptual clarification of R2P, and despite R2P's impact on the international discourse, R2P continued to face opposition after 2005. Donald Steinberg argued that some states were plagued by a sense of 'buyer's remorse' in the years following the 2005 summit, which stalled implementation efforts.³⁵³ Gareth Evans identified 'three big challenges' for R2P in 2008: conceptual clarification, institutionalisation, and political consensus.³⁵⁴

'R2P rejectionists' are states that seek to 'block R2P's implementation, attempt to renegotiate or deny the World Summit consensus, or consider R2P in violation with the UN Charter and contradictory to national sovereignty or the non-intervention principle'.³⁵⁵ There were twenty-five states that had serious objections to R2P, including two permanent Security Council members, Russia and China.³⁵⁶ Some states were more vocal and outright rejectionist than others. Cuba and Sudan, for instance, articulated vehement opposition to R2P. China and Russia were opposed but their position towards R2P was more ambiguous: both refrained from vetoing the Security Council resolution invoking R2P in the case of Libya, suggesting they were not, initially, entirely opposed to R2P, although the intervention went well beyond what they had envisaged. Russia's use of language similar to that used by proponents of R2P in an attempt to justify its role in the Ukraine further suggests that the basic idea of a 'responsibility to protect' has gained traction with Russia.

Patrick Quinton-Brown uses a categorisation that distinguishes between so-called 'cautious supporters' that agree in principle but remain sceptical until the concept has been modified, and 'dissenter states' that rhetorically condemn R2P, and abstain from or oppose resolutions invoking R2P language.³⁵⁷ However, it seems more useful to categorise states' attitudes towards R2P based on the motives driving these attitudes. There appear to be three motives for rejection of R2P: states object to the idea of a 'responsibility to protect' at a conceptual level as a form of anti-liberalism – for example Russia or China. Other states object to R2P as a result of historical experiences with colonisation – this applies to many states in Latin America, Africa, and Asia. At the same time some of these states support the idea of outside protection, and are therefore ambiguous about R2P.

³⁵³ Donald Steinberg, 'Responsibility to Protect: Coming of Age?', *Global Responsibility to Protect* 1, no. 4 (2009)

³⁵⁴ Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* p. 54

³⁵⁵ Jonas Claes, 'Tackling the Drivers of R2P Rejectionism: How Turning a "No" into a "Yes" Could Save the Lives of Millions,' (2011), fn p. 4

³⁵⁶ Algeria; Belarus; Bolivia; China; Cuba; Ecuador; Egypt; Iran; Laos; Libya; Malaysia; Mauretania; Morocco; Myanmar; Nicaragua; North Korea; Pakistan; Qatar; Russia; Solomon Islands; Sri Lanka; Sudan; Syria; Venezuela; and Zimbabwe. See *ibid.* Box 1.

³⁵⁷ In June 2013 Quinton-Brown regards Brazil, China, Egypt, India, Indonesia, Laos, Malaysia, Mauritania, Myanmar, Qatar, Russia, Solomon Islands, South Africa, Sri Lanka, Tunisia, and Vietnam as 'cautious supporters'. He regards Algeria, Belarus, Bolivia, Cuba, Ecuador, Iran, Nicaragua, North Korea, Pakistan, Sudan, Syria, Venezuela, and Zimbabwe as 'rejectionists'. See Patrick Quinton-Brown, 'Mapping Dissent: The Responsibility to Protect and Its State Critics,' *Global Responsibility to Protect* 5, no. 3

African states, for example, are, on the one hand, progenitors of the norm – the Constitutive Act of the AU, for instance, draws on R2P. On the other hand they are also members of the Non-Aligned Movement, which has reservations about R2P.³⁵⁸ In many cases states support R2P, but demand that conditions and criteria for intervention are laid out more explicitly to improve accountability. Finally, other states object to the idea as a matter of principle, for the reasons mentioned above, and/or because their governments are implicated in violence and as such these states could become – or in some cases already are – subjected to outside meddling in internal affairs (Sudan, Sri Lanka, Myanmar).

As outlined above, one of the main concerns of sceptical states was the selective application of R2P. At the 2009 General Assembly debate, Noam Chomsky criticised that R2P could be applied selectively.³⁵⁹ One of the main sources of R2P rejection was the distrust of weaker states about whether R2P could be applied legitimately and consistently in a system characterised by fundamental inequality between states. Ramesh Thakur argued ‘... in general, compared to the industrialized Western countries, developing countries are more suspicious of claims to a right of humanitarian intervention, more interested in justice among rather than within nations ...’³⁶⁰

What was required for operationalising R2P, therefore, was trust – trust in the norm itself, trust in the persons most closely associated with it, and trust in the institutions responsible for implementing it, including the UN and regional organisations – but this is difficult to achieve in a system in which some states have disproportionately more capacity for representing and promoting their own interests. Staff capacities at diplomatic missions at the UN vary greatly, and often it is difficult for smaller countries to cover all of the issues they should participate in to be on an equal footing.³⁶¹

To counter R2P rejection at the state level, the UN Group of Friends on R2P worked to convince undecided countries, and to persuade opposing states. The Group of Friends on R2P was established after the World Summit in 2005 as an initiative by Canada.³⁶² The group has no criteria for membership except for that members need to be committed to the R2P paragraphs in the 2005 World Summit Outcome Document.³⁶³ Also, for every additional member from the North there needs to be a joining state from the South, as the group seeks to uphold the North-South balance

³⁵⁸ African Union, 'Constitutive Act of the African Union,' (Lome 11 July 2000)

³⁵⁹ Chomsky, 'Statement by Professor Noam Chomsky to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect, 23 July 2009'

³⁶⁰ Ramesh Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*, ed. Alex J. Bellamy, Sara E. Davies, and Monica Serrano, Global Politics and the Responsibility to Protect (Abingdon, Oxon: Routledge, 2011) p. 144

³⁶¹ Robert Zuber and Ana Carolina Barry Laso, 'Trust but Verify: Building Cultures of Support for the Responsibility to Protect Norm,' *Unpublished manuscript* (2011) In an interview in April 2011, an Asian diplomat also said that he was finding it difficult to attend Group of Friends on R2P meetings regularly due to insufficient staff capacity at the mission, with many issues at the UN competing for diplomats' attention.

³⁶² It was originally co-chaired by Canada and Rwanda, but the Netherlands has since replaced Canada as co-chair. Information on the Group of Friends on R2P was provided by a Western diplomat at the UN in an interview in New York in April 2011.

³⁶³ The current membership includes, from Africa: Ghana, Mali, Mozambique, Nigeria, Senegal, Sierra Leone, and Tanzania; from Asia: Bangladesh, Philippines, Republic of Korea, and Singapore; from Latin America: Argentina, Chile, Costa Rica, Guatemala, Mexico, Panama, and Uruguay; from Europe: Belgium, Czech Republic, Denmark, European Union, France, Germany, Liechtenstein, Norway, Slovakia, Slovenia, Sweden, Switzerland, and United Kingdom; from Oceania: Australia and New Zealand; and from North America: Canada. The Global Centre for R2P, IPI, and Francis Deng as representative of the UN also participate with a non-member status. A list of member states was made available by a staff member of a UN permanent mission.

amongst its members.³⁶⁴ The group meets both at the level of experts and of principals. The group holds regular meetings, at which a range of R2P related issues may be discussed.³⁶⁵ For example, in 2011 the Group of Friends released a joint statement in response to the crisis in Libya.³⁶⁶

Perhaps as a result of the efforts of states supportive of R2P as well as campaigning from civil society groups some states have shifted their position on R2P, notably the US. Whilst the Bush Administration had been influenced by neoconservative thinking, which holds that democracy and human rights should be promoted internationally, but not necessarily through the UN, and unilaterally if necessary,³⁶⁷ the Obama Administration has been much more open to the idea of a 'responsibility to protect'. Asked about R2P in 2008 Obama replied: 'The Responsibility to Protect is an important and developing concept in international affairs and one which my Administration will closely monitor.'³⁶⁸ The shift is also reflected in the Obama Administration's willingness to employ R2P language in the cases of Libya and Côte D'Ivoire.

Given its military capabilities, the US' concerns about R2P are twofold: about avoiding obligation on the one hand, and about evading constrictions on the use of force on the other.³⁶⁹ This explains why, although the Obama Administration has been vocal on humanitarian issues, it still avoids outright advocacy on R2P.³⁷⁰ In 2011, realist Stephen Walt, for example, argued that R2P may not necessarily be in the US national interest.³⁷¹ Responding to the invocation of R2P in an article in the Washington Times in April 2011, Kim R. Holmes, a former assistant secretary of state in the Bush Administration and currently vice president of the Heritage Foundation, stated that '[t]his doctrine would constrain us from using force for our own protection ... Worse, it leaves our forces on the hook to intervene overseas at the behest of the Security Council, at our expense.'³⁷²

To some extent, therefore, a pragmatic outlook continues to define the Obama administration's foreign policy. Nevertheless, there have been significant changes in the US' position since 2008.³⁷³ A task force on the prevention of genocide completed its work in 2008. It had been led by former US Secretary of State Madeleine Albright and Secretary of Defense William Cohen.³⁷⁴ In 2009, Susan Rice stated:

³⁶⁴ Edward Luck in an interview. New York, 12 April 2011.

³⁶⁵ 'Groups of Friends' exist since the early 1990s. They are informal groups of UN member states, established to support efforts of the Secretary-General and Security Council, and can vary in size and purpose. For states party to a particular group of friends, membership grants privileged involvement in a particular process at the UN. Teresa Whitfield, 'Groups of Friends,' in *The UN Security Council: From the Cold War to the 21st Century*, ed. David M. Malone (Boulder, Colorado: Lynne Rienner Publishers, 2004)

³⁶⁶ Group of Friends on Responsibility to Protect, 'Statement by the Group of Friends on Responsibility to Protect on the Situation in the Libyan Arab Jamahiriya,' (Ministry of Foreign Affairs of Denmark, 2011)

³⁶⁷ See Robert Jervis, 'Understanding the Bush Doctrine,' *Political Science Quarterly* 118, no. 3 (2003)

³⁶⁸ Citizens for Global Solutions, '2008 Presidential Candidate Questionnaire,' <http://globalsolutions.org/08orbust/pcq/obama>

³⁶⁹ I would like to thank Roberta Cohen for first raising this point in an interview. 26 April 2011, via telephone.

³⁷⁰ In the case of Darfur for instance, both Hilary Clinton and Susan Rice have called for tougher measures, and Rice in particular had been an outspoken critic of the way in which the Bush administration had handled the Darfur crisis, but without explicitly invoking R2P. See Theresa Reinold, 'The United States and the Responsibility to Protect: Impediment, Bystander, or Norm Leader?,' *Global Responsibility to Protect* 3(2011)

³⁷¹ Stephen M. Walt, 'What Should We Do About Libya? (Updated),' *Foreign Policy*, http://walt.foreignpolicy.com/posts/2011/03/08/what_should_we_do_about_libya

³⁷² Kim R. Holmes, 'Holmes: Whose "Responsibility to Protect"?,' *The Washington Times*, 6 April 2011

³⁷³ See also James Mann, *The Obamians: The Struggle inside the White House to Redefine American Power* (Penguin Books, 2012)

³⁷⁴ Steinberg, 'Responsibility to Protect: Coming of Age?'

The horrors of the 20th century have helped give rise to an important shift in our thinking about mass slaughter – and to a range of new tools to prevent and respond to it. The international community has started to create a new vocabulary for talking about genocide, war crimes, crimes against humanity, and ethnic cleansing. And it has started to craft a new way to stop them ... R2P ... represents an important step forward in the long historical struggle to save lives and guard the wellbeing of people endangered by conflict. It holds that states have responsibilities as well as interests ... This approach is bold. It is important. And the United States welcomes it.³⁷⁵

The Obama administration has begun articulating its positions using R2P language, for example in the 2010 National Security Strategy (NSS), Obama's first, which reaffirmed support for R2P.³⁷⁶ The US stated that in endorsing R2P it recognised that the primary responsibility for preventing genocide and mass atrocity rests with sovereign governments, but that 'this responsibility is passed to the broader international community when sovereign governments themselves commit genocide or mass atrocities, or when they prove unable or unwilling to take necessary action to prevent or respond to such crimes inside their borders.' The US stated further its commitment to 'ensure that the United States and the international community are proactively engaged in a strategic effort to prevent mass atrocities and genocide' and where prevention fails, 'the United States will work both multilaterally and bilaterally to mobilize diplomatic, humanitarian, financial, and – in certain instances – military means to prevent and respond to genocide and mass atrocities.'³⁷⁷ The State Department issued its first 'Quadrennial Diplomacy and Development Review' in 2010, a document providing a summary of the State Department's and USAID's policy. In it, reference was made to the US' endorsement of the R2P concept, affirming the US' 'commitment to preventing genocide and mass atrocities.'³⁷⁸

Several other states have meanwhile included reference to R2P in strategic policy papers.³⁷⁹ Germany stated in 2006 that the debate on R2P is increasingly impacting UN Security Council decisions on peacekeeping.³⁸⁰ France's White paper stated in 2008 that the international community as a whole had a continued 'responsibility to protect', emphasising the importance of multilateral approaches and the central role of the UN.³⁸¹ The UK stated in 2008 in its National Security Strategy that there are circumstances in which the international community has a responsibility to help countries protect their populations, and that the international responsibility to protect requires the international community to act if a government is unwilling or unable to protect its citizens from R2P crimes.³⁸²

³⁷⁵ Susan E. Rice, 'Keynote Address to the 39th International Peace Institute on 15 June 2009: Ambassador Susan E. Rice, Permanent Representative of the United States of America to the United Nations,' (2009)

³⁷⁶ The White House, 'United States National Security Strategy,' (Washington 2010)

³⁷⁷ Ibid.

³⁷⁸ US Department of State, 'Quadrennial Diplomacy and Development Review: Leading through Civilian Power,' (2010), pp. 128-129

³⁷⁹ For a summary, see International Coalition for the Responsibility to Protect, 'National Endorsements of Responsibility to Protect: Policy Papers, Strategy Documents and Focal Points,' (2011)

³⁸⁰ German Federal Ministry of Defence, 'White Paper 2006 on German Security Policy and the Future of the Bundeswehr,' (2006)

³⁸¹ Présidence de la République, 'The French White Paper on Defence and National Security,' (2008)

³⁸² Cabinet Office, 'The National Security Strategy of the United Kingdom - Security in an Interdependent World,' (2008)

Overall, despite persistent R2P rejection from a small group of vehement R2P opponents, and despite continued distrust from a broader group of sceptics, the 2005 consensus has remained intact, and R2P appears to have continued on a trajectory of norm consolidation – despite the debates surrounding the invocation of R2P in the case of Libya, discussed in more detail in chapter eight. The next section turns to the institutionalisation of R2P in civil society, and its impact on R2P’s progress as a consolidating norm.

Institutionalising Civil Society Advocacy on Atrocity Prevention and R2P Post-2005

There are today a wide range of organisations and institutions dedicated exclusively to the promotion of R2P and advocacy on humanitarian issues. The International Coalition for R2P, for instance, is a network of NGOs supportive of R2P, and is institutionally housed at the World Federalist Movement, which also comprises branches on the International Criminal Court and global governance. Its R2P project is entitled R2PCS (CS standing for ‘engaging civil society’).³⁸³ The project, initially funded by Canada, worked towards an inclusion of the R2P paragraphs into the WSOD in 2005.³⁸⁴ The NGOs involved at this early stage were Oxfam, Human Rights Watch, Refugees International, and R2PCS. After 2005 the R2PCS project discussed with NGOs how to sustain the momentum on R2P. Together with the International Crisis Group, R2PCS decided to establish the Coalition and the Global Centre on R2P.

The Coalition works to promote R2P at both the national and the regional levels. It sees its task as to raise awareness with governments, NGOs, and the media. It produces a regular email newsletter which is sent to many of the missions in New York and the media (approximately 2,000 receive regular emails). The Coalition refrains from making recommendations on the applicability of R2P in a given case, instead re-iterating what its members suggest. The Coalition promotes the 2005 version of R2P as well as the three pillars laid out in the Secretary-General’s report, but makes reference to the 2001 ICISS report when necessary, for instance when making reference to the use of force criteria contained therein.

The Global Centre was created in February 2008.³⁸⁵ The Global Centre, being larger in size than the Coalition, has greater capacities, and it works more on research and can speak on behalf of itself.³⁸⁶ The Global Centre is research-oriented, focusing on policy issues and advocacy. In comparison to the International Coalition, therefore, the Global Centre is a more like a think tank. In referring to R2P the Centre adheres to the language of paragraphs 138 and 139, and sometimes draws on the three pillars contained in the 2009 report, and, like the Coalition, on the ICISS report for intervention

³⁸³ Sapna Considine, Deputy Director at the International Coalition for R2P provided helpful information on the establishment and workings of the organisation and its cooperation with the Global Centre in an interview in New York in April 2011.

³⁸⁴ Previous donors to the Coalition include Canada, the UK, and the McArthur Foundation. The organisation is currently funded by Australia and Sweden, but is encountering funding difficulties and has had to reduce its staff number to two from previously four.

³⁸⁵ Global Centre for the Responsibility to Protect, <http://globalr2p.org/> Naomi Kikoler provided useful information on the creation and work of the Global Centre, and its relationship with the International Coalition, in an interview in New York in March 2011. The Global Centre is funded by various states (the UK, the Netherlands, Norway, Denmark, and Australia), through their respective foreign ministries, as well as the Open Society Institute. The Ralph Bunch Institute offered to house it.

³⁸⁶ It has five staff members working on R2P advocacy.

criteria. The International Coalition and Global Centre work together on policy issues and co-ordinate their work.³⁸⁷

The Asia-Pacific Centre for the Responsibility to Protect was launched by Edward Luck and Lloyd Axworthy in Bangkok on 20 February 2008, to contribute to the advancement of the R2P principle within the Asia-Pacific region.³⁸⁸ It is an associate of the Global Centre for the Responsibility to Protect in New York, with offices located at the University of Queensland in Australia. The centre conducts research and policy work promoting R2P in the Asia-Pacific Region, and publishes the academic journal 'Global Responsibility to Protect'.

There are also a number of NGOs, based around the UN or elsewhere, whose work deals with UN issues but which have an R2P focus, for example Global Action to Prevent War, based at the UN in New York, which aims to support diplomats and gives advice on R2P-related issues.³⁸⁹

There are also other, more unconventional initiatives, such as the Sudan Initiative. Cooperating with Harvard University and a pressure group, Not On Our Watch, founded by George Clooney and other actors, Google used satellite imagery to scour Southern Sudan for state-sponsored violence in the run-up to the referendum on secession from North Sudan.³⁹⁰ The aim of this action was to prevent mass atrocities like those committed in Darfur. The satellite images were analysed by the UN and the Harvard Humanitarian Initiative. The Sudan Initiative was funded by Not On Our Watch.

Regional organisations are increasingly regarded as important in contributing to operationalising R2P. At a meeting organised by the Stanley Foundation in May 2011, participants argued that the role of regional and sub-regional bodies is important, and that they can contribute to the strengthening and implementation of R2P by embedding R2P concepts and principles institutionally. Regional organisation can also contribute by developing their own early warning systems and mediation capacities, as well as a regional standby enforcement capacity.³⁹¹

There are also various academic projects relating to R2P. The 'Global Responsibility to Protect' journal was established in 2009 and is the 'premier journal for the study and practice of the responsibility to protect'.³⁹² Frazer Egerton and W. Andy Knight have co-published a 'Handbook of the Responsibility to Protect'.³⁹³ Thomas Weiss led a book project, 'Ending Mass Atrocities: Echoes in Southern Cultures', in collaboration with the Global Centre for the Responsibility to Protect, the Ralph Bunch Institute for International Studies, the City University of New York's Graduate Center, and the Centre for International Studies and the Department of Political Science and International Relations at the University of Oxford.³⁹⁴ A dedicated series on 'Global Politics and the Responsibility

³⁸⁷ Sapna Considine in an interview. New York, 4 April 2011.

³⁸⁸ 'Asia-Pacific Centre for the Responsibility to Protect,' <http://www.r2pasiapacific.org/>

³⁸⁹ Global Action has three programme foci: disarmament, civilian protection and R2P, and gender. Robert Zuber, Director at Global Action to Prevent War, described the work of the organisation in an interview in New York in April 2011.

³⁹⁰ The Guardian, Thursday, 30 December 2010

³⁹¹ The Stanley Foundation, 'The Role of Regional and Subregional Arrangements in Strengthening the Responsibility to Protect,' (New York 2011), pp. 43-44

³⁹² BRILL, 'Global Responsibility to Protect,' <http://www.brill.nl/global-responsibility-protect>

³⁹³ Frazer Egerton and W. Andy Knight, eds., *The Routledge Handbook of the Responsibility to Protect* (Routledge, 2012)

³⁹⁴ Centre for International Studies University of Oxford, 'Ending Mass Atrocities: Echoes in Southern Cultures,' <http://cis.politics.ox.ac.uk/research/Projects/R2Psouthernperspectives.asp> The findings were published as a monograph; Rama Mani and Thomas G. Weiss, eds., *Responsibility to Protect: Cultural Perspectives in the Global South* (Routledge, 2011)

to Protect' published Ramesh Thakur's *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*.³⁹⁵ The series has published five monographs so far, Heather Roff's 'Global Justice, Kant and the Responsibility to Protect'³⁹⁶ the latest addition to the series.

Australia established a \$2 million fund to support initiatives that seek to promote the R2P principle. The fund is made available on a competitive basis to both Australian as well as international research institutions and NGOs. Patrons are, amongst others, Lloyd Axworthy, Gareth Evans, Edward Luck, and Ramesh Thakur. Research projects funded have titles as diverse as 'The Responsibility to Protect and International Humanitarian Law: A Handbook for Practitioners'; 'Assessing the Parameters for Identifying a "Manifest Failure" to Protect Populations under R2P'; or 'The Responsibility to Protect in Oceania: A Political Assessment of the Impact and Influence of R2P Principles on Police Forces'.³⁹⁷

As the sections above have shown, R2P is today well-represented in the work of a vast number of NGOs, think tanks, and in academia. A wide range of organisations, and individuals, continue to advocate for R2P, and have contributed much towards the conceptual advancement of R2P. They have not, however, been successful at eliminating all opposition to R2P. Indeed, there has also emerged what could be termed an intellectual backlash to R2P and the broader liberal agenda within which it is embedded. David Chandler's *Journal of Intervention and Statebuilding*, for example, was founded in 2007 as a 'cross-disciplinary journal devoted to critical analysis of international intervention' that aims to critique a state in which 'states and other actors increasingly strive to transplant what they see as normatively progressive political orders to other contexts.'³⁹⁸ The final section discusses persistent scepticism of R2P, and why R2P may be emerging, but is still contested.

Contestation and Consequences for R2P's Consolidation as a Norm

The efforts that have gone into sharpening R2P conceptually and into its operationalisation have opened the way for its institutionalisation. However, the 'responsibility to protect' is still sometimes perceived as an idea that has been formulated and advocated by a privileged group. A number of donor governments and think tanks are dominant in R2P advocacy. Organisations and institutions engaging in R2P advocacy compete for the same sources of funding, and as a result there is a sense of exclusivity around R2P promotion.³⁹⁹

³⁹⁵ Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*

³⁹⁶ Heather M. Roff, *Global Justice, Kant and the Responsibility to Protect*, ed. Alex J. Bellamy, Sara Davies, and Monica Serranoibid.(2013)

³⁹⁷ Australian Ministry for Foreign Affairs, 'Australian Responsibility to Protect Fund,' <http://www.foreignminister.gov.au/releases/2009/fa-s090925a-att.html>

³⁹⁸ 'Journal of Intervention and Statebuilding,' Taylor and Francis Online, <http://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=riscb20#.VMAoDi5Zvzo>

³⁹⁹ John Karlsrud points out the sociological dimension of norm promotion in international organisations, with a particular focus on R2P. He regards R2P as the result of the work of a closely knit circle of individuals who take turns at report-writing, think-tank advocacy, scholarly work, and membership on UN high-level panels, in what is known in a range of issue areas as the 'revolving doors phenomenon'. See John Karlsrud, 'Responsibility to Protect and Normative Change in International Organisations: From Weber to the Sociology of Professions, Draft Paper ISA Annual Convention in Montreal, March 2011,' (2011) This analysis was substantiated in an interview in April 2011, where Robert Zuber described the Global Centre as 'predatory' and as having 'a clear sense of who should be in the conversation'. A Latin American diplomat at the UN stated in

Obviously, such perceptions may interfere with efforts to consolidate what advocates hope will become a norm over time. If a proposed norm is too closely associated with an exclusive group of states, individuals, and organisations, this leads to distrust about the intentions motivating the initiative – a norm, in essence, requires some level of shared support. In comparison, the term ‘protection of civilians’, widely used in peacekeeping documents, is not directly associated with particular individuals or organisations, and as a result is a less politicised term. Unlike the Centre and the Coalition, therefore, many NGOs and think tanks prefer working on issues making use of the full human protection cluster, and prefer to regard R2P more as a tool which can be of use sometimes, if not always. Although a vast and growing number of NGOs support R2P, some NGOs avoid R2P precisely because of persistent objections to R2P.

As a result, a number of states prefer ‘human protection’ as a concept to guide humanitarian policy-making. In his speech at Oxford University on 2 February 2011, entitled ‘Human Protection and the UN in the 21st Century’,⁴⁰⁰ the Secretary-General argued that there is a larger human protection cluster, which R2P is a part of. Other parts of it are genocide prevention; children and armed conflict; rape and sexual violence; forced displacement; and the protection of civilians, a term used in peacekeeping. He pointed out that all of these agendas have arisen over the course of the last decade or so, making them 21st century phenomena. This ‘human protection cluster’ is, however, different from the concept of ‘human security’, which, he pointed out, is also concerned with other aspects of human welfare such as economic development. The narrower ‘human protection’ cluster, in contrast, is a group of issues that threaten groups of people physically.

Although the Secretary-General routinely points out the interrelatedness of issues within the human protection cluster, certain issues within the purview of ‘human protection’ are actually at odds with each other. One example of this is the relationship between R2P and the protection of Internally Displaced Persons (IDPs). Roberta Cohen points out that although one of the important conceptual antecedents of R2P was Francis Deng’s ‘sovereignty as responsibility’ in relationship to the protection of IDPs, the application of R2P does not necessarily promote their protection.⁴⁰¹ R2P’s limited application and its narrow scope means it is not applicable to IDP protection, which, in fact, has resulted in the sidelining of the Guiding Principles on Internal Displacement and tensions between human rights and humanitarian goals.

The debates on R2P that followed in response to the application of R2P to the crisis in Libya exemplify the persisting politicisation of R2P. The idea of the ‘Responsibility While Protecting’ (RWP) was a direct response to the criticism surrounding the way NATO and its allies interpreted Security Council resolution 1973 (2011) on Libya.⁴⁰² Brazil introduced the idea at the UN in November 2011.⁴⁰³ The proposal suggested that R2P mandates must be set up in a way that ensures that the use of force is a last resort only, that it is proportional, and that the use of force does not generate

an interview in New York in April 2011 that although he acknowledged the Global Centre’s important role in information collation and dissemination, he felt that its agenda was set by a certain group of countries, including European states and Canada.

⁴⁰⁰ In an interview in April 2011, Edward Luck said that he had drafted the speech and that it was subsequently edited by the UN drafting committee in San Francisco. For a transcript, see UN Department of Public Information, ‘Secretary-General, in Lecture at Oxford, Says Rising International Solidarity on Principles Provides Better Human Protection Tools, SG/SM/13385,’ (United Nations, 2011)

⁴⁰¹ Roberta Cohen, ‘Reconciling R2P with IDP Protection,’ *Global Responsibility to Protect 2* (2010)

⁴⁰² See also Alex J. Bellamy, ‘Making R2P a Living Reality: Reflections on the 2012 General Assembly Dialogue on Timely and Decisive Response,’ *ibid.* 5, no. 1 (2013)

⁴⁰³ United Nations, ‘Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General,’ <http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf>

more harm than if there was no intervention. In addition, a monitoring and review mechanism could ensure that states can debate on the implementation of a UN Security Council mandate. In effect, it was another attempt at deflecting the criticism that R2P could be misappropriated for political purposes, once the Security Council had authorised intervention based on R2P.

Conclusions

The chapter discussed R2P advocacy since the World Summit in 2005. Chapters three and four showed that ideas that developed out of a diverse set of concerns since the end of World War II gradually converged – as a result of the peacekeeping experiences of the 1990s, Rwanda, and Kosovo – around a set of ideas upon which R2P rests but which had not, prior to the publication of the ICISS report, been articulated as a coherent policy framework. Although certain elements of this bundled set of ideas reflected emerging practice – such as a preference for multilateralism and Security Council authorisation (or the need to justify its circumvention where UN Security Council authorisation was not being sought or unavailable, as in the case of Kosovo), or the ever-growing role and expanding influence of regional organisations – as a whole the report was largely visionary and progressive in the sense that it pushed for change, advocating a new understanding of state sovereignty as responsibility.

Chapter four showed that between 2001 and 2005 the ‘responsibility to protect’ gradually lost its visionary edge and was transformed into something more palatable for a wider international audience, enabling its endorsement at the World Summit in 2005. The ‘responsibility to protect’ as endorsed in the World Summit Outcome Document applied in a much narrower set of circumstances only – genocide, ethnic cleansing, war crimes, and crimes against humanity – forestalling any attempt to invoke R2P in relation to other problems. Threshold criteria for intervention were not included, effectively hollowing out the ICISS version. The criteria were meant to give clarity to an otherwise diffuse concept, but were deeply divisive and not included in the WSOD. The threshold for intervention was moved up to a ‘manifest failure’ to meet protection responsibilities, but without further elaboration on what constitutes a manifest failure R2P could be used both to justify intervention, as well as to justify inaction.

Nevertheless, in terms of the consolidation of the ‘responsibility to protect’ as a norm, 2005 best reflects the point at which a prospective norm had finally emerged and, arguably, began to consolidate. The endorsement of the core idea of ‘sovereignty as responsibility’ through the General Assembly gave the ‘responsibility to protect’ international legitimacy and credibility, and further publicised the advocacy efforts. By 2005, most states agreed that there was an international ‘responsibility to protect’ when a state was unable or unwilling to prevent genocide and other mass atrocities, despite the caveats outlined above.

The way the WSOD paragraphs were phrased also demonstrated strong support for a number of related principles that could be regarded as the qualitative dimension of R2P as a prospective norm: that any intervention should be multilaterally orchestrated; that states have a primary responsibility to protect and intervention without the consent of the host government should be undertaken as a last resort only; that prevention is better than reaction; and that regional organisations can and ought to contribute to conflict resolution. These principles enjoy wide support today, and it is in these areas that R2P has progressed most in terms of its consolidation as an international norm.

Chapters six, seven, and eight study two cases in depth, Darfur and Kenya, to which R2P had been applied, assessing to what extent the international responses to these two crises reflected a consolidating R2P norm. Based on the framework provided in chapter two, chapter six on Darfur analyses to what extent the international involvement in Darfur from 2003 onwards was in line with the intervention principles upon which R2P rests. Chapter seven analyses the case of Kenya, which was labelled 'R2P prevention'. Finally, chapter eight takes a close look at the other, more recent crises to confirm the conclusions drawn from the case studies.

Chapter Six: R2P Reaction: The Responsibility to Protect and the Case of Darfur

Introduction: Applying the Analytical Framework to a Case Study of the Darfur Conflict

The previous chapters have discussed the diffusion of R2P as a potential new international norm. Chapter three explored the ideological antecedents of R2P, as well as historical precursors to R2P rejectionism. Chapter four explored the immediate process of what could – if R2P were eventually to meet the criteria for a consolidated international norm – retrospectively be labelled the emergence process of R2P. The chapter concluded that the endorsement of R2P at the World Summit in 2005 suggested that R2P had indeed ‘emerged’, but in a substantially revised form to what the ICISS commissioners had proposed in their 2001 report. Chapter five explored the diffusion process so far, assessing to what extent ‘R2P rejectionism’ has been obstructing R2P’s consolidation in terms of its institutionalisation at the UN and its expression in states’ foreign policies and in international civil society campaigns and initiatives. The chapter focused on implementation at the policy level, surveying to what extent R2P advocacy has been successful in transforming perceptions about appropriate mechanisms for preventing and responding to genocide and other mass atrocities. The chapter concluded with the observation that, despite continued reservations about R2P, the progress of R2P’s diffusion as a potential new norm has been profound, especially considering that all of these changes occurred within a decade or so – a very short period of time indeed for the emergence of a prospective international norm.

However, the conclusions reached in chapters 3-5 remain tentative until a look at recent state practice can establish whether a process of norm consolidation is reflected in the way states respond to the four R2P crimes as stipulated in paragraph 139 of the World Summit Outcome Document. As the analytical framework introduced in chapter two noted, ascertaining to what extent the practice of the international responsibility to protect (pillars two and three) is a consolidating norm needs to establish whether states consistently respond to R2P crimes, and whether the responses taken conform to the principles underpinning R2P as a norm. These questions are the subject of this chapter and the next. The question of consistency is discussed in further detail in chapter eight, which summarises international responses to humanitarian crises since 2005, and applies insights from the two case study chapters.

