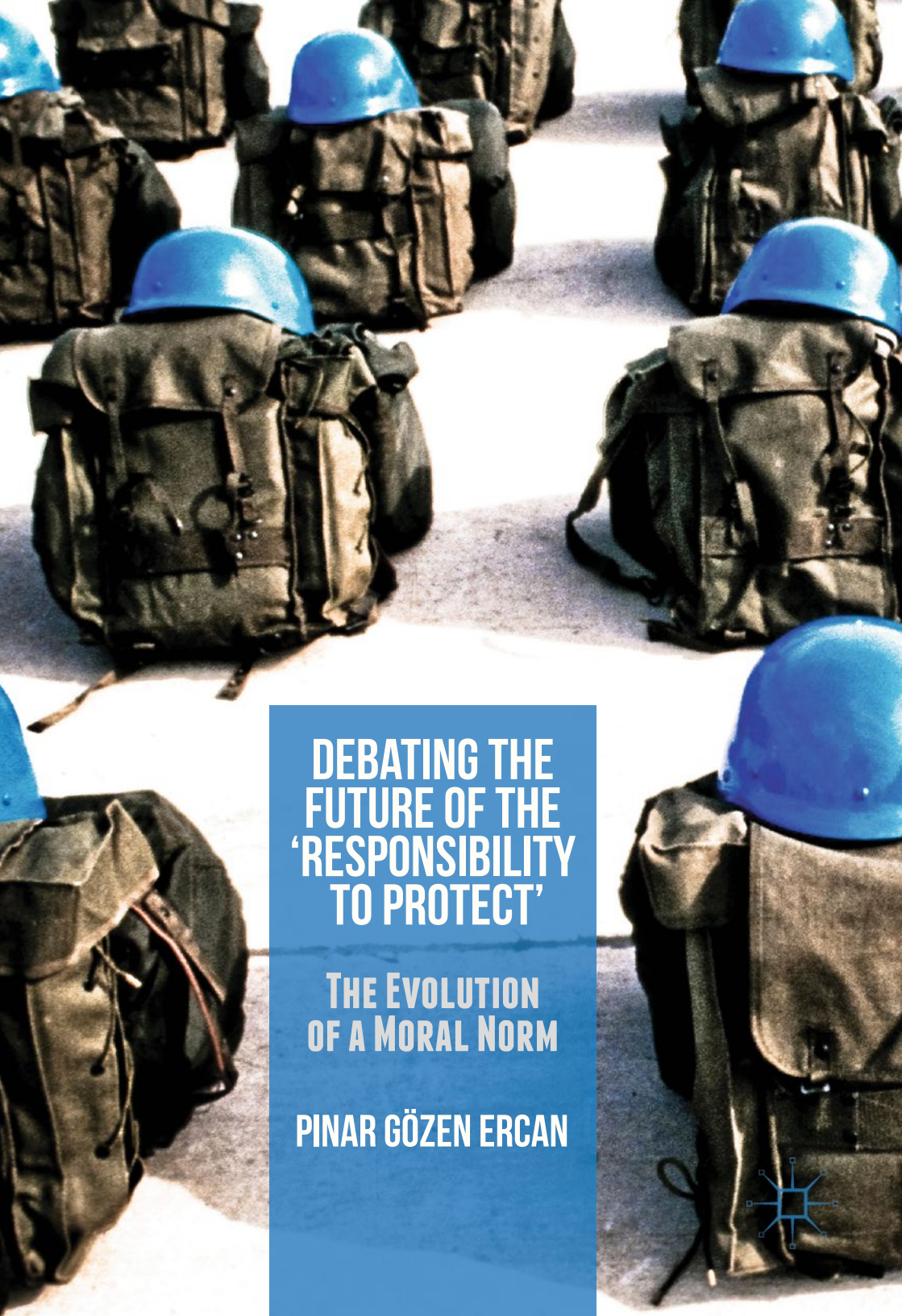

DEBATING THE FUTURE OF THE 'RESPONSIBILITY TO PROTECT'

The Evolution of a Moral Norm

PINAR GÖZEN ERCAN

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Pınar Gözen Ercan
Faculty of Economic and Administrative Sciences
Department of International Relations
Hacettepe University
Ankara, Turkey

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For Derin

Believing in the possibility of progress may be a first step,
but it takes genuine will and effort to achieve it.
It is in the capacity of human beings to make things better or worse.

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Pınar GÖZEN ERCAN

Contents

Abbreviations

ACT	Accountability, Coherence, and Transparency
AMIS	African Union Protection Force
APCR2P	Asia Pacific Centre for the Responsibility to Protect
AU	African Union
AUPSC	African Union Peace and Security Council
BRICS	Brazil, Russia, India, China, and South Africa
CAR	Central African Republic
DPI	United Nations General Assembly Department of Public Information
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
GCR2P	Global Centre for the Responsibility to Protect
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRtoP	International Cooperation for the Responsibility to Protect
IDF	Israel Defense Forces
IS	Islamic State
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
LTTE	Liberation Tigers of Tamil Eelam
NATO	North Atlantic Treaty Organisation
OIC	Organisation of Islamic Cooperation
OSAPG	Office of the Special Adviser on the Prevention of Genocide
PA	Palestinian Authority
para.	Paragraph
R2P/RtoP	Responsibility to Protect
R2PI	Responsibility to Protect Institution

RRF	Rapid Reaction Force
RwP	Responsibility while Protecting
S5	Small Five
SADC	South African Development Community
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNASUR	Union of South American Nations
UNA-UK	United Nations Association—UK
UNDG	United Nations Development Group
UNESC	United Nations Economic and Social Council
UNGA	United Nations General Assembly
UNGA-SC	United Nations General Assembly-Security Council
UNMCPR	United Nations Meetings Coverage and Press Releases
UNNC	United Nations News Centre
UNOCI	United Nations Operation in Côte d'Ivoire
UNSC	United Nations Security Council
US	United States
USHMM	United States Holocaust Memorial Museum
ZOPACAS	South Atlantic Peace and Cooperation Zone

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Introduction

Arguably, in the last fourteen years, we have witnessed the 'rise' and 'fall' of an international norm called the Responsibility to Protect (R2P, also abbreviated as RtoP). When the International Commission on Intervention and State Sovereignty (ICISS) introduced the 'responsibility to protect' to the international community in 2001, it followed the motto 'never again'.[1] In this vein, R2P prescribed states and the international community with three responsibilities—to prevent, to react, and to rebuild—enabling them to prevent or halt mass atrocities against populations.

Instigated by an independent commission, during the then Secretary-General Kofi Annan's term of service, R2P was carried to the political discourse of the United Nations (UN) within a period of three years. In the course of its institutionalisation, R2P was transformed and its scope was redefined. Finally, in October 2005, under paragraphs 138 and 139 of the World Summit Outcome Document, state members of the UN General Assembly unanimously adopted R2P. This was a milestone in R2P's short history that called for a celebration by the advocates of the principle because while Paragraph 138 established states' individual responsibility, via Paragraph 139 the international community acknowledged its responsibility to protect populations from four grave crimes in cases of states' evident failure to uphold their own responsibility.

[1] The slogan of 'never again' was first used in the aftermath of the Nuremberg Tribunals as a pledge not to experience the horrors of the Second World War again. Later, in the 1990s, such a call was reiterated upon the failure to prevent the Rwandan Genocide.

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Nevertheless, the period between 2005 and 2011 proved that it is a rocky road ahead for the effective implementation of R2P, both in terms of prevention and reaction. Though there were seldom stories of success as in the examples of Guinea and Kenya, most of the time faced with the failure to prevent situations at their early stages, the international community reluctantly implemented R2P. Often challenged by grave situations and failure to prevent atrocities at their earlier stages, as in the case of Darfur, the international community did not put the option of humanitarian military intervention on the discussion table. In the face of increasing number of cases and absence of meaningful progress, in 2009, Annan's successor Ban Ki-moon released his first comprehensive report on R2P (A/63/677). In the report, the Secretary-General addressed the issue of effective and timely implementation of the responsibility to protect by the international community, which brought the debates on humanitarian military intervention back in the follow-up meetings of the General Assembly.

In the meanwhile, R2P proponents waited for 'the case' that would set the example for timely and decisive R2P action. In 2011, in response to the escalating violence in Libya, the international community left its reluctance behind and opted for the controversial measure of military intervention to bring an immediate end to human suffering. This swift intervention in Libya has been cited as an example of a successful (pillar three level) R2P action. In Thakur's (2013, p. 69) words: 'The outcome was thus a triumph for R2P. It showed it is possible for the international community—working through the authenticated, UN-centred structures and procedures of organized multilateralism—to deploy international force to neutralize the military might of a thug and intervene between him and his victims'. Nevertheless, the excitement that arose from the intervention in Libya quickly faded as the leading interveners exceeded their mandate and the driving motive for the intervention turned into the toppling of Muammar Qaddafi. The way the military operation was carried out in Libya raised the question of 'protecting responsibly', but soon after, internal violence broke out in Syria. Adding on to the negative implications of the Libyan case, inaction in the case of the quickly deteriorating situation in Syria allowed some critics to pronounce R2P dead (see Rieff 2011; Nuruzzaman 2013; Murray 2013, in Hehir and Murray).

In sum, with a few exceptions, the international community has generally been reluctant in upholding its responsibilities to prevent and to react. One can ask, what has changed since 2001? How has R2P contributed to the efforts to change the international system and/or status quo in responding to mass atrocities in different parts of the world after its unanimous recognition by the international community? If the Security Council's decision on Libya was

a defining moment for R2P's future implementation, then what comes after the persisting failure of R2P in Syria? Building on these questions, this book examines the relevance of R2P in responding to humanitarian challenges taking place in different parts of the world and engages in the task of proposing a way forward with R2P through different revision alternatives. Part 1 of this book explicates what R2P entails and Part 2 advances the argument that R2P has evolved into an international moral norm. Though R2P may have shifted the debate from a right to intervene towards a responsibility to protect, the conceptual and systemic limitations imposed on it have hampered both its ability to lead to a change and to bring about an effective implementation. In light of this, Part 3 engages in developing proposals for the revision of R2P with a special emphasis on the role of the international community in the protection of populations.

Considering the Way Forward

There already exists a wealth of literature on R2P to which proponents and critics have contributed. While some consider R2P a groundbreaking norm that can lead to a change in states' and international community's behaviour (Evans 2008), some others consider it 'sound and fury signifying nothing' (Hehir 2010). This book neither attempts at a sheer defence of R2P nor aims to prove that it is time to pronounce R2P dead. Ever since the UN adopted R2P, there has been an increase in the number of debates on whether R2P has evolved from a policy into an international norm. So far, those who discuss R2P as a norm and cynics of R2P who question the value of the 'responsibility to protect' have contributed to the mounting literature. As for the former, some consider R2P as a norm without specifying its sort, while some discuss its potential as a developing legal norm. Unlike the existing pro-R2P arguments in the literature, in this book, I posit that R2P has evolved into an international *moral* norm (see also Gözen Ercan 2014). This proposition constitutes the first part of my twofold argument. Albeit the argument that R2P is an international norm is not new, its classification specifically as a moral norm is, and this has significant implications regarding the norm's implementation as well as expectations from it in terms of impacting state behaviour. Thus, diverging from works presenting arguments in favour of R2P, I critically evaluate the norm and discuss its limitations in terms of making a change in world politics and state behaviour. In other words, contrary to the understanding of most pro-R2P scholars, I suggest that R2P is not 'the remedy' to man-made disasters and can never be in its current form.

This leads to the second part of my argument. While I adopt a critical approach towards R2P, unlike the cynics, I reject the propositions that R2P is dead or it has never been of significance. As I suggest in the first part of my argument, R2P sets a moral standard for appropriate behaviour; therefore I believe that it carries a potential to make a positive contribution in terms of changing state behaviour. Nonetheless, in order to be able to talk about a short or mid-term positive influence, there is a need for a serious revision of the limits of the norm as established under Paragraphs 138 and 139 of the World Summit Outcome Document, aka 'R2P-lite', as Weiss (2006–2007) aptly labels it. As a part of the second fold, I will discuss the ways to re-equip 'R2P-lite' by considering various scenarios of UN reform—implying any sort of structural or procedural change of a major or minor scale in the Organisation and/or its specific organs.

In a debate on Libya, regarding a 2006 Security Council resolution, which reaffirmed states' and international community's responsibility to protect, Slaughter (2011) comments that '[t]his was an enormous normative step forward, akin to an international Magna Carta, even if it will take decades to elaborate and implement'. It has already been a decade, yet we are to see the change R2P is going to make. My contention is that while waiting for the long-term goal of R2P's internalisation by societies (so that the responsibility to prevent can be realised at the state level), there is a need to develop immediate mechanisms to make the international community willing and capable in terms of upholding its collective responsibility to protect. Arguably, R2P's genuine utility, in conceptual and normative terms, lies in the responsibility that it defines for the international community per se, not for the states, which already have certain obligations prescribed by international law. Hence, placing this utility under focus, the main objective of this book is to assess the measures for enhancing the capacity and capability of the international community in order to protect populations through either prevention or reaction.

Conceptualising the International Community

'Invoking the international community is a lot easier than defining it' (Weiss 2013, p. 10), and as a term that is widely used in different contexts, it is important to identify what is meant by the international community within the context of this study. Bull (1977, p. 13) suggests that the international society comes into existence 'when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions'.

Though I agree with this basic structure depicted by Bull, I conceive of the international community as an imperfect community with various agents, which has potential for progress and further unification. So, in this book, when I refer to the international community, without any disregard for the role of regional organisations or international financial institutions, I primarily refer to the totality of the Member States of the UN. Accordingly, I focus on this totality—which is open to the influence of moral agents such as the Secretary-General—and its practices as an international body within the UN framework, acting specifically through the Security Council, and above all the General Assembly. Furthermore, I consider that it is within such a context that new norms are developed and the international system is transformed, leading to changes in perceptions as well as implementation.

Human Security

In their 2006 report on 'UN System-wide Coherence', members of the Secretary-General's High-Level Panel remarked:

> Just as they [world leaders] did sixty years ago, we face a changing world today. Ours is the era of globalization, of global change unprecedented in its speed, scope and scale. As the world becomes ever more interdependent, sharp social and economic inequalities persist. Some of the poorest countries and communities remain isolated from economic integration and the benefits of globalization, and are disproportionately vulnerable to crisis and social upheaval. […] More conflicts are within states than between them, and the risk of terrorism and infectious disease illustrate that security threats travel across borders' (UN 2006, p. 8).

As outlined by the panel, in the ongoing process of global change, the previous decades also witnessed an increasing awareness of instances of grave violation of human rights on a massive scale. This has brought to attention the issue of whether or not states and the international community have a duty to react to such cases, and if necessary even to undertake humanitarian military interventions.[2] In the immediate post-Cold War environment, not independent from the conceptual and theoretical transformation of war, there has been a transformation of security, where the state-centric national security approach has been challenged by alternative security approaches shifting the referent object from the state to others such as the human being. The ideation of the responsibility to protect takes root from a human

[2] For reasons of brevity, hereinafter, I will refer to humanitarian military interventions as humanitarian interventions.

security approach, where the security of the state does not warrant the security of its individuals or population. As Jackson (1992, p. 93) suggests, this in practice means that 'instead of states or alliances defending their populations against external threats, international society is underwriting the national security of states, whether or not they convert it into domestic security for their citizens'.

As the genuine purpose of a humanitarian intervention is supposedly to secure human lives, human security approach lies at the core of the doctrine of humanitarian intervention as well as the R2P norm. Thomas and Tow (2002, pp. 189–190) argue that 'traditional interpretations of security cannot fully meet the international security community's present needs' since, in the contemporary international structure, states' internal activities are highly connected to the security constraints of the international society. Therefore, they suggest approaching transnational security issues from a human security point of view (Thomas and Tow 2002, p. 190), which brings human rights and human development together and focuses on the security of individuals rather than that of states (Kaldor 2008, p. 182). It is such an understanding that provides a rationale for undertaking humanitarian interventions for states and the international community.

It is important to clarify the meaning of 'human security'. The people-centred, universal concept of human security was taken up in the UN Development Programme's (UNDP) 1994 Human Development Report. The Report while defining the concept generally as 'freedom from fear and want' (King and Murray 2001–2002, p. 585) enumerates seven types of security—specifically economic, food, health, environmental, personal, community, and political—as central interdependent components of the concept of human security (Kaldor 2008, p. 182). The Report maintains that 'development must be focused on people (even though grouped by country) rather than the security of their national boundaries, and on advancing health, education, and political freedom in addition to economic well-being' (King and Murray 2001–2002, p. 587). In this approach, the emphasis is placed on the interconnectedness of various kinds of security, and along with development, it takes security as a strategy—such understanding was later echoed in the UN High-Level Panel on Threats, Challenges, and Change and the Secretary-General's response (Kaldor 2008, p. 183).

Inge Kaul identifies two prominent features of human security as human survival and sustainability. The former means that individuals are capable of ensuring 'their own basic livelihood and hence their security', and the latter means that 'people should be protected against an undue degree of unpredictability and radical change in their living conditions' (Kaul 1995, p. 315). Accordingly,

to highlight a transformation of the security understanding Thomas and Tow (2002, p. 178) remind the argument presented in the 1995 report of the UN Commission on Global Governance that 'recent episodes of humanitarian intervention in the Balkans, Africa and elsewhere by collective security entities (i.e. NATO and the UN) necessitated a widening of the security concept to recognize the "unrelenting human costs of violent conflicts" *within* boundaries'.

Later, in 2003, the Commission on Human Security (2003, p. 4) defined human security as the protection of

> the vital core of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms—freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military, and cultural systems that together give people the building blocks of survival, livelihood and dignity.

Human security, defined as such, imposes limits on national sovereignty in the cases where the state itself is either incapable or unwilling to protect its population and when the international civil society takes up the role of 'safeguard[ing] international norms' (Thomas and Tow 2002, p. 178). Evaluated from such perspective, what claims to be complementary to national security also becomes a challenge to the state. Within the confines of human security, Kaldor identifies that the aim of an intervention is to prevent the reoccurrence of mass violation of human rights (as in Srebrenica and Rwanda). She claims that the 'primacy of human rights also implies that those who commit gross human rights violations are treated as individual criminals rather than collective enemies'. Thus, the purpose of an intervention should not be to eliminate an enemy but to end the gross violation of human rights (Kaldor 2008, p. 186). She further argues that the global character of the human security approach requires its practice 'through multilateral action' (Kaldor 2008, p. 188). In this way, the aim becomes 'both to stabilize conflicts and to address the sources of insecurity' (Kaldor 2008, p. 191). Accordingly, there has to be '*more* not less assistance for development, since human development is a key component of human security' (Kaldor 2008, p. 193).

A plausible argument is that rather than abolishing conceptions of state-based security, human security complements the narrow interpretation to make it more extensive. The Commission on Human Security (2003, p. 4) lists the complementary aspects as follows: (1) the individual and the community are the main concerns but not the state; (2) threats against human

security, which traditionally were not taken into consideration as a part of state security, are now also classified as threats; (3) states are no longer the sole actors, rather there is a multiplicity of actors; (4) '[a]chieving human security includes not just protecting people but also empowering the people to fend for themselves'. These four aspects are fundamental to understanding the responsibility to protect and its impact on the doctrine of humanitarian intervention.