Chapter six explores the international responses to the conflict in Darfur, with the aim of establishing whether the measures that were taken conformed to the principles underpinning R2P in a way that suggests that an R2P norm is beginning to constitute state practice. As outlined in chapter two, there are a number of concrete indicators for whether R2P is gaining ground. As indicated in the analytical framework both behaviour as well as intersubjective beliefs about appropriateness are relevant here (based on the definition of ‘norm’ I suggest in chapter two, that a norm is *a regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*). These will be explored in relation to four core tenets of R2P (prevention, consent, multilateralism, and regionalism) as well as international criminal justice. In each of these areas specific questions will be addressed.

With regard to ‘prevention’:

- Do international actors seek to become engaged early on in a conflict, prior to an escalation of political violence that may lead to the perpetration of R2P crimes?
- Is 'prevention' given as a justification for early involvement in political crises?

In the case of 'consent':

- Are states seeking non-coercive measures?
- Do states increasingly appear to feel obliged to demonstrate they have explored all pillar two options for assisting the state in question before considering pillar three measures?

For 'multilateralism':

- Do international actors use institutionalised channels for multilateral action, or build ad-hoc coalitions for responding to conflicts?
- Has this become habitual, a 'natural' way of responding to conflict?

With regard to 'regionalism':

- Are regional actors routinely engaged in the resolution of conflicts?
- Does the involvement of regional organisations bestow legitimacy to foreign interference; or is the absence of the involvement of regional organisations perceived as a moral deficit?

And, finally, in relation to international criminal justice:

- What was the role of the ICC in criminal justice with regard to the atrocities committed in Darfur?
- Was the ICC regarded as the appropriate authority for prosecuting the alleged crimes? Was its authority in the case of Darfur being contested?

Using the questions above to guide the inquiry, the sections that follow below explore the case of Darfur with a view to assessing the qualitative dimension of R2P's consolidation as a norm. It is important to remember in all of that follows that the conflict began in 2003, prior to the endorsement of R2P at the World Summit in 2005 but alongside the emerging discussion of the 'responsibility to protect' and after the 2001 ICISS report. As the sections that follow discuss at length, the conflict is in fact a part of a much broader, longer history of conflict in Sudan, but for the purpose of this case study the beginning of the conflict is dated with 2003, with the outbreak of large-scale mass atrocities. The chapter begins with a summary of the conflict and a brief discussion of its origins and international responses. The remainder of the chapter is devoted to an in-depth study of the international responses to the conflict in relation to the questions outlined above. As much as possible, I try to distinguish between the four core tenets of R2P purely for the purpose of facilitating analysis, but obviously they are interlinked in practice so cross-references are frequent. The sections are organised thematically rather than chronologically – for a chronological overview of the history of the conflict and international responses see Appendix I. The penultimate section preceding the conclusions briefly discusses R2P and the politics of criminal justice in relation to the Darfur case, drawing together many of the issues discussed. The chapter concludes with a summary of findings and an assessment of the extent to which international responses to the Darfur conflict

reflect R2P's progressive consolidation as an international norm, as well as a discussion of the ways in which the Darfur conflict affected R2P's emergence as an international norm.

The 'Responsibility to Prevent': Failing on Darfur

By 2003, violence in Darfur had escalated to a level that rendered any talk of 'prevention' futile. It is important to distinguish between structural prevention that addresses potential root causes of a conflict early on, and more direct prevention efforts when R2P crimes appear imminent. The term 'prevention' could also be applied to describe actions aimed at halting ongoing mass atrocities, but the R2P jargon usually refers to such measures as 'reaction'. Therefore, I use 'prevention' here to describe actions that either a) address unstable political situations that may give rise to mass atrocities, or b) serve to identify the imminent outbreak of violence and attempt to put in place measures to pre-empt it. In the case of Darfur, those measures that had been taken prior to 2003 had failed: the root causes of the conflict in Darfur had been simmering on for decades, largely ignored internationally. The response measures that states did take were not sufficient to stop the conflict from escalating and pre-empt mass atrocities.

The period surveyed here precedes the articulation of the 'responsibility to protect' in the ICISS report of 2001, but efforts to institutionalise prevention predate the emergence of R2P. In 1996, the Joint Evaluation of Emergency Assistance to Rwanda, a multi-donor effort to draw lessons from the international response to the crisis, had suggested measures for mass atrocity prevention.⁴⁰⁴ These included a more effective early warning system; strengthening of mediation capacities of regional and sub-regional organisations; and the enforcement of arms embargos.⁴⁰⁵

As outlined in chapter two, I use the 2009 report on 'Implementing the Responsibility to Protect'⁴⁰⁶ to guide my enquiry. The report had outlined ways of supporting domestic protection capacities, for example through international assistance and capacity building (pp. 15-22); international suasion, education, and training through UN agencies and bodies (para. 30); and early warning and assessment (pp. 31-33). However, the question for the purpose of this enquiry is not so much whether the international prevention measures in relation to the Darfur conflict were effective; nor what could have been done, with hindsight, to improve prevention efforts. The question here is whether international actors responded in a way that was recognisably in line with 'prevention' as a core principle of R2P, and whether the statements of state representatives and other authoritative international actors reflected that they felt compelled to consider preventative measures (regardless of whether any such measures were ultimately deemed practically feasible).

Structural Prevention

⁴⁰⁴ Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda, 'The International Response to Conflict and Genocide: Lessons from the Rwanda Experience,' (1996)

⁴⁰⁵ John Borton and John Eriksson, 'Assessment of the Impact and Influence of the Joint Evaluation of Emergency Assistance to Rwanda,' (Danish Ministry of Foreign Affairs, 2004) p. 51

⁴⁰⁶ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General'

A number of factors are usually identified as having played a central role in conflict formation in Darfur, and Sudan more broadly.⁴⁰⁷ The conflict in Darfur has been shaped by a history of colonisation, the centralisation of power in Khartoum, the marginalisation of ethnic groups located at the peripheries of the country, and clashes between nomads and sedentary farmers.⁴⁰⁸ Externally imposed models of identity deeply affected racial, ethnic, cultural, and religious configurations. Domestic and foreign policies politicised ethnic identity at the expense of the development of a post-colonial, unified national civic identity. Mansour Khalid described this as 'the inability ... to articulate a genuine vision of Sudanese national identity to the outside world.'⁴⁰⁹

Darfur spans a vast territory: it is about the size of France (490,000 square kilometres).⁴¹⁰ Darfur is composed of a dry belt in the north, inhabited by camel nomads and the central and south-western areas, which are more humid and where conditions for agriculture are better. The region's geography continues to define population settlements and economic activity. The population has increased markedly since pre-colonial times, to around six million today. This growth in population size, added to years of drought and over-grazing, increased pressure on land supply.

In an effort to claim potential agricultural land settled farmers gradually began blocking areas used as pathways by nomads between pastures in the northern and southern parts of Darfur.⁴¹¹ Pastoralists started letting their animals loose into farms, and farmers retaliated by building protective enclosures. The traditional, non-violent mechanisms for dealing with conflicts between farmers and cattle nomads became increasingly difficult to implement. It was in this social and economic climate that divisions were increasingly interpreted in ethnic terms.⁴¹²

By August 1984 Darfur had been declared a 'disaster zone',⁴¹³ forcing the Sudanese government to ask for international food aid. During the Cold War Sudan was fully aligned with the West. The US regarded Sudan as a bulwark against both Ethiopia's Communists and Gaddafi's dictatorship, and committed itself to relief aid in early 1985.⁴¹⁴ This, however, came too late: the Nimeiry regime was overthrown after street riots in a coup organised by students, trade unionists, and professionals.

⁴⁰⁷ See especially Gerard Prunier, *Darfur: The Ambiguous Genocide*, 2nd ed. (Ithaca, New York: Cornell University Press, 2007) ; Alex De Waal and Julie Flint, *Darfur: A New History of a Long War*, ed. Alex De Waal and Richard Dowden, 2nd ed., African Arguments (Zed Books and IAI, 2008) ; Atta El-Battahani, 'Ideological Expansionist Movements Versus Historical Indigenous Rights in the Darfur Region of Sudan: From Actual Homicide to Potential Genocide,' in *Darfur and the Crisis of Governance in Sudan: A Critical Reader*, ed. Salah M. Hassan and Carina E. Ray (Ithaca and London: Cornell University Press, 2009). For a history of Sudan, see Robert O Collins, *A History of Modern Sudan* (Cambridge: Cambridge University Press, 2008) ; P M Holt and M W Daly, *A History of the Sudan: From the Coming of Islam to the Present Day*, 6 ed. (Longman, 2000)

⁴⁰⁸ See also Francis M. Deng, *War of Visions: Conflict of Identities in the Sudan* (Washington, D.C.: The Brookings Institution, 1995) pp. 35-68 and pp. 347-384.

⁴⁰⁹ Mansour Khalid, 'External Factors in the Sudanese Conflict,' in *The Search for Peace and Unity in the Sudan*, ed. Francis M. Deng and Prosser Gifford (Washington, D.C.: Wilson Center Press, 1987), p109, quoted in Deng, *War of Visions: Conflict of Identities in the Sudan*, pp. 347-348

⁴¹⁰ For background on Darfur and its people, see Alex De Waal and Julie Flint, *Darfur: A Short History of a Long War* (London and New York: Zed Books, 2005) pp. 1-16; Prunier, *Darfur: The Ambiguous Genocide* pp. 1-25; 25-53; and 54-80; and Mahmood Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror* (New York: Pantheon Books, 2009) pp. 207-208; 208-212; 212-220; and 243-248

⁴¹¹ Prunier, *Darfur: The Ambiguous Genocide* pp. 47-53

⁴¹² See especially *ibid.* pp. 54-58

⁴¹³ *Ibid.* p. 51

⁴¹⁴ Alex De Waal, ed. *Food and Power in Sudan: A Critique of Humanitarianism* (London: African Rights)

In July 1985 the new government signed a defence agreement with Libya, a product of the new regime's desire to demonstrate a clean break with former pro-US policies under Nimeiry.⁴¹⁵ USAID remained the main provider of food aid, although it was ineffective for the most part and people continued to starve. The famine lasted from August 1984 to November 1985 and killed an estimated 95,000 people out of a population of 3.1 million.⁴¹⁶ Libya took advantage of the situation, occupying Darfur.⁴¹⁷ A Libyan military force settled in El-Fashir, and Libya began arming the Baggara Arab tribes.

The 'Arab Gathering' was a group of Arab opposition movements sponsored by Gaddafi.⁴¹⁸ The Arab Gathering came into being formally with the drafting of an open letter to Prime Minister Sadiq al Mahdi written by a group of prominent Darfurian Arabs in October 1987. In it the Arab Gathering claimed that Arab tribes in Darfur, representing more than 70 per cent of the population, were not adequately represented politically within Darfur. They called for decentralisation and regional administrative reform. Part of the letter warned:

Should the neglect of the Arab race continue, and the Arabs be denied their share in government, we are afraid that things may escape the control of wise men and revert to ignorant people and the mob. Then there could be catastrophe, with dire consequences.⁴¹⁹

For their part, African tribes demanded better representation in the central government in Khartoum, leading Khartoum to suspect secessionist tendencies in Darfur.⁴²⁰

The Cold War saw little in the way of regional or international support and/or pressure to facilitate conflict resolution. The Security Council suffered from Cold War deadlock, and the African Union in its current form had not yet been established.⁴²¹ International actors could have offered assistance outside of these frameworks, on a bilateral basis for example, offering good offices and mediation to achieve a political settlement. Instead, international actors adopted an approach that was bifurcated between humanitarian assistance on the one hand, and support for the various military factions on the other. Furthermore, international actors – most notably France and the United States – turned a blind eye to the conflict in Chad, which had wider regional implications and arguably spilled over into Darfur.⁴²² The military mobilisation of Chadian Arabs by Libya during the 1970s and 1980s was partly

⁴¹⁵ Prunier, *Darfur: The Ambiguous Genocide* p. 54

⁴¹⁶ *Ibid.* pp. 54-80

⁴¹⁷ *Ibid.* p. 55

⁴¹⁸ De Waal and Flint, *Darfur: A Short History of a Long War*, pp. 49-56

⁴¹⁹ *Ibid.* p. 52

⁴²⁰ See El-Battahani, 'Ideological Expansionist Movements Versus Historical Indigenous Rights in the Darfur Region of Sudan: From Actual Homicide to Potential Genocide'

⁴²¹ The AU was established in 2000. Its Constitutive Act outlines its role as encompassing the promotion of 'peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly' (article 4(e)) and refers to 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstance, namely: war crimes, genocide and crimes against humanity' (article 4(h)). African Union, 'Constitutive Act of the African Union'

⁴²² Roland Marchal, 'The Roots of the Darfur Conflict and the Chadian Civil War,' *Public Culture* 20, no. 3 (2008) pp. 429-430

to blame for the formation of the 'Janjaweed', the militias heavily implicated in the mass atrocities that began in 2003,⁴²³ as Chadian recruits bolstered the ranks of the Janjaweed.⁴²⁴

Direct Prevention

The conflict in Darfur escalated with attacks in 2003 by the Sudanese Liberation Army (SLA) against government military installations.⁴²⁵ The Justice and Equality Movement (JEM) joined the SLA in attacks against the national army soon after. The Sudanese government retaliated by deploying the air force and mobilising the Janjaweed militia.⁴²⁶ Because the Sudanese army was focused on the war in South Sudan, not trained for desert combat, and because Darfurians were well represented in the state's security forces, the deployment of proxy militias was central to the government's counter-insurgency strategy in Darfur.⁴²⁷ The counterinsurgency was comprised of three groups: the Janjaweed, the Popular Defence Forces (PDF), and the 'Additional Armed Forces'.⁴²⁸

In the early months of 2003 the confrontations between Khartoum and the rebel movement increased.⁴²⁹ Unquestionably, the 'R2P threshold' for pillar three measures had been met. By May 2004, approximately 80,000 had been killed in Darfur, there were more than 100,000 refugees in Chad, and over a million IDPs.⁴³⁰

There was little in the way of an international response to the escalating violence in Darfur that would merit the label 'direct prevention'. There is no precise data on the number of casualties, but Amnesty International estimated that by May 2004 most of the farming groups in Darfur had left their villages, after 44% of the villages in Darfur had been burnt.⁴³¹ It was only in April 2004 that the

⁴²³ On the Janjaweed, see Ali Haggag, 'The Origins and Organization of the Janjaweed in Darfur,' in *War in Darfur and the Search for Peace*, ed. Alex De Waal (Justice Africa, 2007), and Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror* pp. 231-236

⁴²⁴ The Janjaweed drew their foot soldiers from Arab camel nomad tribes. Six pro-government armed groups in Darfur were associated with the Janjaweed: the 'Peace Forces' (*Quwat al Salaam*); the nomad protection forces; the Um Bakha irregular forces; the Um Kwak attacker forces; the Popular Defence Force (*Difaa al Sha'abi*); and the Popular Police Force (*Shorta al Sha'abi*).

⁴²⁵ For an account of the events and the various groups involved, see Aidan Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society* (Palgrave Macmillan, 2008) pp. 65-70 and Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror* pp. 231-236; 253-261.

⁴²⁶ On the role of the government in the use and coordination of Janjaweed militias, see Human Rights Watch, 'Entrenching Impunity: Government Responsibility for International Crimes in Darfur,' (2005)

⁴²⁷ E. Donald Briggs, Abdel Salam Sidahmed, and Walter C. Soderlung, *The Responsibility to Protect in Darfur: The Role of Mass Media* (Lanham, Boulder, and New York: Lexington Books, 2010) pp. 17-44

⁴²⁸ The PDF was brought to life by the Islamist regime, as a paramilitary force, with the aim of protecting the revolution and to suppress the rebellion in the south, and their soldiers were drafted conscripts. The Additional Armed Forces were made up of men mobilised by their tribe. Although they were not trained by government forces, they were paid and commanded by them.

⁴²⁹ De Waal and Flint, *Darfur: A Short History of a Long War* pp. 99-101

⁴³⁰ These figures are taken from Prunier, *Darfur: The Ambiguous Genocide*, pp. 81-123. It is worth noting that estimates of the numbers are under dispute. According to P. Williams and Alex J. Bellamy, 'The Responsibility to Protect and the Crisis in Darfur,' *Security Dialogue* 36, no. 1 (2005), p. 30, it is estimated that 70,000 had been killed and 1.2 million had fled their homes by September 2004.

⁴³¹ Amnesty International, 'Sudan: At the Mercy of Killers Destruction of Villages in Darfur,' (2004) p. 2, p. 13

African Union finally became involved in Darfur, brokering the N'Djamena Humanitarian Ceasefire Agreement between the Sudanese government and the rebels.⁴³²

The first time the Security Council passed a resolution on Darfur was on 11 June 2004 (resolution 1547), calling 'upon parties to use their influence to bring an immediate halt to the fighting in the Darfur region'. Resolution 1556, adopted on 30 July 2004, called on the Sudanese government to protect civilians from the Janjaweed, and on the government to disarm, apprehend, and bring to justice those responsible for the humanitarian crisis. The resolution endorsed the African Union Mission in Sudan (AMIS), the precursor to the African Union – United Nations Hybrid Operation in Darfur (UNAMID).

In 2006 Khartoum signed a peace agreement, the Darfur Peace Agreement (or Abuja Agreement) with the SLM, but a faction of the SLM and the JEM refused to sign. A further agreement in May 2011, the Doha Document for Peace in Darfur (also known as the Doha Agreement) built a framework for a comprehensive peace process in Darfur.

International policy on Darfur was once again 'too little, too late' to prevent R2P crimes. The Sudanese government was unable and unwilling to heed its primary responsibility to protect, but international actors failed to take appropriate preventative measures. States' policies had been far too disparate and uncoordinated in relation to Sudan, and too unwilling to acknowledge Darfur as part of a broader conflict between the government and marginalised groups in Sudan.⁴³³ The international preoccupation with the North-South conflict and the prioritisation of the secession of the South strengthened the government's stance on Darfur.⁴³⁴

Equally, international discourse on Darfur prior to 2003 is noteworthy for its absence of any reference to an international responsibility to prevent. Prunier argues that the conflict had been known internationally from around 1999, but thematised only in specialised publications.⁴³⁵ Darfur did not become an international issue until well into 2003, despite the fact that Darfur had been politically unstable for decades.

Atrocity Prevention and the Principle of Government Consent: International Actors Caught Between Confrontation and Cooperation

This section takes a close look at the principle of 'government consent' as one of the core principles of R2P. It analyses the international response to the conflict in Darfur in relation to this principle. To what extent did states seek the consent of the Government of Sudan (GoS) when taking measures to react to the R2P crimes that were being committed? The 2009 report on 'Implementing the Responsibility to Protect' suggests how measures should be taken to ensure maximum respect for state sovereignty whilst also addressing the situation effectively. The 2009 report also refers to a range of preventative measures that can be taken with the consent of the government (the transfer

⁴³² For an account of the immediate reaction to the crisis of the AU and the UN see Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society*, pp. 65-70, and Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror* pp. 39-47

⁴³³ The international responses are outlined in De Waal and Flint, *Darfur: A Short History of a Long War*, pp. 126-134, and Prunier, *Darfur: The Ambiguous Genocide*, pp. 124-158

⁴³⁴ De Waal and Flint, *Darfur: A Short History of a Long War* p. 127

⁴³⁵ Such as *Africa Confidential* and the *Indian Ocean Newsletter*. Prunier, *Darfur: The Ambiguous Genocide* p. 125

of best/good practices; strengthening mediation capacities; building infrastructure for local dispute resolution; strengthening the security sector; and offering rule of law assistance) – but for the obvious reasons discussed above the opportunity for prevention had passed in the case of Darfur. However, measures under ‘reaction’ are not necessarily coercive: for example, the report suggests that when states commit egregious crimes related to R2P, ‘collective international military assistance may be the surest way to support the State in meeting its obligations ... and, in extreme cases, to restore its effective sovereignty.’⁴³⁶

What follows below is an analysis of the extent to which, even as states began considering coercive action and/or the use of force to address the conflict in Darfur, the ideal of working with the consent of the government shaped the way states framed their policies as the conditions for a UN peacekeeping operation in Darfur were being discussed and settled upon.⁴³⁷ It is worth bearing in mind that R2P as a norm does not prohibit coercive measures or measures without the consent of the host government – it simply requires that states convincingly demonstrate that both the urgency of the situation and the attitude of the government concerned are such that coercive measures are compelling. Bearing this in mind, the following sections analyse states’ policies towards the Darfur conflict prior to the establishment of UNAMID.

The EU countries were vocal on the need to address the conflict and did not hesitate to invoke R2P.⁴³⁸ In April 2006 the European Parliament called on the UN ‘to act on its responsibility to protect civilians’.⁴³⁹ In September of the same year, the European Parliament determined that Sudan had ‘failed in its “responsibility to protect”’ and called for a UN peacekeeping mission.⁴⁴⁰ In February 2007 the Parliament stated that the GoS had failed to protect its population and called on the UN to act in line with the responsibility to protect, ‘even in the absence of consent or agreement from the Sudanese government’.⁴⁴¹

The US was divided internally about the policy approach to take towards Sudan. The US government was under pressure from American civil society and organisations to put pressure on Khartoum to end the humanitarian crisis in Darfur.⁴⁴² The atrocities committed in Darfur were widely covered in the media, especially as a result of the ‘Save Darfur’ campaign.⁴⁴³ The Save Darfur Coalition was an interreligious umbrella organisation created by the joint efforts of the Committee on Conscience at the US Holocaust Memorial Museum and the American Jewish World Service. By 2007 it had grown into an alliance of more than 180 organisations. Save Darfur defined itself as an advocacy group aiming to shape government policy through public pressure.

Advocates of an anti-Khartoum line were often in Congress or USAID.⁴⁴⁴ However, to complicate matters for the Bush Administration, anti-Khartoum activists also came from the other end of the political spectrum, from fundamentalist Protestant organisations. The realist camp, on the other

⁴³⁶ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General' para. 40

⁴³⁷ For the UN's and individual states' responses, see especially De Waal and Flint, *Darfur: A Short History of a Long War*, pp. 126-134, and Prunier, *Darfur: The Ambiguous Genocide*, pp. 124-158

⁴³⁸ International Coalition for the Responsibility to Protect, 'The Crisis in Darfur,' <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur>

⁴³⁹ European Parliament, 'European Parliament Resolution on Darfur, P6_TA(2006)0142,' (2006)

⁴⁴⁰ 'European Parliament Resolution on the Situation in Darfur, P6_TA(2006)0387,' (2006)

⁴⁴¹ 'European Parliament Resolution on the Situation in Darfur, P6_TA(2007)0052,' (2007)

⁴⁴² Howard Adelman, 'Refugees, Idps and the Responsibility to Protect (R2P): The Case of Darfur,' *Global Responsibility to Protect 2*(2010)

⁴⁴³ Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror*, pp. 19-47; pp. 271-300

⁴⁴⁴ Prunier, *Darfur: The Ambiguous Genocide* p. 138-140

hand, made up of the State Department and the CIA, supported continued, if reduced, collaboration with the Government of Sudan, given its useful role in the War on Terror. In 2005 the CIA invited Sudan's intelligence chief, Salah Abdallah Gosh, to Washington for counter-terrorism talks.⁴⁴⁵ The result was a mixed policy towards Sudan: support for the North-South peace process without too much pressure on Khartoum, and clear policy statements condemning violence in Darfur and financial support for humanitarian efforts, but no use of force.

The Obama Administration developed a somewhat stronger anti-Khartoum line. As Senators, Barack Obama, Joe Biden, and Hillary Clinton had referred to the atrocities committed in Darfur as genocide and had supported the establishment of a no-fly zone in Darfur.⁴⁴⁶ As presidential candidates Obama and Clinton joined with the Republican candidate John McCain in issuing a statement on Sudan which denounced the violence in Darfur and promised that resolute action would be taken on the issue regardless of who would be elected:

We stand united and demand that the genocide and violence in Darfur be brought to an end ... It would be a huge mistake for the Khartoum regime to think that it will benefit by running out the clock on the Bush administration. If peace and security for the people of Sudan are not in place when one of us is inaugurated as president on 20 January 2009, we pledge that the next administration will pursue these goals with unstinting resolve.⁴⁴⁷

In 2006, Susan Rice, senior foreign policy advisor to Obama as a presidential candidate (and subsequently US ambassador to the UN from 2009) co-authored an op-ed in the Washington Post, arguing that it was time for a 'firm resolve to act'.⁴⁴⁸ Rice had been working within the Africa section of the Clinton National Security Council at a senior level during the genocide in Rwanda. She called for military action to halt the atrocities.⁴⁴⁹ Rice was a staunch supporter of a tougher stance on Darfur, and even suggested a no-fly zone. Scott Gration, the Obama Administration's Special Envoy to Sudan, favoured diplomatic engagement with Khartoum and a mixture of pressure and incentives for the government. It appears that in January 2009 the Obama administration briefly pondered intervention in Darfur to support UNAMID, but retracted this when it became clear that the AU was opposed to any intervention without the consent of Khartoum.⁴⁵⁰ In addition, the Administration did

⁴⁴⁵ David Mickler, 'Book Review: Mahmood Mamdani, "Saviors and Survivors: Darfur, Politics, and the War on Terror"', *Global Responsibility to Protect* 2(2010)

⁴⁴⁶ Richard W. Williamson, 'Sudan and the Implication for Responsibility to Protect,' *Policy Analysis Brief: Innovative Approaches to Peace and Security from the Stanley Foundation, October 2009*, <http://www.stanleyfoundation.org/publications/pab/WilliamsonPAB1009.pdf>

⁴⁴⁷ Ibid. See footnote 25. Williamson writes that '[t]he Save Darfur Coalition paid for an advertisement reprinting the entire statement in *The New York Times* on May 28, 2008. The idea for the joint statement had been mine. As President Bush's special envoy to Sudan I was concerned Khartoum would not negotiate for humanitarian relief and peace in Darfur because soon President Bush would be out of office. All three campaigns readily agreed to the proposition and the final language quickly was brokered and the statement issued.'

⁴⁴⁸ Anthony Lake, Donald M. Payne, and Susan E. Rice, 'We Saved Europeans, Why Not Africans?,' *Washington Post*, 2 October 2006

⁴⁴⁹ Ibid.; Susan E. Rice, "'The Escalating Crisis in Darfur', Statement before the Foreign Affairs Committee, 8 February 2007,' (Washington, D.C.: US Congress, 2007); and "'Dithering on Darfur: US Inaction in the Face of Genocide", Statement before the Foreign Relations Committee, 11 April 2007,' (Washington, D.C.: US Senate, 2007)

⁴⁵⁰ Simon Tisdall, *The Guardian*, 15 January 2009

not want to risk undermining the implementation of the Comprehensive Peace Agreement regarding the North-South conflict.⁴⁵¹ Ultimately, the State Department's announcement of its policy on Sudan in October 2009 endorsed Gration's suggestions at the expense of a tougher stance towards Khartoum.⁴⁵² Richard Williamson, the Bush Administration's Special Envoy to Sudan, argued that the Obama administration's policy towards Sudan had strengthened Khartoum, worsened impunity, and 'mistaken dialogue for process'.⁴⁵³

The other major international actor was China, the main producer, exporter and importer of Sudanese oil. Chinese operations in Sudan are valued at 3-4 billion US dollars.⁴⁵⁴ On Darfur, China usually abstained from voting on Security Council resolutions, but did not usually veto.⁴⁵⁵ China repeatedly demonstrated support for the principle that the deployment of a UN peacekeeping mission requires the preliminary agreement on a political settlement of the conflict, an approach that could be seen as reflecting China's preference for a more traditional approach to peacekeeping. In 2006, China reiterated its position on the importance of the consent of the host government:

We believe that, if the United Nations is to deploy a peacekeeping operation in Darfur, the agreement and cooperation of the Sudanese Government must be obtained. That is a basic principle and precondition for the deployment of all United Nations peacekeeping operations.⁴⁵⁶

Governments attempted to balance their economic and strategic interests in Sudan – as well as ensuring continued humanitarian access to the country – with a need to confront Khartoum in relation to the atrocities committed in Darfur. Although the R2P threshold had clearly been met in the case of Darfur and UNAMID was given a chapter VII mandate, states were still keen to reaffirm Sudan's sovereignty in Security Council resolutions on Sudan. Between 2003 and 2009, the Security Council passed 29 resolutions on Sudan (some of which were on the issue of South Sudan and the Comprehensive Peace Agreement), the vast majority of which (26 resolutions) included a preambulatory paragraph that 'reaffirmed' the Council's 'commitment to sovereignty'.⁴⁵⁷

The resolution establishing UNAMID (discussed in detail in the following section) stated that its mandate would not 'prejudice the responsibility of the Government of Sudan'.⁴⁵⁸ The resolution placed particular emphasis on this last point, reaffirming, in its preamble, the Council's 'strong commitment to the sovereignty, unity, independence and territorial integrity of Sudan, and to the

⁴⁵¹ Cristina G. Badescu and Linnea Bergholm, 'The Responsibility to Protect and the Conflict in Darfur: The Big Let-Down,' *Security Dialogue* 40, no. 3 (2009), pp. 294-296

⁴⁵² Adelman, 'Refugees, Idps and the Responsibility to Protect (R2P): The Case of Darfur'

⁴⁵³ Williamson, 'Sudan and the Implication for Responsibility to Protect'. p. 4

⁴⁵⁴ Nicola P Contessi, 'Multilateralism, Intervention and Norm Contestation: China's Stance on Darfur in the UN Security Council,' *Security Dialogue* 41, no. 3 (2010), p. 336

⁴⁵⁵ Between 2004 and 2007, China cast 12 affirmative votes; 3 affirmative votes with reservations; and abstained on 6 occasions. For a detailed account of China's voting behaviour and views in the Security Council, see *ibid.*

⁴⁵⁶ United Nations Security Council, 'S/Pv.5439, 16 May 2006,'

⁴⁵⁷ United Nations, 'Security Council Resolutions,' <http://www.un.org/documents/scres.htm>

⁴⁵⁸ United Nations Security Council, 'Resolution 1769, Adopted by the Security Council at Its 5727th Meeting, on 31 July 2007,' in *S/RES/1769 (2007)*, point 15(a)(ii).

cause of peace, and *expressing its determination* to work with the Government of Sudan, in full respect of its sovereignty, to assist in tackling the various problems in Darfur'.⁴⁵⁹

The Sudanese government demanded that the international presence in Darfur be decidedly African, and that the mission's command and control structure should be the exclusive responsibility of the African Union, although reinforcement through UN systems and structures was possible.⁴⁶⁰ The resolution ultimately voted for on 31 July 2007 (resolution 1769) authorised a mission that attempted a compromise between both the advantages of unity of force and the demands of the Sudanese government, stipulating that there would be unity of command and control with a single chain of command, in a hybrid operation.⁴⁶¹

This was a cumbersome setup for a mission that was set up to protect civilians in the midst of an ongoing conflict to which the government was a party. Unsurprisingly, UNAMID faced an array of day-to-day obstacles for seemingly trivial matters such as permissions for the use of rented vehicles or the issuance of visas for humanitarian workers.⁴⁶² Although the SOFA (Status of Armed Forces Agreement between the AU, the UN, and the Government of Sudan) stated that UNAMID was permitted to move freely within Darfur, peacekeepers were denied access to some areas.⁴⁶³ In May 2010 alone, UNAMID movement was restricted on 10 occasions, eight times by Khartoum.⁴⁶⁴

These problems made UNAMID appear farcical when measured against mission objectives. But UNAMID was only symptomatic of the relevant actors' – most importantly the US, the EU, and the UN – indecisiveness and wavering between cooperation and confrontation. International responses to the crisis in Darfur, and states' emphasis on – and traditional interpretation of – state sovereignty reflected R2P's uncertain status and incomplete consolidation from 2007 and beyond. International actors continued to attempt to cooperate with the Government of Sudan, rather than confront it, despite the practical difficulties and the fact that members of the government were implicated in the perpetration of R2P crimes. The R2P paragraphs stated clearly that states were prepared to take collective action if a state was 'manifestly failing' to meet its protection responsibilities. The fact that the Government of Sudan was obviously manifestly failing, unable, and unwilling to protect all of its population, and states still sought cooperation with Khartoum through the UN suggests that R2P had not yet been successful at reshuffling the normative priorities of international society by the late 2000s and early 2010s.

A Multilateral Endeavour: UNAMID, the World's First Hybrid Peacekeeping Mission

The previous sections discussed the core R2P principles of 'prevention' and 'consent', finding that international actors had hardly thematised prevention prior to 2003 in relation to Darfur, but that international actors had taken disproportionately great pains – in relation to the magnitude of the atrocities committed and the suspected culpability of the Sudanese government – to demonstrate

⁴⁵⁹ Ibid. Emphasis in the original.

⁴⁶⁰ 'Monthly Report of the Secretary-General on Darfur, 28 December 2006,' p. 11

⁴⁶¹ 'Resolution 1769, Adopted by the Security Council at Its 5727th Meeting, on 31 July 2007'

⁴⁶² 'Report of the Security Council Mission to Djibouti (on Somalia), the Sudan, Chad, the Democratic Republic of the Congo and Côte D'ivoire, 31 May to 10 June 2008,' (2008), p. 12

⁴⁶³ Interview with an NGO staffer, Khartoum, 11 July 2010.