The Question of Protection of Populations

Along with the diversification in the security approach, the varying responses to the grave cases of the 1990s such as Somalia, Rwanda, Bosnia-Herzegovina, and Kosovo reaffirmed the necessity to undertake decisive and timely collective action while keeping in mind the question of a moral duty on the part of the international community to react to mass atrocities. By December 2001, the responsibility to protect set a new framework to take up this question with the aim of transforming the negatively perceived notion of the 'right to intervene' into a responsibility to react. As part of the third pillar of the R2P framework, the most recent debates on humanitarian intervention have been taking place under the auspices of the UN. Since 2005, there have been numerous grave crimes against humanity, in turn putting to test the international community's commitment to uphold its responsibility.

In the contemporary international system, humanitarian intervention is being practiced unilaterally or collectively by states as well as by international and/or regional organisations since mass violations of human rights continue to take place in different parts of the world. The mixed components of humanitarian intervention make it a legal, moral, and political dilemma. As Seybolt (2008, p. 1) puts it:

> Once considered an aberration in international affairs, humanitarian military intervention is now a compelling foreign policy issue. It is on the front line of debates about when to use military force; it presents a fundamental challenge to state sovereignty; it radically influences the way humanitarian aid organisations and military organisations work; and it is a matter of life or death for thousands upon thousands of people.

With its lawfulness in question, humanitarian intervention as a moral duty is depicted as a double-edged sword: it is questioned not only when it is practiced but also when it is not. As Wheeler (2002, p. 1) notes: '"Doing

something" to rescue non-citizens facing the extreme is likely to provoke the charge of interference in the internal affairs of another state, while "doing nothing" can lead to accusations of moral indifference.' Politically speaking, unilateral interventions or actions lacking Security Council authorisation are likely to receive negative criticisms or condemnation. Since the doctrine of humanitarian intervention has been abused several times by states in attempts to justify acts driven by hidden agendas, there is considerable suspicion towards interventions undertaken without Security Council authorisation.

Legally speaking, what lies at the core of the humanitarian intervention debate is a clash between taking the necessary extreme measures to safeguard fundamental rights of the masses and upholding basic principles of international law such as state sovereignty, non-intervention, and non-use of force, which are the system values of the UN Charter considered as keys to sustain international peace and security. On the other hand, when there is inaction (as in the case of Rwanda), the international community is criticised for its indifference, which hints at the existence of a sense of a moral duty to react. Arguably, such perception lies at the core of the idea of the responsibility to protect.

Structure and Overview

In light of this general picture, this book questions the way forward for R2P: is it time to say 'rest in peace' to R2P? Is R2P still of significance in its current form, or do we need to supplement or change it to sustain its development in the near future? I seek an answer to these questions under three main parts. While Part I, 'Shifting the Terms of the Debate: from humanitarian intervention to the Responsibility to Protect', builds on the existing literature and provides the background for understanding R2P and its nature, Part II, 'The Path to an International Norm', mainly makes an empirical contribution to the literature with its up-to-date analyses of relevant reports and R2P cases.[3] Last but not least, Part III, 'To Protect or Not to Protect?', delivers the main propositions of the book for discussing the way forward with its scenarios on how to revise R2P and to reform the UN machinery.

Part I of the book derives from the initial quest of the ICISS (2001a, p. vii), that is the continuing disagreement 'as to whether, if there is a right of

[3] In tracing R2P's progress, a minor but theoretical contribution is achieved first by revisiting Finnemore and Sikkink's norm life-cycle scheme through introducing venue and negotiation as additional influences, and second by analysing the content and language of the UN Secretary-General's reports.

intervention, how and when it should be exercised, and under whose authority'. It is important to have an understanding of the notions of humanitarian intervention and the responsibility to protect, and see how these two overlap with and depart from each other. To this end, in Chapter 2, 'Humanitarian Intervention and the Path to R2P', I start by exploring how and to what extent the concepts of humanitarian intervention and R2P are related. Traditionally, humanitarian intervention has been perceived as a 'right to intervene' by states. Arguably, in order not to equip states with such a right, the international community has refrained from formally establishing humanitarian intervention as a legal measure against grave violations of human rights. In this vein, the main goal of the ICISS (2001a, p. 16) has been shifting the terms of the debate from the unhelpful language of the 'right to intervene' to a 'responsibility to protect' in order to urge for a response to mass violations of human rights. Therefore, in my analysis, I first focus on the differences between the notions of the 'right to intervene' and the responsibility to protect in an attempt to demonstrate the conceptual transformation attempted by the ICISS. This is followed by a more detailed analysis of the idea of the responsibility to protect as originally presented in the Commission's report. Such overview not only helps to study in what respects R2P is more comprehensive than humanitarian intervention as a notion but also provides the necessary background to unveil the transformation that R2P has gone through during its process of institutionalisation, which is the subject of Chapter 4. Lastly, I trace the philosophical/cognitive origins of the notions of humanitarian intervention and the responsibility to protect to clarify their ideological underpinnings.

Then, in Chapter 3, 'International Law and the "Right to Intervene"', I place the doctrine of humanitarian intervention within the context of international law. While doing this, I have two objectives in mind: the first is to question whether or not there is an established right to intervene in the legal system of the post-Charter era, and the second is to provide a basis to assess the permissive and restrictive influences of legal elements on the conduct of humanitarian intervention as part of the responsibility to react component of R2P. First, I study three fundamental principles of international law, which constitute the basis for the arguments against the 'right to intervene'—namely sovereignty, non-intervention, and the prohibition of the threat and use of force as laid out in the UN Charter and related documents. Subsequently, I analyse the possible legal grounds within the UN system. As Brownlie (1974, p. 218) posits: 'a jurist asserting a right of forcible humanitarian intervention has a very heavy burden of proof'. If such proof exists, it is to be found in the examples of past state practices. To this end, focusing on the pre-R2P period,

I provide a brief historical overview of the past instances of humanitarian intervention in the Cold War era and the 1990s in relation to the relative application of international law. Such overview serves first to question the existence and/or acceptance of a right to intervene, second to have a general opinion about state practice, and third to outline the legal constraints about the doctrine of humanitarian intervention. Following from this, I conclude that there is no solid proof to support the arguments in favour of the existence of a unilateral right to intervene. In the Cold War era, there is no assertive evidence of states undertaking action based on motivations of humanitarian concerns. Yet, it can be observed that the UN assumed the responsibility of lawmaking for the purpose of protecting human rights while trying to avoid interference in states' domestic affairs. On the one hand, it is possible to talk about an increasing consciousness regarding human rights alongside an adherence to the fundamental principles of international law in international conduct, and on the other, we see that humanitarian situations of the 1990s reaffirmed a sense of moral responsibility, which later translated into the language of R2P.

In Chapter 4, 'Tracing the Process', I analyse R2P's evolution, namely how it has undergone transformation through institutionalisation and its current status. R2P's institutionalisation began with the change of venue from the ICISS to the UN; that is, from a small venue to a larger one with much higher legitimacy. Such change not only enabled the vast recognition of R2P in a period of four years, but also eventually led to a significant transformation of the norm. In order to understand the changes imposed on the scope and content of R2P, I have studied primary documents related to or on R2P that were adopted by the UN since 2004. While doing so, I have identified the milestones and analysed the language adopted in these reports to discuss their implications on R2P's recognition and implementation.

Subsequently, I raise this question: what follows institutionalisation? First, I discuss why R2P cannot be considered as a legal norm in the current state of affairs. After the unanimous recognition of R2P by the Member States with the World Summit Outcome Document, a pioneer of R2P, Evans (2006) asserted that '[w]hat we have seen over the last five years is the emergence, almost in real time, of a new international norm, one that may ultimately become a new rule of customary international law'. At that time, the potential of R2P to evolve into a legal norm was one of the promising aspects of the notion. Nevertheless, the analysis of R2P's evolution reveals that in the course of the last ten years, R2P did not become a legal norm. As will be discussed later in much more detail, R2P action is conditional upon Security Council approval, and thus subject to the existing procedures of the UN. R2P has no (directly) binding powers over states or the international community. Critics

ask: what is the added value of R2P? The final section of Chapter 4 seeks to address this question.

In a nutshell, following the change of venue, with its institutionalisation through the UN, R2P has gained significance but not as an international legal norm. With the understanding established under the auspices of the UN, R2P has evolved into a singular international moral norm, rather than a collection of different norms. That is to say, R2P lacks legally binding powers of its own but provides states and the international community with a standard for appropriate behaviour based on the prioritisation of moral considerations, where the main objective is to prevent mass atrocities from happening.

Another question that remains is to what extent have the states and the international community matured in terms of turning their acceptance of a moral responsibility to protect into practice. To answer this, Chapter 5, 'Upholding the Responsibility?' provides an overview of the international community's response to R2P cases witnessed since the adoption of the Outcome Document in 2005. I begin with a brief evaluation of the international community's track record of R2P implementation, and its responsibility to prevent or to react. In Paragraph 139, while recognising its responsibility to protect populations from four grave crimes, the international community has loosely defined its duty and rendered implementation subject to a 'case-by-case analysis'. The conclusion of the first section of the chapter highlights the several failures of the international community to timely and effectively respond to R2P crises in the years that followed its unanimous adoption. Subsequently, I focus on Libya, which is considered as a milestone in R2P's implementation. In 2011, in response to the escalating violence in Libya, the international community without much reluctance adopted the controversial measure of military intervention to immediately end human suffering. Following the international community's decision to adopt Resolution 1973 that allowed for international intervention, this case has been cited as an example of a successful R2P implementation. At first sight, the case of Libya seems to fit the R2P framework well. Yet, the classification of this case as an R2P implementation becomes questionable when one focuses on how little reference was made to R2P during the Security Council deliberations on the situation and on how the intervention was implemented. I first examine whether Libya signifies a coercive turn in R2P's implementation, and then, evaluate the implications of the military operation that was carried out by the leading interveners on the future of R2P in relation to the unfolding events in Syria. I also seek to demonstrate that R2P was of little significance or hardly the driving principle for the interveners. On the one hand, the swift international intervention in Libya and the subsequent decision allowing for military

action in Côte d'Ivoire signal a change in the behavioural pattern of the international community from non-intervention towards decisive response under pillar three. On the other hand, in the immediate aftermath of the cases of Libya and Côte d'Ivoire, we see an international community at a stalemate in the face of the quickly deteriorating situation in Syria. On this basis, prior to concluding whether or not R2P should be considered dead, the subsequent sections of Chapter 5 briefly focus on the implications of the Syrian case as well as grey areas of R2P, that is non-state armed groups and inter-state crises like that of Gaza, which tells much about the potential of the norm.

If the international community is selectively implementing R2P and is often reluctant or failing to take action in a timely and decisive manner, then what does R2P have to offer to change the international system? In Chapter 6, 'The Way Forward', I discuss the future path of R2P. To this end, I start by outlining the problems inherent in R2P's implementation through the UN. Although one may argue that with the cases of Libya and Côte d'Ivoire the international community had broken its pattern of reluctance in terms of R2P's enforcement, military intervention still remains dependent on the political will of states and specifically of the P5. In this vein, from an R2P point of view, by outlining the weaknesses of the current capacities and the machinery of the UN, I try to single out the factors that hamper R2P's efficient implementation. Second, in discussing the way forward for R2P, I first explore recent R2P-related initiatives by states and the Secretary-General. These are Brazil's proposal entitled 'responsibility while protecting (RWP)', the 'Code of Conduct' initiative by France, and Secretary-General's 'Human Rights up Front' initiative. Following this brief overview, I discuss the ways to rethink the UN/R2P machinery. Also referring to some of the existing scholarly proposals in the literature, I devise alternative scenarios for a reform of the UN—some of which are more moderate compared to the others—with the aim of enhancing the future implementations of R2P through the UN.

In Chapter 7, 'Conclusion: One's Reality, Another's Illusion', I first ask, 'if R2P is an old wine in a new bottle, how can it contribute to changing the international system in favour of humanitarian considerations in international conduct'? Finally, accompanied by an overview of the key points of the book, I present my final comments and propose to move on to R2P2 based on the lessons of the first decade of R2P. Based on my assumption that R2P has evolved into an international moral norm, I conclude that R2P can make a positive contribution to changing the international system, though it is neither 'the ultimate remedy' to man-made disasters nor a blank shot in its current form of 'R2P-lite'. As R2P was stripped off its original powers with the

way it was codified under the 2005 World Summit Outcome, for it to be able to genuinely impact international politics and states' behaviour, it needs to be equipped with legal powers and its implementation needs to be supported with an institutional reform of the UN. While this does not necessitate a change in the scope of R2P established under Paragraphs 138 and 139, it requires the reincorporation of certain components of the norm, such as the criteria for intervention and the responsibility to rebuild back into the R2P framework.

Part I

Shifting the Terms of the Debate: From Humanitarian Intervention to the Responsibility to Protect

2

Humanitarian Intervention and the Path to R2P

In the Foreword, the International Commission on Intervention and State Sovereignty (ICISS 2001a, p. vii) indicates that its 'report is about the so-called "right of humanitarian intervention": the question of when, if ever, it is appropriate for states to take coercive—and in particular military—action against another state for the purpose of protecting people at risk in that other state'. Therefore, prior to tracing R2P's evolution in the institutional framework of the UN, it is important to identify the relationship between humanitarian intervention and the responsibility to protect to have a full understanding of the two notions and of the essence of the Report of the ICISS.

In this context, the chapter begins by delineating the border between humanitarian intervention and the responsibility to protect, to see how the two concepts overlap with and depart from each other. It then explores the normative roots of the idea of a right to intervene and a responsibility to protect in order to outline the inherent ethical motives as well as the underlying logic for undertaking collective action.

Understanding Humanitarian Intervention

Although humanitarian intervention is one single phenomenon, it is possible to come across numerous definitions of it, sometimes with nuances and sometimes with key divergences. How we define the notion matters as this definition determines the scope of the term as well as its implementation. On the one hand, humanitarian intervention can be contemporarily defined as a 'doctrine under which one or more states may take military action inside

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the territory of another state in order to protect those who are experiencing serious human rights persecution, up to and including attempts at genocide' (Robertson 2004, p. 119). On the other hand, in a limited manner, Finnemore (2003, p. 53) defines humanitarian intervention as the positioning of military units within the territory of a third state in order to safeguard foreign nationals not from natural but from man-made disasters. Alternatively, Brownlie defines the act of humanitarian intervention not only as the use of but also as the threat to use military force. Secondly, apart from states he includes 'a belligerent community or international organisation' as actors that can undertake an intervention 'with the objective to protect human rights' (Brownlie 1974, p. 217).

The emphasis in all three conceptualisations of humanitarian intervention is the same: the purpose of intervention. In this regard, humanitarian intervention, in its modern understanding, remains different from other sorts of military intervention, or from crude use of force because beyond a mere drive of self-interest, it is pursued for the purpose of protecting populations from atrocities against humanity or inhuman treatment on a massive scale. Therefore, humanitarian intervention can be distinguished from other types of military intervention or aggression due to its purpose and content. As Griffiths and O'Callaghan (2002, p. 145) note, the 'word "intervention" describes the exercise of public authority by one state in the territory of another'. It is a measure short of war, comprising the threat or use of force over a state. Accordingly, intervention 'may involve a desire to change or to preserve the existing distribution of power […and] covers a vast array of very different sorts of political action' (Hare and Joynt 1994, in Freedman p. 182). Nonetheless, in the case of humanitarian intervention, the interveners' objective is (supposedly) to stop the atrocities within a state and 'to protect fundamental human rights in extreme circumstances'. Therefore, this act is neither 'meant directly to protect or promote civil and political rights' (Seybolt 2008, p. 6) nor directly aims to establish a new state or regime. Although humanitarian intervention limits or challenges the notion of state sovereignty as the interveners—be it a state, a group of states, an international or a regional organisation—end up interfering in the domestic matters of a state during their intervention; it cannot be evaluated in the same manner with aggression, occupation, invasion, or war, since the interveners do not take over the state or annex any part of the territory.

As noted previously, how one defines humanitarian intervention also defines the limits of action. In this book, humanitarian intervention is defined as the use of military means 'across state borders' by a state, a group of states, or an international and/or regional organisation (Abiew 1998, p. 18) in

order to prevent or halt 'widespread and grave violations of the fundamental human rights of individuals other than […the intervener(s)'s] own citizens' (Holzgrefe and Keohane 2003, p. 18), with or without the consent of the target state that is subjected to the use of force in its own territory as a result of the intervention. This definition excludes acts that historically and legally fall under self-defence, which is observed in the protection of nationals in a third state. Humanitarian intervention is an act of coercive protection through use of force due to extreme circumstances concerning the violation of fundamental human rights of masses.

Responsibility versus Right?

Price (2008, p. 215) argues that 'dilemmas only arise if norms are social facts. Progress may well be had, and even though it may be at the price of the generation of yet new dilemmas, this in itself points to a different ethic than that premised on world politics as a realm of recurrence and repetition devoid of possibilities of humanitarian moral change'. From a constructivist point of view, the challenges the international community faces contribute to the emergence of new norms. Arguably, it was the human rights crises of the 1990s that led to the construction of R2P. In responding to mass atrocities against humanity, humanitarian intervention remained a relevant foreign policy tool while its implementation has been a source of moral and legal divides within the international community. Examples of inaction (as in Rwanda), failed interventions (as in Somalia), or unauthorised interventions (as in Kosovo) have been at the heart of the debates on whether or not to forcefully intervene on grounds of humanitarian reasons.

In the past decades, humanitarian intervention has commonly been perceived as a 'right to intervene' by states and scholars. In order not to grant states such a right, the international community had consistently refrained from establishing humanitarian intervention as a formal or legal measure against grave violations of human rights. Consequently, norm entrepreneurs such as Kofi Annan, Francis Deng, and Gareth Evans among many others, instead of adhering to the controversial arguments in favour of a 'right to intervene,' opted for introducing an alternative notion labelled 'the responsibility to protect' with the aim of securing the lives and fundamental rights of masses.

First in 1999 and then in 2000, Kofi Annan raised a challenging question: '… if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and

systematic violations of human rights that affect every precept of our common humanity?' (ICISS 2001a, p. vii). In response to Annan's repeated calls, former Canadian Minister of Foreign Affairs Lloyd Axworthy in September 2000 gathered the ICISS, comprising of delegates from various nationalities. The Commission presented its finalised work to the international community in December 2001 with the Report entitled 'the Responsibility to Protect'.

In this report, the ICISS (2001a, p. viii) put forth 'the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape and from starvation—but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states'. In this regard, the ICISS not only redefines sovereignty to encapsulate the notion of responsibility towards the population—that is one of the main components of statehood—but also defines an exception to the principle of non-intervention by establishing the responsibility of the international community. As Reinold (2010, p. 60) explains, '[t]his reflects a tendency in international law to view individuals, rather than states, as the primary beneficiaries of its protection and to shift the focus of the debate from what the international community owes to sovereign states to the question of what nation-states owe to their own citizens'.

On the one hand, humanitarian intervention and the responsibility to protect are two doctrines both tackling the problem of grave violations of human rights and on the other, R2P as a conceptual whole is beyond a doctrine simply attempting to regulate the implementation of humanitarian intervention, which is practically an act undertaken to address a humanitarian crisis upon escalation or after it peaks. As reflected in its reconceptualisation of state sovereignty, R2P is not only about halting mass atrocities, but in the first place, it is about preventing them from happening or further escalating, and this is a primary point of departure from the understanding of humanitarian intervention.

As will be explored in Chapter 3, some legal scholars argue for the existence of a 'right to intervene'. The ICISS departed from this assumption and attempted to shift the terms of the debate by proposing that there is a 'responsibility to protect' rather than a 'right to intervene'. First, the Commission raised the criticism that humanitarian intervention as a right focuses, above all, on the 'claims, rights, and prerogatives' of the intervening state(s) rather than the needs of those who are the subjects of the atrocities, that is, 'the potential beneficiaries' of the intervention. Second, when emphasis is placed on intervention, this eventually omits the necessity 'for either prior preventive effort or subsequent follow-up assistance'. Finally, 'the familiar language does effectively operate to trump sovereignty with intervention at the outset of the

debate: it loads the dice in favour of intervention before the argument has even begun' (ICISS 2001a, p. 16).

Bearing these criticisms of a right to intervene in mind, with its conceptualisation, the ICISS first brought to international community's attention those in need of support, that is, the subjects of human suffering rather than the rights of the intervener(s). Moreover, it placed the responsibility primarily with the state itself. It is only if the state fails/omits to abide by its duties towards its citizens, or if it is the national authority itself that is the wrongdoer, then the international community assumes the responsibility to take appropriate action.

Accordingly, the Report of the ICISS (2001a, p. xi) established the central theme of R2P in two basic principles:

A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
B. 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.

As Robertson (2004, p. 119) suggests, the notion of national sovereignty generally implies the absence of 'legal measures by which anyone could prevent a government doing whatever it liked to its own citizens, or certainly […] measures which involved direct force within the borders of the offending state'. The ICISS first attempted to transform the notion of (national) sovereignty from a principle which traditionally implies that states are 'untouchable' in their internal affairs into one that holds states responsible for the protection of their peoples from grave violations of human rights. Built on the conceptualisation of Francis Deng and his colleagues, 'sovereignty as responsibility' also implies that national authorities have the responsibility to protect their populations and that 'they are accountable for their acts of commission and omission (ICISS 2001a, p. 13)'. Second, Paragraph B not only hints at the growing expectations from the international community to take collective action in man-made humanitarian crises, but also the transformation of such action into an automatically assumed responsibility for the international community.

Finally, with regard to the third criticism, as part of its general approach towards handling mass atrocities, R2P offers an alternative to the traditional understanding of humanitarian intervention by providing 'conceptual, normative, and operational linkages between assistance, intervention, and

reconstruction' (ICISS 2001a, p. 17). That is to say, the operationalisation of R2P takes place through the three elements of responsibility, which are to prevent, to react, and to rebuild. Among these three, the ICISS (2001a, p. xi) prioritised prevention as it considered this aspect to be the most important one. Hence, the prevalent idea is to adopt successful preventive measures so that situations do not grow into severe cases that would require the implementation of coercive measures. Preventive measures can be adopted either by states themselves or, upon their failure, by the international community. On the other hand, rebuilding is a responsibility that belongs to the international community and this is defined as a complementary stage since it is to follow the responsibility to react, especially if a military intervention was undertaken. With this element, the ICISS (2001a, p. 39) brought to the fore a 'commitment to helping to build a durable peace, and promoting good governance and sustainable development'.

Likewise, the responsibility to react belongs to the international community. Different from the other two elements, it may involve the use of coercive measures ranging from the imposition of sanctions to the use of military force. Thus, of the three operational elements of R2P, humanitarian intervention is implemented under the responsibility to react and is considered as a last resort to be employed in extreme situations only. Humanitarian intervention, considered as a 'human protection operation [that is] different from both the traditional operational concepts for waging war and for UN peacekeeping operations' (ICISS 2001a, p. 66), stands out as the most controversial and, as will be discussed later in Chapter 4, the most resisted[1] measure of R2P. As the ICISS (2001a, p. 29) notes, military intervention 'directly interferes with the capacity of a domestic authority to operate on its own territory. It effectively displaces the domestic authority and aims (at least in the short-term) to address directly the particular problem or threat that has arisen'. Recognising the challenge it poses against state sovereignty and the principle of non-interference in states' internal affairs, to establish the justifiable grounds for such violation, the ICISS put forward a 'just cause threshold' alongside precautionary criteria. By imposing limitations on the conduct of humanitarian intervention under the R2P framework, the ICISS also aimed to prevent arbitrary or wrongful invocations.

[1] In the case of R2P, Bloomfield (2016) prefers to use the term resistance instead of contestation as the latter 'might be directed against any norm, including entrenched norms, while resistance suggests efforts to prevent the entrenchment of a *new* norm like R2P.'

Criteria for Intervention

The ICISS proposes the 'threshold criteria' along with 'other precautionary criteria' to define when and under what circumstances humanitarian interventions can be undertaken. In its Report, the ICISS embraces the principle of non-intervention as the prevalent idea. Nonetheless, it identifies certain exceptions and asks where to 'draw the line in determining when military intervention is, *prima facie*, defensible?' (ICISS 2001a, p. 31). As far as forceful action is concerned, the Report focuses on measures adopted for humanitarian and protective ends against a state without the consent of that state (ICISS 2001a, p. 8). It is such absence of state consent or Security Council authorisation that makes an intervention controversial within the R2P framework.

In the realisation of the responsibility to react, forceful measures are not prioritised. As the ICISS (2001a, p. 29) maintains, 'less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied'. When it comes to the stage of reaction, sanctions should be imposed as a first response to an R2P crisis, whereas humanitarian intervention should be the very last resort undertaken in the case of a failure or an inability to prevent large-scale atrocities and/or when the sanctions implemented fail to stop them (ICISS 2001a, p. 29). Acknowledging that humanitarian justifications have been and are prone to be abused by states (ICISS 2001b, p. 67), the Commission (2001a, p. 32) suggests six basic criteria for deciding whether or not to intervene. These are right authority, just cause, right intention, last resort, proportional means, and reasonable prospects.

'Right authority' asks 'whose right is it to determine, in any particular case, whether a military intervention for human protection purposes should go ahead?' (ICISS 2001a, p. 47). According to the ICISS (2001a, pp. 48–49), the UN undoubtedly is the main international 'institution for building, consolidating and using the authority of the international community', and the Security Council, in this regard, is the principal organ for the authorisation of and legitimation of an intervention. Nevertheless, history reveals that when any of the permanent members (P5) cast veto regarding a certain decision, the Security Council ends up with a deadlock. This means failure to achieve progress in resolving the international problem at hand. Therefore, the Commission suggests a voluntary restraint of the veto by the P5, with the exception of vital interests being at stake. However, if the veto is used no matter what, under such circumstances, the R2P case can be referred to the General Assembly for the adoption of a decision on the matter. This is done through a 'meeting in an Emergency Special Session under the established "Uniting for Peace" procedures' to employ forceful intervention (ICISS

2001a, p. 53). Alternatively, the Commission (2001a, p. 53) also considers collective intervention by a regional or sub-regional organisation 'within its defining boundaries' as a third option and does not rule out the possibility of unauthorised interventions in cases of emergency.

After determining the right authority, the ICISS suggests two main criteria of 'just cause', and considers the satisfaction of one as sufficient to justify a military intervention. These are to stop

> A. 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
> B. large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape (ICISS 2001a, p. 32).

The question that follows is, what do these mean? The Commission (2001a, p. 33) considers six groups of acts in relation to R2P: the first is the acts that fall under the framework of the Genocide Convention involving 'large scale threatened or actual loss of life'. The second is 'the threat or occurrence of large scale loss of life, whether the product of genocidal intent or not, and whether or not involving state action'. The third is various sorts of ethnic cleansing, which may include

> the systematic killing of members of a particular group in order to diminish or eliminate their presence in a particular area; the systematic physical removal of members of a particular group from a particular geographical area; acts of terror designed to force people to flee; and the systematic rape for political purposes of women of a particular group (either as another form of terrorism, or as a means of changing the ethnic composition of that group) (ICISS 2001a, p. 33).

The fourth, as defined by the Geneva Conventions and Additional Protocols, are 'crimes against humanity and violations of the laws of war, […] which involve large scale killing or ethnic cleansing'. The fifth concerns failed state situations, which result with 'mass starvation and/or civil war', while the sixth comprises of cases of natural and environmental disasters, 'where the state concerned is either unwilling or unable to cope or call for assistance, and significant loss of life is occurring or threatened' (ICISS 2001a, p. 33).

The third criterion for intervention, that is 'right intention', concerns the purpose of the intervention. Accordingly, stopping the atrocities and ending human suffering have to be the main objectives. Objectives such as changing the state's regime, assisting self-determination, or occupation cannot be accepted as justifiable causes (ICISS 2001a, p. 35). Though it may not be

possible to avoid the occupation of a territory, this needs to be a temporary situation, and the territory has to be returned to the sovereign owner upon the completion of the intervention (ICISS 2001a, p. 35). Moreover, the ICISS (2001a, p. 36) suggests certain subcomponents to ensure right intention: the first is the collective or multilateral character of the intervention undertaken, which suggests that unilateral interventions are not encouraged and are likely to be considered as legitimate. The second is the consideration of 'whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended'. In this regard, the positive response of those who have been suffering from mass human rights violations is sought for assuring the right intention. Likewise, the opinion and support of the regional states also matter (ICISS 2001a, p. 36).

The 'last resort' criterion reflects the general attitude of the Commission throughout the Report. The Report states that military intervention must be the last remedy to employ, that is, upon the exhaustion of diplomatic and peaceful means and as a result of the failure to successfully implement the responsibility to prevent (ICISS 2001a, p. 36). Though in certain cases of extreme emergency, it may be possible to undertake a military intervention before literally exhausting other measures if there are convincing grounds that those non-coercive measures would fail (ICISS 2001a, p. 36). The Commission requires that the means used are proportional throughout the course of intervention. Particularly,

> [t]he scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question. The means have to be commensurate with the ends, and in line with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention (ICISS 2001a, p. 37).

In light of these conditions, it can be argued that the Commission, in an awareness of the notion of double effect, aims to minimise the negative impact of the military action by enforcing limits on the means adopted and goals pursued throughout the intervention.

A similar consideration is valid also for the final criterion of 'reasonable prospects', which relates to the double-edged sword of human suffering. On the one hand, human suffering is a result of the atrocities conducted against masses—which is considered as a moral basis for taking action. On the other hand, in coercive R2P implementations human suffering may occur because of the collateral damage caused by the military operation or if the interveners

fail to succeed at the end of the intervention. Thus, as the Commission posits, without reasonable chance for success, one cannot justify resorting to military action. Accordingly, there needs to be genuine positive expectations regarding the outcome of the intervention in comparison to the pre-intervention situation or what it would have been like in case of inaction (ICISS 2001a, p. 37).

The threshold criteria on the one hand and its general conceptual specifications on the other, as Pattison (2010, p. 13) suggests, R2P becomes more limited in extent in comparison to humanitarian intervention since the latter 'can be undertaken in response to a variety of humanitarian crises and does not require Security Council authorization'. Furthermore, as will be presented in the analysis of the UN documents and reports on R2P, which is due in Chapter 4, in the current state of affairs R2P's scope is limited to that of genocide, war crimes, crimes against humanity, and ethnic cleansing, while there is no explicit restraint in the case of humanitarian intervention. Hence, in terms of its scope, humanitarian intervention can be interpreted to be broader than R2P (Pattison 2010, pp. 13–14). No matter which notion extends further, both humanitarian intervention and the general tenets of RtoP (alongside the proposed criteria) have their roots in the writings of the philosophers of earlier centuries. An overview of the normative origins helps to outline the similarities and shared components between the two notions.

Origins

It is possible to trace the etymological roots of the phrase 'humanitarian intervention' by dividing the term into its individual elements of 'humanitarian' and 'intervention': the word *humanitarian* is derived from the English word 'humanity' and dates back to 1819. It is defined as 'one who affirms the humanity of Christ XIX (Moore 1974); one devoted to humane action or the welfare of the human race *c.* 1830' (Onions et al. 1985, p. 451). 'The meaning of one devoted to human welfare, a philanthropist, is first recorded in 1844 and was originally disparaging, connoting one who goes to excess in humane principles' (Barnhart 1995, p. 364). The word intervention is traced back to about 1425, it is '*intervencioun* intercession, especially by prayer; borrowed, perhaps through Middle French *intervention*, or directly from Late Latin *interventiōnem* (nominative *interventiō*) an interposing, giving security, from Latin *interven-*, stem of *intervenīre*' (Barnhart 1995, p. 539).

Over centuries, the meaning of both words have undergone changes. Contemporarily, 'humanitarian' stands for '(a person who is) involved in or connected with improving people's lives and reducing suffering' (Procter

2005, p. 625), and 'intervention' is defined as the act of intervening where to intervene means 'to intentionally become involved in a difficult situation in order to improve it or prevent it from getting worse' (Procter 2005, p. 670). Otte traces the roots of the word 'intervention' back to Latin to identify what is in the nature of intervention. There are three meanings that come to surface: '(1) to step between, to appear; (2) to confront, to interrupt, to hinder, to disrupt; and (3) to interfere to either hinder or to arbitrate'. Accordingly, he argues that 'these three groups taken together [… establish the] finite and temporary character of intervention, [since it] is interference by one state in the affairs of another state, thereby temporarily interrupting the normal pattern of bilateral relations between these two' (Otte 1995, p. 5).

As a term, 'humanitarian intervention' appears in the international law and politics literatures first with regard to the nineteenth century cases. Therefore, it is possible to make a distinction between the classical and contemporary understandings of humanitarian intervention. In its classical sense, 'humanitarian intervention may be seen in any use of armed force by a state for the purpose of protecting the life and liberty of its own nationals or those of third states threatened abroad' (Macalister-Smith 1995, p. 926). Though the phrase itself is rather new, its philosophical roots are not.

Certain features of just war principles, specifically *jus ad bellum*, hint at just causes for undertaking interventions in the name of humanity. In this regard, earlier works in Christian political theology constitute a starting point for analysis, and an introductory example is the writings of St. Augustine (354–430). Augustine (1969, p. 165) believes that '[f]or every man even in the act of waging war is in quest of peace, but no one is in quest of war when he makes peace'. The similarity between St. Augustine's approach and contemporary notion of humanitarian intervention lies in the fact that the latter is an act of use of force undertaken as a means to re-establish the order (which can also be regional or international if an internal situation poses a threat to or breach of regional/international peace and security) and human rights within a country, which also results in the re-establishment of (domestic and/or international) peace although this is not an explicitly pronounced objective. In the waging of just wars, Augustine (1969, p. 151) differentiates between the wise man and the other, and asserts that it is the injustice done by the latter that necessitates the undertaking of a just war:

> The wise man, they say, will wage just wars. As if he would not all the more, if he remembers his humanity, deplore his being compelled to engage in just wars; for if they were not just, he would not have to wage them, and so a wise man would have no wars. For it is the injustice of the opposing side that imposes on the wise man the necessity of waging just wars.

Since a just war arises as a necessity from injustice, in ideationally parallel terms, the need to undertake a humanitarian intervention arises from an unjust conduct of men, that is to say, from the gross and systematic violations of human rights committed.

While the idea of a legitimate intervention against unjust acts can be based on the writings of St. Augustine, the idea of responsibility can be traced back to Thomas Aquinas (1225–1274), who talks about the existence of a notion of responsibility all over the Christian Republic. Aquinas, while defining the system of *Respublica Christiana*, claims responsible 'every prince […] for the welfare of the total *Respublica* as well as his own specifically defined territory', and he accordingly posits that a prince 'may be called upon to resist aggression or unjust treatment of subjects any place in the *Respublica Christiana*' (Kusano 2003, p. 125). Though in a limited manner, what Aquinas put forth is parallel to the idea of a 'responsibility to react' element of R2P. While in the responsibility of Aquinas the community concerned is limited to the Christian Republic and the primary responsibility is that of the prince, in the responsibility to react, the responsibility pertains to the international community, according to which there is an expectation for collective response to grave violations of human rights. This also stands for a moral duty to maintain common good in response to unjust treatment.

Following St. Augustine's line of thinking, Thomas Aquinas (2006, p. 40, 1) adds that '[t]rue religion looks upon as peaceful those wars that are waged not for motives of aggrandisement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good'. One similarity between the ancient and contemporary philosophies in terms of undertaking just wars concerns the 'securing of peace'. As its proponents argue, humanitarian interventions may serve to secure peace, which can be peace within a country as well as regional and/or international peace. Nevertheless, what is meant by 'good' may vary depending on the interpretation of the philosopher/theorist. This may be a social order—whether religious, moral, economic, political, and so on—or as in the case of humanitarian intervention and R2P something concrete like the lives of the innocent masses. Thus, from the spectacle of R2P, Aquinas's proposition of a responsibility of the rulers to 'uplift the good' through military means when necessary, provides a basis for a more restricted interpretation of the notion. It is more limited because rather than its interpretation as a general social order, 'good' is defined in terms of ensuring human rights as established by international law, and stopping mass atrocities against populations in general.

Ending human suffering is considered as part of 'uplifting the good'. For instance, moral philosopher Robert Goodin argues that 'the rationale lies in

our own responsibility for the misfortune of others, and the ultimately weak distinction between negative and positive duties (i.e., to refrain from doing something harmful or to do something beneficial)' (Suhrke 1999, p. 272). Popper (1978, p. 223) argues that 'human suffering makes a direct moral appeal, namely the appeal for help, while there is no similar call to increase the happiness of a man who is doing well anyway'. While he considers that, morally, pleasure cannot compensate for pain, he asserts that '[i]nstead of the greatest happiness for the greatest number, one should demand, more modestly, the least amount of avoidable suffering for all'.

Nevertheless, human suffering is a two-sided consideration. As reflected in the reasonable prospects criteria of the ICISS, from a consequentialist point of view, there needs to be substantial hope for the success of the military operation. If the intervention seems likely to increase human suffering, the moral argument suggests that intervention should not be the choice. Wheeler (2002, p. 36) nonetheless suggests that in certain cases 'military necessity can be used to justify the killing of innocents on the grounds that this happens to be an inadvertent consequence of attacks against legitimate military targets'. This line of argumentation is rooted in the 'double effect' understanding of Catholic theologians and dates back to the Middle Ages. Quinn (1989, p. 334) basically defines this doctrine

> as a set of necessary conditions on morally permissible agency in which a morally questionable bad upshot is foreseen: (a) the intended final end must be good, (b) the intended means to it must be morally acceptable, (c) the foreseen bad upshot must *not* itself be willed (that is, must not be, in some sense, intended), and (d) the good end must be proportionate to the bad upshot (that is, must be important enough to justify the bad upshot). Teson (in Holzgrefe and Keohane 2003, pp. 115–116) raises the moral acceptability of 'proportionate collateral harm' that is the outcome of a humanitarian military intervention aiming 'to rescue victims of tyranny or anarchy'.