⁴⁶⁴ United Nations Security Council, 'Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, S/2010/382,' (2010), p. 6

cooperation with the government and avoid coercive measures targeting the government and its official military forces. A mixed record for R2P's consolidation as a norm so far.

This section looks at the core principles of multilateralism. At first glance international responses were blatantly in line with these two core principles. The peacekeeping operation in Darfur, UNAMID, was both multilateral and – and this was a novelty in the history of international peacekeeping – conducted in partnership with a regional organisation, the African Union. As with the previous sections, international responses will be assessed using the 2009 report of the Secretary-General on 'Implementing the Responsibility to Protect' as a reference point.

In relation to multilateralism, the report suggests a number of ways in which states can work multilaterally under pillar three (pp. 22-28): non-coercive responses under Chapters VI and VIII of the UN Charter (para. 51); fact-finding missions by the Security Council, the General Assembly, or the Human Rights Council (para. 52); referral to the ICC (para. 54); military measures (para. 56); targeted sanctions (on travel, financial transfers, luxury goods, and arms, para. 57); as well as self-restraint on the part of the Permanent Five on the use of the veto in R2P situations (para. 61).

UNAMID was preceded by AMIS, (African Mission in Sudan). Established in 2004 with funding from the European Commission (305 million Euros),⁴⁶⁵ and the US government (USD 280 million),⁴⁶⁶ its mandate was limited to monitoring the ceasefire and facilitating the distribution of humanitarian aid, but was subsequently expanded to include the protection of civilians.

To begin with, AMIS was comprised of 60 observers. The mission expanded to a total of 3,605 observers, soldiers, and police officers by the end of 2004, which is still very little compared to the size of the territory.⁴⁶⁷ AMIS' mandate restricted the use of force to the protection of the observers. Although Western powers had pledged to provide financial support to AMIS in early 2005, funds were withheld as the situation continued to deteriorate. The US Congress removed allocated funds from its 2006 Foreign Operations Appropriations Bill in November 2006, and the EU suspended its provision of funds citing accountability concerns. Unable to function, AMIS quickly became a target for belligerents as well as for the civilians they were supposed to protect.

UNAMID, the hybrid African Union – United Nations Operation in Darfur, replaced AMIS. It was established as a hybrid operation between the AU and the UN. The mission was given a joint special representative, appointed by both institutions – the Secretary-General of the UN, and the Chairperson of the African Union. It was decided that the coordination between the AU and the UN was to take place at the leadership level.⁴⁶⁸ UNAMID was projected to have a force of up to 19,555 military personnel, including 360 military observers and liaison officers, as well as a civilian component including police personnel and units.⁴⁶⁹ Although the resolution did not directly refer to

⁴⁶⁵ European Commission, 'Development and Cooperation: Europeaid,' http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/peace-support-operations/amis_en.htm

⁴⁶⁶ US Government Accountability Office, 'Darfur Crisis: Progress in Aid and Peace Monitoring Threatened by Ongoing Violence and Operational Challenges,' <http://www.gao.gov/products/GAO-07-9>

⁴⁶⁷ Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society*, pp. 65-70 and Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror* pp. 39-47

⁴⁶⁸ Michel Liégeois, 'Darfur: Mission Impossible for UNAMID?,' in *Les Rapports du GRIP*, ed. Groupe de Recherche et d'Information sur la Paix et la Sécurité (GRIP)(Brussels2009)

⁴⁶⁹ United Nations Security Council, 'Resolution 1769, Adopted by the Security Council at Its 5727th Meeting, on 31 July 2007' The resolution authorised a civilian component of up to 3,772 police personnel and 19 formed police units comprising up to 140 personnel each. The mission was crafted as having a single chain of command, with the command structure provided by the UN (see point 5(c).7). UNAMID was to take over from

a 'responsibility to protect', its stated aim was to support the peace process and protect civilians.⁴⁷⁰ Acting under chapter VII of the UN Charter, the Security Council mandated UNAMID to 'contribute to the restoration of necessary security conditions for the safe provision of humanitarian assistance', to 'contribute to the protection of civilian populations under imminent threat of physical violence', and to 'monitor ... the implementation of various ceasefire agreements signed since 2004, as well as assist with the implementation of the Darfur Peace Agreement'.⁴⁷¹

As outlined earlier, the decision to co-operate with the Government of Sudan on UNAMID meant that Khartoum's demands regarding the peacekeeping operation were given considerable weight. The Sudanese government insisted that UNAMID should be overwhelmingly African in character. In practice, the requirement by the Sudanese government to maintain a predominantly African character meant that the deployment of the mission was slowed down, as few African countries had contingents that met the necessary criteria, such as appropriate training and equipment.⁴⁷² It had not been defined from the outset what exactly constituted 'African character', and the Sudanese government made use of this imprecision by initially refusing contributions from some countries (Norway and Sweden), and granting late approval to others (Nepal and Thailand). By 2009, 82% of the contributing troops were African, and there were no contributions from Europe and North America. The remainder of the troops were contributed mainly from Muslim countries in Asia, for instance Bangladesh and Pakistan, or from countries with close ties to the Sudanese government, like China.⁴⁷³ The composition of UNAMID was thus exceptional for UN missions in Africa, where around 40% of troops come from Africa, but where Central and South Asian countries, mainly Bangladesh, India, and Pakistan, usually contribute a larger proportion of the troops.⁴⁷⁴ Apparently, the Sudanese government took this approach with the intention of slowing the process of deployment:

the already existing African Union Mission in Sudan, AMIS (which had been endorsed by the Security Council, see 'Resolution 1547 (2004), Adopted by the Security Council at Its 4988th Meeting, on 11 June 2004,' in *S/RES/1547 (2004)* point 6).

⁴⁷⁰ Resolution 1674 on the protection of civilians in armed conflict did, however, reaffirm R2P as endorsed in paragraphs 138 and 139 of the 2005 World Summit Outcome Document, and also recognised the contribution to the protection of civilians in armed conflict by the AU, which at the time of adoption of the resolution in April 2006 was mandated to protect civilians in Darfur. See Badescu and Bergholm, 'The Responsibility to Protect and the Conflict in Darfur: The Big Let-Down', p. 297.

⁴⁷¹ Security Council Resolution 1769 (point 1) decided UNAMID's mandate was to be as proposed in United Nations Security Council, 'Letter Dated 5 June 2007 from the Secretary-General to the President of the Security Council,' in *S/2007/307/Rev.1*, paragraphs 54 and 55. Paragraph 54 sets out further aims in addition to the three I have identified as its primary aims.

⁴⁷² Liégeois, 'Darfur: Mission Impossible for UNAMID?' p. 17. For the figures on troop contribution and a discussion of their significance, see pp. 15-18. A list of country contributors for both military and police personnel can also be found at United Nations, 'UNAMID Facts and Figures,' <http://www.un.org/en/peacekeeping/missions/unamid/facts.shtml> As of 30 August 2010, UNAMID had 22,007 uniformed personnel in total, including 16,954 troops. Troops-contributing countries were Bangladesh, Bolivia, Burkina Faso, Burundi, Cameroon, Canada, China, Egypt, Ethiopia, Gambia, Germany, Ghana, Indonesia, Italy, Jordan, Kenya, Malawi, Malaysia, Mali, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Republic of Korea, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Thailand, Togo, Uganda, Yemen, Zambia, and Zimbabwe.

⁴⁷³ In the meantime there are contributions from Europe and North America, from Canada, Germany, Italy, and the Netherlands. 'UNAMID Facts and Figures'

⁴⁷⁴ Liégeois, 'Darfur: Mission Impossible for UNAMID?'

The Sudanese government was well aware of what it was doing when it requested that UNAMID should be made up of predominantly African troops. The main shortcoming of the African contingents is their low logistical capabilities so most of them could not be rapidly deployed to Darfur, a region where logistical constraints are more demanding than elsewhere. In this way, Khartoum stopped UNAMID's power from increasing too rapidly. Moreover, by ruling out any Western contributions, it made it very difficult to obtain the most robust components, particularly attack helicopters.⁴⁷⁵

In a report on UNAMID structure and record so far, UNAMID's structure is described as 'the result of a compromise between the imperatives of efficiency on the one hand and local legitimacy on the other.'⁴⁷⁶ To ensure efficiency and unity of command, operational responsibility was given to the UN. Yet, the Joint Special Representative heading the mission was to be jointly appointed by both the UN and the AU, and to answer to both the Chair of the African Union Commission as well as the UN Secretary General. This parallel accountability was particular to this hybrid operation and a novelty in international peacekeeping. Regarding operational aspects, however, the mission was only accountable to the UN Secretary-General via the Department of Peacekeeping Operations (DPKO) and it received operational instructions from UN headquarters in New York. The concept of dual accountability therefore applied only to the mission's strategic aspects (i.e. general objectives as set out in the mandate). The inter-institutional partnership was asymmetrical and the financial, technical, and human resources were shared disproportionately between DPKO, the UN and the AU Commission's Peace and Security Department (PSD).

The mission was blighted by the usual problems endemic in peacekeeping operations. First, the mission had insufficient funds. 4.5 billion US dollars were pledged as reconstruction and recovery funds during the Oslo donor conference in May 2005,⁴⁷⁷ but by 2010 the mission was still struggling with a lack of material resources. The environment for a military engagement was challenging. UNAMID's equipment was often not fit for Darfur's terrain, and armoured personnel carrier (APC) vehicles on road missions, for example, often got stuck in the sand.⁴⁷⁸ Added to this, NGOs lamented that UNAMID did not interpret the mandate as a chapter VII mandate.⁴⁷⁹ Often, team sites were based far away from the communities that they were supposed to protect, and UNAMID avoided areas with a high risk of violence, although it was precisely in these areas that civilians were at increased risk. Camps set up for IDPs provided incomplete protection of civilians, who were at risk when leaving the immediate confines of the camp to collect wood or water.⁴⁸⁰ Instead of prioritising the provision of area security, UNAMID offered armed escorts to humanitarians.⁴⁸¹ A representative for the IDPs at one camp stated that even after six months of deployment the same violence and human rights violations continued to occur.⁴⁸²

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid. pp. 12-14

⁴⁷⁷ Royal Norwegian Embassy in Khartoum, 'Donor Conference for Sudan in April 11 - 12 2005,' http://www.norway-sudan.org/News_and_events/CPA/giverlandskonferansen/

⁴⁷⁸ The practical difficulties and obstacles facing UNAMID were outlined by an NGO staffer, Khartoum, 11 July 2010

⁴⁷⁹ Interview with a USAID staffer, Khartoum, 28 July 2010

⁴⁸⁰ Interview with a senior UNAMID official, Khartoum, 16 July 2010

⁴⁸¹ Interview with an NGO staffer, Khartoum, 11 July 2010

⁴⁸² United Nations Security Council, 'Report of the Security Council Mission to Djibouti (on Somalia), the Sudan, Chad, the Democratic Republic of the Congo and Côte D'ivoire, 31 May to 10 June 2008' p. 12.

Khartoum had insisted on the AU's involvement in the peacekeeping operations, but remained suspicious of UNAMID's activities in Darfur,⁴⁸³ and, despite the fact that UNAMID's operations in Darfur had been consented to by the government, the relationship was still tense. In July 2010, for example, 'Sudan Vision' (a Sudanese newspaper sympathetic to the government), reported that rebels had attacked IDPs at a camp, that UNAMID had not been able to provide protection to the IDPs in the camp, and did not hand over the perpetrators to the Sudanese authorities:

... UNAMID, which had the duty to provide security for IDPs inside the camp was totally incapable of providing protection for the people there thus provoking the disgust of the displaced persons against the said mission. ... IDPs believe that UNAMID supported the criminals who carried out these acts of sabotage and provided them with protection and did not hand them over to the Sudanese police so as to take action in accordance with the reports recorded against them.⁴⁸⁴

The mission recorded some initial success at implementing its protection mandate. It appeared that, immediately following the establishment of the mission, the attacks by the Janjaweed stopped, there were fewer instances of direct clashes between rebels and the army, and IDP camps had become more secure,⁴⁸⁵ although a large part of Darfur's population – approximately 25% – remained displaced in 2010.⁴⁸⁶ Eltyeb Hag Ateya, Director of the Peace Research Institute at the University in Khartoum stated in 2010:

I have not heard of any tribal conflict ... where UNAMID came, intervened, and stopped the fighting. Not a single one. And nobody goes to them to come and help. Nobody thinks that they will come and help or anything.⁴⁸⁷

In conclusion, UNAMID's accomplishments fell far short of the mission's objectives – despite the fact that UNAMID was equipped with a chapter VII mandate. Darfur remains politically unstable and systematic human rights abuses continue to this day.⁴⁸⁸

UNAMID's success in implementing its protection mandate was limited. However, the format of the international responses to the crisis in Darfur does suggest that multilateralism as a core R2P principle has informed the discourse on Darfur. International responses were multilateral by default – at no point was unilateral action or action in circumvention of the Security Council envisaged – and

⁴⁸³ Interview with Nasredeen Abdulbari, Lecturer in the Department of International and Comparative Law at the University of Khartoum, Khartoum, 31 July 2010. Abdulbari, who has been to Darfur, says sometimes even UNAMID troops speak of an 'international conspiracy against Sudan'.

⁴⁸⁴ The statement alleged that the group responsible for the attacks was the Abdul Wahid faction of the Sudan Liberation Movement. Najat Ahmed, 'Elements Loyal to Abdul Wahid Movement Burns Homes of Idps in Kalma Camp,' *Sudan Vision*, 31 July 2010, p. 3.)

⁴⁸⁵ Liégeois, 'Darfur: Mission Impossible for UNAMID?' p. 20

⁴⁸⁶ United Nations Security Council, 'Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, S/2010/382' p. 8.

⁴⁸⁷ Interview with Eltyeb Hag Ateya, Director of the Peace Research Institute at the University of Khartoum, Khartoum, 17 July 2010.

⁴⁸⁸ International Coalition for the Responsibility to Protect, 'Crisis Alert: Commentators Warn of Renewed Danger of Atrocities in Darfur,' <http://www.responsibilitytoprotect.org/index.php/crises/37-the-crisis-in-darfur/5677-crisis-alert-commentators-warn-of-renewed-danger-of-atrocities-in-darfur->

strongly oriented towards cooperation with the African Union. This is not to say that a desire to adhere to these two core principles necessarily motivated actors to take this particular response to Darfur; multilateralism in Darfur may have been facilitated by the Security Council's desire to be seen as responsive in a situation where no one individual actor was willing to shoulder the burden. The fact that the Security Council established UNAMID – regardless of its success in meeting its mission objectives – does, however, suggest that a multilateral approach was seen as appropriate.

Regional Initiatives: The Mbeki Panel and the Doha Peace Process

In relation to regionalism, the 2009 report of the Secretary-General on 'Implementing the Responsibility to Protect' refers to several measures within the remit of pillar three: ensuring representatives of states in which R2P crimes have been committed are not eligible for election to leadership posts within regional organisations (para. 57); sanctions and arms embargos authorised and implemented by regional organisations (para. 58); the provision of early warning (para. 65); and cooperation between regional and global actors to operationalise R2P (para. 65).

When compared against the above, the regional initiatives on Darfur were relatively toothless. Both the Mbeki Panel (the High-Level Panel on Darfur, established in March 2009, and replaced in October 2009 by the African Union High-Level Implementation Panel for Sudan, or AUHIP) and the Doha Peace Process were geared towards achieving a peace agreement and, ultimately, a political solution to the crisis and conflict resolution. As such, their aims are not wholly congruent with the narrower set of aims of R2P: of halting ongoing mass atrocities; and of directly or structurally preventing further atrocities from happening. The goals of both mediation and peace processes were more long-term, and less focused on immediate atrocity prevention. Implicitly, therefore, both prioritised a more comprehensive peacebuilding approach, at the expense of resolve on mass atrocity prevention in Darfur.

The African Union channels its policy on Sudan, including on Darfur, through the Mbeki Panel.⁴⁸⁹ The Mbeki Panel was set up following the Report of the International Commission of Inquiry of Darfur's recommendation that Sudan 'fully cooperate with the relevant human rights bodies and mechanisms of the United Nations and the African Union...'⁴⁹⁰ The panel was headed by Thabo Mbeki, the former South African President.⁴⁹¹ Other panel members were Abdulsalami Abubaker of Nigeria and Pierre Buyoya of Burundi. The panel worked for approximately six months and then drafted a comprehensive report on Darfur. Its central recommendation was the establishment of a hybrid court for the prosecution of crimes committed in Darfur. The proposed court would consist of both Sudanese as well as AU judges. However, the Sudanese government, predictably, did not implement the recommendation for a hybrid court to prosecute human rights violations committed in Darfur.⁴⁹²

⁴⁸⁹ Interview with Ibrahima Kane, African Union Advocacy Director at the Open Society Foundations, via telephone, 7 November 2014

⁴⁹⁰ International Commission of Inquiry on Darfur, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General,' (Geneva 2005) p. 164

⁴⁹¹ Human Rights Watch, 'AU: Back Mbeki Panel Call for Darfur Prosecutions,' <http://www.hrw.org/news/2009/10/28/au-back-mbeki-panel-call-darfur-prosecutions>

⁴⁹² 'The Mbeki Panel Report One Year On,' <http://www.hrw.org/news/2010/10/27/mbeki-panel-report-one-year>

In September 2008 the League of Arab States proposed that Qatar should host fresh peace talks on Darfur.⁴⁹³ The Doha Peace Process, as it came to be known, has since overseen talks between the GoS and rebel factions, with a view to reaching a ceasefire agreement as well as resolving issues related to wealth sharing, restitution for Darfurian victims, and political recognition of opposition groups. The Doha Peace Process culminated in the signing of the Doha Document for Peace in Darfur (DDPD).⁴⁹⁴ However, this too remained largely unimplemented, primarily because JEM, the largest rebel group, had withdrawn from the talks prior to the signing of the DDPD. Ibrahima Kane, African Union Advocacy Director at the Open Society Foundation suggests that the Doha talks have led to fragmentation, which may have jeopardised the African Union's conflict resolution efforts through the Mbeki Panel.⁴⁹⁵ Whilst the rebel groups believe they have more to gain from participating in the Doha Peace Process, the GoS is more invested in the Mbeki Panel.

The impact of both of these initiatives has been limited. In 2012, a report of African Union's Peace and Security Council admitted that '[d]espite the commitment of the DDPD [Doha Document for Peace in Darfur] parties, the implementation of provisions that could create immediate tangible improvements on the ground are still seriously lagging behind.'⁴⁹⁶ However, the efforts at the regional level demonstrate the extent to which regional conflict resolution and atrocity prevention efforts have become habitual and institutionalised in international society. Although both the Doha talks as well as the Mbeki Panel did not operate in a way that was geared to prioritising atrocity prevention over other, longer term goals of peacebuilding, these efforts do, nonetheless, show the extent to which regional organisation are increasingly understood as constituting an appropriate locus for conflict resolution and/or responding to the four R2P crimes.

Darfur and the Politics of International Criminal Justice

Any account of the Darfur conflict is incomplete without mention of the ICC proceedings against members of the Sudanese government in relation to the atrocities committed in Darfur, especially because of the overlapping, mutually co-constitutive normative assumptions inherent in both R2P as an emerging norm and the Rome Statute as constitutive of the ICC. Chapter two suggested Florini's norms-genes analogy as a framework for understanding norms as related to wider sets of norms. R2P and the ICC can be seen as related – sharing liberal assumptions, and focused on the individual rather than the state – although there are important differences (the ICC works within the legal paradigm, whereas R2P builds on existing international law). This section now looks at the intersections, overlaps, and contradictions of both of these agendas and approaches. The assumption here is that growing international commitment to the ICC, and an increasing impact of its proceedings, would signal that the wider set of principles within which R2P is normatively embedded are gaining ground internationally. This would suggest better prospects for R2P's consolidation as a norm.

⁴⁹³ Human Security Baseline Assessment for Sudan and South Sudan, 'Darfur Peace Process Chronology,' <http://www.smallarmssurveysudan.org/facts-figures/sudan/darfur/darfur-peace-process-chronology.html>

⁴⁹⁴ The agreement was reached at the All Darfur Stakeholders Conference in May 2011

⁴⁹⁵ Interview with Ibrahima Kane, African Union Advocacy Director at the Open Society Foundations, via telephone, 7 November 2014

⁴⁹⁶ African Union Peace and Security Council, 'Report of the Chairperson of the Commission on the African Union - United Nations Hybrid Operation in Darfur,' (2012) p. 11.

The 2009 report on 'Implementing the Responsibility to Protect' lists ICC referral as one of a range of options under pillar three.⁴⁹⁷ However, in practice this often stands in stark contrast to the principle of government consent, giving rise to the argument that international actors need to choose between them, rather than promoting both simultaneously.⁴⁹⁸ One of the harshest critics of ICC action on Darfur has been Mahmood Mamdani, who has argued that international response options on Darfur amounted to a dilemma of a 'responsibility to protect' versus a 'right to punish'.⁴⁹⁹ In particular, Mamdani is concerned about the inconsistent, selective, and seemingly sporadic ICC prosecutions. He argues that the shift in the meaning of sovereignty applies only to states which are defined as 'failed' or 'rogue', resulting in a bifurcated system in which traditional sovereignty is granted to many states but suspended in ever more states in Africa and the Middle East, denying protectees their legitimate rights and the ability to become active agents of their own emancipation. He regards this conception of humanitarianism as a form of charity, which instead of reinforcing agency, reinforces dependency.

R2P proponents defend the role of the ICC in promoting R2P objectives, generally taking the line that peace is conditional on justice, and vice versa – or, at the very least, that ICC referrals and prosecutions are an important element of the 'R2P toolkit'.⁵⁰⁰ In any case, international criminal justice became a cornerstone element of R2P, both as a form of prevention as well as a form of responding to ongoing conflicts in which the commission of R2P crimes was suspected. 'If we have learned anything from the various "peace processes" of the last twenty years it is that without justice there can be no lasting peace' contends Simon Adams, Executive Director of the Global Centre for the Responsibility to Protect.⁵⁰¹

Whether the crimes committed in Darfur post-2003 constituted genocide was a contentious issue. Alex de Waal has argued that Darfur was – and still is – first and foremost a war.⁵⁰² Others argued that the violence in Darfur amounted to genocide.⁵⁰³ The question became politicised: In March 2004, Mukesh Kapila, the UN's representative in Khartoum, who had worked in Rwanda at the time of the genocide, stated that 'the only difference between Rwanda and Darfur is now the numbers involved'.⁵⁰⁴ Shortly after making the statement, Kapila's contract with the UN was not renewed:

⁴⁹⁷ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General' para. 54

⁴⁹⁸ See, for example, Afyare A. Elmi, 'Evaluating the Implementation of the Responsibility to Protect in East Africa,' in *The Routledge Handbook of the Responsibility to Protect*, ed. Andy W. Knight and Frazer Egerton (Routledge, 2012) pp. 236-238

⁴⁹⁹ See 'Conclusion: Responsibility to Protect Versus a Right to Punish', in Mamdani, *Saviours and Survivors: Darfur, Politics, and the War on Terror*, pp. 271-300

⁵⁰⁰ International Coalition for the Responsibility to Protect, 'ICRtoP Launches New Toolkit on the Responsibility to Protect,' International Coalition for the Responsibility to Protect, <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4718-icrtop-launches-new-toolkit-on-the-responsibility-to-protect>

⁵⁰¹ Simon Adams, 'Peace Versus Justice in Syria's Civil War,' Huffington Post, republished by Global Centre for the Responsibility to Protect, <http://www.globalr2p.org/publications/164>

⁵⁰² Alex De Waal, 'Why Darfur Intervention Is a Mistake,' <http://news.bbc.co.uk/1/hi/world/africa/7411087.stm>

⁵⁰³ The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as direct or structural violence intended to destroy, in whole or part, a national, ethnic, racial, or religious group. United Nations General Assembly Resolution 260, 'Convention on the Prevention and Punishment of the Crime of Genocide,' (1948) (Article 2).

⁵⁰⁴ Quoted in Prunier, *Darfur: The Ambiguous Genocide*, p. 127

'many at the UN were happy to see him go' write De Waal and Flint: 'They thought him too confrontational.'⁵⁰⁵

The US State Department launched an investigation into whether genocide had occurred in May 2004, and sent an investigation team to Chad. The team concluded that genocide had occurred. The State Department responded to this finding by affirming on 9 September 2004 that genocide had been committed, and referred the issue to the UN Security Council several days later. The Security Council (resolution 1564) responded by setting up the International Commission of Inquiry on Darfur (ICID).⁵⁰⁶

The Commission was tasked with investigating reports of violations of international humanitarian law and human rights law in Darfur, and to determine whether acts of genocide had occurred.⁵⁰⁷ The commission established that although 'the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law',⁵⁰⁸ which 'may amount to crimes against humanity ... the Government of the Sudan has not pursued a policy of genocide'.⁵⁰⁹ The commission stated that although the violence committed by government and militias in Darfur was similar to genocide in certain aspects (actions designed to bring about physical destruction; the targeting of a particular group) – the crucial element defining genocide, genocidal intent, appeared to be missing.⁵¹⁰

Generally speaking the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part a group distinguished on racial, ethnic, national or religious grounds. Rather, it would seem that those who planned and organised attacks on villages pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare.⁵¹¹

The commission did not have much time to draft its report – from beginning its work to the set deadline in January, it had just three months within which to collate the information and draft its report.⁵¹² The commission visited Sudan just twice, and spent no more than roughly three weeks there in total, with a little less than a week in Darfur itself.⁵¹³ The commission also encountered

⁵⁰⁵ De Waal and Flint, *Darfur: A Short History of a Long War* p. 126

⁵⁰⁶ On the State Department's investigation see Alex De Waal, 'Darfur and the Failure of the Responsibility to Protect,' *International Affairs* 83, no. 6 (2007), pp. 1041-1042

⁵⁰⁷ United Nations Security Council, 'Resolution 1564, Adopted by the Security Council at Its 5040th Meeting, on 18 September 2004 (S/RES/1564),' (2004); International Commission of Inquiry on Darfur, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General', p. 2.

⁵⁰⁸ 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General' p. 3

⁵⁰⁹ *Ibid.* pp. 3-4

⁵¹⁰ *Ibid.* p. 4. This referred to the government of Sudan – the commission wrote that 'the crucial element of genocidal intent appears to be missing, at least as far as the central Government authorities are concerned.'

⁵¹¹ *Ibid.* p. 132. Much of the commission's argument depended on definitions and assessments of terms, such as whether the crimes were 'systematic'; 'large-scale'; whether target groups could be defined as one of the groups protected by international law (racial, national, ethnical, or religious) or indeed whether these are always appropriate categories for asserting group identity; whether there was genocidal intent; and what the possibility of single individuals, including government officials, having had a genocidal intent means for assessing whether genocide had taken place. For a detailed discussion of these terms and criteria, see pp. 124-132 of the report.

⁵¹² *Ibid.* p. 9

⁵¹³ *Ibid.* pp. 13-14

other difficulties – government records were withheld, and there were indications that pressure had been put on witnesses.⁵¹⁴ Under these conditions, it is questionable whether the commission was able to make the thorough investigations that would have been necessary to reach a conclusion on the extent of the human rights violations committed in Darfur. While scholars such as Prunier argue that the violence committed in Darfur amounted to genocide,⁵¹⁵ Flint and De Waal argue that there were crimes against humanity but not genocide.⁵¹⁶

In the ICC's application for a warrant for President Bashir on 14 July 2008,⁵¹⁷ Bashir was charged with, amongst other crimes, conspiracy to commit genocide and other war crimes. In March 2009, the ICC issued an arrest warrant for President Omar Al-Bashir for war crimes and crimes against humanity.⁵¹⁸ Within days of issuing of the warrant, Bashir announced the expulsion from Darfur of 13 international humanitarian NGOs providing a large proportion of the aid supporting more than a million IDPs.⁵¹⁹ The ICC issued a second arrest warrant for President Bashir on 12 July 2010, which included the charge of genocide:⁵²⁰

[T]here are reasonable grounds to believe: (i) that a core component of the GoS counter-insurgency campaign was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A, the JEM and the other armed groups opposing the GoS in the ongoing armed conflict in Darfur; and (ii) that villages and towns targeted as part of the GoS's counter-insurgency campaign were selected on the basis of their ethnic composition and that towns and villages inhabited by other tribes, as well as rebel locations, were bypassed in order to attack towns and villages known to be inhabited by civilians belonging to the Fur, Masalit and Zaghawa ethnic groups ... [and] that there are reasonable grounds to believe that the attacks and acts of violence committed by GoS against a part of the Fur, Masalit and Zaghawa groups took place in the context of a manifest pattern of similar conduct directed against the targeted groups as they were large in scale, systematic and followed a similar pattern.⁵²¹

In particular, the document states that government forces are believed to have subjected civilians belonging to these groups to acts of murder and extermination, as well as to acts of rape, torture, and forcible transfer.⁵²² In an article in the Guardian, Luis Moreno-Ocampo advocated the second arrest warrant and called for the arrest of Bashir:

Bashir is attacking Sudanese citizens, the same people he has the duty to protect. Now the international community has a new opportunity to provide protection. There are countries that

⁵¹⁴ Ibid. pp. 14-17

⁵¹⁵ See, for example, Gerard Prunier, *Darfur: A 21st Century Genocide*, 3rd ed. (Cornell University Press, 2008)

⁵¹⁶ De Waal and Flint, *Darfur: A New History of a Long War*, esp. p. 242

⁵¹⁷ Office of the Prosecutor, 'Situation in Darfur, the Sudan, Public Document No. ICC-02/05, 14 July 2008,' ed. International Criminal Court, pp. 26-27

⁵¹⁸ International Criminal Court, 'ICC Issues a Warrant of Arrest for Omar Al-Bashir, President of Sudan, 4 March 2009,'

⁵¹⁹ Williamson, 'Sudan and the Implication for Responsibility to Protect'.

⁵²⁰ International Criminal Court, 'Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir,' in *ICC-02/05-01/09* (The Hague, The Netherlands 2010)

⁵²¹ Ibid., 10th preambulatory paragraph, p. 5 and 11th preambulatory paragraph, pp. 5-6

⁵²² Ibid. 12th and 13th preambulatory paragraphs, p. 6

are not members of the treaty that created the ICC, but which are members of the genocide convention. The convention could apply in this situation, triggering the responsibility of these states to prevent and to suppress the acts of genocide. Humanity has a responsibility to protect the Darfuris ... Arresting a head of state requires a consensus among the political elite. It is a matter of will.⁵²³

The African Union criticised the decision of the ICC, on the grounds that the UN International Commission of Inquiry had not found that genocide had occurred, and that the decision could endanger the implementation of the Comprehensive Peace Agreement between the North and the South as well as efforts to end the conflict in Darfur. In a communiqué issued shortly after the second arrest warrant was issued, the African Union stated:

...the AU is of the conviction that this new and untimely decision by the ICC and its action in general on Sudan are counterproductive, and will complicate the ongoing efforts and increase the risk of instability, with far-reaching consequences for Sudan, the region and Africa as a whole ...⁵²⁴

Although the ICC proceedings have mounted further pressure on the government and added to Khartoum's international political isolation, domestically and regionally the indictment has also had the adverse effect of strengthening support for Bashir. Playing on anti-colonial sentiments, Bashir has cast himself as 'martyr' against Western neo-imperialism. Bashir stated that it was important for African states to cooperate in order to 'confront the colonial domination of the great powers' and that 'the great powers which colonized the African continent in the past are now playing the same game in creating hostility between the people of the same African country.'⁵²⁵ Bashir has received support from a number of states including Qatar, Eritrea, and Egypt, where he has been received on official visits despite the arrest warrant (these states are Rome Statute non-signatories), and more generally from the Arab League and the African Union, which have questioned the validity of the ICC charges.⁵²⁶

As a response, and mirroring the rationale for creating a hybrid peacekeeping mission, the AU considered the idea of hybrid courts for Darfur.⁵²⁷ The AU Implementation Panel suggested a hybrid court to help maintain Sudanese confidence in achieving justice: 'The African Union is convinced that

⁵²³ Luis Moreno-Ocampo, 'Now End This Darfur Denial,' *guardian.co.uk* 15 July 2010 Moreno-Ocampo's advocacy efforts in his role as ICC prosecutor subsequently became an object of discussion (see for instance Pieter Tesch, 'Prosecutor's African Roadshow Keeps on Muddling Through,' SSRC Blogs, <http://blogs.ssrc.org/sudan/2010/07/17/prosecutors-african-roadshow-keeps-on-muddling-through/>)

⁵²⁴ African Union, 'Communiqué: The Chairperson of the Commission Expresses Deep Concern About the New Decision of the ICC Pre-Trial Chamber I on Sudan and Its Impact on the Ongoing Peace Processes in Sudan, 16 July 2010,' (Addis Ababa)

⁵²⁵ Zuleikha Abdul Raziq, 'Al Bashir Affirms Importance of African States' Cooperation to Confront Colonial Domination,' *Sudan Vision*, 14 July 2010 2010, p. 1

⁵²⁶ Liégeois, 'Darfur: Mission Impossible for UNAMID?' p. 5

⁵²⁷ Andrea Bottorff, 'African Union Calls for Hybrid Court to Try Darfur Genocide Cases,' *Jurist Legal News & Research*, <http://jurist.law.pitt.edu/paperchase/2010/02/african-union-calls-for-hybrid-court-to.php>

the achievement of lasting peace, justice and reconciliation in Sudan requires Sudanese ownership and Africa's leadership, with the full support of the international community'.⁵²⁸

ICC proceedings are variously seen as an obstruction to R2P or as an elementary part of the R2P-toolkit, reflecting the general debate on whether justice and peace stand in conflict with each other in post-conflict peacebuilding efforts, or whether they are co-constitutive. The discourse within which the international politics of criminal justice in relation to Darfur were embedded reflected growing influence on international practice of the principles that also underpin R2P. The ICC is multilateral and emphasises complementarity with national criminal jurisdictions.⁵²⁹ As a new institution, now tasked with addressing the crimes committed in Darfur, the ICC faced similar challenges as R2P. The accomplishments of the ICC, or even the debate on international criminal justice as facilitating or obstructing the prevention and response efforts are, however, secondary here. The point is that – beyond the delineations of R2P, strictly speaking – the ICC indictments reflected a growing sense of international responsibility, and international criminal justice has been institutionalised in a way that directly corresponds with R2P; which does seem to indicate that R2P is gradually consolidating as an international norm.