Its theological roots providing a moral basis for consideration, just war notion has been elaborated within the natural law tradition. Although some legal scholars consider humanitarian intervention as a 'relatively new doctrine,' as Meron (1991, p. 115) notes, it is possible to trace its legal roots back to philosophers of law like Alberico Gentili (1552–1608), Francisco Suàrez (1548–1617) and Hugo Grotius (1583–1645). Similar lines of thought are apparent in the arguments of Gentili and Suàrez since both of them make reference to the responsibility towards the human race in cases of inhuman treatment against people that occur in another sovereign's land (Meron 1991, p. 115).

For example, Gentili 'raise[s] the notion of sovereign accountability, noting that there must be some mechanism to remind the sovereign of his/her duty towards his people and hold him in restraint, "unless we wish to make sovereigns exempt from the law and bound by no statutes and no precedents"' (Chesterman 2001, p. 14). This understanding is, for instance, prevalent in R2P where sovereignty is understood also as a responsibility that is of the state/national authorities towards its populations.

Hugo Grotius's *De Jure Belli Ac Pacis* (1625) is an example of the works where Grotius makes reference to the notion of humanitarian intervention. Lauterpacht (1946, p. 46) posits that Grotius made 'the first authoritative statement of the principle of humanitarian intervention—the principle that exclusiveness of domestic jurisdiction stops when outrage upon humanity begins'. Grotius maintains that there may be a just cause for undertaking war on behalf of the subjects of another ruler, in order to protect them from wrong at his hands (Meron 1991, p. 111). '[I]f the wrong is obvious, in case some Busiris, Phalaris, or Thracian Diomede should inflict upon his subjects such treatment as no one is warranted in inflicting, the exercise of their right vested in human society is not precluded' (Chesterman 2001, p. 15). It is therefore up to another state or sovereign ruler to take the necessary measures 'to help the persecuted' since the subjects themselves are incapable of taking action (Meron 1991, p. 11; Chesterman 2001, p. 15).

Based on examples from history, Grotius acknowledges that the claim of 'taking up arms' to this end is prone to be used as a cover for an act of invasion of others' territories. Nevertheless, he adds that the abuse or misuse of a right does not necessitate the annulment of that right (Grotius 1967, p. 171). In his *De jure praedae*, Grotius argues that 'the protection of infidels from injury (even from injury by Christians) is never unjust' (Nardin and Williams 2006, p. 15). As can be inferred from Grotius's statement, his main emphasis is on the justness of an act rather than its lawfulness, and although an act can be just, this does not mean that it is also lawful. Following a similar line of thought, in an attempt to establish a just principle for undertaking action Pufendorf (1632–1694) asserts that 'we cannot lawfully undertake the defence of another's subjects, for any other reason than they themselves can rightfully advance, for taking up arms to protect themselves against the barbarous savagery of their superiors' (Chesterman 2001, p. 15). With this argument, Pufendorf brings to attention the lawfulness of the act alongside its justness.

Similar lines of reasoning were adopted for the justification of intervention in the domestic affairs of another state in the name of humanity in the later centuries. An example from the eighteenth century is the arguments of

Emmerich de Vattel (1714–1767), who posited that 'if the prince, attacking the fundamental laws, gives his people legitimate reason to resist him, if tyranny becomes so unbearable as to cause the Nation to rise, any foreign power is entitled to help an oppressed people that has requested its assistance' (Fonteyne 1973–1974, pp. 215).

In light of the referred argumentations, it is possible to suggest that although not formally named as humanitarian intervention in the then times, philosophers of law have articulated just reasons for undertaking action in order to stop atrocities against humanity. Moreover, it is observed that they provided moral arguments based on ethical constraints rather than legal ones. In a similar way, some of the contemporary scholars from the strand of liberal internationalism such as Ann-Marie Slaughter develop their arguments on moral aspects while talking about a duty to intervene. Their inspiration is the cosmopolitan arguments of Immanuel Kant, a philosopher who argues for the authority of moral law over that of the sovereign state. Kant maintains:

> For Hugo Grotius, Pufendorf, Vattel and the rest (sorry comforters as they are) are still dutifully quoted in *justification* of military aggression, although their philosophically or diplomatically formulated codes do not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint. Yet there is no instance of a state ever having been moved to desist from its purpose by arguments supported by the testimonies of such notable men. This homage which every state pays (in words at least) to the concept of right proves that man possesses a greater moral capacity, still dormant at present, to overcome eventually the evil principle within him (for he cannot deny it exists), and hope that others will do likewise. Otherwise the word *right* would never be used by states which intend to make war on one another (Reiss 2000, p. 103).

Such idea of moral capacity provides a basis for the universality of human rights. Accordingly, Kant posits:

> The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*. The idea of a cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity. Only under this condition can we flatter ourselves that we are continually advancing towards a perpetual peace (Reiss 2000, pp. 107–108).

While establishing that a cosmopolitan right and a moral capacity exists, Kant does not make authoritative statements regarding intervention in the internal

affairs of states on grounds of humanity, but lays the possible grounds for such understanding. Nevertheless, a nineteenth-century international lawyer Henry Wheaton presents a detailed discussion of the 'right to intervene' where he arrives at the conclusion that '[n]on-interference is the general rule, to which cases of justifiable interference form exceptions limited by the necessity of each particular case' (Knudsen 2009, p. 7). By suggesting that it is unlikely to have a definitive statement about the absoluteness of non-interference, Wheaton, based on historical examples, argues for the possibility of recognition of legitimacy for unilateral practices on the basis of a right to intervene as an exception to the general rule of non-intervention (Knudsen 2009, p. 7).

An intellectual of the same century, John Stuart Mill, presents his thoughts on non-intervention on a more general background. In his short essay entitled 'A Few Words on Non-Intervention', Mill (1859, p. 4) asserts:

> There seems to be no little need that the whole doctrine of noninterference with foreign nations should be reconsidered, if it can be said to have as yet been considered as a really moral question at all. […] To go to war for an idea, if the war is aggressive, not defensive, is as criminal as to go to war for territory of revenue; for it is as little justifiable to force our ideas on other people, as to compel them to submit to our will in any other respect. But there assuredly are cases in which it is allowable to go to war, without having been ourselves attacked, or threatened with attack; and it is very important that nations should make up their minds in time, as to what these cases are. There are few questions which more require to be taken in hand by ethical and political philosophers, with a view to establish some rule or criterion whereby the justifiableness of intervening in the affairs of other countries, and (what is sometimes fully as questionable) the justifiableness of refraining from any intervention, may be brought to a definite and rational test. Whoever attempts this, will be led to recognise more than one fundamental distinction, not yet by any means familiar to the public mind, and in general quite lost sight of by those who write in strains of indignant morality on the subject.

While raising the controversial issue of interference in the domestic affairs of states, Mill raises the question on what grounds an intervention can be justified (like for instance, in the case of a civil war, or in the case of providing assistance to the people of another country in their struggle for liberty). He also mentions intervention on the basis of the imposition 'on a country any particular government or institutions, either as being best for the country itself, or as necessary for the security of its neighbours' (Mill 1859, p. 5). The traces of Mill's rationalisation are found in the contemporary understanding of 'failed states'. Furthermore, a resemblance to the principles emanating from the UN Charter can be seen in Mill's question since he raises the issue of the

security of neighbours. Based on Chapter VII of the UN Charter, threats to or breaches of international peace may create situations where non-interference is no longer prioritised and states may intervene for the maintenance of international peace and security. In this respect, threats to or breaches of regional security, as is valid in contemporary cases, may provide legitimate grounds to intervene in the domestic matters of states.

Mill (1859, p. 5) asserts that the principle of non-intervention prevails in cases where a 'government which needs foreign support to enforce obedience from its own citizens' as he considers intervention of this sort as a support for despotism. Nevertheless, in case 'of protracted civil war', which is considered 'injurious to the permanent welfare of the country', Mill (1859, p. 5) talks about the possibility of an intervention that receives 'general approval, that is legitimacy may be considered to have passed into a maxim of what is called international law'.

Approaching the issue from a different perspective, on the basis of a distinction between well-ordered and burdened societies, Rawls (1999, p. 106) suggests that a duty of assistance exists. Financial assistance is not sufficient to correct injustices inherent within the so-called burdened societies. Nevertheless, placing 'an emphasis on human rights may work to change ineffective regimes and the conduct of the rulers who have been callous about the well-being of their own people' (Rawls 1999, pp. 108–109). The affirmation of basic human rights, he notes, is not necessarily only a traditional part of the institutions and practices of liberal societies, but also of all decent societies in general (Rawls 1999, p. 111).

He further argues that citizens are capable of two moral powers, which are 'a capacity for a sense of justice and a capacity for a conception of the good. It is also assumed that each citizen has, at any time, a conception of the good compatible with a comprehensive religious, philosophical, or moral doctrine', alongside 'a first principle that all persons have equal rights and liberties' (Rawls 1999, p. 82). In 'the Law of Peoples', human rights 'express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide' (Rawls 1999, p. 79). Accordingly, these rights have the following functions:

1. Their fulfilment is a necessary condition of the decency of a society's political institutions and of its legal order.
2. Their fulfilment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
3. They set a limit to the pluralism among peoples (Rawls 1999, p. 80).

The protection of peoples, for instance, from mass murder and genocide is a principal part of the understanding of human rights in the 'Law of Peoples'. As can be inferred from the second function, the failure to provide these urgent rights is a justified cause for forceful intervention by external actors. In light of this, following Rawls's assertions, in defence of humanitarian intervention and R2P, one may talk about an inherent duty of assistance of the members of the international community to provide the necessary conditions for enabling the enjoyment of basic rights and freedoms by all peoples, through any means necessary.

In the absence of delineation between the understandings of humanitarian war and humanitarian intervention as in its contemporary sense, the end of the nineteenth century has been marked by raising humanitarian concerns, as well as the conclusion of the Geneva Conventions in the meantime. Following the natural law tradition, in later centuries, some scholars argued for a right of humanitarian intervention. Writing during the pre-Charter period, Edwin Bouchard observes that

> where a state under exceptional circumstances disregards certain rights of its own citizens over whom presumably it has absolute sovereignty, the other States of the family of nations are authorized by international law to intervene on grounds of humanity (Duke 1994, p. 33).

However, it should be noted that citing 'humanity' for undertaking coercive action is also likely to constitute a point of criticism. For instance, Schmitt (2007, p. 54) argues against wars waged in the name of humanity, as he suggests that

> humanity as such cannot wage war because it has no enemy, at least not on this planet. […] When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent. At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, justice, progress, and civilisation in order to claim these as one's own and to deny the same to the enemy. The concept of humanity is an especially useful ideological instrument of imperialist expansion.

In countering arguments against intervention, Bouchard further maintains that 'when these "human rights" are habitually violated, one or more States may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled' (Duke 1994, p. 33).

Similarly, Shaw (2005, p. 252) posits that in the pre-Charter period there is an acceptance, at least in appearance, of 'a right of humanitarian intervention, although its range and extent were unclear'. Likewise, Beyerlin (in Bernhardt 1992, p. 927) notes an acceptance of 'the idea of lawful humanitarian intervention' while emphasising the doctrinal confusion concerning 'the legal foundation and the extent of that institution'. Nonetheless, neither prior to World War I nor in its aftermath, there is any substantial evidence (e.g., consistent and accepted general state practice) to suggest that humanitarian intervention was a soundly established principle of customary international law (Bernhardt 1992, p. 927).

Corten (2010, p. 496) asserts that grounding the conduct of humanitarian intervention on an established 'right to intervene' places the doctrine and related discussions

> within the legal sphere and not in the realms of ethics or politics. […] The term 'right' also denotes the idea of an autonomous legal basis: a 'right' of humanitarian intervention, it can be surmised, would justify a military action independently of the classical foundations for such justification such as the host State's consent, Security Council authorisation, or even self-defence.

The argument for the existence of a right to intervene—allowing unilateral humanitarian interventions—is highly contested in the post-Charter period, and thus, the assessment of the validity of such argument requires a deeper analysis of the international legal framework, which is due in Chapter 3.

3

International Law and the 'Right to Intervene'

This chapter places the doctrine of humanitarian intervention within the realm of international law keeping two objectives in mind. The first is to question whether or not there exists a right to intervene and how state practice has evolved prior to 2001. The second is to provide a basis to assess the permissive and restrictive influences of legal elements on the conduct of humanitarian intervention, which is among the measures of the responsibility to react. In the subsequent chapters of the book, such analysis will also help understand the factors hindering the evolution of the collective responsibility to protect into a legal norm. In light of this, the chapter inquires into the legal backdrop prior to R2P's construction, and analyses the legal approaches to the practice of humanitarian intervention in the post-Charter period. As Teitel (2011, p. 4) maintains:

> This history has created the context for a transformation in the relationship of law to violence in global politics. The normative foundations of the international legal order have shifted from an emphasis on state security – that is, security as defined by borders, statehood, territory, and so on – to a focus on human security: the security of persons and peoples. In an unstable and insecure world, the law of humanity – a framework that spans the law of war, international human rights law, and international criminal justice – reshapes the discourse of international relations.

After experiencing two major wars, states have tried to find ways to avoid large-scale interstate armed conflicts. Hence, in the aftermath of World War

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I and particularly World War II, new legal rules emerged. Following the end of World War I, recognising the cruelty of war, states engaged in developing new norms. An example is the 'Convention relative to the Treatment of Prisoners of War' signed at Geneva on 27 July 1929 and entered into force on 19 June 1931. As mentioned in Chapter 2, in the earlier centuries, philosophers of law who focused on just causes of war, or helped the evolution of the just war theory for that matter, directed their attention primarily to *jus ad bellum*. Distinctively, the Geneva Conventions addressed the issue of *jus in bello*. The evolution of international law continued in the aftermath of World War II with numerous multilateral agreements. In this regard, the first example was the 1949 Geneva Conventions, which revised the earlier Geneva Conventions. As Mills (2013, p. 338) suggests:

> The 1949 Geneva Conventions represented a significant point in the history of the attempt to 'humanize' war. In addition to providing a basis for humanitarian action, it also further elaborated what states could and could not do during war and created a legal basis for individual responsibility for violations of the laws of war—war crimes—although the Cold War prevented institutionalization in the form of a war crimes court.

The second line of rules emerged under the UN framework through the establishment of the Charter of the United Nations, which Bruno Simma describes as 'not just one multilateral treaty among others, but an instrument of singular legal weight, something akin to a "constitution" of the international community' (House of Commons 1999–2000). Under Article 1(1), the Charter established the primary purpose of the UN as the maintenance of international peace and security. As Boutros-Boutros Ghali maintains, 'the whole philosophy of the charter is to avoid military force' (Barnett 2003, p. 116).War and aggression were outlawed first according to the UN Charter, and later with the resolutions adopted by the Security Council or the General Assembly. In the meanwhile, the principles of the prohibition of the threat and use of force as well as non-intervention in internal and external affairs of states were established as *jus cogens* norms.

This was a critical change since resort to military force in the conduct of international affairs was not prohibited in the pre-Charter period. In this context, arguing for the existence of a right to intervene in the post-Charter period is to assume that unilateral humanitarian interventions undertaken without Security Council authorisation can be lawful. Restrictionist scholars challenge such assertion on grounds of basic system values of the UN Charter.

Sovereignty, Non-Intervention, and Non-Use of Force

Within the international law literature, Simon Duke identifies three broad approaches to the debate on the legality of humanitarian intervention: the restrictionist tradition on the one hand and the natural law tradition as well as the international community approach on the other, which can be grouped more generally into two as restrictionist (see Brownlie 1974; Akehurst 1984; Beyerlin 1992) and counter-restrictionist (see Lillich 1974; Bouchard 1922; Lauterpacht 1950) approaches. Under such classification, restrictionists belong to the group that considers humanitarian intervention as 'a violation of the territorial integrity and political independence of the state' (Duke 1994, p. 33). Thus, at the core of their arguments lies the Westphalian notion of national sovereignty, according to which states are not legally permitted to intervene in the internal affairs of another state. Article 1 of the 1933 'Montevideo Convention on the Rights and Duties of States', which as a model is reflected in the UN Charter, establishes 'permanent population, defined territory, government, and capacity to enter into relations with the other states' as the four components of statehood. Therefore, these are the key components that constitute the basis for the sovereignty, territorial integrity, and political independence of a state. As established in Article 2(1) of the Charter, the UN 'is based on the principle of sovereign equality of all its Members', which entails elements such as judicial equality of states, enjoyment of 'the rights inherent in full sovereignty', 'the duty to respect the personality of other States', the inviolability of 'the territorial integrity and political independence of' states, and the freedom of states 'to choose and develop [their] political, social, economic, and cultural systems' (UNGA 1970). Adhering to this basic principle, in several resolutions—such as Resolution 688 (1991) on Iraq, Resolution 1079 (1996) on the Republic of Croatia, Resolution 1802 (2008) on Timor-Leste, and Resolution 1858 (2008) on Burundi—the Security Council has reaffirmed its 'commitment to the sovereignty, territorial integrity, and political independence' of states.

As one of the core system values of the UN, the notion of sovereignty is interconnected with the principle of non-intervention, which is laid out in Article 2(7) of the UN Charter as follows: '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'. This paragraph simply defines the boundaries of action within the

UN framework. Therefore, it is of importance when it comes to discussing actions to be undertaken by the Organisation regarding the internal affairs of states. The UN General Assembly, in its 1408th plenary meeting on 21 December 1965, by the resolution entitled 'Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty' (A/RES/2131 (XX)) confirmed this principle in the following words:

> No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic, or cultural elements are condemned.

The wording of this provision not only reaffirms the sanctity of states' sovereignty and the principle of non-intervention but also carries these two principles to interstate relations. The same principle is established also in General Assembly Resolution 2625 (1970) entitled 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations', as well as in Article 3(2) of the Additional Protocol II to the Geneva Conventions. Although a direct reference to Article 2(7) in Security Council resolutions is not very common, an example of this can be seen in Resolution 688 on Iraq dated 5 April 1991. In its resolution, the Council explicitly recalled the provisions of Article 2(7) of the Charter, while it condemned 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region'.

As far as application of law is concerned, it is possible to observe that the principle of non-intervention has also been reaffirmed in the judgements of the International Court of Justice (ICJ). For instance, in paragraph 241 of the 'Judgement of the Case Concerning the Military and Paramilitary Activates in and Against Nicaragua (Nicaragua vs. United States of America)' dated 27 June 1986, the ICJ finds that giving support of any sort to the opposition (military and paramilitary forces and activities, and in this case the *contras* whose aim was to overthrow the Government of Nicaragua) signals intervention and also falls contrary to Article 2(4). As indicated in the summary of the judgement under the section entitled the principle of non-intervention (paras. 239–245), the Court 'considers that if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose

is to overthrow its government, that amounts to an intervention in its internal affairs, whatever the political objective of the State giving support'. Therefore, such an act constitutes a clear breach of the principle of non-intervention.

Restrictionist scholars argue that humanitarian intervention falls contrary to the prohibition of the use of force, which is established in the UN Charter and several other international documents.[1] Article 2(4) of the Charter reads: 'All members in their international relations shall refrain from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the Purposes of the UN'. In other words, it prohibits war and any sort of aggression. Moreover, Resolution 2625 (XXV) establishes that

> Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.
>
> The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized (UNGA 1970, pp. 122–123).

The wording of the Resolution strengthens the principle laid out in Article 2(4), which was later reaffirmed by the Security Council in its numerous resolutions.