Conclusions: Sudan's Sovereignty, Darfurian's Rights, and the Qualitative Dimension of the Responsibility to Protect Norm

'In a remarkably short time', Samantha Power wrote in 2009, 'influential UN member states went from ignoring mass atrocities altogether to setting up international tribunals to punish them, to accepting that they have a responsibility to prevent or stop them. But despite the fanfare surrounding both events and the sense of promise they engendered, the stark reality is that little has been done to stop the slaughter in Darfur.'⁵³⁰

In 2009, UNAMID recorded 832 violent fatalities in total. Approximately one third of these fatalities were the result of confrontations between armed movements and the government; just short of half resulted from crime and murder; with the remainder (approximately 16%) attributed to tribal clashes.⁵³¹ By 2010, UNAMID had not been successful at preventing rebel attacks or aerial bombardment by the government forces, inter-tribal fighting had actually increased, and attacks on humanitarian personnel and peacekeepers continued.⁵³² In May 2010 alone, more than 400 conflict-related fatalities were recorded, following the renewed outbreak of violence in Western Darfur.⁵³³

⁵²⁸ African Union, 'Communiqué on the 3 February 2010 Judgment of the International Criminal Court Appeals Chamber on Darfur, 4 February 2010,' (Addis Ababa)

⁵²⁹ '...the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions', International Criminal Court, 'Rome Statute of the International Criminal Court,' (1998)

⁵³⁰ Samantha Power, 'Forward,' in *Responsibility to Protect: The Global Moral Compact for the 21st Century*, ed. Richard H. Cooper and Juliette Voinov Kohler (New York: Palgrave Macmillan, 2009), quoted in Williamson, 'Sudan and the Implication for Responsibility to Protect'.

⁵³¹ The exact figures are as follows: 369 deaths resulting from criminality and murder; 295 conflict-related deaths, 134 attributed to tribal clashes; and 34 deaths as a consequence of accidents or other causes.

⁵³² United Nations Security Council, 'Resolution 1935 (2010), Adopted by the Security Council at Its 6366th Meeting, on 30 July 2010,'

⁵³³ For a detailed account of recent developments and figures, see 'Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, S/2010/382', p. 5

The ineffectiveness of the international measures put in place to address the conflict in Darfur led some to argue that, once again, sovereignty had trumped human rights, and that the formulation of R2P had not been successful at reconciling the norm of state sovereignty with human rights protection. Host state consent as a core principle of R2P, it was argued, was being used as a pretext for inaction, made possible by the new R2P norm. Critics like Aidan Hehir argued that R2P facilitated Western inaction;⁵³⁴ David Chandler argued that R2P was a tool to 'divest Western responsibility'.⁵³⁵ Gerard Prunier argued that "'African solutions to African problems" had become the politically correct way of saying "We do not really care."⁵³⁶

The international response to the crisis in Darfur raised real doubts about R2P's consolidation as an international norm. Although the R2P principles had influenced the discourse on Darfur – especially regarding multilateralism and regionalism – states were reluctant to move from a traditional interpretation of state sovereignty towards 'sovereignty as responsibility', to confront Khartoum, and to implement the UNAMID peacekeeping mission in a way that would ensure it could meet its protection mandate. The qualitative dimension of R2P, it appears, had made some headway: the justifications given for international responses on Darfur conformed to the R2P tenets. Nevertheless, the lack of resolve on the part of international actors does suggest that, by 2010, R2P had not yet fully consolidated as a norm prioritising human rights protection in international society.

The Darfur case, in turn, had a strong impact on the international discourse on human rights protection and mass atrocity prevention. At the General Assembly's first informal, interactive dialogue on the responsibility to protect in 2009, the representative of Ireland stated that the international response to the Darfur crisis represented a 'grotesque failure' on the part of the international community 'to live up to this responsibility'.⁵³⁷ Alex De Waal suggested that R2P's 'critical weakness' was that it stood for 'a middle way between classical peacekeeping and outright military intervention ... without the consent of the host government.'⁵³⁸ Badescu and Bergholm described the international responses to Darfur as 'the big let-down' and concurred that 'military intervention should not have been seen as the central way to realize R2P...'⁵³⁹ Over the next decade or so, the academic debate focused on exploring avenues for overcoming this conundrum; and had, by the late 2000s and early 2010s, arrived at the idea of an emphasis on 'prevention' as an approach for overcoming the problem.⁵⁴⁰

⁵³⁴ Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society*, p. 93

⁵³⁵ David Chandler, 'The Paradox of the "Responsibility to Protect",' *Cooperation and Conflict* 45, no. 1 (2010) This stands in stark contrast to the anxiety amongst several states and some academics – including Chandler himself – that R2P is a policy tool by Western states to facilitate intervention in other states under the guise of humanitarianism, see 'The Responsibility to Protect: Imposing the Liberal Peace,' in *Peace Operations and Global Order*, ed. Alex J. Bellamy and Paul D. Williams (London: Routledge, 2005)

⁵³⁶ Prunier, *Darfur: The Ambiguous Genocide* p. 124

⁵³⁷ United Nations General Assembly, '99th Plenary Meeting, Friday, 24th July 2009, 3pm, New York,' (2009) p. 1

⁵³⁸ De Waal, 'Darfur and the Failure of the Responsibility to Protect', quotation from abstract

⁵³⁹ Badescu and Bergholm, 'The Responsibility to Protect and the Conflict in Darfur: The Big Let-Down' p. 304

⁵⁴⁰ This is reflected also in the Secretary-General's report of 2013, United Nations Secretary-General, 'Responsibility to Protect: State Responsibility and Prevention'

Chapter 7: R2P Prevention: Mediation in the Aftermath of Kenya's 2007 Presidential Elections

Introduction: A Case Study of the Post-Election Violence in Kenya, 2007-2008

The previous chapter analysed the impact of the emergence of R2P on international responses to the Darfur conflict, using the analytical framework introduced in chapter two to structure the analysis. The following chapter will analyse the extent of R2P's consolidation as an international norm in light of the international responses to the electoral violence in Kenya in 2007-2008.⁵⁴¹

Kenya was seen as a model case of intervention informed by a new approach based on humanitarian grounds. International mediation efforts by the African Union Panel of Eminent Personalities, under the leadership of the former UN Secretary-General Kofi Annan and with the support of the UN, neighbouring states, donors, and civil society were regarded as having successfully brought about a resolution of the crisis in the name of R2P. The mediation resulted in an agreement between the two presidential candidates, Mwai Kibaki and Raila Odinga, and successfully averted a deepening of the crisis created by the post-election turmoil that had caused 1,000 deaths and led to 600,000 displaced people. Large-scale ethnic conflict was averted without the use of coercive measures. Consequently, the case of Kenya was seen as an R2P success story – multilaterally orchestrated action to prevent an escalation of conflict, with heavy reliance on regional actors.

R2P supporters, including think tanks and NGOs were enthusiastic about the meaning of the Kenyan case for R2P. In a speech in Berlin in 2008 the Secretary-General Ban Ki-moon cited Kenya as an example of a case in which the R2P approach to humanitarian crises was successfully employed: 'The combined efforts of the African Union, influential Member States, the United Nations and my esteemed predecessor, Kofi Annan, were instrumental in curbing the post-election violence.'⁵⁴² Human Rights Watch stated that the international response was 'a model of diplomatic action under the responsibility to protect'.⁵⁴³ In an address to the World Affairs Council of Oregon, Mark Schneider, Senior Vice President of International Crisis Group, said that '[t]here is today one instance, Kenya, where we can see the potential of the Responsibility to Protect – in the background, unstated until after the fact, but very definitely a factor in international decision making to limit the waves of ethnically-linked killings in Kenya in 2008'.⁵⁴⁴ The think tank Global Centre for the Responsibility to Protect stated in a policy brief that 'Kenya is a promising sign in the broader context

⁵⁴¹ I have argued elsewhere that international responses to the crisis were not a direct result of the invocation of R2P, see Noële Crossley, 'A Model Case of R2P Prevention? Mediation in the Aftermath of Kenya's 2007 Presidential Elections,' *Global Responsibility to Protect* 5, no. 2 (2013). However, this is not to say – and will become clearer in the pages that follow – that the emergence of R2P as an international norm had no influence on international practice. The case studies indicate that the core R2P tenets are gradually pervading international practice.

⁵⁴² UN Department of Public Information, 'Secretary-General Defends, Clarifies "Responsibility to Protect" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World", SG/SM/11701,' (2008)

⁵⁴³ Global Centre for the Responsibility to Protect, 'The Responsibility to Protect and Kenya: Past Successes and Current Challenges,' in *Policy Brief, 13 August 2010*

⁵⁴⁴ Mark Schneider, 'Implementing the Responsibility to Protect in Kenya and Beyond,' International Coalition for the Responsibility to Protect, <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2730-international-crisis-group-implementing-the-responsibility-to-protect-in-kenya-and-beyond>

of efforts to prevent atrocities and uphold the responsibility to protect'.⁵⁴⁵ Roger Cohen said of the Kenyan case that 'the remarkable power-sharing outcome can, I believe, serve as a model: Call it the Nairobi paradigm or Annan's R2P marker.'⁵⁴⁶

Explicit reference to R2P as the conflict erupted and escalated was limited. Although R2P had already been endorsed in the outcome document of the 2005 World Summit, the speeches, formal statements, and media coverage on the electoral violence scarcely mentioned R2P. Advocates of R2P, however, retrospectively argued that because those involved in the mediation, especially former UN Secretary-General Kofi Annan, were aware of the wider debate that had shaped international humanitarian policy in recent years, R2P had informed the course of events in Kenya during the crisis.

In order to find out whether the emerging norm of R2P has been influential in shaping the responses to the conflict it is necessary to establish in what ways the behaviour of international actors were different from behaviour that could have reasonably been expected if R2P had never emerged. This means it is necessary to identify which responses can reasonably be attributed to R2P as a consolidating norm, and which responses would have occurred regardless of R2P's emergence.

I begin with a critical evaluation of the claim that the international responses to the crisis constitute a model case of R2P prevention. In so doing, I analyse the role of international involvement, and whether the prevention of mass atrocities was improperly attributed to R2P: in other words, whether the mediation would have been undertaken if the norm of R2P had not emerged. Secondly, I assess whether the mediation actually corresponded to R2P in terms of its characteristics and their resemblance to the individual R2P principles (its qualitative dimension): prevention; consent; multilateralism; regionalism. As before in the analysis of the case of Darfur, I use the 2009 report on 'Implementing the Responsibility to Protect'⁵⁴⁷ to guide my analysis. Again, I will use the following questions to guide my analysis:

- Prevention: do international actors seek to become engaged early on in a conflict, prior to an escalation of political violence that may lead to the perpetration of R2P crimes? Is 'prevention' given as a justification for early involvement in political crises?
- Consent: are states seeking non-coercive measures; do states increasingly appear to feel obliged to demonstrate they have explored all pillar two options for assisting the state in question before considering pillar three measures?
- Multilateralism: do international actors use institutionalised channels for multilateral action, or build ad-hoc coalitions for responding to conflicts? Has this become habitual, a 'natural' way of responding to conflict?
- Regionalism: are regional actors routinely engaged in the resolution of conflicts? Does the involvement of regional organisations bestow legitimacy to foreign interference; or is the absence of the involvement of regional organisations perceived as a moral deficit?

⁵⁴⁵ Global Centre for the Responsibility to Protect, 'The Responsibility to Protect and Kenya: Past Successes and Current Challenges'

⁵⁴⁶ Roger Cohen, 'African Genocide Averted,' *The New York Times*, 3 March 2008

⁵⁴⁷ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General'

- International criminal justice: is there evidence of efforts to effectively pursue international criminal justice? Is action through the ICC perceived as appropriate; and what does this tell us about the extent of the institutionalisation of principles that inform R2P and the ICC?

The chapter begins with a summary of the root causes of the conflict and the events that instigated the violence that erupted in 2007, followed by a discussion of the motivations driving international actors to formally invoke R2P, and the role of the African Union in coordinating the mediation process. I then outline the responses at the local, regional, and international levels that brought about a peaceful, non-coercive resolution of the dispute. In the penultimate section I discuss the relationship between R2P and international criminal justice. I conclude with a discussion of the implications of the case of Kenya for R2P's progress as a consolidating international norm. As in the previous chapter on Darfur, the sections are organised thematically rather than chronologically.⁵⁴⁸

The 'Responsibility to Prevent': Assessing Structural and Direct Prevention Efforts

R2P favours prevention over reaction – if the prevention of political violence is successful, there will be no need to intervene to halt already occurring mass atrocities and crimes against humanity. This emphasis on prevention necessitates a clear definition of the term, and I will expand a little on the definition of 'prevention' provided in chapter six on Darfur. Narrowly defined, one could argue that in the Kenyan case, the threshold for 'reaction' had already been met, with 1,000 dead and many more displaced. To some extent therefore, R2P is necessarily always 'reaction', contrary to what the ICISS report and subsequent publications and reports suggest. A real preventative approach would be more akin to a Human Security approach that addresses real long term, structural issues that give rise to a potential for the kind of political violence R2P aims to address.⁵⁴⁹ As I have suggested earlier in chapter six on Darfur, it therefore makes sense to distinguish between what can be termed 'structural' (more long-term) and 'direct' (more immediate) preventative efforts.

As before, I use the 2009 report on 'Implementing the Responsibility to Protect' to allow me to assess the prevention efforts. The report suggests a range of preventive measures: support for domestic protection capacities, for example through international assistance and capacity building (pp. 15-22); international suasion, education, and training through UN agencies and bodies (para. 30); and early warning and assessment (pp. 31-33).

⁵⁴⁸ For a chronological summary of events the reader may wish to refer to a chronology of the crisis and international responses provided in Appendix II.

⁵⁴⁹ There is no formal 'R2P threshold' for reaction, but the ICISS report as well as the Outcome Document should be seen as indicative: International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'; United Nations, 'World Summit Outcome' The 2001 report states that '[f]or political, economic and judicial measures the barrier can be set lower, but for military intervention it must be high: for military intervention ever to be defensible the circumstances must be grave indeed.' (29). In particular, military intervention is justifiable only where there is 'large scale loss of life, actual or apprehended', or 'large scale "ethnic cleansing", actual or apprehended' (32). The Outcome Document states that member states are prepared to take collective action 'should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity' (paragraph 139). The R2P threshold problem is discussed in detail in Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection'

A further source of suggested measures can be found in the 'narrow but deep' approach outlined by the Secretary-General at a speech in Berlin in 2008. The Secretary-General states that although R2P targets a narrow set of issues as laid out in the 2005 World Summit Outcome Document – genocide, ethnic cleansing, war crimes, and crimes against humanity – the response to these crimes 'should be deep, utilizing the whole prevention and protection tool kit available to the United Nations System, to its regional, subregional and civil society partners and, not least to the Member States themselves'.⁵⁵⁰ This toolkit consists of political and diplomatic measures such as the involvement of the UN Secretary-General; fact-finding missions; mediation through good offices; the threat of political sanctions; targeted travel bans; and asset freezing. Responses might also involve positive and negative inducements such as promises of funding or investment, or, conversely, threatening the withdrawal of investment or IMF/World Bank support or development aid. In the legal sphere, prevention tools include the threat of ICC prosecution. Ultimately, in some cases, 'direct prevention might involve the threat to use force'.⁵⁵¹

Also instructive, although with the caveat that it preceded the 2005 consensus, is the section on prevention in the ICISS report, including the 'preventive toolbox'.⁵⁵² The ICISS report lists as root causes 'poverty, political repression, and uneven distribution of resources',⁵⁵³ and states that to ignore underlying factors 'amounts to addressing the symptoms rather than the causes of deadly conflict'.⁵⁵⁴ Root cause prevention could involve democracy promotion and capacity building and addressing structural issues such as redistribution and constitutional reform.

In terms of direct prevention efforts, the ICISS report states that 'the essential and common attribute of all these actions and measures is that they aim – even where the cooperation of the state concerned is reluctant – to make it absolutely unnecessary to employ directly coercive measures against the state concerned'.⁵⁵⁵ The distinction between non-coercive and coercive measures is however, not entirely clear-cut – much depends on whether threats (political, economic, legal, or military) count as non-coercive and whether non-military sanctions and pressures are regarded as coercive. In any case, R2P promotes a gradual and context-based escalation of tools, giving preference to less intrusive, non-military forms of pressure.

In what follows below I briefly outline the root causes of the Kenyan post-election violence, and discuss international structural prevention efforts in the light of R2P's progress as a consolidating norm, using the 2009 and 2005 reports, as well as the Secretary-General's Berlin speech to frame my analysis. I do the same for direct prevention, assessing to what extent international responses to the unfolding crises indicate that the 'responsibility to prevent' shaped international responses to the crisis in Kenya.

Structural Prevention

⁵⁵⁰ UN Department of Public Information, 'Secretary-General Defends, Clarifies "Responsibility to Protect" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World", SG/SM/11701'

⁵⁵¹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', p. 25

⁵⁵² *Ibid.* pp. 19-27

⁵⁵³ *Ibid.* p. 22

⁵⁵⁴ *Ibid.* p. 23

⁵⁵⁵ *Ibid.* p. 23

Kagwanja and Southall have identified several underlying causes for the outbreak of the violence, including: population growth and extensive poverty; the construction of political coalitions around Kenya's 42 ethnic groups; the manipulation of armed militias by the elite; and, importantly, land disputes dating back to colonial times, organised along ethnic lines (between Kalenjin and Kikuyu in the Rift Valley).⁵⁵⁶ Reforms that had been pursued through settlement schemes and the land purchase programme by the successive governments had ethnicised the land question and laid the ground for conflict along ethnic lines.⁵⁵⁷ Land ownership is linked to socio-economic success in Kenya, and land and property are regarded as necessary to secure livelihood and survival.⁵⁵⁸ Sometimes grievances are aggravated by corruption in the allocation of land in settlement schemes. Land management institutions do not work to provide support to resolve land disputes as senior public servants, local land boards, the provincial administration, and politicians allocate public or private land illegally and irregularly with impunity. One explanation for the post-electoral violence, therefore, was that individuals had lost confidence in these institutions and became inclined to take matters into their own hands and resort to violence.

Unfortunately, international actors hardly sought to engage with the structural problems afflicting Kenyan politics. Owing to the strategic importance of Kenya, many international actors downplayed the problems.⁵⁵⁹ Meredith Preston-McGhie and Serena Sharma argue that the popular conception of Kenya as 'the most stable and economically developed nation in volatile East Africa'⁵⁶⁰ led to complacency on the part of relevant international actors. Kenya was perceived as 'on the right track',⁵⁶¹ even though the 2002 elections and the 2005 constitutional referendum had been accompanied by hate speech.⁵⁶² Even President Mwai Kibaki's re-engineering of the Election Commission of Kenya (ECK) did not elicit a decisive international response. 'There was an instinct, prior to the onset of the violence, to support the status quo.'⁵⁶³

Direct Prevention

The elections in 2007 resulted in a volatile political climate, and there was evidence to suggest that the crisis could escalate. 'We were well on the downward spiral to civil war' comments Wycliffe Muga, prominent Kenyan journalist.⁵⁶⁴ In an interview, Muga recalled the political climate at the time of the elections:

⁵⁵⁶ Peter Kagwanja and Roger Southall, 'Introduction: Kenya - A Democracy in Retreat?', in *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*, ed. Peter Kagwanja and Roger Southall (London and New York: Routledge, 2010)

⁵⁵⁷ Karuti Kanyinga, 'The Legacy of the White Highlands: Land Rights, Ethnicity and the Post-2007 Election Violence in Kenya,' *ibid.*

⁵⁵⁸ Prisca Mbura Kamungi, 'The Politics of Displacement in Multiparty Kenya,' *ibid.*

⁵⁵⁹ Meredith Preston-McGhie and Serena Sharma, 'Kenya,' in *The Responsibility to Protect*, ed. Jared Genser, et al. (Oxford University Press, 2011)

⁵⁶⁰ Sean Harder, 'How They Stopped the Killing,' The Stanley Foundation, <http://www.stanleyfoundation.org/resources.cfm?id=596&article=1> quoted in Preston-McGhie and Sharma, 'Kenya' p. 282.

⁵⁶¹ 'Kenya'

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.* p. 283

⁵⁶⁴ Interview held in Nairobi, 13 December 2011.

I remember seeing at the time a very elegantly drawn map of Kenya showing how the country might break into civil war... at that time it looked like something remote and theoretic ... the president's people are more or less surrounded in central Kenya, and hostile tribes all around. So based on that I would think that we were on the way to civil war and had it not been for foreign intervention certainly there was no room for resolution.⁵⁶⁵

A report by the Kenya National Commission on Human Rights (KNCHR) noted that there was 'organisation and method to the violence', with attacks 'carried out with military discipline'.⁵⁶⁶ Attacking groups underwent oath-taking ceremonies, both Kalenjin and Kikuyu forces were transported in vehicles. Road blocks were set up and commuters ethnically targeted. The areas most affected were the Rift Valley, Nyanza, Western, Coast, and Central regions.

The voting itself had been relatively peaceful and predictions were optimistic that the elections would pass peacefully.⁵⁶⁷ Initially, Raila Odinga, representing the Orange Democratic Movement (ODM), had a strong lead in vote counting on 28 December, but this lead shrank to only 38,000 votes with almost 90% of the votes counted on 29 December. On 30 December the Electoral Commission of Kenya (ECK) announced Mwai Kibaki, the candidate of the Party of National Unity (PNU) the winner, having won 47% of the popular vote, over Odinga with 44%. The remaining 9% were for Kalonzo Musyoka, representing the Orange Democratic Movement – Kenya (ODM-K). This translated into 99 seats for ODM and 43 for the PNU. Counting seats of allied parties, however, ODM could command the support of just 103 parliamentarians compared to the PNU's 104. Following the announcement of the results, Kibaki was sworn in for a second five-year term on 30 December, even though the opposition and international observers called for a recount of the votes. The perception was widespread that the count had been manipulated in favour of Kibaki. Supporters of Odinga in ODM strongholds (Nairobi, Nyanza, and the Rift Valley) began protesting the election in demonstrations that soon degenerated into violence including killing, looting, and rape. The ODM, however, refused to take the dispute to the courts, pointing out that Kibaki had nominated six judges to the Court of Appeal and to the High Court several days prior to the election.

In the following days the violence worsened, with ethnically targeted killing, rape, and plunder. On New Year's Day 39 people, mainly women, children, and disabled people were burnt to death in a church in Kiambaa, near Eldoret, set on fire by supporters of the ODM. The violence was mainly directed against Kikuyu, Kibaki's ethnic group, and others who were believed to have voted for his party, the PNU. From late January 2008, Kikuyu youths and Mungiki militias, reacting to the killings and displacement in ODM strongholds, engaged in reprisal attacks in Nairobi and parts of the Rift Valley and Central Kenya, targeting Luo, Luhya, and Kalenjin, ethnic groups that traditionally support the ODM.⁵⁶⁸ The violence took different forms:⁵⁶⁹ disorganised, spontaneous violence that grew out

⁵⁶⁵ Ibid.

⁵⁶⁶ Kenya National Commission on Human Rights, 'On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence,' (2008), p. 3

⁵⁶⁷ For elections results and a recount of events, see Kagwanja and Southall, 'Introduction: Kenya - A Democracy in Retreat?'

⁵⁶⁸ Ibid. For a summary of the outbreak of the post-election violence, see also Peter Kagwanja, 'Courting Genocide: Populism, Ethno-Nationalism and the Informalisation of Violence in Kenya's 2008 Post-Election Crisis,' *ibid.*

⁵⁶⁹ Marcel Rutten and Sam Owuor, 'Weapons of Mass Destruction: Land, Ethnicity and the 2007 Elections in Kenya,' *ibid.* ; Karuti Kanyinga, 'The Legacy of the White Highlands: Land Rights, Ethnicity and the Post-2007

of protests against perceived rigging of the election; institutional violence by the security forces to disperse protesters; less spontaneous, better organised violence by militias formed out of criminal gangs, enlisted by certain politicians and business people from the Rift Valley region; and, fourth, retaliatory or revenge attacks, predominantly by Kikuyu who expelled Kalenjin, Luo, and Luhya from rented premises in Nairobi, Naivasha, and Nakuru.

The violence finally came to an end with the signing of the National Accord on 28 February 2008, which established a power-sharing agreement, following a mediation process discussed in detail further on. By the time the agreement was reached, however, an estimated 1,300-2,000 people had been killed. A further 400,000-600,000 had been displaced, and the disruption of agriculture had resulted in a humanitarian crisis.⁵⁷⁰

To promote reconciliation, restoration, combat impunity, and ultimately also to prevent future crises, the National Accord of 28 February 2008 provided for the establishment of three separate commissions: the Independent Review Commission (IREC, or 'Kriegler Commission', named after the South African judge heading the commission), to investigate the elections and make recommendations to improve the electoral process in future; the Commission of Inquiry into the Post-Election Violence (the 'Waki Commission' named after Judge Waki who headed the commission), to investigate the causes of the violence and the role that state security agencies played, and outlining how this could be prevented in the future; and a Truth, Justice and Reconciliation Commission, which was to inquire into historical injustices.⁵⁷¹

Kofi Annan's mediation, combined with pressure from international donors, was at the heart of the international strategy for containing the crisis. Structural prevention had been neglected, but the same cannot be said of direct preventative responses to the crisis as it unfolded. They were timely, they made reference to R2P, and conformed to other R2P principles, including a preference for measures that have the consent of the host government, and measures that involve regional actors. In what follows below I engage in more depth with the non-coercive and regional dimensions of the preventative efforts in the context of the post-election violence. The following sections provide a detailed analysis of the international responses to the crisis, all of which fall under the rubric of 'direct prevention'.

Prevention without Coercion: The UN and Foreign Donors

Initial assessments of the international responses to the crisis in Kenya were positive. The prevailing view was that for once, international pressure had been unified and actions had been taken in a coordinated way. Donor responses were much more focused on prevention than they had been in other cases, where donors had avoided conditionality as a strategy to promote democratisation.⁵⁷² In breaking with past approaches to contested elections, where donors had traditionally endorsed

Election Violence in Kenya,' *ibid.* ; and Peter Kagwanja, 'Courting Genocide: Populism, Ethno-Nationalism and the Informalisation of Violence in Kenya's 2008 Post-Election Crisis,' *ibid.*

⁵⁷⁰ 'Courting Genocide: Populism, Ethno-Nationalism and the Informalisation of Violence in Kenya's 2008 Post-Election Crisis'

⁵⁷¹ *Ibid.*

⁵⁷² Conditionality is often imposed on countries in Sub-Saharan Africa, where many countries are heavily dependent on aid, and where wealthier states have fewer economic and strategic interests. Stephen Brown, 'From Demiurge to Midwife: Changing Donor Roles in Kenya's Democratisation Process,' in *Kenya: The Struggle for Democracy*, ed. Goodwin R Murunga and Shadrack W Nasong'o (Dakar: Codesria Books, 2007)

unfair election results, donors put pressure on Kibaki to acknowledge that the election results were disputable.⁵⁷³

The top five donors were: the United States (27% of the total, amounting to \$304 million per year); the United Kingdom (12%, \$133 million); the European Commission (10%, \$115 million); Japan (10%, \$113 million); and World Bank / IDA (10%, \$111 million).⁵⁷⁴ In the aftermath of the 2007 elections several ambassadors, amongst them the German, Dutch, American, and British ambassadors, attempted to prevent the announcement of the election results to allow for a recount. The only Western state that offered its congratulations to Kibaki after the results had been announced was the US, but the US soon changed its position. The World Bank appears to have been inclined towards an endorsement of Kibaki's proclaimed victory, as a confidential internal memo by the World Bank's representative in Kenya, Colin Bruce, to headquarters in Washington suggested.⁵⁷⁵ Wycliffe Muga suggests that the EU played an important role at this juncture: it had sent elections observers who were not willing to sign off on an election they saw as flawed.⁵⁷⁶

Adam Wood, the British High Commissioner, met ECK chair Samuel Kivuitu twice to urge him to conduct an investigation before declaring the outcome,⁵⁷⁷ and the United Kingdom was the first to suggest a power sharing arrangement. Prime Minister Gordon Brown called both Kibaki and Odinga on 31 December, urging them to begin negotiations for a coalition government. On 3 January the US sent Assistant Secretary of State for African Affairs, Jendayi Frazer, to Kenya to meet Kibaki and Odinga in support of initial mediation efforts by John Kufuor, chair of the African Union.⁵⁷⁸

A group of 'like-minded donors' subsequently supported the Annan mediation.⁵⁷⁹ Donors were constantly in contact with Annan, coordinating their strategy.⁵⁸⁰ PNU officials were hesitant to cede ground in the negotiations, as they were in the position of de facto government and not inclined to give way, although they were under pressure as members of Kibaki's ethnic group, the Kikuyu, were being targeted in the violence. In mid-January, 14 donors, including the US, issued a statement warning that their foreign aid was under review as a consequence of the violence, and that a greater proportion of aid might be channelled through NGOs and the private sector.⁵⁸¹ Pressure was increased further through travel bans on senior political figures from both parties.⁵⁸² Early in February, the US embassy stated that the visa status of 13 Kenyan politicians and businessmen was under review as a result of their suspected involvement in the violence. Secretary of State Condoleezza Rice visited Nairobi on 18 February, and soon after raised the possibility of further punitive steps if the negotiations failed to make progress. Finally, late in February, the PNU and ODM signed the National Accord in which a power sharing arrangement was agreed upon.

⁵⁷³ 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?', in *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*, ed. Peter Kagwanja and Roger Southall (London and New York: Routledge, 2010)

⁵⁷⁴ The figures are for the years 2006-2007. Organisation for Economic Co-Operation and Development (OECD), 'Aid Statistics, Recipient Aid Charts: Kenya,' www.oecd.org/dataoecd/62/54/1877992.gif, see Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?' fn. 2.

⁵⁷⁵ Unknown, *Financial Times*, 10 January 2008

⁵⁷⁶ Wycliffe Muga, interview in Nairobi, 13 December 2011.

⁵⁷⁷ Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

⁵⁷⁸ Ibid.

⁵⁷⁹ The group was initially made up of 7-8 members but has subsequently grown to 18, including the US, the UK, Canada, the Netherlands, and Norway. Interview with anonymous, Nairobi, 19 December 2011.