Two examples of explicit reference to the principle with almost exact wording are present in Resolutions 573 (1985) and 611 (1988) concerning the conflict between Israel and Tunisia. An implicit reference can be found in Resolution 1318 (2000) on 'ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa', where the Security Council under Paragraph I of the Annex '[*r*]*eaffirms* the importance of adhering to the principles of the non-threat or non-use of force in international relations in any manner inconsistent with the Purposes of the United Nations and of peaceful settlement of international disputes'.

[1] See, for instance, the Covenant of the League of Nations of 1924; Locarno Agreement of 1925; Briand-Kellogg Pact of 1928; Geneva Final Act of 1928; the Litvinov (Moscow) Protocol of 1929; Stimson Doctrine of 1931; the Montevideo Convention on the Rights and Duties of States of 1933; Rio de Janeiro Agreement of 1933; 1970 Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN; 1975 Helsinki Final Act; Manila Declaration of 1982; the 1988 Declaration on the Prevention and Removal of Disputes and Situations which May Threaten Peace and Security and the Role of the United Nations in this Field; and the 1990 Paris Charter for a New Europe.

Furthermore, Resolution 884 (1993) on the conflict between Armenia and Azerbaijan, in its seventh preambular paragraph reminds 'the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory'. Resolution 748 (1992) reaffirms 'that, in accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every state has the duty to refrain from organizing, instigating, assisting, or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force'.

In principle, General Assembly resolutions lack legally binding powers yet they are considered as evidence of state practice. Resolutions 2131 (1965) and 2625 (1970) can be provided as examples supporting the restrictionist approach. Resolution 2131 (A/6220) states: 'No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State'. To this, Resolution 2625 (A/8028) adds that 'armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law'.

While the prohibition of the use of force is an *erga omnes* principle of law as well as a *jus cogens* rule that is binding upon non-Member States, Article 2(6) of the Charter also provides that 'the Organisation shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security'. On this basis, the Security Council may urge non-Member States to act in co-operation with the Organisation like it did in Resolution 558 (1984) on South Africa, where the Council requested 'all States, including States not Members of the United Nations, to act strictly in accordance with the provisions of the present resolution'.

In light of these, restrictionist scholars like Ulrich Beyerlin argue that humanitarian intervention is 'clearly enough, in conflict with the prohibition on the use of (armed) force in Article 2(4) of the Charter' unless the use of force is authorised by the Security Council under the powers vested in it by Article 42 (Duke 1994, p. 34). In contention, Reisman argues that Article 2(4) 'should be interpreted in accordance with its plain language, so as to prohibit the threat or use of force *only when directed at the territorial integrity or political independence* of a State' (Fonteyne 1973–1974, p. 253). He further suggests that 'this specific modality of the use of force is not only not inconsistent with the purposes of the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter' (Fonteyne 1973–1974, p. 254), since it is directed neither at the territorial integrity

nor the political independence of a state. In objection to Reisman, Fonteyne (1973–1974, p. 255) argues that Article 2(4) is not necessarily concerned with the intentions of the states involved in the action. Any sort of intervention, even though temporary, constitutes a breach of the territorial integrity and political independence of the state, as long as it is undertaken without the consent of that state. Fonteyne (1973–1974, p. 255) further maintains that humanitarian intervention is a far serious breach since an effective long-term solution to the issue oftentimes rests in the 'change of government or even a secession'. Therefore, the intervention eventually ends up with a vital impact on the domestic political and/or legal order of the state that has been subjected to the humanitarian intervention.

When state practice in the immediate post-Charter period is observed, we see that states' interpretation of the Charter was in line with the views of the restrictionists. In the three prominent examples of the Cold War, which are considered in the literature as precedents for later humanitarian interventions, the intervening states tried to justify their acts on the basis of the right of self-defence rather than humanitarian reasons, despite the visible humanitarian consequences of the interventions. Furthermore, these interventions were not authorised by the UN Security Council, as they were not perceived as legally acceptable actions by some of the P5.

In the case of the Indian intervention in Pakistan, which followed the civil war that erupted in March 1971 in East Pakistan, the influx of refugees was put forth as the grounds for invoking the inherent right of self-defence. Only as a secondary point, India noted the necessity to aid the 'Bengali victims of the Pakistani Army's onslaught' (ICISS 2001b, pp. 54–55). Due to the use of the veto by the Soviet Union, the Security Council came to a deadlock and the draft resolution asking for an 'immediate ceasefire' was not passed (Wheeler 2002, p. 68). Upon this, the Non-Aligned Group put pressure to bring the issue before the General Assembly. Finally, Resolution 2793 (XXVI) calling for the withdrawal of all military forces was adopted (ICISS 2001b, pp. 55–56). This Resolution was indeed a compromise between the superpowers, as it was a decision calling for an immediate ceasefire but without a condemnation on India (Wheeler 2002, p. 70). That is to say, in the political conjuncture of the Cold War, the support of the Soviet Union prevented India from being sanctioned or condemned due to its use of force in contravention to the basic principles of the UN Charter. Last but not least, during the deliberations, humanitarian justifications were given no credit.

A similar scenario took place in the 1978 intervention of Vietnam in Cambodia where the UN Security Council yet again became inoperable due to a veto cast. From March 1978 to March 1979, human rights abuses

in Cambodia were recorded in the resolutions of the UN Commission on Human Rights (UNCHR) (Ramsbotham and Woodhouse 1996 p. 55). In the ongoing war between Cambodia and Vietnam on the border, 'humanitarian' reasons were present for Vietnam to claim as a justification for its coercive action. However, as in India's case, Vietnam claimed to undertake its intervention on the basis of the inherent right of 'self-defence' against the aggression by the Khmer Rouge regime (ICISS 2001 b, p. 58). In the Security Council's consideration of the case, no humanitarian cause was accepted to constitute a reason to permit a breach of the principle of non-intervention, of which the main purpose is to prevent states from intervening in the domestic affairs of other states. The Soviet Union vetoed the draft resolution asking 'for the withdrawal of all foreign (that is, Vietnamese) forces from Cambodia' (ICISS 2001b, p. 59). The debate in the General Assembly was crucial in the sense that the question of 'whether substantial human rights violations could provide a justification for intervention' was raised (ICISS 2001b, p. 60). As Wheeler (2002, p. 91) notes:

> The USA recognized that Vietnam had legitimate security anxieties relating to Cambodian attacks against its citizens in the border areas, but Young argued that 'border disputes do not grant one nation the right to impose a government on another by military force.' […] The Carter administration had sought to elevate human rights in the hierarchy of foreign-policy principles, but, when it came to a choice between upholding the rule of law or permitting an exception in the name of rescuing the Cambodian people, an absolutist interpretation of the rules won out.

As it did in the case of India's intervention, the General Assembly called for an immediate withdrawal of Vietnamese forces. Moreover, it did not extend recognition to the new Cambodian Government as it decided to continue to consider the ousted government as the official one (Ramsbotham and Woodhouse 1996 p. 55).

Although the incidents were similar to the ones in the Vietnamese case, in the 1979 Tanzanian intervention in Uganda, the international community's response was nuanced. Like India and Vietnam, Tanzania also claimed the right of 'self-defence' for its actions, and stated that 'there were two wars being fought: "First there are Ugandans fighting to remove the Fascist dictator. Then there are Tanzanians fighting to maintain national security"' (ICISS 2001b, p. 60). The reaction to the Tanzanian intervention diverged from the Indian and Vietnamese interventions in the sense that there was almost no international reaction. Western states, including the USA, refrained from

commenting on Tanzania's use of force and the toppling of Idi Amin (Wheeler 2002, p. 124). Contrary to the outcome of the Vietnamese intervention, the new government in Kampala was recognised by most countries in a short period of time, and there were no condemnations regarding the actions of Tanzania (Wheeler 2002, p. 125). Nonetheless, the Tanzanian intervention was not authorised by the Security Council either.

In the case of the interventions by the USA, the outcome was no different from the previous cases mentioned. In the incidence of the 1989 US intervention in Panama—which came right after the government change in Panama—this time it was Washington that cast a veto in order to avoid the drafting of a condemnatory resolution. Refusing to extend recognition to the new government of General Manuel Noriega, Washington later intervened militarily to reinstall the old government. Following the successful US military operation, upon the request of Nicaragua, the Security Council convened (ICISS 2001 b, p. 66).

> The action was immediately repudiated by 79 governments, and condemned as a violation of international law by a 108 to 9 vote in the UN General Assembly. The United States invasion of Panama on 20 December 1989 […] was only obliquely presented as a humanitarian operation. President Bush gave four objectives for the mission: (a) protection of US nationals, (b) defence of democracy, (c) elimination of drug-trafficking, and (d) upholding the Panama Canal Treaty (Ramsbotham and Woodhouse 1996 p. 56).

At the same time that the Organization of American States (OAS) raised their strong criticisms of the USA, the Soviet Union and its allies unsurprisingly voted in favour of the resolution condemning the US intervention. In the end, it was nothing else but the British, French, and American vetoes that prevented a condemnatory Security Council resolution.

In light of these examples, concerning the practice during the Cold War era, it would not be wrong to generalise that the provisions of the UN Charter were interpreted in a strict manner. Nonetheless, it is possible to see changes in the pattern as of 1990s. As Cohen (2008a, p. 456) maintains, in the late 1980s and 1990s, '[t]he new willingness of the Security Council to sanction grave domestic human rights breaches, and the development of supranational courts to enforce them, seemed to indicate that the basic rights of all individuals would be protected even if their own states failed to do so'. Such difference of interpretation is reflected in the arguments of Fonteyne and Reisman, since restrictionist and counter-restrictionist scholars interpret the main provisions of the UN Charter in a different way. In this regard, it is important

to consider counter-restrictionist propositions on the matter as well as their suggested legal grounds under the UN framework.

Possible Legal Grounds under the UN Framework

Despite the fact that the principles of sovereignty, non-intervention, and prohibition of the threat and use of force have been widely recognised by the international community, the aftermath of World War II brought about new challenges, which also altered the implementation of these principles. As Fabri (2008, p. 34) reminds, sovereignty is not an equivalent of 'unlimited power' on the part of the state; it is rather 'the fact of not being subject to any higher authority, or to any obligation to which the sovereign has not consented'. Hence, it can be conceived as a freedom, naturally having its limitations. In this regard, additional limitations were imposed with the new rules defined under international law. First, with the drafting of the Charter of Nuremberg Tribunal in 1945, 'crimes against humanity' were defined. As Mills (2013, p. 338) suggests, the 'Nuremburg trials and the idea of "never again" laid the foundation for the development of what has become the vast edifice of international human rights and humanitarian law'. Then in 1948, genocide was established as a crime under the 'Convention on the Prevention and Punishment of the Crime of Genocide'. 'Since then, genocide has become the über crime—the worst of all imaginable things one can do in war' (Mills 2013, p. 338).

The definition of certain crimes within the context of international law, the transformation of the prohibition of the crime of genocide into a *jus cogens* norm, and in general the rise of international criminal law gave way to arguments for a right or duty to take action against atrocities towards masses through measures up to and including the use of force. Arguably, it was on the basis of such legal background that the entrepreneurs of R2P constructed the norm. Later in 2005, the very same background was used to clarify the limits of R2P and to constrain the norm when it was reformulated within the UN framework. Accordingly, paragraphs 138 and 139 of the World Summit Outcome Document established that states and the international community have a 'responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity'. The descriptions of these crimes can be found in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and the Rome Statute of the International Criminal Court of 1998. Additionally, for war crimes, a prominent reference is International Humanitarian Law, which comprises of documents such as

the Hague Regulations of 1899 and 1907, Geneva Conventions of 1929 and 1949, and the Additional Protocols of 1977.

Article VIII of the Genocide Convention enables its state parties to 'call upon the competent organs of the United Nations to take such action [that is granting extradition] under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts' such as 'genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide'. Arguably, the developments in international criminal law have blurred the margins of what falls under the domestic jurisdiction of a state and what does not.

Counter-restrictionist scholars claim that the UN Charter leaves room for the legitimacy and/or legality of humanitarian interventions, although, as Murphy (1996, p. 83) asserts, 'the language and intent behind the UN Charter does not provide an express legal basis for the conduct of humanitarian intervention by States or by regional organisations'. In his criticism of *a contrario* interpretations of the UN Charter, Corten (2010, p. 501) asserts that the wording of the Charter aims for a strict reading of the prohibition, not a loose one that is based on the context. He further argues: 'As humanitarian intervention invariably follows from a disagreement between the intervening State and the State that is the target of allegations about human rights' violations, and so from a 'dispute' in the legal sense of the term, such an intervention can hardly be considered compatible with the UN Charter' (Corten 2010, p. 501). Thus, Corten argues against any claim for the justification of humanitarian intervention on the basis of the UN Charter.

Addressing the same aspects of the legal context, Lauterpacht defines humanitarian intervention as an act signifying 'dictatorial interference of the State', involving the threat or use of force (Garrett 1999, p. 4). Nevertheless, he considers intervention as permissible in legal terms when a state commits atrocities against fundamental human rights (Duke 1994, p. 33). In this regard, counter-restrictionist scholars take the Preamble to the Charter as well as Articles 1, 13, 55, and 56 as potential grounds for humanitarian intervention (Duke 1994, p. 35). In other words, the arguments in favour of the legitimacy and/or legality of humanitarian interventions are based on the promotion and protection of human rights, which are indicated in the Charter among the purposes of the UN. Both the Preamble and Article 1(3) of the Charter place human rights as a higher value. The referred paragraphs, in a consecutive order, read as follows:

> We the peoples of the United Nations determined […] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the

> equal rights of men and women and of nations large and small […] have resolved to combine our efforts to accomplish [the stated] aims.
>
> The Purposes of the United Nations are to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Furthermore, Article 13 establishes that 'the General Assembly shall initiate studies and make recommendations for the purpose of […] assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. More importantly, Article 55(c) reads: 'the United Nations shall promote […] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. In this vein, Article 56 states: 'All Members pledge themselves to take joint or separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55'.

On these grounds, the 1948 Universal Declaration of Human Rights in Article 28 recognises for everyone the right 'to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'. Moreover, Article 30 aims to assure that nothing in the content of the Declaration 'may be interpreted as implying for any State, group, or person any right to engage in any activity to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'. Although these provisions by themselves do not necessarily constitute exceptions to the prohibition of the use of force, they can be interpreted as complementary to what has been established by the Charter regarding respect for human rights.

Garrett (1999, p. 47) reminds that the purpose of humanitarian intervention is 'to compel the state to observe fundamental international norms of human rights'. As an exception to the dictates of Article 2(7), proponents of humanitarian intervention argue that human rights standards are not simply matters of domestic jurisdiction of states if states are parties to the related international treaties. It is as a result of these legal bonds that human rights matters need to be considered as part of the international duties of states leading to or allowing 'for the supervision and possible sanction of the international community' (Garrett 1999, p. 47). For instance, Oppenheim (1955, pp. 336–337) acknowledges that although it might be possible for a state to get around its legal—but not moral—responsibility towards its subjects in certain cases through changing parts of its municipal law, the same is not

necessarily true concerning the state's legal responsibility in so far as its international duties are concerned.

> There is general agreement that, by virtue of its personal and territorial authority, a state can treat its own nationals according to discretion. But a substantial body of opinion and of practice has supported the view that there are limits to that discretion and that when a state commits cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, the matter ceases to be of sole concern to that state and even intervention in the interest of humanity might be legally permissible (Oppenheim 1992, p. 442).

For instance, in the *Duško Tadić* case, on the basis of Article 3 of the Statute of the ICJ, the Appeals Chamber found that it has jurisdiction over 'violations of the laws or customs of war […] regardless of whether they occurred within an internal or international armed conflict' (Shaw 2005, p. 1070).

Concerning the prohibition of the use of force, Lillich (1974, p. 241) argues for 'a right of forcible humanitarian intervention' and contends that Article 2(4) 'does not constitute an absolute prohibition against all unilateral humanitarian interventions'. Brownlie (1974, p. 227) challenges Lillich arguing that his position 'is completely outside the general consensus of state practice and the opinion of experts of various nationalities', and concludes that no such right exists. As Corten (2010, p. 547) notes, on the basis of the UN Charter, one may possibly talk about lawful use of force in relation to humanitarian intervention only if the intervention is linked to the three distinctive circumstances of self-defence, state consent, or Security Council authorisation. Nevertheless, Oppenheim (1995, p. 443) draws attention to the fact that the unilateral character of an intervention tends 'to weaken its standing as a lawful practice' since it can be an abusive conduct by a state. For instance, in its 1983 intervention in Grenada, the USA failed to receive support from the Security Council although it based its intervention on 'an invitation from the Grenadan Governor General to restore order to the island, a request from the Organization of East Caribbean States for collective security action in Grenada and the need to protect US nationals in Grenada' (Murphy 1996, p. 109). The invasion was debated in the Security Council and the draft resolution that condemned the US action failed due to a veto by the USA itself (ICISS 2001b, p. 65). Nevertheless, Washington was not able to prevent the General Assembly resolution condemning the intervention as a 'flagrant violation of international law' (Murphy 1996, p. 111).

In this regard, Oppenheim (1955, pp. 443–444) suggests that what is legally contested by default is the existence of a right for unilateral intervention and

that the international community's increasing involvement in the protection of human rights renders it much less necessary for states to preserve or practice a right to intervene. There is general consensus among scholars and lawyers that with the authorisation of the Security Council humanitarian interventions can be lawfully conducted. The basis of such authority is laid out in the last part of Article 2(7), where it is stated that the principle of non-intervention 'shall not prejudice the application of enforcement measures under Chapter VII'. In this vein, a fundamental exception to the dictates of Article 2(4) is established in Chapter VII of the Charter regarding 'action with respect to threats to the peace, breaches of the peace, and acts of aggression'.

Arguably, the Security Council is legally capable—but not necessarily morally obliged—to authorise humanitarian interventions given in Article 39 of the Charter, vesting the power on the Security Council 'to determine the existence of any threat to the peace, breach of the peace, or act of aggression, [… to] make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'. If there is a case of gross violation of human rights that constitutes a threat to international peace and security, then action can be undertaken in accordance with the terms of Chapter VII. As Brownlie (1974, p. 226) notes: 'Such action may relate to Articles 40 (provisional measures), 41 (economic sanctions), or 42 (military sanctions)'. Provisions of Chapter VII take into consideration measures up to and including the use of force for adoption in order to ensure the preservation or maintenance of international peace and security, specifically in cases of 'threats to the peace, breaches of the peace, and acts of aggression'. Therefore, on the basis of the UN Charter, the Security Council stands out as the organ with the power to authorise the lawful use of force.

A prominent example of Chapter VII authorisation is Resolution 794 (1992) where the Security Council found that 'the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security'. Likewise, Resolution 929 (1994) on Rwanda determined 'that the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region', and '[a]cting under Chapter VII of the Charter of the United Nations, authorize[d] the Member States cooperating with the Secretary-General to conduct the operation […] using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994)'. Like in Resolution 940 (1994) on Haiti, in Resolution 1264 (1999) the Security Council established 'that the present situation in East Timor constitutes a threat to peace and security', and authorised action under the mandate of Chapter VII.