⁵⁸⁰ Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

⁵⁸¹ Unknown, *New York Times*, 17 January 2008

⁵⁸² Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

One of the reasons for the persistent and sustained international pressure on political actors may have been that Kenya acts as an important multilateral station. It hosts UN headquarters and several agencies, with more than 1,000 international staff and 3,000 national staff. Kenya's stability, therefore, is of great importance to the UN and other international actors. Kenya is also a logistical hub for humanitarian support in the region. Many internationally coordinated assistance programmes directed towards the Greater Horn of Africa are coordinated from Nairobi.⁵⁸³ Makumi Mwangiri, Director of the Institute of Diplomacy and International Studies at the University of Nairobi, argues that although the ODM side was more welcoming of the mediation than the PNU side, the overall attitude in Kenya towards international efforts was positive, and the Kenyan public was overwhelmingly supportive of Annan's initiative.⁵⁸⁴ Laetitia Van den Assum, then Dutch Ambassador to Kenya recounts how, amidst rumours that Annan was leaving, a supermarket cashier had grabbed her hand and said 'please don't let Kofi Annan leave us in this mess.'⁵⁸⁵

In terms of outcome, the international effort to resolve the Kenyan crisis certainly differed greatly from other conflict prevention or mitigation efforts elsewhere. Mugambi Kiai, Program Manager at the Open Society Initiative Eastern Africa, states:

... [I]t was very clear that without international intervention the outcomes would have been nasty. If both parties continued with hardened positions Kenya was actually going to choke. And not just choke and recover, but choke and go down the road as a failed state.⁵⁸⁶

A number of factors facilitated a positive outcome: Kenyan foreign policy is traditionally pro-Western, which makes for a different environment for foreign – and to a large extent Western – conflict resolution efforts. Anti-colonial rhetoric was limited and originating mainly from the pro-PNU elite.⁵⁸⁷ Kenya is hospitable to foreign investors and dependent on economic assistance, which means that there is a strong relationship of mutual dependency, which both donors and the recipient, in this case the Kenyan government, could not afford to allow to deteriorate. Kenya is also a popular tourist destination; gives preferential treatment to multinational corporations; and has promoted its capital as a centre of affairs for both the region and the world.⁵⁸⁸ Finally, Kenya is an important ally in the 'war on terror', due to its proximity to Somalia, and especially given that al-Qaida has committed attacks in Kenya, such as on the US embassy in 1998.⁵⁸⁹ Gilbert Khadiagala has argued that it was precisely for these reasons that the international conflict resolution efforts were

⁵⁸³ Monica Kathina Juma, 'African Mediation of the Kenyan Post-2007 Election Crisis,' *ibid.*

⁵⁸⁴ Makumi Mwangiri, interview in Nairobi, 19 December 2011

⁵⁸⁵ Lillian Aluanga, 'Dutch Envoy Loved Kenya,' Standard Mobile, <http://m.standardmedia.co.ke/headlines.php?id=2000039085>

⁵⁸⁶ Mugambi Kiai, interview in Nairobi, 19 December 2011

⁵⁸⁷ An article in the Nairobi Star criticised Gordon Brown for his choice of tone. 'He commanded them to "behave responsibly" and used such language as "what I want to see is..." and "only by working together can we make progress." He said he would be talking to the various parties for all the world as if Kenya was still a colony.' Simon Jenkins, quoted in Makumi Mwangiri, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya*, 1 ed., vol. 3, IDIS Publications on International Studies (Nairobi: Institute of Diplomacy and International Studies, 2008) p. 21. Beth Mugo, MP elect for Dagoretti, accused the US of applying double standards for Kenya and of attempting to run Kenya's electoral affairs. *Ibid.* p. 69.

⁵⁸⁸ For a summary of factors that facilitated the summoning of international actors on the one hand, and that meant that Kenya was comparatively welcoming of foreign involvement on the other, see Norman Miller and Rodger Yeager, *Kenya: The Quest for Prosperity*, 2nd ed. (1994) chapter 6, pp. 161-180.

⁵⁸⁹ Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

successful in the case of Kenya, where there was a ‘convergence of circumstances that seem unique to the Kenyan context’.⁵⁹⁰ Still, it is questionable whether these conducive circumstances would have led to success if Annan had not been successful in ensuring a single mediation effort (discussed in further detail later on). The favourable context was necessary, but not sufficient, for success.

The success of the preventative measures stands out in comparison with other recent cases – because the circumstances were conducive to successful conflict resolution – but in terms of assessing the extent of R2P’s consolidation as a norm, the fact that international actors responded the way they did is more significant than the fact that the efforts were successful at resolving the conflict. The donor responses exemplified a model, non-coercive international response to an R2P crisis. Although the conditions for such a response were favourable, the urgency and competency with which international actors responded to the unfolding crisis, in partnership with the rivalling political parties in Kenya, does suggest that preventative practices have become institutionalised. The degree of coordination between donors and their local and regional counterparts suggests that non-coercive response options aiming at direct prevention have taken root in international practice.

A Regional Initiative: Kofi Annan’s Mediation Team

To assess the extent to which the core tenet of regionalism shaped the international responses to the Kenyan post-electoral crisis, I continue to use the Secretary-General’s 2009 report on ‘Implementing the Responsibility to Protect’ as a yardstick. In the report, the Secretary-General suggested, in concordance with the ICISS report of 2001, that regional organisations could provide an alternative institutional locus for conflict resolution mechanisms in case of Security Council deadlock.⁵⁹¹ But regional organisations were regarded not just as an alternative, but as a vehicle for the involvement of regional actors that could work in tandem with other multilateral efforts:

Context matters. The Responsibility to Protect is a universal principle. Its implementation, however, should respect institutional and cultural differences from region to region ... Energetic implementation efforts by regional and subregional organizations can bring added value to each of the three pillars of my strategy for fulfilling the promise of the responsibility to protect.⁵⁹²

The Secretary-General directly referred to the Kenyan case, lauding the ‘successful bilateral, regional and global efforts to avoid further bloodshed in early 2008 following the disputed election’,⁵⁹³ illustrative of a successful response to an R2P situation under pillar three (‘Timely and Decisive Response’). As outlined in depth in the preceding chapters, regionalism as a core tenet of R2P became manifest in 2011, with the informal, interactive dialogue on R2P that year dedicated to the ‘Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect’.⁵⁹⁴

⁵⁹⁰ Gilbert M Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis,' *ibid.* p. 182

⁵⁹¹ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General' p. 23

⁵⁹² United Nations, 'The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General, A/65/877-S/2011/393' p. 3

⁵⁹³ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General' p. 9

⁵⁹⁴ International Coalition for the Responsibility to Protect, 'General Assembly Debate on the Responsibility to Protect and Informal Interactive Dialogue' . See also United Nations, 'The Role of Regional and Subregional

Regional involvement in the Kenyan case took the form of a mediation team sponsored by the African Union. The AU sent a number of potential mediators, first Desmond Tutu, South African activist and retired Anglican bishop; then former Ghanaian president John Kufuor; followed by Cyril Ramaphosa, South African activist and politician – but the mediation effort did not properly get underway before the arrival of former UN Secretary-General Kofi Annan. The agreement made in April 2008 between President Kibaki and Raila Odinga was brokered by Kofi Annan and his team of ‘eminent African personalities’, including Benjamin Mkapa and Graça Machel. Annan’s team had diverse diplomatic skills – the former Ghanaian UN Secretary-General had much experience with conflict resolution and knowledge of international structures of authority and leverage. Mkapa, former Tanzanian president, had local knowledge due to geographical proximity and familiarity with the political parties.⁵⁹⁵ Machel, known for her advocacy work on women’s and children’s rights, had served as Mozambique’s Minister of Education between 1975 and 1989.⁵⁹⁶

The mediation team was mandated by the AU, and received technical support from the UN (from DPA, UNDP, the UN Office in Nairobi), and the Centre for Humanitarian Dialogue in Geneva.⁵⁹⁷ The mediation team used a building block approach, beginning with less contentious issues, and by working through them building confidence to engage the more challenging issues.⁵⁹⁸ The agenda consisted of four elements: first, immediate action to stop violence and restore fundamental human rights; second, dealing with the humanitarian crisis and national reconciliation; third, negotiation on the ongoing political crisis; and fourth, long-term strategies for durable peace.⁵⁹⁹

Supporting the regional efforts were various local civil society initiatives by organisations including the Coalition of Citizens for Peace, which provided a space for Kenyans to engage in dialogue; the activities of the Kenyan Association of Manufactures, who feared negative effects of the crisis on the economy; and the Central Organisation of Trade Unions offered to initiate talks between Kibaki and Odinga (although without success). A coalition of more than 30 non-governmental and civic organisations formed an umbrella movement, Kenyans for Peace with Truth and Justice (KPTJ), also supported the AU’s mediation efforts.⁶⁰⁰ ‘There was a marvellous exhibition of civil society unity and strength at the time, so it is important not to downplay the role of domestic pressure’ points out Maina Kiai, UN Special Rapporteur. ‘Businesses were coming out, the media was doing stuff – it was not just the internationals, they did not solve this problem.’⁶⁰¹

The African Union took the lead on the mediation, although alternatives had been considered. The crisis tested two other regional organisations that one might have expected to play an important role as well: the East African Community (EAC) and the Intergovernmental Authority on Development (IGAD). The EAC, headed by Ugandan president Museveni, initially called for a political and judicial resolution to the crisis – the EAC countries had a strong interest in a negotiated settlement, for economic reasons (major transport routes from Mombasa were already paralysed, and Uganda, Burundi, Eastern Congo, Rwanda, and South Sudan were affected by fuel shortages and

Arrangements in Implementing the Responsibility to Protect: Report of the Secretary-General, A/65/877-S/2011/393'

⁵⁹⁵ Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis'

⁵⁹⁶ Kenya National Dialogue and Reconciliation, <http://www.dialoguekenya.org/panel.aspx>

⁵⁹⁷ Josie Lianna Kaye and Elisabeth Lindenmayer, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya,' (New York: International Peace Institute, August 2009)

⁵⁹⁸ For a summary of the mediation strategy, see Juma, 'African Mediation of the Kenyan Post-2007 Election Crisis'

⁵⁹⁹ See also Kaye and Lindenmayer, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya'

⁶⁰⁰ Juma, 'African Mediation of the Kenyan Post-2007 Election Crisis'

⁶⁰¹ Maina Kiai, interview in Nairobi, 20 December 2011

the flow of imports was disrupted) – but efforts to lead a mediation effort were complicated by Museveni’s endorsement of Kibaki’s proclaimed victory and reports that 3,000 Ugandan troops had been placed in western Kenya to support Kenyan government forces.⁶⁰² Similarly, IGAD was perceived by ODM as sympathetic towards Kibaki, and ODM refused its offer of mediation on the same grounds.

John Kufuor, former Ghanaian president and chairman of the African Union at the time suggested he could make Annan available.⁶⁰³ On January 16, the day Annan was supposed to embark to Kenya, Annan was taken to hospital with a fever, causing a week-long delay of the start of the mediation. It was during this time that he got all sides to agree to a single mediation process and the full and undivided support of the international community.⁶⁰⁴ When Kofi Annan and his team arrived in Nairobi in late January Museveni still tried to stay involved in negotiations, meeting with both Kibaki and the ODM, and suggesting the establishment of a judicial commission of inquiry into the electoral outcome. However, the ODM derided this proposal and stated that multiple negotiation tracks were not efficient. Annan again sought assurances from both Western and African leaders that there would be no competing mediation processes. Museveni then attended an event signalling the beginning of the AU mediation on 24 January, which concluded the EAC’s involvement.⁶⁰⁵

At the beginning of February, proposed talks by the Intergovernmental Authority on Development (IGAD), to be held in Nairobi in the week of 4 February, again threatened the success of the Annan mediation. The PNU invited these talks, especially as it consolidated the legitimacy of the Kenyan president as such a meeting could only be convened by a head of state, but ODM opposed them and called upon Kenyans to unite in peaceful protests. Finally, IGAD met at ministerial level, and Annan stated publicly there would continue to be just one mediation process. ODM subsequently cancelled the planned protests. The US and Canada reported at the time that travel bans would be imposed on those accused of obstructing the mediation.⁶⁰⁶

The Annan negotiations took place in the basement of Nairobi’s Serena Hotel. AU observers described the AU mediation as ‘an African solution to an African problem’.⁶⁰⁷ However, it relied heavily on Western threats and pressures, especially from the US. Indeed, it is questionable whether the mediation would have produced the same result without pressure from donor states. Makumi Mwangiri, in an interview in Nairobi in December 2011, argued:

The AU has structures that look very different from the old OAU [Organisation of African Unity] structures ... more progressive. But unfortunately some aspects ... have not changed much from the old OAU ... They still respect governments a lot ... [and they] must deal with governments. Their analysis of situations and issues is still a bit old-fashioned. This is a problem. The structure is there but the mode of thinking is what needs to change.⁶⁰⁸

⁶⁰² Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis' Khadiagala provides an assessment of the various regional and sub-regional organisations in respect to their contribution to the mediation process.

⁶⁰³ Mugambi Kiai, interview in Nairobi, 19 December 2011

⁶⁰⁴ Kaye and Lindenmayer, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya'

⁶⁰⁵ On multiple negotiation tracks to begin with, see Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis'

⁶⁰⁶ Kaye and Lindenmayer, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya'

⁶⁰⁷ Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis' , p. 179.

⁶⁰⁸ Makumi Mwangiri, interview in Nairobi, 19 December 2011

Donor states worked together closely, and, through coordinating their approach, produced leverage that was required to move the mediation forward.⁶⁰⁹ On 12 February, negotiations moved to a retreat in Tsavo West National Park in southeast Kenya, to avoid media coverage. This was aided by the imposition of a no-fly zone above the area. The final negotiations between Kibaki and Odinga, led by Annan, who had asked President Jakaya Kikwete of Tanzania and former President Mkapu to join, were held at Harembee House. After five and a half hours of intense negotiations, an agreement was reached, and a ceremony was held later that day, on 28 February, at which Kibaki and Odinga signed the Agreement on the Principles of Partnership of the Coalition Government.⁶¹⁰ The agreement outlined the terms of a power sharing arrangement whereby ethnically aligned elite factions were allocated executive positions in a coalition government. This resulted in the appointment of a 40-member cabinet, the largest in Kenya's history.⁶¹¹

Monica Juma argues that the fact that the three mediators were African prevented resistance to the mediation process that may have resulted from an association with Western or other external forces, by ensuring that the process was seen as African-led and multilateral.⁶¹² 'It is hard to tell Archbishop Tutu that he is imperialist. Or Kofi Annan', argued Maina Kiai.⁶¹³ Annan had been Secretary-General of the UN, but this time he came under the auspices of the AU. Mugambi Kiai commented:

[Sending Annan] was a great move. It was a great move because you do not get this whole host of African countries saying look, again you are interfering, it's a Western agenda, whereas most of them understood that in terms of resources, in terms of, even legitimacy, they want the big player. The big player is that Kofi Annan could pick up his phone and call George W. Bush or talk to ... Gordon Brown. Outside the murmurs were of course: he is not reporting back to us. This would be what the bureaucracies ... in Addis Ababa [were] saying ... if nothing else, just having a face which showed that R2P was not just the international community invading, it's about cooperating within a very complex environment, and then giving it a face that, in a sense, made it look like a continental effort rather than an effort where the actors came from for instance Geneva or New York, or London.⁶¹⁴

Although the mediation was conducted by the AU, donor states played a central role in pushing the negotiations forward. Wycliffe Muga argues that '[i]t is a delicate situation where you need the African Union as the official face of the negotiations but the real muscle is elsewhere.'⁶¹⁵ Much of the mediation's success depended on Kofi Annan, who was seen as having the legitimacy required to be trusted by all sides. The Annan-led mediation exemplified skilful negotiation and diplomacy, competent at managing 'the intricate balance between international pressure and a local context in which the parties gradually learnt the importance of accommodating each other.'⁶¹⁶

⁶⁰⁹ Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis'

⁶¹⁰ Kaye and Lindenmayer, 'A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya'

⁶¹¹ See Kagwanja and Southall, 'Introduction: Kenya - A Democracy in Retreat?'

⁶¹² Monica Kathina Juma, 'African Mediation of the Kenyan Post-2007 Election Crisis,' *ibid.*

⁶¹³ Maina Kiai, interview in Nairobi, 20 December 2011.

⁶¹⁴ Mugambi Kiai, interview in Nairobi, 19 December 2011.

⁶¹⁵ Wycliffe Muga, interview in Nairobi, 13 December 2011.

⁶¹⁶ Khadiagala, 'Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis' p. 182.

Annan was primarily associated with the UN – of symbolic significance in this regard is that the AU never invited Annan to report back at its summit. In an interview, a Western diplomat suggested that because Annan was being associated primarily with the UN the AU did not celebrate the Kenyan success-story as a precedent and building block for its own conflict resolution mechanism.⁶¹⁷

Nevertheless, the fact that the AU played a substantial role in the mediation process added legitimacy to the mediation process – in fact, it is rather unthinkable that the mediation would not have been hosted by one of the regional organisations. The mediation was successful, but the outcome of the mediation – for the purpose of the analysis here – is secondary here. The case shows that international actors naturally assumed that regional organisations were going to take the lead. The degree of institutionalisation of prevention responsibilities in the relevant regional organisations (the AU, EAC, or IGAD), and the role these organisations played in the mediation process, reflect the growing importance of regionalism in atrocity prevention. The successful AU mediation, in turn, shaped the subsequent discourse on R2P. Kenya was subsequently viewed as a ‘model case’⁶¹⁸ for the consolidating norm, and helped reinforce ‘regionalism’ as an essential principle of R2P.

Democracy Consolidation and International Criminal Justice: Kenya After the Peace Agreement

As in the previous chapter on Darfur, it is worthwhile – especially because the 2001 ICISS report emphasises ‘rebuilding’ – analysing the dimension of (liberal) post-conflict peacebuilding, with a particular focus on the politics of international criminal justice, and its relationship with the consolidating R2P norm. Criminal justice is an important aspect of post-conflict peacebuilding, but also serves an important (structural) preventative purpose in that it promotes a process of reconciliation and deters the commission of future crimes.⁶¹⁹ As such, international criminal justice plays a vital role in R2P prevention as a form of general deterrence.

Where R2P is invoked, calls for international criminal justice are never far off. The relationship between R2P and international criminal justice may be one that is complicated – are they mutually supportive, or mutually obstructive? – but the consolidating R2P norm and the institutions of criminal justice (both national and international) are inextricably linked. A number of scholars continue to grapple with the issue.⁶²⁰ On the whole, however, both spring from a liberal, internationalist logic, and the beliefs, values, and normative priorities of the individuals inhabiting the institutions that represent these two distinct paradigms share more in common with each other than they do with their opponents. Vice versa, R2P critics are more likely than not to oppose the ICC.

One of the ways in which the ICC can directly serve to promote R2P is by way of immediate deterrence. R2P advocates suggest that threatening R2P referral may serve as an instrument of short-term, direct atrocity prevention through deterrence. For example, the Secretary-General’s 2009 report, ‘Implementing the Responsibility to Protect’ stated:

⁶¹⁷ Interview with anonymous, Nairobi, 19 December 2011

⁶¹⁸ Preston-McGhie and Sharma, ‘Kenya’ p. 290

⁶¹⁹ International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty’, see ‘rebuilding’, pp. 39-46, esp. pp. 41-42, ‘Justice and Reconciliation’

⁶²⁰ Schiff, ‘Lessons from the ICC for ICC/R2P Convergence’; Kersten, ‘The ICC and R2P - Bridging the Gap’

If undertaken early in a crisis, at the first sign that a State is failing to meet its obligations relating to the responsibility to protect, ... on-site missions can also provide opportunities for delivering messages directly to key decision makers on behalf of the larger international community, for example, by trying to dissuade them from destructive courses of action that could make them subject to prosecution by the International Criminal Court or ad hoc tribunals.⁶²¹

However, although Kenya had ratified the Rome Statute in 2005, the threat of prosecution through the ICC did not appear to have much influence on domestic politics in Kenya before the Commission of Inquiry on Post-Election Violence ('Waki Commission') threatened ICC referral in case the domestic prosecution of alleged post-election crimes proved unsuccessful. In an interview in Nairobi in December 2011, Wycliffe Muga stated:

Nobody ever believed the ICC would come in ... We associated the ICC with the levels of violence seen in DRC, Congo, seen in Sierra Leone, seen in Liberia, seen in Rwanda, that kind of thing, Darfur – no one seriously thought that a few militias running rampant through the Rift Valley and policemen with shoot to kill orders, nobody thought that that would lead to the ICC.⁶²²

But it did. On 5 November 2009, the prosecutor of the ICC made known his intention to begin an investigation into the situation in Kenya. On 31 March 2010, Pre-trial Chamber II of the court stated that it had authorised the prosecutor to commence an investigation into alleged crimes against humanity in the run-up and aftermath of the presidential elections in Kenya in 2007.⁶²³ Later that year, on 15 December 2010, the prosecutor filed applications to summon six Kenyan nationals in relation to the post-election violence: William Samoei Ruto (ODM), Henry Kiprono Kosgey (ODM), Joshua Arap Sang (ODM), Francis Kirimi Muthaura (PNU), Uhuru Muigai Kenyatta (PNU), and Mohamed Hussein Ali (PNU).⁶²⁴

Since late in 2010, Kenya has been pursuing a deferral of the ICC proceedings, in the form of a decision by the Security Council, which under Article 16 of the Rome Statute allows the Council to make use of Chapter VII to defer an ICC investigation or prosecution for 12 months. The Assembly of the AU decided to endorse Kenya's position on 31 January 2011.⁶²⁵ In an informal, interactive dialogue between the permanent representative of Kenya and Security Council members on 18 March 2011, which was also attended by AU representatives, Kenya argued that a deferral by 12 months would give Kenyan authorities sufficient time to establish alternative domestic adjudicative mechanisms. Council members mostly agreed, however, that the situation in Kenya does not amount to a threat to international peace and security, and that it would therefore be preferable for Kenya to challenge the admissibility of the case at the ICC directly, under Article 19 of the Rome

⁶²¹ Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', p. 23.

⁶²² Wycliffe Muga in an interview with the author, Nairobi, 13 December 2011

⁶²³ Security Council Report, 'Update Report: Kenya and the ICC,'

⁶²⁴ International Criminal Court, 'Kenya's Post Election Violence: ICC Prosecutor Presents Cases against Six Individuals for Crimes against Humanity,' <http://www.icc-cpi.int/NR/exeres/BA2041D8-3F30-4531-8850-431B5B2F4416.htm>

⁶²⁵ African Union, 'Decision on the Implementation of the Decisions on the International Criminal Court (ICC), Assembly/AU/Dec/334(XVI),' (Addis Ababa 2011)

Statute. Kenya filed an application before the ICC on 31 March 2011 under Article 19 of the Rome statute, arguing that the new constitution and judicial reforms allowed for a proper investigation into alleged post-election crimes.⁶²⁶

Although the joint efforts to end the crisis managed to put a swift end to the violence, they may have done so at the expense of justice, at least in the short-term, compromising the political reform agenda, and failing to address issues that may pose a risk for Kenya in the future.⁶²⁷ The Kenyan government – predictably – continues to object to the ICC proceedings on the post-election violence. In a letter to the UN Secretary-General and President of the Security Council, the Kenyan government had stated that the naming of six individuals by the Prosecutor of the International Criminal Court was premature and resulted in the slow-down of the implementation of the new constitution and the reform process, and ‘interfered with the delicate political climate’.⁶²⁸ The letter also stated that the ICC proceedings could potentially ‘reignite violence, cause a breakdown of law and order and result in loss of human life in Kenya and the disruption of economic, peace and security activities in the fragile and volatile subregion...’ The letter goes on to explain that this is the reason why the AU has taken the decision to request the deferral.⁶²⁹

The general public, however, had a positive attitude towards ICC prosecutions, and a common slogan was ‘don’t be fake, let’s go to The Hague.’⁶³⁰ An opinion poll taken in 2012, after ICC judges made their decision to send four Kenyans to trial found that amongst Kenyans, 60 per cent were either very satisfied or somewhat satisfied about this.⁶³¹ Since then, however, the popularity of the ICC has dropped considerably amongst Kenyans and on the African continent more generally.⁶³² In 2013, African leaders demanded a suspension of the trials against Kenyatta and Ruto in an extraordinary AU Summit. ‘Africans were conned into submitting to an Inquisition!!!’ read a comment on an article on the ICC prosecutions.⁶³³ Michela Wrong puts this down to a deliberate anti-ICC campaign of the incumbent government.⁶³⁴ Susanne Mueller even suggests that Kenyatta and Ruto’s strategy for running together in the 2013 presidential elections was part of a strategy of insulating themselves from the ICC prosecutions.⁶³⁵ ‘Winning the election was part of a key defense

⁶²⁶ Security Council Report, 'Update Report: Kenya and the ICC'

⁶²⁷ Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

⁶²⁸ A new constitution accepted in 2010 by a national referendum is in line with the principle of complementarity of the Rome Statute, and facilitates the establishment of legal and judicial mechanisms necessary for the investigation and prosecution of suspected perpetrators of the violence following the elections in 2007.

⁶²⁹ United Nations Security Council, 'Identical Letters Dated 4 March 2011 from the Permanent Representative of Kenya to the United Nations Addressed to the Secretary-General and the President of the Security Council, S/2011/116,' (2011)

⁶³⁰ Adams Oloo, Lecturer at the Department of Political Science at the University of Nairobi in an interview. Nairobi, 21 December 2011.

⁶³¹ Tom Maliti, 'Majority of Kenyans Happy with ICC Judges' Decisions, Saying Justice Will Be Done,' Open Society Justice Initiative, <http://www.icckkenya.org/2012/02/majority-of-kenyans-happy-with-icc-judges-decisions-saying-justice-will-be-done/>

⁶³² See Michela Wrong, 'Has Kenya Destroyed the ICC?,' *Foreign Policy* (2014)

⁶³³ Taegin Reisman, 'Defense Says Adjournment Would Violate Kenyatta's Fair Trial Rights,' International Justice Monitor, <http://www.ijmonitor.org/2014/09/defense-says-adjournment-would-violate-kenyattas-fair-trial-rights/>, see reader comment

⁶³⁴ Wrong, 'Has Kenya Destroyed the ICC?'

⁶³⁵ Susanne D. Mueller, 'Kenya and the International Criminal Court (ICC): Politics, the Election and the Law,' *Journal of Eastern African Studies* 8, no. 1 (2014)

strategy to undercut the ICC by seizing political power, flexing it to deflect the ICC, and opening up the possibility of not showing up for trial if all else failed.⁶³⁶ So far, this strategy is proving successful.

Meanwhile, charges against Ali, Kosgey, and Muthaura have been dropped. Deputy President Ruto and former radio journalist Sang are on trial at the ICC. Kenyatta's trial had been expected to begin in October 2014, however the charges against Kenyatta were withdrawn in December 2014. At first Kenyatta's trial had been delayed because of a failure of the Kenyan government to comply with prosecution requests.⁶³⁷ Meanwhile, eight witnesses have withdrawn from the Ruto/Sang trial. 'While there is no proof that Kenyatta or his allies are responsible for what appears to be a concerted witness intimidation programme, the Kenyan president is undeniably its principal beneficiary' argues Simon Allison.⁶³⁸

In terms of democracy consolidation, structural issues such as a reform of the electoral commission have been tackled – the ECK, to which Kibaki had unilaterally appointed members perceived as biased towards him by the commission has been replaced with the Independent Electoral and Boundaries Commission (IEBC), which has been appointed through a competitive process and has been approved by parliament. The judiciary has been overhauled as well, and the constitution of 2010 brought reforms intending to ensure the neutrality of the security sector. These reforms were meant to address some of the institutional weaknesses that contributed to the post-election violence. The new constitution also stipulates a precise timeframe for the swearing in of the president after elections – a hurried swearing in as had been the case in the previous elections should thus be avoided. According to the new constitution, once election results have been announced petitions are possible for 7 days, during which time the president may not be sworn in. The Supreme Court has 14 days to determine the outcome of a petition, and, once settled, another 7 days must pass before the president may be sworn in. This mechanism is designed to avoid a repetition of the confusion surrounding the elections in 2007.⁶³⁹ Indeed, the presidential elections of 2013 were relatively peaceful, although this was not necessarily a function of the reforms.

The case of Kenya's post-election violence illustrates the intricacies and politics of the pursuit of international criminal justice, and the sometimes rather awkward relationship with the consolidating R2P norm. The ICC – operating within a legal paradigm – is subject to some of the same principles underpinning R2P, 'multilateralism' and 'consent' ('prevention' and 'regionalism' do not fit in the judicial context, although a judicial institutionalisation of 'regionalism' could perhaps help the ICC overcome some of its problems). As an international endeavour, the ICC is by definition multilateral. It operates according to a principle of complementarity, which could be likened to R2P's respect for state sovereignty and the three-pillars approach. The ICC as an institution faces some of the same criticism to which R2P is exposed and that has given rise to R2P rejectionism. ICC proceedings and efforts to prevent or respond to mass atrocity crimes share a subset of identical obstacles.

Just as a preference for non-coercive, multilateral measures, in line with R2P, may result in a policy that appears ill-suited and/or ineffective at preventing or halting mass atrocity crimes, the principles underpinning the ICC may stand in the way of a thorough, unbiased investigation of suspected R2P crimes. Stephen Brown – who had lauded immediate donor responses to the elections violence⁶⁴⁰ – provides a scathing account, together with Rosalind Raddatz, of the ways in which 'Western officials

⁶³⁶ Ibid. p. 26

⁶³⁷ Reisman, 'Defense Says Adjournment Would Violate Kenyatta's Fair Trial Rights'

⁶³⁸ Simon Allison, 'ICC Should Drop Charges against Kenyatta - for Now,' *The Guardian*, 17 July 2014

⁶³⁹ Adams Oloo, interview in Nairobi, 21 December 2011.

⁶⁴⁰ Brown, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting It Right?'

have continued to make short-term decisions favouring stability or peace that actually undermine basic principles of democracy and justice.’⁶⁴¹

But, similarly to R2P, the ICC’s success at delivering justice in this particular case is less relevant (although no less disappointing) than the fact that there was an international effort to deliver justice, and that, qualitatively, the shape and form of these efforts correspond to the principles that underpin R2P – suggesting that these core tenets have made substantial progress in shaping international practice.

Conclusions: The Case of Kenya and ‘R2P Prevention’

The outbreak of violence following the 2007 elections certainly qualified as a case in which the ‘R2P threshold’ had been met – for ‘R2P prevention’ at the very least. A significant number of people had died in a short period of time, with evidence of systematic, pre-planned ethnic violence, its form worryingly reminiscent of that seen in Rwanda a decade earlier. The number of displaced people soared and the economy threatened to collapse – Kenya’s descent into civil war, at that point, was not just an abstract scenario, but a real possibility. Indeed, an argument could be made that actually, the opportunity for true ‘prevention’ had already been missed.⁶⁴² In any case, the situation was one in which national authorities were already ‘manifestly failing’ to protect their population.

A number of international and local actors directly involved in the mediation invoked R2P at the time: In January 2008, as the crisis was ongoing, French Foreign and European Affairs Minister Bernard Kouchner stated that a swift, political solution was needed, and that France supported the efforts of Kofi Annan’s mediation team with the support of the AU and UN. ‘In the name of the responsibility to protect, it is urgent to help the people of Kenya. The United Nations Security Council must take up this question and act.’⁶⁴³ The original, in French, read ‘Au nom de la responsabilité de protéger, il est urgent de venir en aide aux populations du Kenya’ – interestingly, Kouchner did not use ‘droit d’ingérence’, but instead referred explicitly to the responsibility to protect.⁶⁴⁴

Other actors also invoked R2P. Francis Deng, then UN Special Adviser on the Prevention of Genocide, urged political leaders to ‘meet their responsibility to protect’.⁶⁴⁵ In February 2008, towards the end of the mediation process, Desmond Tutu stated ‘I believe what we are seeing in Kenya is action on a fundamental principle – the Responsibility to Protect.’⁶⁴⁶ Chief mediator Kofi Annan had been one of

⁶⁴¹ Stephen Brown and Rosalind Raddatz, ‘Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya,’ *Journal of Eastern African Studies* 8, no. 1 (2014), quotation taken from abstract

⁶⁴² Serena Sharma to The Broker2010, <http://www.thebrokeronline.eu/Blogs/The-Responsibility-to-Protect/The-Responsibility-to-Prevent-Lessons-from-Kenya-s-post-electoral-crisis>

⁶⁴³ International Coalition for the Responsibility to Protect, ‘Violence in Kenya: Statement Made by French Foreign and European Affairs Minister Bernard Kouchner,’ <http://www.responsibilitytoprotect.org/index.php/component/content/article/129-africa/1501-violence-in-kenya-statement-made-by-french-foreign-and-european-affairs-minister-bernard-kouchner>

⁶⁴⁴ See France Diplomatie, ‘Situation Au Kenya: Déclaration De M. Bernard Kouchner,’ http://www.diplomatie.gouv.fr/fr/pays-zones-geo_833/kenya_372/presentation-du-kenya_983/situation-au-kenya-2008_18317/m.-kouchner-violences-au-kenya-31.01.08_59045.html

⁶⁴⁵ United Nations Department of Public Information, ‘The United Nations and Kenya: Briefing Note,’ (2008)

⁶⁴⁶ Desmond Tutu, ‘Taking the Responsibility to Protect,’ *Spiegel Online*, 20 February 2008

the driving forces behind advocacy efforts to promote R2P's international recognition and the history of thought that led to the formulation of R2P at the turn of the millennium.⁶⁴⁷ Kofi Annan said after the crisis that he had seen 'the crisis in the R2P prism with a Kenyan government unable to contain the situation or protect its people' and that Kenya was 'a successful example of R2P at work'.⁶⁴⁸ Annan said 'When we talk of intervention, people think of the military.' He went on to say 'But under R2P, force is a last resort. Political and diplomatic intervention is the first mechanism. And I think we've seen a successful example of its application.'⁶⁴⁹ R2P, Annan suggested, 'gives nations and peoples a yardstick – a standard by which they can hold their government to account.'⁶⁵⁰

Yet, the question remains which role the R2P rhetoric actually played in the conflict mitigation efforts, especially given the unique, favourable context within which response measures were taken in Kenya – the shared and common interest in seeing the crisis resolved swiftly and without further bloodshed and destabilisation. All sides, including both the PNU and ODM, agreed that no one stood to gain from a Kenyan descent into civil war – intervention in an environment in which actors have strong political, economic, strategic, or ideological interests, and are pitted against each other, is much more difficult. Kenyan journalist Wycliffe Muga concludes that '[o]nce it became clear that we stand to lose everything, they were going to find a way to work together.'⁶⁵¹

Consequently, it could be argued that the converging interests around a power-sharing agreement, rather than the emergence of R2P, explains the success of the mediation; that the mediation success owed more to the particularity of the Kenyan case than the ability of R2P to change the political realities on the ground. Without much doubt the mediation would have taken place regardless of the existence or application of R2P. This is not to say, however, that the international approach to the crisis did not reflect R2P's growing influence on international practice. Although it is difficult to establish a direct causal relationship between the invocation of R2P and the mediation, the case does suggest that the principles underpinning the consolidating R2P norm informed international practice as actors were considering appropriate preventative measures in response to the worsening situation following the elections.

The course of events in Kenya, in turn, lent itself well to continued efforts to promote R2P internationally. The branding of Kenya as an R2P success helped make R2P seem less threatening and corrosive of state sovereignty, especially at a time when many states were reconsidering their views about R2P. The application of R2P to the mediation in Kenya made the Kenyan success-story a valuable example for R2P advocates eager to reinforce R2P's core principles: prevention, consent, multilateralism, and regionalism.

The international response to the crisis successfully averted a further escalation of the violence. However, for assessing the extent of R2P's consolidation as a norm, what is more significant is the qualitative dimension of the international response. In the case of Kenya, international responses showed a remarkable degree of institutionalisation of the core R2P tenets. R2P has been successful at altering perceptions about the legitimate and appropriate forms of responding to imminent or ongoing humanitarian crises.

⁶⁴⁷ For his contribution to the debate on a modern approach to state sovereignty, see Annan, 'Two Concepts of Sovereignty'

⁶⁴⁸ Roger Cohen, 'How Kofi Annan Rescued Kenya,' *The New York Review of Books*

⁶⁴⁹ 'African Genocide Averted,'

⁶⁵⁰ Kofi Annan and Mousavizadeh, *Interventions: A Life in War and Peace* (London: Allen Lane, 2012) p. 132

⁶⁵¹ Wycliffe Muga, interview in Nairobi, 13 December 2011.

The efforts sat squarely within the paradigm of prevention – although sadly, the opportunity for long-term, structural prevention had been missed, despite clear warning signs. Nevertheless, the responses to the first signs of violence following the disputed election results was swift and, surprisingly, very well-coordinated between international state and non-state actors. This may have been a happy coincidence, but – given the extensive efforts that had gone into lessons-learnt from other recent cases, especially the tragedy of Rwanda – it is more likely that the response to the post-elections crisis reflected the institutionalisation of preventative practices.

The mediation showed that ‘multilateralism’ and ‘regionalism’ have become standard descriptors of habitual international responses. International actors sought the consent of the Kenyan governing elite at all times, exerting pressure, to be sure, but never actually crossing the line of coercion. Whilst there may have been a number of factors facilitating such a strategy – Kenya’s pro-Western politics, extensive commercial interests, and so on – the fact that the particularities of the Kenyan case were conducive for enabling a successful international strategy based on R2P principles (in other words, a ‘model’ case of R2P prevention) does not negate the Kenyan case as one illustrating – like its more unsuccessful counterparts, e.g. Darfur – that R2P has made significant advances in consolidating as an international norm.

Indeed, the ICC prosecutions of Kenyatta, Ruto, and Sang prove the point. The court has indicted a sitting head of government for the second time (the first being the indictment of Bashir of Sudan), which seemed to suggest international criminal justice was gaining ground. So far, however, the ICC’s proceedings in relation to the alleged crimes committed in the aftermath of the elections have not proved successful – Michela Wrong, for instance, even asks ‘Has Kenya Destroyed the ICC?’⁶⁵² The ICC did not issue an arrest warrant for Kenyatta, as this was deemed unnecessary (in contrast with Bashir’s indictment, where an arrest warrant has been issued). In the end, the ICC proceedings met a similar fate as the intervention in Sudan on Darfur: international criminal justice was forgone in deference to government consent and state sovereignty traditionally conceived. R2P prevention efforts in Kenya have been successful, in contrast with the ICC prosecutions, which have been fraught with difficulty. Nevertheless, the mere fact that the ICC became involved in the first place, and that the Kenyan government felt compelled to cooperate, does appear to reflect new priorities and changing practices in international society.

In sum, the Kenya case was a ‘model case’ of R2P prevention – but the success of the mediation is not what makes the case significant in terms of assessing R2P’s progress as a consolidating international norm. What is significant about this case is that it shows that international actors acted in a way that recognisably conformed to the core R2P tenets – whether they were aware that they were doing so, or simply because they thought it the most appropriate approach to take. It is evident that a considerable number of key actors – first and foremost Annan leading the mediation – were familiar with R2P. Some of these actors invoked R2P in relation to the crisis in Kenya (as the crisis was ongoing, or afterwards). Even without explicit R2P invocation, however, the qualitative dimension of the international response to the crisis suggests that the international principles underpinning R2P have had a significant impact on international practice.

⁶⁵² Wrong, ‘Has Kenya Destroyed the ICC?’

Chapter 8: The Responsibility to Protect: International Practice Since 2005

Introduction: The Consolidation of R2P as a Norm in International Practice Since 2005

Humanitarian policy debates and policies concerning specific cases may seem theoretical and far-removed from the locale of actual conflicts, figuratively as well as literally. Consequently, notes Bellamy, '[t]here are two parallel stories to tell about RtoP since 2005, one concerning debates about its implementation within the UN system and the other concerning its use in response to humanitarian crises.'⁶⁵³ Whilst the earlier chapters, chapters 3-5 looked more closely at the former – the conceptual development of R2P, and its advances in international discourse – the latter part of the thesis, chapters 6-9 explores the relationship between the emerging norm and international practice. However, the distinction is for analytical purposes only. Although the stories can be told separately, they are both drawn from the same sequence of relevant social phenomena. This is why I refrain from portraying the two case studies simply as the 'application of R2P', instead emphasising the interrelatedness of the R2P discourse in these two cases with R2P's consolidation process. R2P shaped the responses to the crises in Darfur and Kenya, but the responses also affected attitudes towards R2P.

Chapters 3-5 illustrated the growing impact R2P has had on humanitarian policy debates over the last decade or so, despite the fact that R2P can only really be said to have 'emerged' in 2005. R2P had been invoked repeatedly since 2005, notably in Security Council resolution 1674 of April 2006, on the protection of civilians, which reaffirmed the 2005 World Summit paragraphs;⁶⁵⁴ in Security Council resolution 1706 of 2006 on Darfur, in making reference to the Sudanese government's responsibility to protect civilians under threat of physical violence;⁶⁵⁵ and the General Assembly's resolution taking note of the 2009 report on implementing R2P.⁶⁵⁶

Since 2005, formal references to R2P have increased and are today commonplace in UN documents: In May 2011, a draft resolution on Syria circulated to the Security Council referred to the 'Syrian government's responsibility to protect its citizens';⁶⁵⁷ in response to the recent escalation of violence in Abyei, Sudan the President of the Security Council stated in June 2011 that '[t]he Security Council underscores the responsibility of the parties to protect civilians...'⁶⁵⁸; the Human Rights Council went one step further in an American draft resolution on Syria, 'reaffirming' that 'all States have an *obligation* to protect'.⁶⁵⁹ The norm entrepreneurship promoting R2P had, in just over a decade,

⁶⁵³ See also Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* p. 27

⁶⁵⁴ United Nations Security Council, 'Resolution 1674, Adopted by the Security Council at Its 5430th Meeting, on 28th April 2006 (S/RES/1674),' (2006)

⁶⁵⁵ 'Resolution 1706 (2006), Adopted by the Security Council at Its 5519th Meeting, on 31 August 2006,'

⁶⁵⁶ UN General Assembly, 'Resolution Adopted by the General Assembly: The Responsibility to Protect, A/Res/63/308,' (United Nations, 2009)

⁶⁵⁷ Security Council Report, 'Update Report No. 2, Syria, 26 May 2011,' http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.7494091/k.53A1/Update_Report_No_2brSyriabr26_May_2011.htm

⁶⁵⁸ United Nations Security Council, 'Statement by the President of the Security Council, 3 June 2011, S/PRST/2011/12,' (United Nations, 2011)

⁶⁵⁹ Emphasis by the author. The full paragraph reads: 'Reaffirming that all States have an obligation to protect the rights to life, liberty and security of persons within their territory', see United Nations General Assembly,

successfully institutionalised a discourse of a 'responsibility to protect', although with the caveat that – as these examples illustrate – references to R2P usually refer to the state's responsibility to protect rather than the international community's responsibility to protect.

Chapters six and seven explored the meaning of R2P's invocation in the case of Darfur and Kenya. The cases had been chosen because of the fact that R2P had been – more or less – formally invoked in both cases.⁶⁶⁰ Since then, R2P has been invoked successfully in two further cases: Libya⁶⁶¹ and Côte D'Ivoire.⁶⁶² Of the four cases, Kenya was the only case that fell under 'R2P prevention'⁶⁶³, making the case particularly interesting because it facilitated exploration of 'prevention', a core R2P principle.

However, there are, in addition, a number of cases in which R2P could have been invoked, but where it was not; and where invoking R2P was attempted, but without success.⁶⁶⁴ R2P could have been applied to the DRC, which has been experiencing ongoing violence since 1997; Russia attempted in 2008 to invoke R2P in relation to Georgia; Bernard Kouchner proposed to the UN Security Council to invoke R2P in the case of Myanmar in 2008, but this was rejected by China and ASEAN; the World Council of Churches and Oxfam referred to R2P in the case of Gaza (2008-9); Gareth Evans attempted to invoke R2P in relation to the conflict in Sri Lanka (2008-09), but R2P was never mentioned explicitly in official documents; and, similarly, was relevant in the case of Guinea (2009), although again, no formal reference was made.

The following chapter provides an overview of cases qualifying as 'R2P cases' since 2005. The aim is twofold: on the one hand, to explore the dimension of 'consistency', both with regard to the invocation of R2P, as well as with regard to the type of international responses the crises elicited. In

'United States of America: Draft Resolution A/HRC/S-16/L.1,' in *Situation of Human Rights in the Syrian Arab Republic*(2011)

⁶⁶⁰ Security Council resolution 1674 referred to the contribution of the AU, which at the time was engaged in peacekeeping in Darfur. On Kenya, a Security Council presidential statement called for mediation efforts, but stopped short of an explicit reference to R2P. See UN Security Council, 'Statement by the President of the Security Council, S/PRST/2008/4,' (2008) R2P supporters nevertheless argue that the case was regarded through the 'R2P prism', as the Secretary-General's spokesperson referred to the 'legal and moral responsibility to protect' in a statement in January 2008 (UN Secretary-General Office of the Spokesperson, 'New York, 2 January 2008 - Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Kenya,' (2008)) At a speech in Berlin in July 2008 Ban Ki-Moon stated that the reaction to the post-election violence in Kenya in 2007 was the first example of the implementation of the 'narrow but deep' approach to R2P, arguing that '[t]he combined efforts of the African Union, influential Member States, the United Nations and my esteemed predecessor, Kofi Annan, were instrumental in curbing the post-election violence.', see UN Department of Public Information, 'Secretary-General Defends, Clarifies "Responsibility to Protect" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World", SG/SM/11701'

⁶⁶¹ Security Council resolution 1970 'recalled the Libyan authorities' responsibility to protect its population' (see UN Security Council, 'Resolution 1970 (2011), Adopted by the Security Council at Its 6491st Meeting, on 26 February 2011, S/RES/1970,' (2011) Security Council resolution 1973 reiterated 'the responsibility of the Libyan authorities to protect the Libyan population', and reaffirmed 'that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians' (see 'Resolution 1973 (2011), Adopted by the Security Council at Its 6498th Meeting, on 17 March 2011, S/RES/1973,' (2011)

⁶⁶² Resolution 1975 reaffirmed 'the primary responsibility of each State to protect civilians' and reiterated 'that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians...', see 'Resolution 1975 (2011), Adopted by the Security Council at Its 6508th Meeting, on 30 March 2011, S/RES/1975,' (2011)

⁶⁶³ The Special Advisers were also engaged in preventive action in the cases of Kyrgyzstan, Guinea, and South Sudan. Edward Luck in an interview in New York, April 2011.

⁶⁶⁴ Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* pp. 51-70

the analytical framework, chapter two, I defined a consolidated norm as *a regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*. Consequently, I argued, I needed to assess the degree of institutionalisation, both in terms of consistency in responses to R2P situations, as well as in terms of the extent to which the behaviour conformed to core R2P tenets (the qualitative dimension of R2P as a consolidating norm).

The two previous chapters have dealt in depth with the latter question – this chapter now takes a look at the bigger picture, analysing the politics of R2P invocation, and whether R2P's consolidation has successfully managed to de-politicise R2P invocation, resulting in more consistent international responses to R2P crises. If R2P has made substantial progress in terms of its consolidation as an international norm, I argued in chapter two, similar cases would elicit similar responses, and international responses would gradually become more consistent. To explore this question, I use Melissa Labonte's 'manifest failure' threshold framework, which allows for a comparative analysis across cases.⁶⁶⁵ Using this framework, I compare the international responses to a number of R2P relevant crises since 2005.

Second, the chapter takes a cursory glance at a smaller subset of these cases to confirm conclusions drawn from chapters six and seven, on Darfur and Kenya, respectively, in relation to the qualitative dimension of R2P. A brief discussion of three cases – Burma/Myanmar, Libya, and Côte D'Ivoire – illustrates that core R2P principles have shaped international responses to R2P crises in a further three cases. The case of Myanmar in the aftermath of cyclone Nargis is significant, because the rejection of attempted R2P invocation was heralded as a sign that R2P was consolidating further, undergoing a process of 'conceptual clarification'.⁶⁶⁶ The case is widely cited as one in which a failed attempt at R2P invocation sharpened the conceptual meaning of R2P by delineating clear limits of applicability, and consequently, as was argued, facilitated the acceptance of the concept by some of its sceptics. I explore the nature of the international responses to the humanitarian crisis in Myanmar, and whether they suggest that the core R2P tenets have been relevant despite the failed invocation attempt (confirming the conclusions drawn from the case study on Kenya, which found that the application of the 'R2P label' was not directly related to the extent to which international practice reflected the growing influence of core R2P tenets – nor to the success of the international response in terms of humanitarian outcomes).

I do the same for two further cases, Libya and Côte D'Ivoire. These cases are more straightforward because they clearly fell within the remit of R2P as according to the narrower 2005 consensus, and because R2P was invoked explicitly in the form of Security Council resolution references, to the great surprise of R2P advocates and opponents alike, in February and March 2011. Supporters immediately argued that the invocation was proof that R2P had consolidated as an international norm. Not only did the Council set a precedent with the Libya case – it also reaffirmed it with its invocation of R2P in the case of Côte D'Ivoire. Critics argued the outcome of the intervention in Libya actually harmed R2P's consolidation as a norm. The sections on Libya and Côte D'Ivoire engage with these arguments. Using my own definition of 'norm', and again applying the analytical framework introduced in chapter two, I lay out my own position on the role of these two cases in the consolidation of R2P as an international norm.

⁶⁶⁵ Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection'

⁶⁶⁶ Badescu and Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?', quotation from abstract.

Assessing Consistency in International Responses to R2P Situations Since 2005

'Inconsistent' has become a derogatory descriptor for international responses across cases in situations in which genocide and other mass atrocities are imminent or already occurring. R2P proponents point out that '[t]he responsibility to protect is a principle and not a tactic.'⁶⁶⁷ Much is at stake here, because consistency is commonly associated with impartiality, and inconsistency with bias. On the other hand, Chris Brown, for instance, argues that inconsistency (in relation to the use of force on humanitarian grounds) is not necessarily a bad thing, unless this is used as a pretext, to justify morally reprehensible action or inaction as in the case of Rwanda.⁶⁶⁸ However, whether or not inconsistency is ethically undesirable is a question I do not seek to address here. The point is not that inconsistency in applying R2P questions R2P's moral worth. I assess consistency because I have identified consistency as an essential characteristic of norms.

Aidan Hehir, reflecting on the meaning of the invocation of R2P in relation to Libya, argues that the Security Council's response to Libya, rather than proving that R2P is consolidating as an international norm, is a case of inconsistency: Resolution 1973, he argues, 'is consistent with the Security Council's record of inconsistency.' He argues that the permissive approach taken in response to imminent atrocities in Libya were 'impelled by a unique confluence of factors'.⁶⁶⁹ However, Hehir's conclusions are premature. To shed more light on the question of consistency it is necessary to take into consideration a much broader range of cases – and indeed, doing so leads to different conclusions.

First of all, it is necessary to clarify what exactly is meant by 'consistency': consistency in assessing what constitutes an R2P case; or consistency in the sorts of responses that follow once a case has been recognised as qualifying. Regarding the former, the 2005 World Summit Outcome Document is ambiguous. Much depends on interpreting the document's reference to 'manifest failure' to protect in paragraph 139.⁶⁷⁰ The document fails to elaborate further on the meaning of 'manifest failure' of national authorities to protect their populations, leaving international actors to interpret the term on a case-by-case basis. The vague phrasing allows for inconsistency – for 'politicised' decision-making. The 2009 report on implementing R2P has gone some way towards clarifying which kinds of international responses are appropriate for responding to different categories of 'manifest failure'. Pillar three – the international responsibility to protect – outlines both coercive and non-coercive response options (and potentially, but not necessarily, the use of force).

Melissa Labonte finds that Security Council responses to situations in which R2P crimes are imminent or occurring can be categorised as follows:⁶⁷¹ the *permissive* approach, the *conservative* approach, and the *satisficing* approach. In the *permissive* approach the 'manifest failure' threshold is

⁶⁶⁷ Thomas G. Weiss, 2 February, 2014, <http://www.e-ir.info/2014/02/02/after-syria-whither-r2p/>

⁶⁶⁸ Chris Brown, 'Selective Humanitarianism: In Defence of Inconsistency,' in *Ethics and Foreign Intervention*, ed. Deen Chatterjee and Don Scheid (Cambridge: Cambridge University Press, 2003)

⁶⁶⁹ Aidan Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect,' *International Security* 38, no. 1 (2013), quotations on pages 157 and 158, respectively.

⁶⁷⁰ The 2005 World Summit outcome document paragraph 139 states that states are 'prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities *manifestly fail* to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.' Emphasis added by the author.

⁶⁷¹ Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection'

set comparatively low; there is early response making full use of the pillar three response options contained in paragraphs 49-66 of the 2009 report of the Secretary-General on 'Implementing the Responsibility to Protect'; the use of diplomatic pressure and sanctions; and a willingness to take more robust measures where diplomacy fails. The only example of a case in which this approach has been taken to date, she argues, is Libya, where the international community used diplomacy, sanctions, and ultimately the establishment and enforcement of a no-fly zone by NATO.

In the *conservative* approach, on the other hand, the Security Council displays extreme caution and hesitance; uses a strict interpretation of Charter provisions on state sovereignty; national interests play an important role; the crisis is usually framed as being domestic or internal; there is an emphasis on the state's primary responsibility; international reaction follows as the crisis abates or is about to end; there is a lack of follow-up to national protection responses; a wilful disregard of substantive evidence of mass atrocities; and Security Council members may use or threaten to use their power to veto. Labonte cites the response taken to the conflict in Sri Lanka, where no R2P response was taken even though there was substantial evidence that the Sri Lankan state authorities were committing war crimes and crimes against humanity, as an example. Gareth Evans, head of the International Crisis Group at the time, had invoked R2P in a speech in July 2007. In the speech Evans argued that it was 'hard to argue that Sri Lanka is anything but an R2P situation ... which demands preventive action, by the Sri Lankan government itself, but with the help and support of the wider international community, to ensure that further deterioration does not occur.'⁶⁷² The Sri Lankan Secretariat for Coordinating the Peace Process (SCOPP) rejected Evans' invocation of R2P, on the basis that R2P criteria had not been met in the case of the Sri Lankan crisis, and that R2P was not applicable in the Sri Lankan context.⁶⁷³ Evans recalled a string of negative reactions following the delivery of the Sri Lanka speech.⁶⁷⁴

Finally, in the *satisficing* approach, the bar for 'manifest failure' is again set high, with states assessing the situation according to what is deemed appropriate rather than what would be needed for effective protection: pillar three options may be regarded as applicable but evaluated taking into consideration political and financial resources and commitments; the Council uses fact-finding missions or commissions of inquiry; the international response is guided by the approach and capacities of regional and sub-regional organisations; there might be sanctions or other measures, but only if they do not pose high risks or costs; and there may be sanctions but these may not be sufficiently enforced. Labonte contends this was the approach taken in response to the Darfur conflict. There was a 'pillar three' response, but this was largely ineffective because actions were guided by feasibility rather than what would have been needed to ensure civilian protection.

Labonte's framework is a good starting point for enquiring further into consistency in responses to intrastate crises that may give rise to R2P crimes. However, it needs further elaboration before it can

⁶⁷² Gareth Evans, 'The Limits of State Sovereignty: The Responsibility to Protect in the 21st Century,' (International Crisis Group, 2007)

⁶⁷³ Asian Tribune, 'Peace Secretariat Slams Gareth Evans' Call for International Intervention in Sri Lanka,' 1 August 2007, p. 8. Sri Lanka's former ambassador to the EU stated that 'The grave danger is that the decision to intervene could quite possibly be on the basis of some unsubstantiated and cooked up reports / allegations [sic] of persons and organizations which have their own agenda.' K. Godage, 'Persons Such as Gareth Evans Should Not Prostitute Themselves,' Website of the Permanent Mission of Sri Lanka, Geneva, Switzerland, <http://www.lankamission.org/other%20pages/News/2007/November/2007-11-10GE.htm>

⁶⁷⁴ 'I gave a fairly cautiously expressed lecture on the subject only to be greeted by a hail of personal abuse...' Gareth Evans, 'The Responsibility to Protect: Creating and Implementing a New International Norm', Address by Gareth Evans, President, International Crisis Group, to Human Rights Law Resource Centre, Melbourne, 13 August 2007 and Community Legal Centres and Lawyers for Human Rights, Sydney, 28 August 2007,' (2007)

be applied. The main problem with the framework as it stands is that it does not sufficiently distinguish between different types of conflict. Even without politicisation, R2P is bound to be inconsistent, because different conflicts necessarily require different policy responses. In addition, the framework is one-dimensional in that it views 'consistency' merely as a measure of the vigour or tenacity of the international response. However, a case can be made that 'consistency' should also encompass consistency in the types of measures that are being taken (qualitative consistency): more cooperative (pillar two measures) or confrontational/coercive measures (pillar three measures). These two must not be confused: a conflict may elicit a vigorous response, and it may do so with or without the full cooperation of the government of the state in question; another conflict may elicit little international response, whether or not the government of the state concerned is seeking foreign assistance or intervention.

Any attempt at analysing 'consistency' must take all of the above into account. First of all, it is necessary to devise a typology of intrastate conflict, which is necessary if we want to compare international responses across cases. I therefore suggest breaking down 'intrastate conflict' into four categories: violence resulting from disputed elections; rebellion with the aim of overthrowing the government; secessionist movement with the aim of creating an independent state; and state-sponsored violence / oppressive regimes. The distinction is for analytical purposes only: there are likely to be linkages (for instance, there may be a secessionist movement in an oppressive regime; elections are more likely to be disputed and give rise to violence in unstable, war-torn states), and for each case I have chosen the description that best captures the quality of the conflict at a particular point in time.

In the table below, I provide a cursory overview of relevant R2P crises since 2005. The cases listed are crises where one can reasonably argue that the R2P threshold had been met – where, in other words, relevant authorities were unable or unwilling to protect their entire population from genocide, ethnic cleansing, war crimes, or crimes against humanity. To facilitate analysis of international responses to similar cases, I distinguish between different forms of intrastate violence, as outlined above (elections disputes; rebellion; secession; and oppressive regimes). 'International responses' here refers to Security Council action, but also to other international responses if they do not contradict core R2P principles (for example measures taken by regional organisations). Rather than provide a definitive, detailed study, the intention here is to provide a cursory assessment (which could possibly be elaborated on in future research). Despite the limitations, summarising international responses to a number of intra-state crises since 2005 in this way allows for a cross-cases analysis of consistency in both the extent and the format of response measures taken by international actors.

Table 2

*International Responses to Intrastate Conflict Since 2005*⁶⁷⁵

⁶⁷⁵ Most of the data for the table is derived from case information available on the website of the International Coalition for the Responsibility to Protect (ICR2P); on the website of the Stockholm International Peace Research Institute; and on the website of Human Rights Watch. See International Coalition for the Responsibility to Protect, 'Crises,' <http://www.responsibilitytoprotect.org/index.php/crises>; Stockholm International Peace Research Institute, 'SIPRI Yearbook,' <http://www.sipri.org/yearbook/2012/02>; and Human Rights Watch, 'World Report 2013,' <http://www.hrw.org/world-report/2013>. The categories 'conservative'; 'satisficing'; and 'permissive' have been borrowed from Melissa Labonte, see Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection'. N.B. This is not a complete list

	Conservative	Satisficing	Permissive
Disputed elections	<p><u>Zimbabwe:</u> Aftermath of presidential elections in 2008, lack of international coordination, little pressure on Mugabe</p>	<p><u>Kyrgyzstan:</u> Uprising in 2010 toppling Bakiyev; the successor government seeks military assistance from Russia (without success); International actors exert pressure through the OSCE</p>	<p><u>Kenya:</u> AU mediation in response to elections violence, 2008</p> <p><u>Côte D'Ivoire:</u> In 2011, resolution 1975 explicitly invokes R2P and places targeted sanctions on Gbagbo, French military intervention</p>
Rebellion	<p><u>Syria:</u> Ongoing since 2011, provision of humanitarian aid, arming of rebel factions, lack of international political coordination, no coordinated R2P response</p> <p><u>Afghanistan:</u> Ongoing civil war, civilian casualties resulting from indiscriminate Taliban attacks; Taliban attacks targeting civilians supporting the government</p> <p><u>Somalia:</u> Ongoing civil war since Siad Barre's overthrow in 1991, failed state, Islamist insurgency, Kenyan military intervention, African Union Mission in Somalia (AMISOM)</p>	<p><u>Central African Republic:</u> Conflict between Seleka rebels and 'anti-balaka' militias, Seleka coup in March 2013, UN establishes MINUSCA</p>	<p><u>Democratic Republic of Congo:</u> Ongoing, failed state, transitional government since 2003, UN arms embargo, travel bans and asset freezes, MONUSCO, approval of contentious 'Intervention Brigade'</p>
Secessionist movement	<p><u>Sri Lanka:</u> Escalation of violence during final months of war in 2008 and 2009, international actors avoid R2P label</p> <p><u>Israel/Palestine:</u></p>	<p><u>Sudan (Darfur and South Kordofan and Blue Nile):</u> Civil war in Darfur since 2003; indiscriminate bombardment in Southern Kordofan and Blue Nile. Establishment of UNAMID</p>	<p><u>Nigeria:</u> Nigeria has sought assistance from other states on a bilateral basis against Boko Haram</p>

of possible cases. A great number of other cases could have been included, for example unresolved conflicts in Kashmir, Tibet, Ethiopia, or Eritrea.

	<p>Renewed violence in Israel and Gaza in 2014. Israeli Defence Forces 'Operation Protective Edge' in 2014 was heavily criticised for failing to discriminate between legitimate military targets and civilian infrastructure. Egyptian and UN efforts to broker a ceasefire.</p>	<p>(Darfur) in 2007; 2012 Tripartite Proposal between UN, AU, and the Arab League (Southern Kordofan and Blue Nile)</p> <p><u>South Sudan:</u> Ongoing crisis, limited international responses beyond support for existing UNMISS, condemning the violence, and threatening further measures</p>	<p><u>Mali:</u> Rebellion in the north of the country in 2012, French military intervention, ECOWAS mediation, Security Council authorises MINUSMA</p> <p><u>Iraq/Syria:</u> ISIS and other jihadist groups fighting governments in Syria and Iraq since 2013, United States leading the anti-ISIS coalition</p>
Oppressive regime	<p><u>Burma/Myanmar:</u> The state is governed by a military junta since a 1962 coup ended democratic rule. Violent crackdown on Saffron revolution in 2007. Rejection of humanitarian aid in the aftermath of Cyclone Nargis in 2008.</p> <p><u>North Korea:</u> Totalitarian state since 1948, systematic human rights abuses (prison camps, forced labour, torture), little scope for international R2P response options as China is North Korea's most important ally</p>	<p><u>Guinea:</u> Coup in 2008, 2009 Stadium Massacre. ECOWAS mediation and arms embargo, AU travel bans and asset freezes, UN Commission of Inquiry</p>	<p><u>Libya:</u> The Gaddafi regime falls in 2011, followed by civil war. Prior to the collapse of the regime, the UN authorises a NATO-enforced no-fly zone with the aim of protecting civilians</p>

As the table above indicates, assessing consistency in applying R2P is complex. A number of issues complicate the analysis: is the situation one in which any measures can reasonably be taken in an attempt to prevent mass atrocities or halt ongoing mass atrocities? North Korea is a case in point. It is difficult to argue that the international approach to North Korea demonstrates that R2P is being applied inconsistently, because of the difficulty in identifying and implementing measures that would do more good than harm in a country governed by a regime in possession of nuclear weapons and the backing of a permanent member of the Security Council. The same holds true for other cases, in varying degrees. In some cases it is difficult to distinguish a 'lack of political will' from 'a lack of sufficient political will'.

In conclusion, the table above seems to suggest that a 'conservative' approach is not necessarily the result of a lack of political will – rather, it results from political circumstances that make it very difficult to identify and/or implement useful, realistic R2P measures. The variation in the measures taken in response to the crises listed under 'satisficing' and 'permissive' gives more credence to the idea that R2P measures are inconsistent. This is not the place to speculate about the reasons for this inconsistency – this would require significantly more space than is available here. A possible explanation could be regime type – elaborating on Michael Doyle's liberal peace theory, an argument could perhaps be made that democracies are more likely to seek assistance and cooperate with international actors, whereas non-democracies are more likely to resist external interference and become the target of coercive pillar three response options.⁶⁷⁶

Perfect consistency is, however, unlikely: the question is whether international responses are sufficiently consistent to be recognisably rule-like, or whether it appears that international responses are becoming gradually more consistent and rule-like. It appears that both questions can, cautiously, be answered in the affirmative: first, if there is no strong (political or other) reason why response measures are severely limited, similar intrastate conflicts usually result in similar international responses. Second, it is possible that the consistency gap is gradually closing, as the institutionalisation of these response measures progresses – although this is perhaps the more contentious claim, as it may be too soon to tell whether this is indeed the case.

In conclusion, this section assessed consistency from three particular angles: consistency in invoking R2P; consistency in the extent, force, and robustness of appropriate measures; and consistency in the form of measures taken (the qualitative dimension of the implementation of R2P). The cross-case comparison shows that R2P has made remarkable progress in terms of consistent R2P invocation: a greater number of cases that give rise to – or that have the potential to give rise to – genocide and other mass atrocities are being brought to international attention. Contentious cases are often, at a minimum, picked up on and discussed thoroughly. R2P has made substantial progress in pervading the international discourse. R2P concerns have been raised in relation to a great number of present intra-state conflicts, even where other – national security interests – have dominated the discourse. International actors generally cannot factor R2P concerns out anymore – at the very least, they need to demonstrate that their actions have been informed by consideration of R2P concerns.

International practice is more inconsistent when it comes to the extent, force, and robustness of appropriate measures. As the table above shows, some cases continue to elicit conservative international responses, whereas others are permissive to international responses. And a third category of cases continues to elicit responses in which international actors take action, and appear to be wanting to be seen to take action, but the response measures and the way they are followed through does not display the same extent, force, and robustness as in the permissive cases. The cross-case comparison showed that there are two factors that appear decisive here: first, the extent to which international actors are interested in resolving a conflict, and, second, the extent to which appropriate measures can be implemented given the political particularities of the case. In the foreseeable future, it is unlikely that inconsistency in the extent, force, and robustness of

⁶⁷⁶ See Michael Doyle, 'Kant, Liberal Legacies and Foreign Policy (Parts I and II),' *Philosophy and Public Affairs* 12(1983) and 'Liberalism and World Politics,' *American Political Science Review* 80, no. 4 (1986). For continued debate on the liberal peace see Bruce Russett et al., 'The Democratic Peace,' *International Security* 19, no. 4 (1995) and Michael W. Doyle, 'Three Pillars of the Liberal Peace,' *American Political Science Review* 99, no. 3 (2005)

international responses to R2P crises will disappear, although it may be possible that the consistency-gap will gradually converge.

Assessing the third dimension of consistency – the way international actors respond to R2P crises – shows that international practice has firmly internalised R2P’s core tenets. International responses to humanitarian crises are habitually multilateral and channelled through the UN, where procedures for dealing with humanitarian crises have become institutionalised. The degree of institutionalisation, not just at the UN, but also amongst states and international civil society, is elaborate and a wide range of international actors have developed sophisticated, generic policies to support the prevention of, and response to, genocide and other mass atrocities. Most conflicts have elicited some form of regional response – for example, to name but a few, OSCE involvement in efforts to de-escalate the crisis in Kyrgyzstan; AU involvement in mediating/peacekeeping in Kenya, Somalia, Sudan, and Guinea; or ECOWAS efforts regarding the crisis in Mali. State sovereignty still structures international society, but the idea of ‘responsibility’ has taken root, and international actors now consider a wide range of non-coercive and coercive response measures legitimately at their disposal if a state is manifestly failing to protect its population from R2P crimes and any such measures are viable and can reasonably be expected to improve the situation.