Nevertheless, the consideration of a situation as a threat to international peace and security does not also mean the authorisation of the use of force. Regarding the situation in Kosovo, the Council drafted Resolution 1160 (1998) in which it invoked Chapter VII, and specifically Article 39, considering the situation a threat to international peace and security in the region. The Security Council indicated grave concern in Resolution 1199 (1998) and made reference to a possible use of force in Resolution 1203 (1998). In its later resolutions too, the Council considered the situation a threat to peace and security in the region. In all resolutions that were adopted unanimously, it was indicated that the Security Council was acting under Chapter VII.

All in all, an undisputed point of consensus among restrictionist and counter-restrictionist scholars is that, whether there exists a right to intervene or not, the Security Council can authorise lawful humanitarian interventions on the basis of Chapter VII. Therefore, the lingering question is how does the failure of the Security Council to take a decision on a specific issue due to political inertia reflect on the implementation of the fundamental principles of the Charter in practice?

In Principle and/or in Practice?

While arguing for the existence of a right to intervene, Oppenheim bases his observations on the interventions that had taken place in the 1800s. Nevertheless, the generalisation of such argument to the post-Charter era is problematic since the rules established by the Charter challenged most of the past understandings and/or habits. Speaking about a right of humanitarian intervention, state practices as well as the debates within the UN in the period between 1945 and 1990 reveal neither a foundation of nor support for it. Evidence suggests an adherence to the principles of state sovereignty, non-intervention, and non-use of force more rigidly than before, given that the period was characterised by the ideological and political divides between the western block led by the USA and the eastern block led by the Soviet Union. As Murphy (1996, p. 84) suggests, in the Cold War era, there are no examples of Security Council authorised interventions, due to the generous use of the veto by the two superpowers.

Along the same lines, Corten (2010, p. 534) observes:

> A review of precedents characteristic of the Cold War clearly show that States remained attached to a classical conception by which violations of human rights cannot justify military actions from outside. […] It was only in the 1990s that

> States as a whole admitted an extended competence of the Security Council to deal with situations that had formerly been considered as purely internal, including by authorising an outside military intervention.

Thus, in contrast to the Cold War era, it is observed that the Security Council assumed a more active role in addressing cases of mass atrocities and did not necessarily refrain from adopting coercive measures. Alongside military interventions, two preferred methods—generally prior to the adoption of the use of force—were sanctions and international prosecution (ICISS 2001b, p. 118).

Furthermore, as the ICISS (2001b, p. 117) notes, compared to the cases of the Cold War era, in the 1990s the humanitarian elements of the situations were recognised in justifying multilateral actions. Robertson (2004, p. 199) posits that 'the first clear-cut abandonment of the pure sovereignty doctrine in favour of humanitarian intervention was probably the UN action in Iraq after the Gulf War of 1991 to protect both the Kurds in the north and the Marsh Arabs in the south'. While the international community was not necessarily active in each case, differing from the Cold War era, it is possible to see Security Council sanctioned military actions carried out by other international/regional agents, such as NATO's bombing of the Serbian forces from 1994 to 1995 in order to halt the atrocities in Bosnia-Herzegovina, which were authorised by resolutions 770, 776 and 836 (Corten 2010, p. 539).

Arguably, the most controversial case of the twentieth century's last decade was the 1999 NATO intervention in Kosovo. The legitimacy and/or legality of NATO's air strikes has been a subject of heated debates in international political and scholarly milieus. Despite the fact that in Resolutions 1199 (23 September 1998) and 1203 (24 October 1998) the Security Council described the situation in Kosovo as a 'threat to peace and security in the region', and indicated that it is acting under Chapter VII, NATO's military operation was never authorised by the Council. While NATO's coercive action against Serbia and Montenegro was undertaken collectively upon the decision of nineteen states, many scholars such as Simma (1999) and Cassese (1999, p. 23) argue that due to lack of authorisation 'NATO's action falls outside the scope of the United Nations Charter and, by that token, is illegal under international law' (see also Gazzini 2001; Rytter 2001; and Harhoff 2001).

Nonetheless, diverging from the pattern of the Cold War era, the intervening states argued for the legality of their action on the basis of humanitarian arguments. For instance, the then Defence Secretary of the UK on 25 March 1999 stated that NATO's 'use of force […] can be justified as an exceptional measure in support of purposes laid down by the UN Secretary,

but without the Council's express authorisation, where that is the only means to avert an immediate and overwhelming humanitarian catastrophe' (House of Commons 1999–2000). In the meanwhile, German Foreign Minister considered this act as an exceptional derogation from principle, which ought not to become a precedent for future cases that is necessitated by a humanitarian catastrophe requiring an immediate intervention (Corten 2010, p. 542). For the USA, it signalled that Security Council's authorisation was to be sought but the failure to secure such authorisation was not necessarily a barrier against undertaking action. Taking a more controversial position, Belgium and the Netherlands claimed for a right of intervention for the prevention of grave violations of human rights, which made them, as Stromseth (2003, pp. 238–239) suggests, 'seem willing to argue for humanitarian intervention as a legal basis for action in the future if the Security Council is unable or unwilling to authorize force'.

Although the intervening states argued for the legitimacy of their action, not all members of the international community were of the same opinion. By mid-1998, China and Russia had already signalled that they would veto any Security Council authorisation under Chapter VII. In the aftermath of the operation, Russia with the support of China and Namibia proposed a draft resolution to condemn NATO's intervention, which was turned down by twelve votes to three (House of Commons 1999–2000). While the way the veto was used in the specific instance of Kosovo bears a similarity to the examples of the Cold War period, prioritisation of humanitarian reasons by states, and Security Council sanctioned interventions constitute a major departure from the past behaviour of the international community. In this context, in the aftermath of the Cold War, it is possible to speak about two fundamental changes of understanding on the part of the international community: (1) the description of 'civil war and internal strife' as threats to international peace and security as well as the acceptance that these may constitute the necessary grounds for action under Chapter VII enforcement; and (2) the possibility of the consideration of refugee influxes as a threat to international peace and security.

All in all, the last decade of the twentieth century was characterised by the possibility of collective humanitarian interventions based on Security Council resolutions that invoked action under Chapter VII. As Hehir (2012) notes: 'By the end of the 1990s, therefore, it was clear that the P5 understood Chapter VII as enabling it to authorise a military intervention against a state without that state's consent for humanitarian purposes—a "humanitarian intervention" to all intents and purposes'. This was an era where inaction (as in the case of Rwanda) was criticised severely. The controversial case of

Kosovo, while reignited the debates on the lawfulness of forceful action without Security Council authorisation, once again led practitioners and researchers to question the legitimate bases for action in the name of halting atrocities against the masses. In the meanwhile, the humanitarian situations that arose in the 1990s reaffirmed a sense of moral duty, which was later translated into the language of R2P.

Part II

The Path to an International Norm?

4

Tracing the Process

Evans (2008b) argues that the 'whole point of embracing the new language of "responsibility to protect" is that it is capable of generating an effective, consensual response in extreme, conscience-shocking cases, in a way that "right to intervene" language simply was not'. While addressing the question of 'how humanitarian intervention could be possible', the ICISS was aware of the need to shift the terms of the intervention debate. By adding the responsibility component to the classical conceptualisation of state sovereignty, the Report suggested 'sovereignty as responsibility' understanding as a first measure to prevent conscious acts of violence within states. Second, it argued, rather than a natural right to intervene, there exists for the international community the responsibilities to prevent, react, and rebuild when states themselves fail to uphold their responsibility due to either inability or unwillingness. As Finnemore and Sikkink (1998, p. 908) note, '[t]he relationship of new normative claims to existing norms may also influence the likeliness of their influence. This is most clearly true for norms within international law, since the power or persuasiveness of a normative claim in law is explicitly tied to the "fit" of that claim within existing normative frameworks'. In this vein, entrepreneurs of the norm differentiated the 'responsibility to protect' from the controversial notion of the 'right to intervene' and embedded the concept within the well-established principle of sovereignty. With this, they aimed to preclude any negative connotation stemming from past practices or arguments in favour of forceful interventions.

Nonetheless, the first response to R2P was mixed as the report's release coincided with the immediate aftermath of 9/11 and the 'war on terror'. Preoccupied with Afghanistan and Iraq, the Bush Administration did not

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extend support for R2P. Although they did not oppose R2P in general, 'other Security Council members also voiced concerns about committing to any criteria and were unwilling to give up the practice of case-by-case decision making about whether to intervene for humanitarian or any other reasons' (MacFarlane et al. 2004, p. 983).

The responsibility to react component of R2P constituted the most contested and cautiously approached aspect as it allowed for humanitarian interventions.[1] The false invocation of humanitarian reasons for Iraq's invasion fuelled the suspicion of many states regarding the use of force under the R2P framework. As Molier (2006, p. 39) puts it, 'the American-British attack on Iraq shows how easy the doctrine of humanitarian intervention can be abused'. In the meantime, the Darfur challenge—commonly referred to as a major test case for R2P (see Badescu and Bergholm 2009)—stood out as a strong indication of the immediate need to adopt measures for decisive and timely action. Despite setbacks, persistent persuasion efforts of norm leaders such as the then Secretary-General Kofi Annan paved the way for R2P's institutionalisation through the machinery of the UN.

Institutionalisation of R2P

R2P's institutionalisation began with the change of venue from the ICISS to the UN, that is, from a small venue to a large one with much higher legitimacy. Such change not only enabled a vast recognition of R2P in four years time, but also eventually led to significant transformations regarding the content and the extent of the notion. Coleman (2013, p. 169) suggests: 'From a negotiation perspective, small homogeneous venues promote norm specificity and strength, whereas large venues tend to produce ambiguous and/or undemanding rules because they dilute the influence of "outliers", including norm leaders'. At the early stages of institutionalisation, conceptual limits of R2P followed the propositions of the ICISS. From the three elements of R2P, which are prevention, reaction, and rebuilding, to the threshold criteria for military intervention, the original framework proposed by the Commission constituted the basis for R2P's consideration within the UN. For the first time, R2P was placed on the agenda of the General Assembly with the Report of the Secretary-General's High-level Panel on Threats, Challenges and Change.

[1] For instance, Chomsky (2011) argues that 'R2P is a neo-imperialistic scheme serving for the hidden agenda of Western domination over non-Western states'.

A More Secure World: Our Shared Responsibility

Annan's first attempt for the consideration of R2P under the roof of the UN came in 2004 with the 'Report of the Secretary-General's High-level Panel on Threats, Challenges and Change' entitled 'A More Secure World: our shared responsibility'. Part 3 of the Report endorsed R2P as a matter of 'Collective Security and the Use of Force', where the reference is mainly to the rules and guidelines for the use force. R2P is placed under the subsection of 'The Question of Legality' and addressed alongside matters relating to Chapter VII of the Charter and internal threats. While referring to the ambiguities in the Charter concerning cases of 'saving lives within countries in situations of mass atrocity', the Secretary-General noted that the Charter '"reaffirm(s) faith in fundamental human rights" but does not do much to protect them' (Annan 2004, p. 65). Subsequently, Annan (2004, p. 65) suggested that the principle of non-intervention cannot be a reason keeping the Security Council from taking action against mass violations of human rights, which can be considered as a threat against international peace and security. On this basis, Annan (2004, pp. 65–66) introduced R2P, emphasising that the current issue is not the right to intervene but the responsibility of all states to protect. In the Report, the Secretary-General claimed that there is an increasing recognition of sovereignty as responsibility, as well as the responsibility of the international community in cases of states' failure to protect their populations. Following the ICISS's conceptualisation, Annan explained that there are three elements of responsibility ranging from prevention, to the use of force, and to rebuilding. Furthermore, he suggested that the emphasis should be placed on prevention, and that the use of force should be employed only as a last remedy. Subsequently, reminding that the Security Council has proved ineffective in responding to catastrophic cases, Secretary-General (2004, p. 66) noted that the Council can authorise action under the mandate of Chapter VII to realise the collective responsibility to protect 'in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent'.

While addressing the question of legitimacy, Annan (2004, p. 67) proposed the adoption of criteria akin to those of the ICISS for employing the use of force. The first is the 'seriousness of threat', which corresponds to the 'just cause' criterion of R2P, but suggests a more limited scope as it excludes 'cases of natural and environmental disasters' and confines the perception of threat to acts of 'genocide and other large-scale killing, ethnic cleansing, or serious violations of international humanitarian law'. The second criterion is 'proper purpose',

which presupposes that the goal of the intervention is to stop a threat. This clause refers to the same understanding with that of the 'right intention' of the ICISS but in different words. On the other hand, Annan fully adopted the principle of 'last resort' according to which military intervention should be the final measure to be employed that is after the exhaustion of peaceful and non-military options. The fourth criterion is 'proportional means', which uses the same wording and is the same in essence with the principle proposed by the ICISS. The final criterion is the 'balance of consequences', which corresponds to the 'reasonable prospects' of the ICISS. This principle suggests that in order to undertake a military intervention there has to be reasonable chance for the success of the intervention, and that in the aftermath of the intervention the conditions must be improved, not worsened in comparison to the pre-intervention stage.

Although it is important to undertake military intervention with the right intentions, the right reasons and with the correct timing, the realisation of the collective responsibility to protect is dependent on the will of the Security Council. Recognising this fact, Annan (2004, p. 82) asked 'the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses'. Stahn (2007, p. 106) interprets this as a reflection of 'the panel's intention to make the Council both a vehicle for, and an addressee of, the concept of the responsibility to protect'. Moreover, the Report links the ICISS's 'vision of shared responsibility directly to the United Nations' and utilises the concept as a 'means to strengthen the collective security system under the Charter' (Stahn 2007, p. 105).

While the Report was not conclusive for the adoption of R2P by the international community, it created the platform for further discussion under the roof of the UN. In the aftermath of the High Level Panel, the African Union convened to determine 'the Common African Position on the Proposed Reform of the United Nations', namely 'the Ezulwini Consensus' of 7–8 March 2005. The Union dealt with R2P under Part B, which is entitled 'collective security and the use of force'. Accordingly, the document accepted the criteria of the High Level Panel concerning the authorisation of the use of force by the Security Council while acknowledging that 'this condition should not undermine the responsibility of the international community to protect'. Second, the Union made reference to regional organisations regarding their vital role as actors due to their capability to take immediate action enabled by their proximity to the areas of conflict especially in cases where the UN is not in a position to assess the situation effectively. Finally, while reiterating the idea of sovereignty as responsibility, the Consensus (2005, p. 6) underlined that 'this

should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states'. This emphasis reaffirms the remaining concern among states—or, as Quinton-Brown (2013, p. 264) puts it, among the cautious supporters[2] of the norm—regarding potential abuses of the norm by governments for legitimising their interventions driven by national interests.

Report on UN Reform: In Larger Freedom

In continuing his efforts to endorse R2P, Kofi Annan included the concept in the 'Report on UN Reform: In Larger Freedom', which was published on 21 March 2005. In the report, Annan (UNGA 2005a, p. 34) suggested that the 'protection and promotion of the universal values of the rule of law, human rights and democracy are ends in themselves. They are also essential for a world of justice, opportunity and stability'. Moreover, Annan posited that sovereignty cannot be used as a shield for 'genocide, crimes against humanity and mass human suffering', and drew on the importance of implementation (UNGA 2005a, p. 34). Building on such grounds, he argued:

> We must also move towards embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities. The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. We must move from an era of legislation to an era of implementation. Our declared principles and our common interests demand no less (UNGA 2005a, pp. 34–35).

Drawing on the importance of rule of law and prevention of genocide, Annan endorsed the 'emerging norm that there is a collective responsibility to protect' while acknowledging 'the sensitivities involved in this issue'. Nonetheless, by expressing his strong support for the concept, the Secretary-General called on states to embrace R2P and to implement it. In his endorsement, Annan underlined that the responsibility primarily pertains to states on an individual basis. He further explained that in case of states' failure, the responsibility becomes that of the international community, which while upholding its collective responsibility can adopt 'diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian

[2] Quinton-Brown (2013, p. 264) uses the term to refer to states which in their official statements indicated their support for R2P in part, rather than a full support. That is to say, these states, in principle, approved of R2P but had certain reservations or concerns considering its practice.

populations', or take action through the Security Council (UNGA 2005a, p. 35).

As it can be inferred from the grounds provided for the endorsement of R2P, different from the High Level Panel Report, in 2005 Annan placed R2P under 'the Rule of Law' section in the chapter on 'Freedom to Live in Dignity' and dropped the criteria for intervention. The move from 'Collective Security and Use of Force' towards 'Freedom to Live in Dignity' seems like a relevant change considering the arguments of R2P proponents who emphasise that the concept is beyond an attempt to legitimise the use of force, and that R2P is not a synonym for humanitarian intervention. This, nonetheless, can also be seen as an attempt to soften the edges in dealing with the matter as it places the emphasis widely on prevention rather than reaction and the question of humanitarian intervention, which actually was the starting point in the conceptualisation of R2P. Such shift in discourse became much more evident with the World Summit Outcome Document.

2005 World Summit Outcome Document

Following Kofi Annan's initial attempts for the endorsement of R2P within the framework of the UN, a milestone was reached with the 2005 World Summit. On 24 October, the members of the General Assembly unanimously adopted the 'World Summit Outcome Document' (A/RES/60/1). To begin with, the Document assigned all states, on an equal basis, 'the duty to promote and protect all human rights and fundamental freedoms' (UNGA 2005b, p. 27) and acknowledged the individual responsibility of States 'to respect human rights and fundamental freedoms for all' (UNGA 2005b, pp. 27–28). Diverging from the preceding resolutions, the Outcome Document placed R2P under a separate section entitled 'Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity', comprising of the three paragraphs of 138, 139 and 140.

While Paragraph 140 remains a mere statement of support for the Special Adviser of the Secretary-General on the Prevention of Genocide, paragraphs 138 and 139 concisely refer to the 'responsibility to prevent' and the 'responsibility to react' aspects of R2P without touching upon the 'responsibility to rebuild'. In this regard, detached from the understanding of the responsibility to protect, and thus, that of a responsibility to rebuild, peace-building is separately considered through paragraphs 97–105 within the framework of the peace-building commission to be established as an advisory intergovernmental body by the General Assembly.

Paragraph 138 establishes that states have an individual responsibility for the protection of their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, hereinafter which will be referred to as atrocity crimes for brevity. This responsibility of the state not only covers the prevention of these crimes but also their incitement. Therefore, in essence, the responsibility is set out between the state/national authorities and the population living on that territory. As suggested with the 'sovereignty as responsibility' understanding, the authorities assuming control over a territory are accepted to bear the responsibility for the protection of the population within the boundaries of that state.

While making Member States of the General Assembly pledge to act in accordance with this individual responsibility, on the part of the international community, the paragraph also states that 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'. Subsequently, paragraph 139 defines the responsibility of the international community in terms of prevention and reaction and urges for collective action in the following words:

> 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 to 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 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 are *manifestly failing* to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (emphasis added, UNGA 2005b).