To explore the third dimension of consistency – the qualitative dimension of R2P responses – in more detail, it may be helpful to analyse an additional subset of the cases in more detail, with the aim of confirming the findings from the chapters on the emergence of R2P as a prospective norm, and the case studies on Darfur and Kenya. For this purpose, three cases merit closer attention: first, the case of Burma/Myanmar, where initial attempts to invoke R2P failed and were followed by short-lived international consensus on R2P’s inapplicability. Second and third, the cases of Libya and Côte D’Ivoire, which stand out because they elicited Security Council responses formally invoking R2P, followed by scholarly debates on whether the responses in both cases were setting a precedent, or whether they should be regarded as normal aberrant international practice in a situation in which a powerful group of actors pursues a particular set of interests. The following sections explore each of these three cases in turn.

Invoking R2P, Unsuccessfully: International Responses to the Humanitarian Crisis in Burma/Myanmar in the Aftermath of Cyclone Nargis

Although application of an R2P prism today is less contentious than it used to be, invoking R2P still seemed very political just five years ago, when disaster struck Burma in 2008. At the time R2P was still relatively new, and a much smaller number of cases were actively on the ‘R2P radar’. The international organisation – especially non-governmental – was nowhere nearly as elaborate and sophisticated as it is today; the Global Centre for the Responsibility to Protect and the International Coalition for the Responsibility to Protect were in the process of being established and coordinating their policies with other civil society actors, the UN, and states. The terms and conditions for recognising valid R2P situations had not yet been settled upon and were still being negotiated.

Therefore, it makes sense to look in more detail at non-successful R2P invocation, and its influence on the process of norm consolidation. There were two cases where international actors have attempted to invoke R2P, without success: French Foreign Minister Bernard Kouchner invoked R2P when the military junta in Burma refused to cooperate with humanitarian aid organisations to alleviate the suffering of more than a million people in the aftermath of cyclone Nargis; Russia

attempted invocation of R2P in South Ossetia. R2P supporters argued that failed R2P invocation did not damage R2P, but that, on the contrary, it strengthened the concept by defining more clearly what it was applicable to, and what not.⁶⁷⁷ Whereas the South Ossetia case, however, was dismissed more readily as an invalid case of R2P invocation in which Russia was seen to be attempting to misuse the concept, Myanmar was a more controversial case, in which even R2P supporters were at odds about whether R2P should apply or not.⁶⁷⁸

Bernard Kouchner argued that Myanmar's denial of humanitarian access to victims of Cyclone Nargis in 2008 necessitated an R2P response, and that the large-scale suffering and deaths that resulted constituted crimes against humanity, one of the four R2P crimes.⁶⁷⁹ In a press briefing in May 2008, Kouchner explicitly invoked R2P.⁶⁸⁰ Kouchner argued: 'We are seeing at the United Nations whether we can implement the Responsibility to Protect, given that food, boats and relief teams are there, and obtain a United Nations resolution which authorizes the delivery [of aid] and imposes this on the Burmese government.'⁶⁸¹ Supporting the French position, British Foreign Secretary David Miliband stated that 'All instruments of the UN should be available.'⁶⁸²

The UK and the US subsequently proposed a draft Security Council resolution calling for the government to allow unhindered access to humanitarian organisations, promote democratisation, and release political prisoners, amongst other things (there was no mention of the use of force). There were nine votes in favour, three abstentions (Congo, Indonesia, Qatar), and three votes against (China, Russia, and South Africa). The UK stated that 'the situation in Burma/Myanmar represents a threat to regional peace and security and to the security of the Burmese people'; Ghana stated that 'the maintenance of international peace and security in today's radically changed world necessarily involves addressing complex challenges that are cross-cutting and inter-related'; Panama was 'concerned that the topic ... far transcends the situation in Myanmar. The topic we are addressing is the functions and mandate of this Council, and specifically its capacity to act preventively...'⁶⁸³ China and Russia justified their veto arguing that the devastation caused by the cyclone was Myanmar's internal matter and did not threaten international peace and security.⁶⁸⁴

At first, it appeared R2P proponents were undecided about whether Burma qualified as an 'R2P case'. Ramesh Thakur argued that as natural and environmental catastrophes were dropped from R2P in 2005, to invoke R2P in the case of Myanmar would have meant that Southern suspicion about

⁶⁷⁷ Badescu and Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?'

⁶⁷⁸ For a discussion of the debate on the applicability of the R2P label in this case see Jürgen Haacke, 'Myanmar, the Responsibility to Protect, and the Need for Practical Assistance,' *Global Responsibility to Protect* 1(2009)

⁶⁷⁹ For a summary of events and reactions in policy circles, see International Coalition for the Responsibility to Protect, 'The Crisis in Burma,' <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma>

⁶⁸⁰ French Embassy UK, 'Burma - Joint Press Briefing Given by M. Bernard Kouchner, Minister of Foreign and European Affairs, and M. Jean-Pierre Jouyet, Minister of State Responsible for European Affairs, Paris, 13 May 2008,' (2008)

⁶⁸¹ International Coalition for the Responsibility to Protect, 'Untitled,' <http://responsibilitytoprotect.org/index.php/component/content/article/1652>

⁶⁸² Quoted in Doug Bandow 2009, <http://www.cato.org/publications/commentary/rangoons-renaissance>

⁶⁸³ Excerpts of individual statements are available at International Coalition for the Responsibility to Protect, 'Burma Resolution in Security Council, Vetoed by Russia and China: Implications for RtoP,' <http://www.responsibilitytoprotect.org/index.php/crises/128-the-crisis-in-burma/793-burma-resolution-in-security-council-vetoed-by-russia-and-china-implications-for-r2p>

⁶⁸⁴ Ibid.

Western motivations would have increased.⁶⁸⁵ Edward Luck stated that 'linking the "responsibility to protect" to the situation in Burma is a misapplication of the doctrine'.⁶⁸⁶

However, seeing the aftermath of Cyclone Nargis as an isolated event was to distort the reality of the government's tainted human rights record since a military coup had ended democratic rule in 1962. The junta's brutal repression of a political uprising in 1988 had resulted in 10,000 deaths. Since then, armed conflict between the government and several ethnic armed groups had been prevalent throughout the country.⁶⁸⁷ Abuse of political dissidents and ethnic minorities, such as the Karen and Rohingya, continues to this day.⁶⁸⁸

Roberta Cohen provided an argument that proved more defensible in the long run. She argued that what started as a natural disaster later turned into a human-made disaster in which crimes, and possibly crimes against humanity, were committed.⁶⁸⁹ In her view, invoking R2P in this case would not necessarily have meant calling for military intervention. She argued that the Security Council's role was to use 'the R2P umbrella to galvanize political and humanitarian action.'⁶⁹⁰ She suggested that some R2P proponents viewed Kouchner's role as that of 'bad cop', whose invocation of R2P may have played a role in compelling the government of Myanmar to cooperate with the UN and ASEAN (the 'good cops') and to allow foreign aid.⁶⁹¹

Cristina Badescu and Thomas Weiss subsequently argued that Kouchner's unsuccessful invocation of R2P clarified R2P's scope, contributing to its consolidation as a norm. In an article in *Global Responsibility to Protect* Badescu and Weiss argued that R2P can be wrongly invoked, even if this is well-intentioned. Such misuses, however, have the potential of advancing norms through contestation and 'conceptual clarification'.⁶⁹² It seems that, for a short while at least, the case of Burma clarified that humanitarian crises that result from irresponsible government responses to natural disasters do not qualify as R2P cases. It is, however, unclear to what extent this would have held true had a similar situation occurred under different circumstances, if the circumstances had been more amenable to the implementation of R2P measures, i.e. if the situation had been permissive. Possibly – and quite likely, I would argue – a permissive case would have *confirmed* that R2P applies when governments act irresponsibly, potentially amounting to R2P crimes, regardless of the events that led to the crisis.

Indeed, it seems that the initial consensus on the (non-)applicability of R2P in this case has since been superseded by an element of revisionism regarding R2P's applicability to Burma in the aftermath of Cyclone Nargis. The precursor organisation to the International Coalition (ICRtoP), The Responsibility to Protect – Engaging Civil Society (R2PCS) eventually conceded that 'if it could be shown that the Burmese government's actions would lead to crimes against humanity, the international community would then bear the responsibility to prevent the commission of such crimes'.⁶⁹³

⁶⁸⁵ Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*

⁶⁸⁶ Quoted in International Coalition for the Responsibility to Protect, 'The Crisis in Burma'

⁶⁸⁷ Global Centre for the Responsibility to Protect, 'Policy Brief: Applying the Responsibility to Protect to Burma/Myanmar,' (2010)

⁶⁸⁸ International Coalition for the Responsibility to Protect, 'The Crisis in Burma'

⁶⁸⁹ Cohen, 'Reconciling R2P with IDP Protection'

⁶⁹⁰ 'The Burma Cyclone and the Responsibility to Protect,' (2008)

⁶⁹¹ Ibid.

⁶⁹² Badescu and Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?'

⁶⁹³ International Coalition for the Responsibility to Protect, 'The Crisis in Burma'

Today, invoking R2P is much less contentious and, arguably, evokes less scepticism or even hostility – a tribute perhaps to R2P advocates' ceaseless efforts to emphasise R2P's wide range of prevention and response measures; but in large part due to the increasing number of cases that are being viewed through the 'R2P prism'.

In terms of extent, force, and robustness of measures, the international responses to the crisis were conservative, largely a function of China's and Russia's position and veto in the Security Council. In terms of qualitative consistency, however, the case is illustrative of R2P's progressing consolidation: preventing further deterioration of the situation preoccupied a wide range of international governmental and non-governmental actors. The Security Council proposed a resolution, demonstrating that international actors sought a multilateral avenue for mitigating the humanitarian crisis, even though the resolution was vetoed. ASEAN's role in coordinating the humanitarian relief efforts bears testimony to the growing role of regional organisations.⁶⁹⁴ In sum, international responses were – yet again – not as comprehensive and robust as they might have been, had an international consensus existed – but the avenues international actors sought for addressing the crisis did demonstrate that, by 2008, there was consistency in the qualitative dimension of R2P.

The Security Council's First Explicit Invocation of R2P: The Case of Libya

The international responses to the crisis unfolding in Libya in 2011 stand in stark contrast to the more conservative responses in other cases, such as in the cases of Burma/Myanmar or Sri Lanka. Jennifer Welsh points out that the international response to the crisis in Libya was unusual in two ways: the Security Council passed a resolution authorising 'all necessary measures', without mention of host state consent; and, compared to other cases, the international responses were decisive and swift.⁶⁹⁵ On Melissa Labonte's conservative – satisfying – permissive continuum, the international response to the Libyan case is clearly located at the 'permissive' end.

At the beginning of 2011, in response to protests against the government, Muammar Gaddafi, Libya's leader since 1969, threatened his forces would begin an assault on Benghazi, and threatened his forces would 'come house by house, room by room ... will find you in your closets' and that there would be 'no mercy and no pity.'⁶⁹⁶ The Security Council responded with a statement on 22 February 2011, in which it called on the Libyan government to 'meet its responsibility to protect its population.'⁶⁹⁷ On the same day, the Global Centre for the Responsibility to Protect made an open statement, in which it urged member states to take steps to prevent further atrocities. It suggested that measures could include: calling on the government to uphold its responsibility to protect; establishing a no-fly zone over the entire country under Chapter VII to prevent aerial attacks on civilians; an arms embargo banning the sale, transfer and delivery of weapons to the government of Libya; imposing targeted sanctions on key regime figures such as Gaddafi, members of his family, and other individuals; as well as the creation of a commission of inquiry, and a possible referral to

⁶⁹⁴ Yves-Kim Creac'h and Lilianne Fan, 'Asean's Role in the Cyclone Nargis Response: Implications, Lessons and Opportunities,' *Humanitarian Exchange Magazine* 41, no. December (2008)

⁶⁹⁵ Jennifer Welsh, 'Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP,' *Ethics & International Affairs* 25, no. 3 (2011)

⁶⁹⁶ Dan Bilefsky and Mark Landler, 'As UN Backs Military Action in Libya, US Role Is Unclear,' *International Herald Tribune*, 17 March 2011

⁶⁹⁷ UN Department of Public Information, 'Security Council Press Statement on Libya,' (United Nations, 2011)

the International Criminal Court.⁶⁹⁸ On 26 February, UN Security Council Resolution 1970 referred the situation in Libya to the International Criminal Court; stipulated an arms embargo; and targeted travel bans and asset freezes. On 28 February, the UN Group of Friends on R2P made a statement on Libya in which they called on the government of Libya to meet its responsibility to protect its population and put an end to the human rights violations, and for relevant UN bodies 'to put into practice the commitment of the international community to the Responsibility to Protect'.⁶⁹⁹

On 17 March 2011, the Security Council passed resolution 1973, which stated that the attacks against civilians might constitute crimes against humanity and demanded 'the immediate establishment of a ceasefire and a complete end to violence and all attacks against, and abuses of, civilians'. The resolution also approved a no-fly zone over Libya and authorised 'all necessary measures' to protect civilians. However, the resolution did not call for Gaddafi's removal, and explicitly excluded 'a foreign occupation force of any form on any part of Libyan territory...' It was passed with 10 votes in favour and 5 abstentions. The abstaining states were Brazil, China, Germany, India, and the Russian Federation. Russia explained its abstention arguing that the resolution had not been clear on how and by whom the measures would be enforced and what the limits of the engagement would be. China said it had not vetoed the resolution in consideration of the wishes of the Arab League and the African Union. The representatives of India, Germany, and Brazil explained that they had abstained as they wished to stress the need for peaceful resolution of the conflict and consideration of potential unintended consequences of the use of force.⁷⁰⁰

France and Britain effectively took leadership roles, causing a rift in European policy. Germany was hesitant and ultimately abstained from a vote on resolution 1973. Bucher et al relate this rift to differing traditional conceptions about the use of force on humanitarian grounds, which seems plausible:⁷⁰¹ whilst France has a tradition of intervening in domestic politics of former colonies, Germany's experience during both world wars has resulted in a preference for non-militaristic foreign policy. On 18 March 2011, David Cameron made a statement on the UN resolution on Libya, justifying British involvement and laying out the criteria for intervention:

[I]ntervening in another country's affairs should not be undertaken save in quite exceptional circumstances. That is why we've always been clear that preparing for eventualities which might include the use of force – including a no fly zone or other measures to stop humanitarian catastrophe – would require three tests to be met. Demonstrable need. Regional Support. And a clear legal basis ... We should not forget his [Gaddafi's] support for the biggest terrorist atrocity on British soil ... We simply can not have a situation where a failed pariah state festers on Europe's southern border ... This would potentially threaten our security, push people across the Mediterranean and create a more dangerous and uncertain world for Britain and for all our allies as well as for the people of Libya.⁷⁰²

⁶⁹⁸ Global Centre for the Responsibility to Protect, 'Open Statement on the Situation in Libya,' (2011)

⁶⁹⁹ Group of Friends on Responsibility to Protect, 'Statement by the Group of Friends on Responsibility to Protect on the Situation in the Libyan Arab Jamahiriya'

⁷⁰⁰ UN Department of Public Information, 'Security Council Approves a "No-Fly Zone" over Libya, Authorizing "All Necessary Measures" to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions,' <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>

⁷⁰¹ Jessica Bucher et al., 'Domestic Politics, News Media and Humanitarian Intervention: Why France and Germany Diverged over Libya,' *European Security* 22, no. 4 (2013)

⁷⁰² BBC Mobile, 'Libya: David Cameron Statement on UN Resolution,' <http://www.bbc.co.uk/news/uk-politics-12786225>

In doing so, Cameron essentially identified four criteria for intervention: 'demonstrable need' (comparable to a 'just cause', reminiscent both of Just War thinking and the ICISS report); 'regional support' (clearly in line with R2P principles); a 'clear legal basis' (similar to the 'right authority' criterion in the ICISS report, which recognises the UN Security Council as the primary source of authority); and the UK's strategic interests. Cameron's criteria are similar to those Tony Blair laid out when he justified intervention in Kosovo.⁷⁰³

In the US realists opposed intervening in Libya, but a number of influential individuals supported the idea of imposing a no-fly zone, most importantly Susan Rice, Samantha Power, and Hillary Clinton as Secretary of State.⁷⁰⁴ Rice had worked on the Clinton Administration's National Security Council during the Rwanda genocide. In an interview she had said that if faced with a similar situation in future, she 'would come down on the side of dramatic action, going down in flames if that was required'.⁷⁰⁵ Power had written 'A Problem From Hell',⁷⁰⁶ advocating for the use of force as a last resort in response to genocide, before becoming National Security Council staff director for multilateral affairs and human rights in the Obama Administration. Power's conceptual work provided a toolbox outlining response options to the Libya crisis, Rice coordinated action at the UN. In a speech on 28 March 2011, Barack Obama justified intervention in Libya on humanitarian grounds, justifying why the decision to intervene needs to be selective:

It is true that America cannot use our military wherever repression occurs. And given the costs and risks of intervention, we must always measure our interests against the need for action. But that cannot be an argument for never acting on behalf of what's right. In this particular country – Libya; at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Gaddafi's forces in their tracks without putting American troops on the ground.⁷⁰⁷

The Arab League, the Gulf Cooperation Council, and the Organisation of the Islamic Conference initially backed the idea of a no-fly zone, a factor regarded as important in facilitating a Security Council resolution. The Arab League's support for the no-fly zone was probably motivated by both genuine humanitarian concerns, as well as the result of the influence of Saudi Arabia, which detested the Gaddafi regime.⁷⁰⁸ Alex Bellamy contends that without this regional backing, China and Russia would have most certainly vetoed Security Council resolution 1973.⁷⁰⁹ In a Brookings commentary, Bruce Jones highlighted the legitimising role of the support of the Arab League,

⁷⁰³ See Blair, 'Doctrine of the International Community - Speech Given to the Economic Club of Chicago in 1999'

⁷⁰⁴ Mann, *The Obamians: The Struggle inside the White House to Redefine American Power* chapter 20

⁷⁰⁵ Samantha Power, 'Bystanders to Genocide,' *The Atlantic* 2001, quoted in Mann, *The Obamians: The Struggle inside the White House to Redefine American Power* p. 284

⁷⁰⁶ Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (Basic Books, 2002)

⁷⁰⁷ International Herald Tribune, 'Obama's Remarks on Libya,' *International Herald Tribune*, 28 March 2011 2011

⁷⁰⁸ Luke Glanville, 'Intervention in Libya: From Sovereign Consent to Regional Consent,' *International Studies Perspectives* 14, no. 3 (2013)

⁷⁰⁹ Alex J. Bellamy, 'Libya and the Responsibility to Protect: The Exception and the Norm,' *Ethics & International Affairs* 25, no. 3 (2011)

arguing that 'in a region still scarred by US military action in Iraq, for this most recalcitrant of institutions to call for UN military action – knowing full well that means US military action – is a reflection of the deep changes underway in the region.'⁷¹⁰ By 20 March, however, the Arab League voiced criticism about the air attacks in Libya, and Amr Moussa, Secretary-General of the Arab League, stated that 'what we want is the protection of civilians and not the bombardment of more civilians'.⁷¹¹

Not everyone agreed that intervening in Libya was the right decision. Alan Kuperman, for instance, argued that the humanitarian threat was grossly exaggerated to justify military action.⁷¹² Preventing a 'bloodbath' feared to take place in Benghazi, the rebel stronghold, was given as a justification for the intervention. Kuperman suggested that data collected by Human Rights Watch showed that Gaddafi's forces were not deliberately massacring civilians but rather targeting armed rebels fighting the government. He argued that instead of preventing genocide, as this was not imminent, the intervention emboldened the rebellion, prolonging Libya's civil war. He argued that although war crimes may have been committed, the casualties that resulted from the re-taking of cities by the Libyan forces was collateral damage inevitable in counter-insurgency. Kuperman wrote that the intervention was pursuing 'regime-change on bogus humanitarian grounds' and that it exceeded the UN mandate for the protection of civilians, as coalition forces bombed Libyan forces in retreat or based in Gaddafi strongholds where they did not threaten civilians.

The outcome of the intervention in Libya was important for R2P: it could strengthen the concept and set a precedent for its repeated application, or weaken it if the intervention was deemed unsuccessful and states were retrospectively to find that R2P should not have been invoked or was to blame for a negative outcome.⁷¹³ Thomas Weiss, for instance, argued that if the outcome of Libya was a situation like Kosovo, R2P would stand on firmer ground. If, on the other hand, the outcome would be a failed state situation like Somalia, this would reflect badly on efforts to promote R2P.⁷¹⁴

So far, Libya has been cited by both R2P supporters and sceptics. On the one hand, the air strikes may have been successful at avoiding a Srebrenica-type situation in Benghazi and protecting civilians in rebel-held areas of the country. On the other hand, R2P sceptics have argued that, in an effort to protect civilians in areas under the control of the government, R2P has been transformed into a quest for regime change.⁷¹⁵ Stewart Patrick argued that 'the notion that any country could impartially intervene on behalf of civilians is a delusion. Using military force to protect beleaguered civilian populations invariably means taking sides...'⁷¹⁶

⁷¹⁰ Bruce Jones, 'On Libya, the Contours of the Emerging International Semi-Order,' Brookings, http://www.brookings.edu/opinions/2011/0318_un_libya_jones.aspx Bruce Jones was co-author of 'A More Secure World', a report by a high-level panel in 2004, and 'In Larger Freedom', the 2005 report of the Secretary-General. These documents are widely regarded as antecedents of the ICISS report in 2001.

⁷¹¹ Michael Georgy and Maria Golovkina, 'Western Powers Strike Libya; Arab League Has Doubts,' *Reuters*, 20 March 2011

⁷¹² Alan J. Kuperman, 'False Pretense for War in Libya?,' *boston.com*, http://articles.boston.com/2011-04-14/bostonglobe/29418371_1_rebel-stronghold-civilians-rebel-positions. Kuperman elaborated on the argument in 'A Model Humanitarian Intervention? Reassessing Nato's Libya Campaign,' *International Security* 38, no. 1 (2013)

⁷¹³ Bruce Jones, Director and Senior Fellow of the NYU Center on International Cooperation expressed this opinion in an interview on 24 March 2011, in New York.

⁷¹⁴ Thomas Weiss expressed this opinion in an interview in New York in March 2011.

⁷¹⁵ The Economist, 'Responsibility to Protect - the Lessons of Libya,' 19 May 2011

⁷¹⁶ Stewart Patrick, 'A New Lease on Life for Humanitarianism: How Operation Odyssey Dawn Will Revive RtoP,' (Foreign Affairs, 2011)

Libya remains politically unstable. Elections were held in 2012, and again in 2014, but the government remains fractured. Regardless of whether the NATO intervention was perceived as helpful in preventing further bloodshed, or as further drawing out an existing civil war, the modalities of international responses to the unfolding crisis in Libya were squarely in line with the core tenets of R2P: Security Council authorisation was sought and granted for the enforcement of a no-fly zone over Libya; and the legitimising role of the endorsement of the intervention of regional organisations cannot be understated. 'Prevention' did not play an important role, because of the speed at which the situation deteriorated. Although coercive measures were ultimately taken, this was only after other non-coercive options proved unsuccessful. Aidan Hehir argued that the international responses to the crisis in Libya was exceptional, and that responses to humanitarian crises remain inconsistent⁷¹⁷ – but the way international actors responded to the deteriorating situation in Libya early in 2011 is very much in line with emerging practice observable in a wide range of cases.

The Security Council Invokes R2P, Again: The Case of Côte D'Ivoire

When incumbent president Laurent Gbagbo refused to step down and cede power to the internationally recognised winner of the presidential election in December 2010, Alassane Ouattara, 210 people were killed and more than 22,000 people fled to neighbouring countries.⁷¹⁸ The UN, the European Union, the African Union, and the Economic Community of West African States (ECOWAS), as well as several states, including, amongst others, the US, the UK, France, and Germany had formally recognised Ouattara as the President-elect and urged Gbagbo to step down.⁷¹⁹

Over the course of December 2010 and January 2011, a wide range of actors were vocal on the crisis. The Global Centre for the Responsibility to Protect published a statement warning of potential escalation of violence on 17 December 2010,⁷²⁰ and the International Crisis Group sent an open letter to the Security Council demanding the Council take a determined position.⁷²¹ The Prosecutor of the International Criminal Court declared that he would open an investigation if there were reasonable grounds to believe that crimes under the jurisdiction of the ICC would be committed.⁷²² Francis Deng and Edward Luck issued a joint statement on 17 December 2010 expressing their concern over the situation.⁷²³

Consequently, the US, the EU, ECOWAS, and the UN placed financial sanctions on Gbagbo and his wife Simone Gbagbo, as well as his closest political supporters. The AU suspended Côte d'Ivoire's

⁷¹⁷ Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect'

⁷¹⁸ United Nations Operation in Côte d'Ivoire (UNOCI), 'Presidential Elections,' <http://www.un.org/en/peacekeeping/missions/unoci/elections.shtml>

⁷¹⁹ A summary of the various reactions and preventative efforts is provided in International Coalition for the Responsibility to Protect, 'RtoP Listserv: Refusal of Gbagbo to Step Down Raises International Concern of Renewed Violence; January 9th Referendum in Sudan, 8 January 2011,'

⁷²⁰ Global Centre for the Responsibility to Protect, 'Open Statement on the Situation in Côte D'ivoire, 17 December 2010,'

⁷²¹ Louise Arbour, 'Open Letter to the United Nations Security Council on the Situation in Côte D'ivoire,' (Brussels: International Crisis Group)

⁷²² International Criminal Court, 'Press Release: Statement by ICC Prosecutor Luis Moreno-Ocampo on the Situation in Côte D'ivoire, 21 December 2010,'

⁷²³ United Nations, 'Press Release: UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte D'ivoire, 29 December 2010,' (New York)

membership and ECOWAS threatened the use of force should Gbagbo continue to refuse to step down. The AU and ECOWAS repeatedly sent envoys to Côte d'Ivoire in an attempt to mediate a peaceful resolution of the dispute, including former president of South Africa, Thabo Mbeki and Kenyan Prime Minister Raila Odinga.

The Security Council extended UNOCI through to 30 June 2011 and increased troop strength and number of personnel of the mission in resolution 1962.⁷²⁴ The mission was tasked with protecting Ouattara and his government, which was based in a hotel. On 23 December 2010, the Human Rights Council passed a resolution condemning the human rights violations.⁷²⁵ As the situation failed to improve and killings and forced disappearances continued, the UN Secretary General Ban Ki-Moon announced on 6 January 2011 that he would request the Security Council to authorise additional UNOCI forces.

The situation failed to improve, and UNOCI was not able to avert violence committed by forces loyal to the government. In January, the UN's military spokesman on the ground stated that 'the mission is always the same, to protect civilians', but argued that the host state's 'security forces always have the first line of responsibility against wrongdoers'. Nevertheless, the Under Secretary General for Peacekeeping, Alain Le Roy, stated that '[w]e will ensure firmly, if someone obstructs us, that we cross through roadblocks because it is inadmissible that anybody prevent us from protecting civilians.'⁷²⁶ On 19 January 2011 the Office of the Special Adviser of the Secretary-General on the Prevention of Genocide made its second statement on the crisis.⁷²⁷

On 30 March 2011, the Security Council called on Gbagbo to step down in resolution 1975, and reaffirmed UNOCI's mandate to protect civilians, including the prevention of the use of heavy weaponry against them.⁷²⁸ In April 2011, the UN and France struck at targets at Laurent Gbagbo's residence, his offices, and two of his military bases.⁷²⁹ France attacked heavy artillery and armoured vehicles at Gbagbo's residence and presidential offices, and supported UN forces with helicopter strikes against his forces at two of his bases. The UN Secretary-General justified this action by stating that Gbagbo's forces had targeted the civilian population and attacked the UN's headquarters in Abidjan, wounding four peacekeepers. France said it had joined the operation in Côte D'Ivoire at the request of the UN. In remarks to the press, French permanent representative to the UN, Gérard Araud, stated that resolution 1975 referred to the Responsibility to Protect, 'a concept which is dear

⁷²⁴ United Nations Security Council, 'Resolution 1962 (2010), Adopted by the Security Council at Its 6458th Meeting, on 20 December 2010,'

⁷²⁵ Office of the High Commissioner for Human Rights, 'Special Session of Human Rights Council on Côte D'Ivoire Concludes after Adopting a Resolution Calling for End to All Human Rights Violations, 23 December 2010,' (2010)

⁷²⁶ Adam Nossiter, 'Ivory Coast Forces Crack Down on Opposition,' *International Herald Tribune*, 12 January 2011

⁷²⁷ Office of the Special Adviser of the Secretary-General on the Prevention of Genocide, 'Statement Attributed to the UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte D'Ivoire,' (United Nations)

⁷²⁸ UN Security Council, 'Resolution 1975 (2011), Adopted by the Security Council at Its 6508th Meeting, on 30 March 2011, S/RES/1975'

⁷²⁹ Adam Nossiter, 'Strikes by UN and France Corner Leader of Ivory Coast,' *International Herald Tribune*, 4 April 2011

to the French.⁷³⁰ Finally, on 11 April, Gbagbo was arrested, and on 6 May, Ouattara was sworn in as president.⁷³¹

France's justification for 'Operation Unicorn' were diverse, but what stands out is that R2P was not given as a justification for intervention until after Gbagbo's arrest, in May 2011.⁷³² French officials invoked a responsibility to protect French and other European nationals and the need to support democratisation – they also referred to UN authorisation granted by the Security Council, although R2P was not referred to specifically. It was not until French President Sarkozy mentioned R2P in a concluding speech in Abidjan on 21 May 2011 that R2P was invoked. 'This is somewhat strange', notes Katariina Simonen, 'as France had been actively involved for a long time in the development of the humanitarian assistance doctrine [*droit d'ingérence*], one of the precursors of the responsibility to protect doctrine.'⁷³³ However, rather than detract from R2P's role in facilitating international responses to the crisis, this simply attests that, unsurprisingly, there were a number of factors that, in combination, led French officials to decide military intervention was both desirable and feasible. A comparison to the case of Kenya can be made here – although references to R2P were sparse and Kenya was seen as a 'model case' of R2P prevention only in retrospect, this does not preclude the possibility that R2P was influential in shaping the responses to the crisis.

Although the French intervention brought the conflict to a swift end, it was criticised on the grounds that it was undertaken by a former colonial power, and not undertaken by regional actors.⁷³⁴ Ultimately, it was not the African Union that resolved the crisis, but western military capacities that facilitated Gbagbo's arrest. Reactions, therefore, were mixed. On the one hand, there was relief that the crisis had ended, especially because of the importance of the port in Abidjan for local and regional trade. The Burkina Faso daily *Le Pays* wrote that 'the impartial – UN operation in Ivory Coast and French – forces did African democracy a great service', adding that UN resolution 1975 'will remain forever engraved in the marble of African history'. In Mali, the daily *Le Républicain* stated that '[i]t is easy to take offence at a foreign army entering an African palace ... but could we just stand by and allow people to die ... in the name of principles that disregard the cost in human life?' However, there was also criticism. On Ghanaweb, for instance, a comment read '11 April 2011 is a date to be remembered ... On that day we saw a sovereign African country's military barracks being attacked by a colonial power that has been meddling in the affairs of its former colony.'⁷³⁵ Critics argued France had attempted to impose democracy.⁷³⁶

The political situation in Côte D'Ivoire remains volatile. Nevertheless, the international responses showed that states and other international actors have internalised core R2P principles. The prevention of further bloodshed was a motive that allowed for a decisive Security Council resolution. The context was permissive, allowing for robust measures – in this case including the use of force.

⁷³⁰ Permanent Mission of France to the United Nations in New York, '30 March 2011 - Côte D'Ivoire - Remarks to the Press by Mr Gérard Araud, Permanent Representative of France to the United Nations,' <http://www.franceonu.org/spip.php?article5468>

⁷³¹ United Nations Operation in Côte d'Ivoire (UNOCI), 'Post-Election Crisis,' <http://www.un.org/en/peacekeeping/missions/unoci/elections.shtml>

⁷³² Katariina Simonen, 'Qui S'excuse S'accuse... An Analysis of French Justifications for Intervening in Cote D'Ivoire,' *International Peacekeeping* 19, no. 3 (2012)

⁷³³ *Ibid.* p. 370

⁷³⁴ Robert Zuber in an interview, New York, April 2011.

⁷³⁵ For a summary, see Phillipe Bernard, 'How the African Press Sees Events in Ivory Coast,' *Guardian Weekly*, 19 April 2011

⁷³⁶ Foluke Ipinyomi, 'Is Cote D'Ivoire a Test Case for R2P? Democratization as Fulfillment of the International Community's Responsibility to Prevent,' *Journal of African Law* 56, no. 2 (2012)

The measures were multilaterally authorised, if not actually multilaterally implemented. Regionalism played an important role: the AU and ECOWAS exerted diplomatic pressure and placed financial sanctions on Gbagbo and his wife. The AU and ECOWAS also attempted to facilitate a peaceful resolution of the conflict through mediation, without success. The military intervention that ultimately deposed Gbagbo was facilitated by France, even though French officials avoided officially conceding Operation Unicorn's role in facilitating Gbagbo's arrest⁷³⁷ – a more active role of the AU or ECOWAS might have bolstered the legitimacy of the intervention.

Conclusions: International Practice Since 2005

The two first explicit references to R2P, in response to crises in Libya and Côte D'Ivoire, came as a surprise to many R2P advocates and scholars. R2P had begun to turn from an idea, or a concept, into a norm. At the same time, the use of force to depose a sitting head of state – in both cases – and the aftermath of the interventions, sceptics argued, has resulted in normative backlash and explains a more conservative approach of international actors in responding to the Syrian civil war.⁷³⁸ 'As a result of the interventions in Libya and Côte D'Ivoire', note Almustafa et al., 'the norm now faces the risk of irrelevance'.⁷³⁹

At the same time, however, it is just as likely that international responses to Syria – where a range of factors obstruct internationally coordinated, decisive, and robust response to the crisis – are the exception to a new rule, rather than the continuation of an old rule to which Libya appeared the exception.⁷⁴⁰ Alternatively, it is possible that the international responses to the crisis in Syria were not exceptional at all, but conformed with R2P practice, but for the fact that these responses had to operate at the far end of a permissive-satisficing-conservative spectrum, and so were subject to a range of political considerations other than R2P concerns, or humanitarian concerns more broadly. It is, therefore, too soon to tell whether international practice has been consistent (in the second sense of the meaning discussed here, that is, in terms of the effort and robustness). There are simply too few cases to determine whether Libya and Côte D'Ivoire have been the exception to the old rule of non-intervention, or whether the inability to implement R2P in the case of Syria is exceptional in an international society in which R2P responses are gradually becoming the norm.

It is not, on the other hand, too soon to assess the qualitative dimension of R2P as an emerging norm. Both interventions were authorised by the Security Council. Both of these interventions could be categorised as 'direct prevention' if we take Kenya as a yardstick (although this is a more contentious claim in the case of Libya, where intervention could also be labelled 'reaction'). The use of force was part and parcel of a much broader set of international responses, including non-coercive as well as coercive, non-military measures such as asset freezing and travel bans – interveners saw military intervention as a last resort to prevent the worst, in both cases. Both of these cases also highlighted the contemporary importance and legitimising function of the involvement of regional actors: the intervention in Côte D'Ivoire, although greeted with relief in the

⁷³⁷ Simonen, 'Qui S'excuse S'accuse... An Analysis of French Justifications for Intervening in Cote D'ivoire' p. 367

⁷³⁸ See, for example, Justin Morris, 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum,' *International Affairs* 89, no. 5 (2013)

⁷³⁹ Maissaa Almustafa, Evan Cinq-Mars, and Matthew Redding to CIGI Junior Fellows Policy Brief 2013, <http://www.cigionline.org/publications/2013/8/responsibility-protect-ensuring-norms-relevance-after-libya-c%C3%B4te-divoire-and-syr>

⁷⁴⁰ Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect'

region, was criticised for a lack of involvement of regional actors, especially the AU, confirming the importance of genuine regional involvement as a legitimising factor today; in the case of Libya, the Arab League's initial endorsement of coercive measures was widely regarded as having played an important role in the run-up to the Security Council's decision to intervene.

In conclusion, 'consistency', or an apparent lack thereof, cannot qualify as an indicator of R2P's consolidation as a norm unless a distinction is made between rhetorical consistency (or the impact of R2P on international discourse); the vehemence and robustness of international responses to R2P crises (with or without R2P invocation); and consistency in the way international actors choose to respond to similar crises, and the degree of institutionalisation of these ways of responding (qualitative consistency). I have argued that discourse and qualitative consistency are much better indicators for assessing the degree of R2P's consolidation as an international norm. The consistency of robustness, or effectiveness, of international responses says little about R2P as an emerging norm, because it is a) too soon to tell, and b) there are too many confounding factors.

International responses to humanitarian crises since 2005 demonstrate that R2P has had a profound impact on international discourse. This discourse was – as Burma demonstrated – shaped by, and moulded around, responses to individual crises. In little more than a decade, the idea of a responsibility to protect has fully pervaded the international discourse on humanitarianism, and R2P principles shape perceptions about appropriate ways of responding to humanitarian crises. These responses are remarkably consistent when we look at *how* actors choose to respond (rather than on whether they respond, and to what effect). Based on discourse and qualitative consistency alone, a conclusion can be drawn that R2P is well on the way to normative consolidation.

Chapter Nine: Conclusion

The Responsibility to Protect and Norm Consolidation

This thesis has set out to answer the question of the extent to which the Responsibility to Protect can be considered a consolidated norm in international society today. The question is important because it assesses the strength of a claim that raises expectations with important ethical ramifications, a claim that suggests that international society can be modified to accommodate new priorities. If a new practice of responsibility were successfully implemented, the structure of international society would change. R2P campaigners advocate for a new norm – a new ‘normal’ – in international relations. This putative norm of a ‘responsibility to protect’ re-interprets existing human rights law, prioritising it over the traditionally protected status granted to the principles of state sovereignty and non-interference.

If, on the other hand, it was found that the Responsibility to Protect is not a norm, and is unlikely to become a norm in international society in the future, R2P campaigning would need to be seen with more realism: advocacy for a good cause, and deserving of our support – but unlikely to effect change in structural terms in international society, and certainly not an idea to rely on with regard to securing protection from politically motivated, large-scale and systematic human rights violations. Such a finding would give credence to a more realist outlook.

This is the theoretical puzzle this thesis addresses. The way the question is set up implies that the inquiry is based on the assumption that ‘norms’ exist in international relations, and that potentially they can have effects on the behaviour of states and other relevant international actors partaking in international society. In chapter two I set out my definition of ‘norm’ and give examples of international norms. The working definition of ‘norm’ I suggested defines a norm as a social rule that is based on regular practice, the repetition of which confirms the continued relevance of the practice and as such reproduces it: *a regularised pattern of behaviour, which is widely accepted as appropriate within the social context in which it occurs*. Not only is it a regular pattern of behaviour (actors routinely display this behaviour, although exceptions are possible): furthermore, this behaviour is also intersubjectively regarded as appropriate. Non-conformism or transgression of the norm is regarded as inappropriate. I defined the responsibility to protect as a policy idea with norm-potential. I understand R2P as making very specific and concrete suggestions as to who is responsible, in which situations, and in what ways. The thesis took the 2005 World Summit Outcome Document as its point of reference.

The analytical framework I had set up in chapter two defined three criteria that needed to be fulfilled for a putative international norm to qualify as ‘consolidated’: the regular behaviour is consistent (it occurs on most occasions); it is principled (it is similar in comparable circumstances); and it is effective (the norm successfully prioritises conformity/compliance over other behaviour-affecting factors). I had stressed that a norm could still qualify as ‘consolidated’ even if the three criteria were not fulfilled fully. Generally norms do not always lead to complete conformity; they are not applied equally on every occasion; and they do not always trump any other factors affecting behaviour. However, if we can observe that the putative norm appears to result in fairly regularised patterns of behaviour and appears to apply effectively most of the time, we can speak of a consolidated norm. An all-or nothing approach is distortive and therefore unhelpful. Analyses that fail to view norms as the result of aggregate behaviour are based on inherently flawed assumptions

about social reality; will be prone to draw conclusions based on observations that place too much emphasis on exceptions; and consequently may draw the wrong sorts of conclusions.

The analysis of the question whether R2P qualifies as a consolidated norm in international society at present – premised on the understanding of ‘norm’ as outlined above – came to the conclusion that the Responsibility to Protect is not, as yet, fully consolidated as an international norm, but that it has made significant advances in terms of normative consolidation. I showed that one of the aspects in which R2P’s consolidation as a norm has progressed the most is in terms of its influence on international perceptions of appropriateness, reflected in international discourse. The idea of a responsibility to protect, and indeed the specific responsibilities as endorsed in the 2005 Outcome Document, have successfully pervaded the international discourse, much as ‘humanitarian intervention’ had done previously.⁷⁴¹ Even R2P detractors and norm-challengers have been obliged to use R2P language, suggesting R2P has made significant advances in shaping perceptions about appropriateness.

The Consolidation Process So Far

Using the norms-lifecycle model,⁷⁴² chapters 3-5 tracked the emergence process of R2P, identifying 2005 as the year in which R2P can be said to have ‘emerged’. Chapters three and four showed that the articulation of R2P and the initial campaigning for R2P following the publication of the 2001 report was largely driven by middle power states and a limited number of specialist NGOs. Other actors, including participants from states from the Global South, had been consulted in a series of consultative meetings at various locations between January and July 2001, but the role of the participants at these roundtables was mainly to provide feedback to a framework of which the core elements had already been laid out. The roundtables provided a semblance of cosmopolitanism and inclusiveness, when in actual fact the process was steered by a group of individuals, or norm entrepreneurs, who shared a liberal, internationalist outlook and in many cases came from the West, or had spent a significant amount of time there.

As a result, R2P sceptics wondered whether R2P amounted to disguised imperialism, an attempt to institutionalise interference in weaker states’ domestic affairs. The use of humanitarian justifications for the war in Iraq further disaffected sceptics. Advocates feared that a sense of ‘buyer’s remorse’ could endanger the process of norm diffusion.⁷⁴³ In 2008 Gareth Evans found himself struggling to eradicate ‘five major misunderstandings about R2P’.⁷⁴⁴ One of the concerns, or misunderstandings, was that R2P ‘applies only to weak and friendless countries, never the strong’, and whether ‘Iraq 2009 was an example of the application of the R2P norm and a foretaste of things to come’. However, these were not misunderstandings in the literal sense of the word: rather they constituted a form of pre-emptive norm contestation (pre-emptive because R2P had not yet consolidated).

Arguably, this scepticism was the direct result of a lack of an insufficiently broad-based and genuinely inclusive conceptualisation, campaigning, and implementation process between 2000 and 2005. In the short run, the exclusivity around the process of the conceptualisation of R2P facilitated ingenuity and innovation; a more broad-based approach would have been slower, more gradual, and

⁷⁴¹ See especially Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*

⁷⁴² Finnemore and Sikkink, 'International Norm Dynamics and Political Change'

⁷⁴³ Thakur and Weiss, 'R2P: From Idea to Norm - and Action?'

⁷⁴⁴ Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* p. 56-70

it would have been difficult to maintain a decidedly liberal internationalist approach. R2P would not have emerged in its current form – perhaps an alternative proposal, or no proposal at all. Exclusivity allowed for innovation, but it was also short-sighted in that it effectively set R2P up for major problems, problems that materialised soon after in the run-up to the 2005 World Summit and beyond. Whether or not R2P advocates will be able to persuade initially marginalised parties that they can come on board and take ownership of a process they have not initiated will determine the success of R2P's consolidation process in the long-run. It seems that to some extent, this process of genuine suasion is now underway, and that it is proving successful.

Responsibility as International Practice

Chapters 6-8 took a closer look at international practice since the endorsement of R2P at the World Summit in 2005. If R2P were a norm, I argued, it would consistently shape perceptions about appropriate responses to international crises that can give rise to R2P crimes; international actors would be consistent in their choice of measures to address such crises; and meeting this responsibility would be pursued with consistent vigour across cases, resulting – all else being equal – in similar outcomes (a comparable degree of success in preventing atrocities). This research has found that whilst R2P has been remarkably successful at pervading the international discourse, it has, as yet, been somewhat less successful at consistency in implementation in terms of adherence to core R2P principles (the qualitative dimension of R2P); and has been least successful, to date, in terms of consistency across cases in terms of resolve and tenacity. In what follows below I briefly revisit each of these three dimensions in turn, in light of the overall findings of this thesis.

The emergence of R2P with the publication of the ICISS report in 2001 has been successful at 'shifting the terms of the debate', which had been what the authors of the report had intended to do.⁷⁴⁵ R2P has successfully replaced 'humanitarian intervention' as a point of reference,⁷⁴⁶ and this has had consequences for the way we think about these issues today, and has re-shaped perceptions about appropriate responses to egregious human rights violations. R2P replaced 'humanitarian intervention' with a framework that specified a 'threshold' (the sovereign states' manifest failure to protect) allowing international interference; and that offered a 'toolkit' wherein the use of force was just one of a number of options.⁷⁴⁷ One of the most important differences to 'humanitarian intervention' – if not the most important one – was that R2P suggested that governments that were already failing to meet protection responsibilities were not necessarily to be regarded as adversaries, but as partners if it could be determined that the failure to meet these responsibilities was the result of incompetence rather than of unwillingness. In that sense, R2P complemented the work of the ICC: individuals could now be held accountable for the commission of R2P crimes – governments as such could remain partners in efforts to prevent and/or respond to human rights violations even where individuals indicted held government posts. While governments were responsible, individuals could be held to account for a government's failure to meet this

⁷⁴⁵ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' p. 16

⁷⁴⁶ See also Stephen Hopgood, 'The Last Rites for Humanitarian Intervention: Darfur, Sri Lanka and R2P,' *Global Responsibility to Protect* 6, no. 2 (2014)

⁷⁴⁷ International Coalition for the Responsibility to Protect, 'ICRtoP Launches New Toolkit on the Responsibility to Protect'

responsibility. In this way, R2P sought to 'de-politicise' mass atrocity prevention.⁷⁴⁸ However, as the case of Kenya showed, questions of criminal culpability remained highly politicised despite the Kenyan government's cooperation with the ICC and its good relations with donor states. In fact Kenyatta and Ruto demonstratively cooperated with the ICC as a strategy of avoiding isolation and perhaps also reputational rehabilitation, with some degree of success (the prosecution withdrew charges against Kenyatta in December 2014). Al Bashir, in contrast, has failed to cooperate with the court, resulting in international isolation. R2P superseded 'humanitarian intervention' with the result that governments were now regarded as partners by default in the protection of human rights, rather than as potential adversaries. The international discourse reflects that this more nuanced approach has now begun to shape perceptions about appropriateness, both in principle as well as in response to specific cases.

The second dimension of consistency identified in chapter eight is the degree of adherence to the principles upon which R2P rests, and the degree of institutionalisation of practices that reflect conformity with these principles. I had identified four separate, if interlinked, core tenets: a respect for state sovereignty and therefore the necessity of government consent; multilateralism, in other words the authorisation of coercive measures through the Council, and the implementation of R2P measures through multilateral channels; an emphasis on prevention and the use of force as a last resort as an option amongst a range of other coercive measures; and an emphasis on the involvement of regional organisations, both in the implementation of R2P as generic prevention, as well as in responses to conflict situations in which R2P crimes may be imminent or are already occurring. Using these four core tenets to structure my analysis, I probed into two cases, the international responses to the ethnic conflict in Darfur from 2003 and into the post-election violence in Kenya in 2007-2008.

The case studies showed that whilst outcomes differed substantially, what was interesting was the degree to which international actors adhered, if unconsciously, to the central R2P tenets. Unsurprisingly, state sovereignty remained valid and R2P implementation efforts in both cases were moulded around a respect for the sovereignty of the state of Sudan and Kenya. R2P has not weakened the norm of non-intervention in the affairs of a sovereign state. In the case of Kenya, leading actors proved co-operative, willing and able to act as bearers of the state's primary responsibility to protect. In contrast, the Darfur case showed that state sovereignty is much more of a barrier to human rights protection where a state fails to meet its primary responsibility, and fails to cooperate with international actors seeking to act as responsible international actors. Here the relationship between outside actors and the domestic authorities was more confrontational. A respect for state sovereignty characterised international responses to the other cases surveyed briefly in chapter eight, Burma/Myanmar, Libya, and Côte D'Ivoire. The latter two saw responses that were more reminiscent of 'humanitarian intervention': the use of force without the consent of the government. However, both were authorised by the Security Council and accompanied by comprehensive sanctions regimes, in line with the other core R2P tenets.

Chapter eight showed that the least consistent dimension of R2P as a practice concerned effectiveness, measured not in outcomes but in terms of the resolve and tenacity of international actors in their response to the ongoing or imminent commission of R2P crimes. A comparison of a wide range of cases since 2005, by which time R2P had emerged as a potential new international norm, showed that resolve and tenacity were strongly affected by other considerations and that the consolidating R2P norm has not led to consistency in the extent, force, and robustness of

⁷⁴⁸ Brown, 'The Antipolitical Theory of Responsibility to Protect'

international responses. A catalogue of a number of post-2005 cases, modelled on a framework suggested by Melissa Labonte in which international responses are categorised as conservative, satisficing, or permissive,⁷⁴⁹ showed that international responses continued to be shaped to a significant extent by interests other than R2P norm compliance. This was particularly true when one or more permanent members of the Security Council had a vested interest: where one or more permanent members had a shared interest in facilitating a swift and effective response to a situation, international responses were likely to be permissive (Kenya, Côte D'Ivoire, DRC, Nigeria, Mali, Iraq/Syria, Libya). Where interests of influential states diverged, the result was a conservative approach (Zimbabwe, Syria, Afghanistan, Somalia, Sri Lanka, Israel/Palestine, Burma/Myanmar, North Korea).

Because of the impact of great power interest convergence versus interest divergence on effectiveness (not outcomes), realists have been quick to conclude that R2P may be an interesting theoretical proposition with limited effect in practice, despite R2P's substantial impact on international discourse.⁷⁵⁰ According to this argument, R2P does not determine state behaviour and therefore cannot be considered a consolidated norm in international society. However, such a conclusion overlooks two factors: first, R2P's existence dates back 10-15 years, depending on whether one dates the emergence of R2P with 2001 or with 2005. In any case, this is not a very long period of time for a norm to consolidate and settle. It is plausible that changed perceptions of appropriateness would precede the institutionalisation of a norm and that, in the final stages of a norm becoming settled, the pressure for consistency in application becomes greater. Consequently, one could expect the consistency gap to close in future as R2P continues to consolidate as an international norm. Second, the expectation that norms are *always* applied with complete consistency is simply unrealistic: consolidated norms require a bare minimum of consistency, and failing consistency may be an indication of norm corrosion or decline – but these inconsistencies, differences in interpretation, and exceptions characterise social reality. Norms operate in a social environment in which a multitude of factors play decisive roles in shaping outcomes. All social norms are afflicted by this problem, and, unfortunately, it is unlikely that a norm of a responsibility to protect would be exceptional or any different in this regard.

Prospects for the Responsibility to Protect as an International Norm

Despite a number of initial setbacks, R2P appears to be continuing on a path towards consolidation. A wide network of NGOs have taken on board the cause of promoting the institutionalisation and implementation of R2P nationally and internationally.⁷⁵¹ 43 states have established R2P focal points.⁷⁵² A UN General Assembly informal, interactive dialogue is now being held each year. R2P has pervaded the international discourse and has begun to transform international perceptions about appropriateness. Governments and other relevant authorities are being seen as primary

⁷⁴⁹ Labonte, 'Whose Responsibility to Protect? The Implications of Double Manifest Failure for Civilian Protection'

⁷⁵⁰ See, for example, Hehir, 'The Responsibility to Protect: 'Sound and Fury Signifying Nothing?'; 'The Responsibility to Protect in International Political Discourse: Encouraging Etatement of Intent or Illusory Platitudes?', *International Journal of Human Rights* 15, no. 8 (2011)

⁷⁵¹ International Coalition for the Responsibility to Protect, 'Current Members,' <http://www.responsibilitytoprotect.org/index.php/about-coalition/current-members>

⁷⁵² Global Centre for the Responsibility to Protect, 'R2P Focal Points,' http://www.globalr2p.org/our_work/r2p_focal_points

responsibility-holders in the protection of basic human rights, and international authorities (above all the UN Security Council, but also other bodies such as the Human Rights Council and the Human Rights Committee) are regarded as bearers of a secondary responsibility for ensuring states meet these responsibilities. '[T]he prevention of mass atrocities has become a field of practice in its own right and has achieved some notable early successes', Alex Bellamy suggests.⁷⁵³

R2P's consolidation is progressing, but R2P has not, as yet, fully consolidated as an international norm. Other political factors remain decisive in determining outcomes, particularly in cases in which two or more great powers have vested, but divergent, interests, such as in Syria. However, it is possible that, if R2P continues on a path of consolidation, the consistency gap may gradually close, and we may finally witness an international society in which there is agreement that certain human rights violations can no longer occur without a state losing its claim to legitimate statehood; and in which international actors can no longer evade secondary protection responsibilities without undermining their authority. This would not mean that international politics would become apolitical; international politics would be no less political, but R2P concerns would play a more central role in influencing behaviour and determining outcomes by constituting identities in a particular way. It may be that, as R2P's consolidation as an international norm continues, R2P rejectionism and norm contestation will decline until it reaches a point at which R2P has become a fully accepted norm, its principles have been internalised, and 'sovereignty as responsibility' is fully normalised.

From today's perspective, it appears that R2P will continue on a path of diffusion and eventual consolidation. R2P's emergence process so far appears to have reached a point at which the basic idea inherent in the concept, and its core tenets – prevention, consent, multilateralism, regionalism – are no longer being questioned. Norm contestation now focuses less on conceptual issues, and more on operationalisation and the practicalities of implementation. Implementing R2P is still a huge task and much work still lies ahead. Institutionalising R2P at the regional and the domestic levels is bound to be a protracted process. One of the central issues, as in many other policy areas, is Security Council reform. A functioning, legitimate Council is an important ingredient of R2P's long-term success as an international norm. The development of a related rule, 'the responsibility not to veto', may offer a way forward.⁷⁵⁴ Currently, R2P's prospects of successful consolidation are good, and are getting better. Whether R2P will eventually grow into a fully consolidated norm in international society remains to be seen.

Limitations and Avenues for Future Research

The limitations of this research are twofold: theoretical and empirical. The theoretical limitations stem from a need to base this work on established ways of theorising on and about norms. This is itself an evolving field and so some of the theoretical assumptions on which the thesis builds may be subject to debate and scholarly contestation. In terms of the empirical chapters, the main limitations arose out of a need for feasibility: the need to narrow down the number of cases surveyed, balancing between breadth as well as depth, in a way one could reasonably assume would lead to the best research findings for this particular research question. Undoubtedly, with a wider scope of

⁷⁵³ Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015) p. 99

⁷⁵⁴ See also Theresa Reinold, 'The 'Responsibility Not to Veto', Secondary Rules, and the Rule of Law,' *Global Responsibility to Protect* 6, no. 3 (2014)

in-depth studies, as well further research on the existing in-depth studies, one could have gleaned some additional interesting insights that could have helped to further substantiate the research findings; to further qualify some of the findings; or to help to further refine the conclusions drawn.

In the field of theory, one of the areas in which research on norms requires most immediate attention is in establishing a generic threshold for norm consolidation. Such a study would compare the consolidation process of norms in international society. At present, there is no authoritative study that suggests a threshold at which norms can be considered consolidated and that provides a list of indicators for when this is the case. Jepperson, Wendt, and Katzenstein suggest that levels of endorsement, conventionalisation, and institutionalisation serve as indicators,⁷⁵⁵ but do not elaborate more on possible thresholds. A comparative case-study that explores historical cases of norms that consolidated successfully could yield empirical insights that could serve to facilitate further theorising on the process of norm consolidation.

More work on theorising relationships between norms and groups of norms would also be helpful. Paul Kowert and Jeffery Legro point to the ubiquity of norms as one of the challenges of researching norms, pointing out that 'it is difficult to predict which norms will be most influential ... One can almost always identify, post hoc, a norm to explain a given behaviour.'⁷⁵⁶ Here, again, one would need to look at a number of norms from a comparative perspective, with the objective of identifying patterns that might explain the relationships between norms and norms systems.

Furthermore, one could explore the role of the responsibility to protect in relation to other norms or other groups of norms. For example, one could explore the role of the responsibility to protect within the wider field of related human rights norms. Another avenue in this direction might be to explore norm consolidation from a regional perspective. For example, one could explore whether R2P is more consolidated in some regions than in others, and in turn, what this might say about the consolidation process of norms.

Further empirical research on the responsibility to protect could look at more recent cases in which R2P could have been, or has been, invoked, such as the cases of Libya, Syria, or the Ukraine. Building on this research, and based on the methodology developed for the in-depth studies of the case studies on Darfur and Kenya, further case studies could shed more light on R2P's consolidation process, international discourse and the qualitative dimension of responses to relevant crises, to gauge whether international responses are becoming more consistent.

Another productive research agenda might build on the findings in chapter eight, which took a cursory glance at international conflicts since 2005, after R2P had been endorsed in the World Summit Outcome Document. The comparison did not aim to provide a comprehensive study of the entire set of post-2005 cases. However, further research could build on the methodology I outline here, taking into consideration further cases and probing more deeply into the other cases.

From the outset this research has focused on cases in which R2P has been invoked – albeit in cases where, sometimes, the invocation may have been contentious or contested. Further research is sorely needed on cases that fail to make it onto the 'R2P radar'. This would entail research that aims to understand the process whereby cases of human rights violations are construed as qualifying as situations in which the R2P label applies. One could explore the factors that determine whether

⁷⁵⁵ Jepperson, Wendt, and Katzenstein, 'Norms, Identity, and Culture in National Security' p. 64

⁷⁵⁶ Paul Kowert and Jeffrey Legro, 'Norms, Identity, and Their Limits: A Theoretical Reprise,' *ibid.* p. 486

human rights violations that constitute R2P crimes become internationally visible. Ethiopia and Eritrea, for example, where R2P has not been invoked, could make interesting case studies here.

Whilst this research has provided valuable insights into the emergence, diffusion, and consolidation process of a new norm in international society, it also raises numerous other questions both in the sphere of theory as well as in the realm of empirical research. The areas for potential future research outlined briefly above constitute no more than a small fraction of the vast array of possible research areas in the wider field of normative IR theory and the responsibility to protect.

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List of Interviewees

List of Interviewees in Khartoum, July/August 2010

Abdulbari, Nasredeen, Lecturer in the Department of International and Comparative Law, University of Khartoum, via telephone, 26 May 2010, and in Khartoum, 31 July 2010

Anonymous, NGO staffer, Khartoum, 11 July 2010

Anonymous, Western journalist, Khartoum, 12 July 2010

Anonymous, senior UNAMID official, Khartoum, 16 July 2010

Anonymous, Western diplomat (1), Khartoum, 20 July 2010

Anonymous, Western diplomat (2), Khartoum, 26 July 2010

Anonymous, USAID staffers (two individuals, same meeting), Khartoum, 28 July 2010

Assal, Munzoul, Associate Professor of Social Anthropology at the University of Khartoum, Khartoum, 21 July 2010

Augstburger, Daniel, Director of Humanitarian, Recovery, and Development Liaison Office, UNAMID, Khartoum, 26 July 2010

Bassey, Toba, Co-founder of the Sudan Liberation Movement (SLM), follow-up interview via telephone, 27 February 2015

Haj Ateya, Eltyeb, Director of the Peace Research Institute at the University of Khartoum, Khartoum, 17 July 2010

Kane, Ibrahima, African Union Advocacy Director at the Open Society Foundations, follow-up interview via telephone, 7 November 2014

List of Interviewees in New York and Washington, DC, March/April 2011

Anonymous, Western diplomat at the UN, New York, 13 April 2011

Anonymous, Expert working for a Western Mission to the UN, New York

Anonymous, Asian diplomat at Mission to the UN, New York, 21 April 2011

Anonymous, Latin American diplomat at a Mission to the UN, New York, 21 April 2011

Claes, Jonas, Programme Specialist at the United States Institute of Peace, Washington D.C., 26 April 2011

Cohen, Roberta, Non Resident Senior Fellow at the Brookings Institution, 26 April 2011, via telephone

Considine, Sapna, Deputy Director of the International Coalition for R2P, New York, 4 April 2011

Doyle, Michael, Harold Brown Professor of International Affairs, Law and Political Science, Columbia University, New York

Jones, Bruce, Director and Senior Fellow of the NYU Center on International Cooperation, New York, 24 March 2011

Kikoler, Naomi, Senior Adviser and Programme Manager at the Global Centre for the Responsibility to Protect, New York, 29 March 2011

Kraus, Don, Global Solutions Chief Executive Officer, Washington D.C.

Lebrun-Damiens, Emmanuel, Diplomat at the French Mission to the UN, New York

Luck, Edward, UN Special Adviser for R2P, New York, 12 April 2011

Rugema, Moses, Diplomat at the Rwandan Mission to the UN, New York

Weiss, Thomas, Professor of Political Science at the CUNY Graduate Center and Director of the Ralph Bunche Institute for International Studies, New York, 30 March 2011

Woocher, Lawrence, Senior Program Officer, Center for Conflict Analysis and Prevention, Washington D.C., 28 April 2011

Zuber, Robert, Director at Global Action to Prevent War, New York, 14 April 2011

List of Interviewees in Nairobi, December 2011

Anonymous, Nairobi, 19 December 2011

Katumanga, Musambuayi Senior Lecturer, Department of Political Science and Public Administration, University of Nairobi, Nairobi, 20 December 2011

Kiai, Maina, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Nairobi, 20 December 2011

Kiai, Mugambi, Kenya Program Manager, Open Society Initiative Eastern Africa, Nairobi, 19 December 2011

Muga, Wycliffe, journalist, Nairobi, 13 December 2011

Mwagiru, Makumi, Director of the Institute of Diplomacy and International Studies, University of Nairobi, Nairobi, 19 December 2011

Oloo, Adams, Lecturer, Department of Political Science, University of Nairobi, 21 December 2011

Appendix I: A Chronology of the Darfur Conflict and International Responses

- 1898 The sultanate of Darfur becomes part of the Anglo-Egyptian Condominium
- 1956 Darfur becomes a state within the Republic of the Sudan
- 1984 Persistent drought and ecological problems result in famine in Darfur
- 1985 Khartoum signs a defence agreement with Libya
- 1987 The 'Arab Gathering' sends an open letter to Prime Minister al Mahdi
- 1989 Omar Al-Bashir takes power in Sudan
- 2003 In the early months of 2003, confrontations between government forces and rebels escalate
- 2004 On 8th April the Sudanese government, JEM, and SLM sign the Humanitarian Ceasefire Agreement establishing the African Union Mission in Sudan (AMIS)
- 2004 In July, Security Council resolution 1556 calls on the Government of Sudan to protect civilians from the Janjaweed and endorses AMIS
- 2004 In September, UN Security Council resolution 1564 establishes the International Commission of Inquiry on Darfur
- 2005 The Comprehensive Peace Agreement is signed, setting a date for a referendum on the secession of South Sudan
- 2006 The Darfur Peace Agreement (DPA) / Abuja Agreement is signed on 5 May by the Sudanese government and the SLM
- 2007 On 31st July the Security Council passes resolution 1769, establishing the African Union – United Nations Hybrid Operation in Darfur (UNAMID)
- 2009 In March the ICC issues its first arrest warrant for President Omar Al-Bashir for war crimes and crimes against humanity
- 2010 On 12th July, the ICC issues its second arrest warrant for Bashir, adding genocide to the list of charges
- 2011 On 14th July, the GoS signs the Doha Document for Peace in Darfur (the 'Doha Agreement') settling a framework for a comprehensive peace process in Darfur

Appendix II: A Chronology of the Post-Electoral Crisis in Kenya 2007-2008

- 2002 General elections are held in December. Mwai Kibaki, running for the National Rainbow Coalition, is elected president
- 2005 A constitutional referendum is held in 2005. A majority of 57% of voters reject the proposed new constitution
- 2007 General elections are held on 27th December. The incumbent president, Mwai Kibaki (Party of National Unity, PNU) runs against Raila Odinga (Orange Democratic Movement, ODM)
- 2007 On 30th December, the Electoral Commission of Kenya announces Kibaki the winner, having won 47% of the popular vote, over Odinga with 44%
- 2008 On 1st January, 39 civilians are killed in the burning of a Church in Kiambaa, near Eldoret, set on fire by supporters of the ODM
- 2008 On 3rd January, the US sends Assistant Secretary of State for African Affairs, Jendayi Frazer, to Kenya to meet Kibaki and Odinga
- 2008 In mid-January 14 donor states, including the United States, issue a statement warning that their foreign aid to Kenya was under review
- 2008 Late in January, Kofi Annan and his mediation team arrive in Nairobi. On 24th January, the mediation begins officially
- 2008 Early in February, the United States announces that it is reviewing the visa status of thirteen Kenyan politicians and businessmen due to suspected involvement in the elections violence
- 2008 On 12th February, the negotiations move to a retreat in Tsavo West National Park in southeast Kenya. A no-fly zone is imposed above the area
- 2008 On 18th February, Secretary of State Condoleezza Rice visits Nairobi
- 2008 The National Accord is signed on 28th February, bringing an end to the violence and establishing a power-sharing agreement between Kibaki and Odinga
- 2009 On 5th November, the ICC prosecutor announces his intention to begin investigations into the situation in Kenya
- 2010 On 31st March, Pre-trial Chamber II of the court states that it has authorised the prosecutor to commence an investigation into alleged crimes against humanity in the run-up and aftermath of the presidential elections in 2007
- 2011 On 31st March, Kenya challenges the admissibility of the cases, arguing that the new constitution and judicial reforms enable it to investigate the alleged post-election crimes
- 2013 On 9th April, Kenyatta and Ruto take office as President and Deputy President, respectively
- 2013 On 10th September, the trials for Ruto and Sang begin, after being postponed twice
- 2013 On 18th October, the ICC rules that Kenyatta does not need to be continuously present at his trial in The Hague