As the paragraph suggests, prevention pertains not only to individual states but also to the international community in cases of states' failure at the individual level to uphold their responsibility or when they are in need of assistance. Nevertheless, the responsibility of the international community is loosely defined, as some of the Member States objected to the assertive language that was initially proposed. For instance, China and the USA led the Outcome Document into dropping the criteria for legitimacy and instead opted for adopting a case-by-case approach. So, regarding the responsibility to react, the decision to take action became fully and solely dependent on the Security Council without any restraints on the veto power of the P5, in

addition to being subject to a case-by-case evaluation. Likewise, upon the proposition of the USA, the original statement that 'we recognise our *shared responsibility* to take action' was replaced with the one indicating that the Members States are '*prepared* to take collective action' in cases of 'manifest failure' of individual states (Bolton 2005). This tentative language implies neither a legal duty nor a clearly established political commitment on the part of the international community that would ensure action, whether of non-coercive or coercive nature, in cases of unwillingness or inability of national authorities to protect their populations. Last but not least, Member States indicate their *intention* 'to commit' themselves to assisting states in capacity building. All in all, reflecting the concessions made for the sake of mass adoption, the paragraph adopts a very cautious language when defining the responsibility of the international community, and leaves ample room for manoeuvre without creating potential legal consequences and/or obligations.

Arguably, in the course of institutionalisation, the most critical change introduced with the Outcome Document was perhaps the limitation of R2P's scope to genocide, war crimes, ethnic cleansing, and crimes against humanity. This restriction can be seen as an attempt to make the terms of the concept less ambiguous and, in the meanwhile, less flexible. As one of the entrepreneurs of the norm Evans (2008a, pp. 64–65) emphasises that a broadly defined scope for R2P including

> non-mass atrocity contexts […] is to dilute to the point of uselessness its role as a mobilizer of instinctive universal action in cases of conscience-shocking killing, ethnic cleansing, and other such crimes against humanity. […] If R2P is about protecting everybody from everything, it will end up protecting nobody from anything.

The change in the limits of R2P can be seen as an expected outcome of institutionalisation in a large venue where consensus cannot be achieved without compromise. First signs of a move towards restricted boundaries for R2P were present in the High Level Panel where the possibility of extending the responsibility to protect to natural disasters (as suggested by the ICISS) was left out. As mentioned earlier, the trend continued in the Report on UN Reform. Finally, in the Outcome Document the language became much more precise and concise: the responsibility is determined within the limits of crimes defined under international criminal law (with the exception of ethnic cleansing), and the Security Council is established as the 'right authority'. Furthermore, there is no mention of possible referral of cases to the General Assembly in the case of a deadlock, or alternatively a restriction on the veto

powers of the permanent members in matters concerning atrocity crimes. Thomas Weiss (2008) concisely refers to such revision of the responsibility to protect under paragraphs 138 and 139 as 'R2P-lite'.

In the General Assembly debates, as the representative of India to the UN Mr. Puri stated that the Outcome Document is practically 'a cautious go ahead' for the adoption and collective implementation of R2P (UNGA 2009e, p. 25). Arguably, it was such 'cautious' approach that made the affirmation of the provisions of the Outcome Document possible in the later Security Council Resolutions. Some examples are the unanimously adopted Resolution 1674 (2006) concerning the protection of civilians in armed conflict, and Resolution 1706 (2006), 'which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document'.

As noted in paragraph 139, the General Assembly was assigned the task of further consideration of R2P. The General Assembly has been resuming its deliberations on the implementation of the responsibility to protect, under the leadership of the Secretary-General, accompanied by the Special Adviser of the Secretary-General on the Prevention of Genocide (whose mission was supported under paragraph 140), and later also by the Special Adviser of the Secretary-General on the R2P.[3] To this end, in the period between 2009 and

[3] Soon after the appointment of Francis Deng as the Special Adviser for the Prevention of Genocide as the successor of Juan Méndez (SG/A/1070), the Secretary-General sent a letter to the President of the Security Council on 31 August 2007 addressing the issue of the appointment of a Special Adviser on RtoP. Ban Ki-Moon indicated: 'To enable the Special Representative to have greater operational impact and in recognizing the link between large scale atrocities and threats to peace and security, his office needs to be strengthened. As part of this effort, and based on the agreement contained in paragraphs 138 and 139 of the 2005 World Summit Outcome Document, I intend to designate a Special Adviser on the Responsibility to Protect at the level of Assistant Secretary-General, on a part-time basis. Recognizing the fledgling nature of agreement on the responsibility to protect, the Special Adviser's primary roles will be conceptual development and consensus-building' (UNSC 2007c, p. 1).

The appointment process revealed certain difficulties about the full-fledged adoption of R2P. During the Fifth Committee's 23rd Meeting on 17 December 2007 a number of states (such as Cuba, Venezuela, Pakistan, China, Egypt, India, Nicaragua, and Iran) pointed to the considerable increases in the budget and asked for clarifications on the last-minute propositions while some raised their reservations regarding Secretary-General's request to appoint a Special Adviser on the Responsibility to Protect. For instance, Pakistani representative Imtiyaz Hussain noted that 'Pakistan's most important concern had to do with the proposal for the appointment by the Secretary-General of a Special Adviser on Prevention of Genocide and Mass Atrocity. […] No such thing as "mass atrocity" had been defined in order to give the Secretary-General the mandate to make such an appointment. The General Assembly, in follow-up to the World Summit Outcome Document, had not yet pronounced itself clearly, in order to establish such a mandate. Thus, the intention to appoint a new adviser on "responsibility to protect" was in clear violation of the decision at the summit level and needed further deliberation. There had been no consensus and the current attempt was an effort to promote a point of view that had not been agreed upon' (DPI 2007). In this vein, the states that raised reservations shared the view that as established by the World Summit Outcome Document, R2P needed to be discussed further by the General Assembly in relation to its implementation. Accordingly, they 'refused to consider approval of any resources before approval of the

2015, the Secretary-General published seven reports on R2P on an annual basis, the first one of which addressed the issue of the implementation of the norm.

2009 Report: Implementing R2P

On 25 September 2007, Secretary-General Ban Ki-moon stated that he 'will strive to translate the concept of our Responsibility to Protect from words into deeds, to ensure timely action so that populations do not face genocide, ethnic cleansing and crimes against humanity' (UNMCPR 2007). In the face of ongoing atrocities in different parts of the world, and no R2P action, the Secretary-General presented his report on the implementation of the responsibility to protect (A/63/677) dated 12 January 2009, which devised a three-pillar strategy for R2P's application on the basis of the framework created by the Outcome Document. In a press conference Ban noted that this report 'seeks to situate the responsibility to protect squarely under the UN roof and within our Charter, where it belongs' (Aziakou 2009).

The 2009 report is the first one solely focusing on R2P within the framework of the UN. It aims to develop a strategy for the effective implementation of R2P without imposing any revisions on the principle. Ban notes: 'While the scope should be kept narrow, the response ought to be deep, employing the wide array of prevention and protection instruments available' (UNGA 2009a, p. 8). Thus, the wording suggests that the report does not challenge the limits of R2P established by paragraphs 138 and 139, and that the primary focus is on prevention. Accordingly, the implementation of the responsibility to protect is based on the three pillars of states' responsibility, international assistance and capacity building, as well as timely and decisive response.

Pillar one addresses states' individual responsibility to protect their populations from the four crimes and from their incitement as affirmed under Paragraph 138. The Secretary-General underlines that pillar one 'rests on long-standing obligations under international law', and is a crucial part of the responsibility to protect, especially for it 'to move from the realm of rhetoric to the realm of doctrine, policy and action' (UNGA 2009a, p. 10).

The second pillar is concerned with the role of the international community in assisting states to fulfil their responsibilities and capacity building. It primarily builds on the notion of prevention, as does pillar one. While

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mandate by the Assembly' (DPI 2007). It was only after a modification of the title that on 21 February 2008 Edward Luck was appointed at the level of 'Assistant Secretary-General' as Special Adviser *to the Secretary-General* on the Responsibility to Protect (UNMCPR 2008).

drawing attention to the understanding that use of force should be utilised only as a final remedy, the Secretary-General also notes that in cases where non-state actors are perpetrators of atrocity crimes, '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' (UNGA 2009a, p. 18). In this vein, he considers the peacekeeping missions of the UN based on the consent of the host state 'a United Nations innovation and strength'. According to Ban, a key concern from an R2P point of view is the 'development of assistance programmes that will move states away from atrocity crimes' (UNGA 2009a, p. 20).

But what happens in case of states' manifest failure? Pillar three is about 'timely and decisive response', namely that of the Member States, establishing the collective responsibility to react. In accomplishing this task, an array of measures ranging from pacific (under Chapter VI) to coercive (under Chapter VII) means can be adopted alongside regional arrangements (under Chapter VIII). It is under this pillar that humanitarian interventions may be undertaken upon the authorisation of the Security Council (UNGA 2009a, p. 9).

In fulfilling the collective responsibility to protect, the Secretary-General touches upon particular responsibilities and duties. One of these is that of the Secretary-General to 'tell the Security Council—and in this case the General Assembly as well—what it needs to know, not what it wants to hear' (UNGA 2009a, p. 24). As for the P5, Ban urges them 'to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome and to reach a mutual understanding to that effect' (UNGA 2009a, pp. 26–27). Concerning the deliberations on R2P under the roof of the UN, the voluntary restraint on veto was first brought to attention in Annan's 2004 Report but was later dropped in the following reports/documents, and was fully left out in the 2005 Outcome Document that officially placed R2P within the Organisation's framework. In this vein, five years later, Ban brought the issue back on the table for reconsideration.[4]

Ban Ki-moon notes: 'If the General Assembly is to play a leading role in shaping a UN response, then all 192 Member States should share the responsibility to make it an effective instrument for advancing the principles relating to the responsibility to protect expressed so clearly in paragraphs 138 and 139 of the Summit Outcome' (UNGA 2009a, p. 27). One of the important propositions of the ICISS in its report on R2P was the consideration of

[4] The call for a voluntary restraint on veto has been made numerous times in the following years, last of which was made by France in 2013. For further details, see Chapter 6.

the General Assembly as a 'right authority' that could replace the Security Council in cases of deadlock or inaction. This proposition was not taken up in the negotiations on the World Summit Outcome Document, so that paragraphs 138 and 139 did not empower the General Assembly with any explicit authority regarding implementation. In this vein, Ban's proposition reminds of a missing component and leads to the question of to what extent the Assembly can play a genuine leading role if it cannot override the Security Council in cases of deadlock.

Concerning the adoption of the use of force, the Secretary-General suggests to bring the 'just cause criteria' back to the debate, and he further notes that the UN is still in need of developing a 'rapid-response military capacity' (UNGA 2009a, p. 27). While talking about enhanced collaboration between the UN and regional organisations, he also notes that a consistent response strategy by the UN can deter states from acting unilaterally or without proper authorisation, as well as helping to 'dissuade potential perpetrators of such crimes and violations' (UNGA 2009a, pp. 27–28).

In considering the way forward, the Secretary-General suggests the discussion of the implementation of the responsibility to protect without revisiting the unanimously adopted paragraphs of the Summit Outcome, which he argues 'would be counterproductive, and possibly even destructive' (UNGA 2009a, p. 29). Accordingly, he states: 'The emphasis of the present report is therefore on forging a common strategy rather than on proposing costly new programmes or radically new approaches' (UNGA 2009a, p. 29).

This suggestion was widely supported by the Member States in the plenary meetings of the General Assembly that took place in July 2009. In the follow-up meetings, Member States welcomed the narrow understanding of the responsibility to protect as outlined by paragraphs 138 and 139. While some states argued for the extension of the limits of R2P, the vast majority of States indicated that these criteria should not be subject to change or renegotiation. For instance, Sri Lanka favoured a possible extension of R2P arguing that 'responsible sovereignty must also apply to key issues such as the prohibition of the use of nuclear weapons and other weapons of mass destruction, nuclear disarmament, non-proliferation, counter-terrorism, global warming, biological security and economic prosperity' (UNGA 2009f, p. 4). France indicated that it will 'remain vigilant[5] to ensure that natural disasters, when combined with deliberate inaction on the part of a Government that refuses to provide

[5] France, indeed, remained vigilant as it invoked the collective responsibility to protect upon the Burmese government's refusal of the delivery of humanitarian aid in the aftermath of *Cyclone Nargis*. For more details on the case, see Chapter 5.

assistance to its population in distress or to ask the international community for aid, do not lead to human tragedies in which the international community can only look on helplessly' (UNGA 2009c, p. 9). Nonetheless, these propositions were not supported by other states. For instance, Cuba stated that '[a]ny attempt to expand the term to cover other calamities—such as AIDS, climate change or natural disasters—would undermine the language of the 2005 World Summit Outcome Document' (UNGA 2009e, p. 16). Likewise, the representative of the Philippines indicated: 'Any attempt to enlarge its coverage even before R2P is effectively implemented will only delay, if not derail, such implementation; or worse yet, diminish its value or devalue its original intent and scope' (UNGA 2009c, p. 11). In sum, a majority of states opted for adhering to the criteria of atrocity crimes instead of extending the scope of the responsibility to protect to include the war against terrorism, natural disasters, pandemics, or other calamities that may require the assistance of the international community.

Concerning pillar one, states have agreed that the responsibility to protect lies first and foremost with the states individually. Some states favoured a more proactive part for regional organisations in responding to cases of R2P while others considered the general role of the international community in the implementation of R2P as complementary. 'Many Member States have spoken of the root causes of R2P situations and highlighted the urgency of addressing development issues' (UNGA 2009g, p. 20). The importance of early warning has been emphasised, and prevention was considered to be the key element of the responsibility to protect. Moreover, the need for capacity building was raised as an issue requiring immediate attention. It was often highlighted that prevention must be prioritised over other methods in order to provide early and effective responses to cases of R2P.

Most states in their statements considered the three pillars as complementary. As for taking action under the third pillar, there was consensus that the use of force should be a last resort employed in accordance with the provisions of the UN Charter. In this regard, the understanding of a case-by-case implementation of the responsibility to protect was preferred by the majority of the Member States. Accordingly, the prevalent idea was that 'any coercion has to be under the existing collective security provisions of the United Nations Charter, and only in cases of immediate threat to international peace and security' (UNGA 2009g, p. 20).

Many states of the developing world, especially those that are part of the Non-Aligned Movement (NAM), expressed a concern about the possible abuses of R2P 'by expanding its application to situations that fall beyond the four areas defined in the 2005 World Summit Outcome, and by misusing it to

legitimize unilateral coercive measures or intervention in the internal affairs of States' (UNGA 2009c, 5). As can be inferred from the statements, for many states, especially for those of the non-Western world, justification of actions driven by national interest on the basis of humanitarian causes remain as a concern. The President of the General Assembly reiterated such concern in his opening statement in the following words:

> The problem for many nations, I believe, is that our system of collective security is not yet sufficiently evolved to allow the doctrine of responsibility to protect (R2P) to operate in the way its proponents intend, in view of the prevailing lack of trust in developing countries when it comes to the use of force for humanitarian reasons. […] It seems unlikely that it [/General Assembly] will be able to agree any time soon on definitions of just cause and right intentions (UNGA 2009c, 3).

In this vein, many (small and/or developing) states in their statements have pointed to the issues of politicisation of cases, selective implementation as well as double standards within the UN, and urged for adopting measures to avoid these. The issues of the reform of the UN, especially of the Security Council, as well as the use of the veto right by the P5 have also been raised in line with these concerns. Finally, numerous states noted the lack of political will in the international community to react to cases of mass atrocities, and called for non-indifference.

Following preliminary meetings of July 2009, with document A/63/L.80/Rev.1, the General Assembly decided to continue its consideration of the responsibility to protect. Later on, in its 105th plenary meeting on 14 September 2009, it adopted a resolution on the responsibility to protect (A/RES/63/308) recalling the two paragraphs of the Outcome Document. In this regard, under the auspices of the General Assembly the international community continues its efforts to establish the framework for the implementation of R2P in an effective manner while trying to improve the inner mechanisms of the Organisation.

2010 Report: Early Warning, Assessment, and R2P

As set in the agenda with the 2009 report, the 2010 report on the responsibility to protect addressed the issues of early warning and assessment in view of 'gaps and capacities' as well as 'next steps'. The choice of the report's theme is relevant to the emphasis on the preventive aspects of R2P in continuing what the Secretary-General called a 'constructive debate in the General Assembly'

(UNGA 2010, p. 6). In the context of prevention, Ban Ki-moon identified the need for 'assessment tools and capacity to ensure both efficiency and system-wide coherence in policymaking and the development of an early and flexible response tailored to the evolving needs of each situation' (UNGA 2010, p. 5). He underlined the importance of information sharing among governments for the delivery of 'critical and timely information', which requires genuine willingness on the part of states (UNGA 2010, p. 5).

Regarding early warning measures, the Secretary-General required his special advisers to report manifest failure signs and 'to convene an urgent meeting of key Under-Secretaries-General to identify a range of multilateral policy options, whether by the United Nations or by Chapter VIII regional arrangements, for preventing such mass crimes and for protecting populations' (UNGA 2010, p. 7). He considered early warning a basic requirement for early action. Finally, he stated: 'My strategy for implementing the responsibility to protect calls for early and flexible response tailored to the circumstances of each case' (UNGA 2010, p. 8). As can be inferred from his statement, consistent with the previous reports, the focus of R2P implementation was to remain on prevention. Along these lines, Ban turned his eye to regional arrangements in his subsequent report.

2011 Report: Regional and Sub-regional Arrangements

The 2011 report came in the aftermath of two successful preventive R2P actions, namely in Kenya and Guinea as well as two examples of failure in Zimbabwe and Nigeria. While regional actors played a key role in the implementation of preventive measures in the former, lack of support in the latter led to the failure of the international community. Following the agenda set by the 2010 report, the new report focused on the 'regional and sub-regional dimensions of' R2P in line with paragraph 139, which is based on Chapter VIII of the UN Charter (UNGA–SC 2011a, p. 1). In the report, the Secretary-General underlined some trends such as the increasing potential of neighbouring states' opinions to impact action by the Security Council (UNGA–SC 2011a, p. 3). Noting that regional differences matter, Ban drew attention to the fact that the implementation of R2P, a universal principle, 'should respect institutional and cultural differences from region to region. Each region will operationalize the principle at its own pace and in its own way' (UNGA–SC 2011a, p. 3).

While operationalisation is expected to take time depending on the contextual aspects of each region, what the Secretary-General considers 'the

ultimate goal' is definitely an open-ended question, that is 'to have States institutionalise and societies internalise these principles in a purposeful and sustainable manner' (UNGA–SC 2011a, p. 4). Admitting that the international community of states is yet far from attaining this goal, Ban suggested that 'neighbouring countries and regional and subregional bodies can play a critical facilitating role as political and operational bridges between global standards and local and national action' (UNGA–SC 2011a, p. 4). In considering the prevention of atrocity crimes as 'the legal responsibility of the State', non-state actors are argued to play a supplementary role in fulfilling this responsibility. Furthermore, the Secretary-General posited that 'beyond the legal responsibilities of the state, individuals have a moral responsibility to protect' (UN UNGA–SC 2011a, p. 4), which is in essence consistent with the set goal of the internalisation of R2P principles.

Regarding international assistance and capacity building, the report differentiated between structural and operational prevention. While the former 'seeks to change the context from one that is more prone to [mass atrocities] to one that is less so', the latter 'strives to avert what appears to be the imminent threat of atrocity, […and] thus may be related to the third pillar' (UNGA–SC 2011a, p. 6). In this vein, in addition to advantages such as the ability to provide timely and accurate flow of information, or assisting the ICC at the regional or subregional level, regional arrangements can be utilised in terms of their military capabilities to provide an alternative to the Blue Helmets of the UN (UNGA–SC 2011a, p. 9). In addressing matters related to pillar three, the Secretary-General noted that 'no broad strategy for implementing the responsibility to protect could be complete without some reference to Chapter VII methods' (UNGA–SC 2011a, p. 9). Afterwards, he referred to examples of cases where R2P was invoked in a non-coercive manner. Then, yet again, he drew the attention back to the necessity of 'an early and flexible response tailored to the specific circumstances of each case, rather than any generalised or prescriptive set of policy options' (UNGA–SC 2011a, pp. 9–10).

2012 Report: Timely and Decisive Response

In the very first paragraph of the 2012 report, the Secretary-General argued that 'the international community has made significant progress in the development of the concept and its implementation' and that 'great importance continues to be attached to the responsibility to protect' (UNGA–SC 2012, p. 1). The progress achieved in relation to international community's practices will be discussed in Chapter 5, but suffice it to say for the moment, considering

that the 2012 report was published in the aftermath of the interventions in Libya and Côte d'Ivoire, the Secretary-General's assertion has been quite optimistic.

Following his previous reports on the first and second pillars of R2P, Ban Ki-moon in his fourth specific report on R2P addressed the issue of 'timely and decisive response', which relates to pillar three—the most resisted aspect of R2P. During the informal dialogues in the General Assembly, a majority of states indicated their concerns regarding the exercise of forceful measures under R2P. These concerns also shed light to the way R2P was institutionalised through the UN. In his report, the Secretary-General noted that 'the 2005 declaration on the responsibility to protect is focused on prevention' (UNGA–SC 2012, p. 3), which in fact is a diversion from the report of the ICISS since the Commission also placed importance on collective reaction. While this report is not a return to the original propositions of the ICISS, it focuses on different dimensions of the collective responsibility to react as well as assess the progress achieved in the implementation of R2P.

Once again, the emphasis was on the adoption of a narrow but deep approach (UNGA–SC 2012, p. 3), where

> the goal is to help States to succeed in meeting their protection responsibilities. *It is not the role of the United Nations to replace the State in meeting those responsibilities*. The purpose of action under pillar three is to help lay the foundation for the State to reassure its responsibility and for assisting or persuading national authorities to meet their responsibilities to their populations under the well-established legal obligations expressed under pillar one (emphasis added, UNGA–SC 2012, p. 4).

One implication of this sentence is that legal responsibilities are defined for individual states, not for the international community. Furthermore, the collective responsibility is also defined in a softer language, that is, in terms of assistance rather than an assertive or interventionist one.

The Secretary-General considers responsibility 'an ally of sovereignty' since the collective responsibility to protect cannot be enforced on states which fulfil their individual responsibility. He also differentiates between collective action under pillar three and the UN peacekeeping missions pertaining to pillar two, on the basis that the latter is deployed upon the consent of the receiving state. Drawing on the lessons learned, as an overall strategy, non-coercive measures are prioritised. The possibility of an ICC prosecution of allegedly perpetrated crimes is considered as a preventive tool. As far as coercive measures are concerned, 'deployment of United Nations-sanctioned multinational forces

for establishing security zones, the imposition of no-fly zones, the establishment of a military presence on land and at sea for protection or deterrence purposes' based on a Security Council decision are enumerated as possible actions. While referring to the capacities of the General Assembly and the Secretary-General to bring an issue that is likely to endanger international peace and security to the attention of the Security Council, Ban referred to the General Assembly Resolution 66/253 condemning the situation in Syria. Nonetheless, he did not mention anything about the failure of the Council in fulfilling its collective responsibility in the very case (UNGA–SC 2012, p. 10). Instead, he moved on to the role of the Human Rights Council and regional arrangements, and later to the partners available for implementation (UNGA–SC 2012, pp. 10–11).

Based on the proposition of Brazil, a new aspect that was introduced in the report was the 'responsibility while protecting' (RwP) initiative. The Secretary-General noted that 'with expanded use has come a deeper and wider conversation about how to "operationalize" the responsibility to protect in a manner that is responsible, sustainable and effective' (UNGA–SC 2012, p. 13). He considered the essence of RwP as 'doing the right thing, in the right place, at the right time and for the right reasons'. Furthermore, Secretary-General noted that he continues 'to favour an early and flexible response that takes into consideration all the tools available under Chapters VI, VII and VIII and is tailored to the circumstances of each situation' (UNGA–SC 2012, p. 15). While expressing the 'need to better understand the measures available under Chapters VI and VIII of the Charter, sharpen those tools where necessary, and make better and smarter use of them', Ban also underlined that coercive measures are to be adopted as a last resort. In this vein, a challenge he identified was 'to recognise the necessity of Chapter VII measures in some situations, to learn from past experience, and to build bridges between different views about how to realise the shared goal of protecting populations' (UNGA–SC 2012, p. 16). The consideration of Chapter VII measures as a challenge implies that suspicion of states towards humanitarian intervention as a legitimate measure continues to exist and that the focus will continue to be on the preventive aspects of R2P rather than the development of a full-fledged strategy addressing all aspects of timely and decisive response.

2013 Report: State Responsibility and Prevention

In 2013, the Secretary-General placed the focus once again on prevention and pillar one responsibilities as he noted that '[a]dvancing the responsibility to protect through the prevention of atrocity crimes is a key element of

[his] five-year action agenda' (UNGA–SC 2013, p. 2). While stressing that states' individual responsibility to protect is in line with their legal obligations, Ban also mentioned a moral responsibility without explicitly stating what this entails of in practice (UNGA–SC 2013, p. 2). In assessing prevention responsibilities of individual states, Ban looked at the reasons why atrocity crimes occur and the possible measures for their prevention. The tasks undertaken in this regard are the assessment of risk factors and the discussion of 'policy options for atrocity prevention' (UNGA–SC 2013, pp. 3–15). The Secretary-General not only noted that 'atrocity crimes are processes and not single events that unfold overnight', but also that these crimes 'affect men and women and girls and boys differently' as well as the impossibility of a 'one-size-fits-all approach to atrocity prevention' (UNGA–SC 2013, pp. 7–8).

In the accomplishment of the national responsibility to protect, a preliminary requirement was considered to be 'political will and leadership' (UNGA–SC 2013, p. 15), which in fact is also valid for the accomplishment of the collective responsibility. In this vein, eight years after the unanimous adoption of R2P, Ban yet again noted that it was 'time to make the responsibility to protect a living reality for all people in the world and make prevention a priority' (UNGA–SC 2013, p. 17). This was a call that Ban will probably have to repeat in many more years to come, given that the internalisation of the norm is yet to be materialised at the state and international levels.

2014 Report: International Assistance and R2P

As placed in the agenda by the 2013 Report, in 2014 Ban returned to the issue of pillar two responsibilities of states, and inquired into 'the ways in which national, regional and international actors can assist States in fulfilling their responsibility to protect' (UNGA–SC 2014, p. 1). Taking the nature of atrocity crimes into consideration, Ban noted that pillar two assistance comprises not only of early-stage prevention but also of prevention in cases of 'imminent or ongoing atrocity crimes' (UNGA–SC 2014, p. 4). In this vein, the suggested forms of assistance are encouragement (i.e., encouraging states to fulfil their pillar one responsibilities and encouragement through dialogue and preventive diplomacy), capacity building, and assisting states for the protection of their populations.

Regarding the conceptual shift attempted by the ICISS, the Secretary-General noted:

> The key conceptual move made by the principle of the responsibility to protect was to shift the discussion from the discretion or right of third parties to

> intervene to the responsibility that a variety of actors have, at different levels, to assist in protecting potential victims of atrocity crimes. Collective responsibility is a demanding but more inclusive idea. Rather than simply providing support to States when they are in need, international assistance under pillar II contributes to fulfilling a collective responsibility (UNGA–SC 2014, pp. 4–5).

In the meanwhile, he reminded of two prominent challenges. The first is the lack of political will in operationalising prevention, especially at early stages. The second concerns the development of 'methodologies to analyse prevention outcomes' as well as achieving a common understanding of 'what constitutes a State "under stress"' (UNGA–SC 2014, p. 18). Though pillar two is not ideationally contested like pillar three has been, the responsibilities it entails of are still far from being fulfilled by the international community in an effective manner.

In his report, Ban noted that states continue to consistently argue for R2P's implementation on the basis of the UN Charter as well as the resort to the use of force as a last measure, that is, to follow from the exhaustion of non-coercive measures. In the meanwhile, he confirmed the narrow but deep approach as well as the assumption that the three pillars support each other (UNGA–SC 2014, p. 20). On this basis, on the eve of the conclusion of R2P's first decade, the Secretary-General suggested the Member States to deliberate on placing R2P in the formal agenda of the General Assembly. Ban further notes: 'I encourage Member States to seize this opportunity to craft an *ambitious vision* for the next decade of the responsibility to protect' (emphasis added, UNGA–SC 2014, p. 20).

2015 Report: A Vital and Enduring Commitment

Marking the end of the first decade of R2P, with his 2015 Report, the Secretary-General returned to the issue of R2P's implementation and devised strategies to move forward based on the experiences of the past decade. The Report analysed the past efforts for the implementation of the three pillars of the norm, focusing both on actions of individual states (such as ratifying related international legal instruments) as well as international initiatives to assist in fulfilling their responsibility and international responses to crises (UNGA–SC 2015, p. 1). Furthermore, it addressed new challenges that should/can be taken into consideration within the R2P framework.

In his report, Ban Ki-moon 'reaffirm[ed] the enduring relevance of the principle, both as an expression of political commitment and as a guide for action to prevent and halt genocide, war crimes, ethnic cleansing and crimes

against humanity' (UNGA–SC 2015, p. 1), and referred to the widespread institutionalisation of the responsibility to protect under the roof of the UN. Nevertheless, Ban also highlighted the need for a 'shift in the conversation from the conceptual to the practical […] to ensure that the responsibility to protect retains its aspirational quality. [And added:] The principle was not designed to make Member States and other international actors comfortable. Its purpose, and value, is to push all of us to do more and to do better' (UNGA–SC 2015, p. 6).

While the first two sections of the report provided an overview of the progress achieved during the first decade of R2P's adoption, the third section addressed the issue of the operationalisation of the three pillars. For pillar one, Ban suggested to focus on efforts for increasing states' participation in key legal instruments such as the Genocide Convention and the Rome Statute of the ICC (UNGA–SC 2015, p. 7); for 'building national resilience to prevent atrocity crimes' (UNGA–SC 2015, p. 8); for 'expanding and supporting national focus points' (UNGA–SC 2015, p. 9), whereas for pillar two, he spoke of encouragement, capacity building, and protection assistance (UNGA–SC 2015, pp. 10–12).

Highlighting that pillar three continues to undergo the misperception that it is all about military intervention, Ban emphasised that

> timely and decisive response remains essential to protecting populations and that a collective response can dampen the determination of potential perpetrators to commit atrocity crimes. However, the record also shows a lack in both the political will and cohesion of the international community, which has compromised the pursuit of a consistent and timely response to protecting populations (UNGA–SC 2015, p. 12).

One of the significant aspects of the report, in this regard, is that it put forth five prerequisites for action under pillar three, addressing issues such as the exercise of military intervention.

Subsequently, Ban discussed 'new challenges in protection' and the rise of non-state armed groups and new technologies and the challenges they raise (UNGA–SC 2015, pp. 14–15). Finally, the Secretary-General outlined six core priorities for the next decade of R2P:

> (1) signalling political commitment at the national, regional and global levels to protect populations from atrocity crimes; (2) elevating prevention as a core aspect of the responsibility to protect; (3) clarifying and expanding options for timely and decisive response; (4) addressing the risk of recurrence; (5) enhancing regional action to prevent and respond to atrocity crimes; and (6) strengthening

> international networks dedicated to genocide prevention and the responsibility to protect (UNGA–SC 2015, p. 1).

Calling on Member States to enhance their efforts to uphold their protection responsibilities, Ban concluded that the individual responsibilities of states are enshrined in the existing legal instruments and 'as no State is immune to the risk of atrocity crimes, no State is absolved of its shared responsibility to protect' (UNGA–SC 2015, p. 20).

Following Institutionalisation: R2P as a Norm?

The reports by the former and current Secretaries-General have been tackling with the question of making R2P an effective part of the UN's machinery. The progress achieved to this end remains a question. Upon the dawn of the first decade of R2P, Gareth Evans (emphasis added, 2006) asserted that R2P has emerged as an international norm, 'almost in real time' and that it 'may ultimately become *a new rule of customary international law*, of really quite fundamental ethical importance and novelty in the international system'. When Evans made this remark, R2P's institutionalisation was far from complete. The question of whether R2P was evolving into a legal norm or not was debated in the literature in the years that followed the unanimous adoption of the notion (see for instance, Stahn 2007; Barbour and Gorlick 2008). While cynics challenge the added value of R2P (see Hehir 2010), scholars who are more optimistic about R2P speak of R2P as a norm (see Bellamy 2010). It is possible to observe that at the initial stages of institutionalisation Annan introduced R2P as 'an emerging norm' (UNGA 2005a, p. 35), and later Ban has referred to the 'ultimate goal' of internalisation (UNGA 2010, p. 4), which implies that he considers R2P as a norm. Embracing the propositions of the latter group of scholars, the rest of this chapter addresses the question of what sort of a norm R2P has evolved into in the process of its institutionalisation through the UN.

R2P: Why Not a Legal Norm?

While the World Summit Outcome Document itself can be considered as a form of soft law at best (Welsh 2013, p. 376) or as Bloomfield (2016, p. 15) suggests, 'at best evidence of *opinion juris* or the "collective intention" of states to act in accordance with the R2P norm', it can hardly be argued that R2P

in its totality has evolved into a legal norm. Nonetheless, considering the implications of paragraphs 138 and 139, there is a vital distinction between the responsibilities established by the two paragraphs and their implied constraints on states *vis-à-vis* the international community.

With the obligatory language it employs, paragraph 138 has a restrictive impact on the behaviour of states, since R2P as a norm is in conformity with the established standards of fundamental human rights as well as international criminal and humanitarian laws.[6] In this regard, it is possible to talk about previously established obligations and sanctioning mechanisms that can be enforced on states in cases of breaches of fundamental human rights through the machineries of the UN as well as the ICC.

Accordingly, it can be observed that states, at least signatories to the said conventions already have certain legal responsibilities that precede the construction of the responsibility to protect. As the appropriate behaviour dictated by paragraph 138 overlaps with these existing legal responsibilities, national authorities' manifest failure to protect their populations can be sanctioned by the international community if the individual members of the international community agree on prioritising legal and/or moral considerations over political/self-interested motives in their collective responses to cases. The Secretary-General Ban Ki-moon maintains:

> When a State refuses to accept international prevention and protection assistance, commits egregious crimes and violations relating to the responsibility to protect and fails to respond to less coercive measures, it is, in effect, challenging the international community to live up to its own responsibilities under paragraph 139 of the Summit Outcome. Such collective measures could be authorized by the Security Council under Articles 41 or 42 of the Charter, by the General Assembly under the 'Uniting for peace' procedure (see para. 63 below) or by regional or subregional arrangements under Article 53, with the prior authorization of the Security Council (UNGA 2009a, p. 25).

That is to say, the existing legal machinery can be effectively mobilised for R2P situations if there is the will of the Member States of the Security Council, especially of the P5, to do so.

[6] Some examples are the Convention on the Prevention and Punishment of the Crime of Genocide; International Covenant on Civil and Political Rights including the Second Optional Protocol; International Covenant on Social, Economic and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Elimination of All Forms of Racial Discrimination; Convention relating to the Status of Refugees as well as the 1967 Protocol; Convention on the Rights of the Child; Rome Statute of the ICC; and Arms Trade Treaty.

As both paragraphs suggest, prevention pertains not only to individual states but also to the international community. In this vein, whether through sanctions or coercive measures, atrocity crimes can be penalised based on the legally binding rules of international law following a sense of a collective responsibility to protect. However, the issue is that there are no obligations, implied or expressed, for the international community in upholding its responsibility towards populations in cases of manifest failure of national authorities. Given the way it was formulated, it is another question whether or not the responsibility to protect has been devised as or intended to transform into a legal norm in the course of its institutionalisation within the UN.

The statements of the former Special Adviser Edward Luck suggests that it was/is not. Luck (2009, p. 3) rejects the idea that 'RtoP offers new legal norms or would alter the Charter basis for Security Council decisions'. He also notes that R2P 'is a political, not legal, concept based on well-established international law and the provisions of the UN Charter'. The discourse of the reports on R2P concurs such approach. The wording of the World Summit Outcome Document intentionally avoids any legal commitment on the part of the international community whereas the individual responsibility of states is based on already existing legal obligations under international law and multilateral conventions. The Secretary-General

> underscore[s] that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity. Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes' (UNGA 2009a, p. 5).

On the other hand, both in the Outcome Document and the follow-up documents, states have refrained from turning the responsibility to protect into a legal obligation or duty on the part of the international community as far as the realisation of collective action is concerned.

While basing state responsibility on current international law, avoiding any binding obligations for the international community was arguably one of the factors that granted the unanimous adoption of paragraphs 138 and 139. For instance, '[a]t the negotiations on the World Summit Outcome Document, the then US Permanent Representative John Bolton stated accurately that the commitment made in the Document was "not of a legal character"' (Office of the President of the General Assembly 2009). As Reinold (2010, p. 67) underlines, USA sought for a responsibility of a 'more general and moral

character', since Washington rejected the idea 'that either the UN as a whole, or the Security Council, or individual states, have an obligation to intervene under international law'. It was such contention of the USA that led to the adoption of a language speaking of a 'preparedness to take action' rather than 'a duty to act' in the final version of the Outcome Document.

Some of the statements made during the debates in the General Assembly pursuant to the 2009 Report of the Secretary-General were of similar nature. For instance, the representative of Singapore noted: 'For my delegation, it is clear that, four years ago, our leaders pledged their strong resolve to the notion of R2P. Certainly, that did not make R2P part of international law or a legally binding commitment' (UNGA 2009d, pp. 6–7). Likewise, the representative of the Netherlands argued that the ongoing debate on R2P's implementation 'is not a legal discussion, nor should it be' (UNGA 2009c, p. 26).

As the President of the General Assembly concluded in his closing statement, there is 'need to ensure that all the elements are in place to make [… R2P] a viable and consistent legal norm' (UNGA 2009g, 20). At the current state of its institutionalisation, R2P is not there yet, and it is not possible to interpret the 'collective responsibility' as a legal one. Nevertheless, Bellamy (2010, p. 160) argues that '[t]here is general consensus that R2P is a norm, but much less agreement on what sort of norm it is'. So, the question is, if R2P is not a legal norm, then what is it? My suggestion is that R2P is an international moral norm.

R2P: A Moral Standard of Appropriate Behaviour

Legal norms/rules possess legally binding powers and have direct legal consequences in cases of breaches of the rule, whereas moral norms lack such authority. Thus, R2P's characterisation as a moral norm delimits R2P's powers in terms of coercing states and/or the international community to act in a certain manner. Accordingly, while R2P defines the appropriate behaviour for states as well as the international community, and naturally creates an expectation of conformity, it can neither assure compliance nor legally sanction non-compliance. Based on a contextual analysis of the documents adopted within the UN framework as well as the statements of the Secretary-General, it can be argued that paragraphs 138 and 139 established R2P primarily as a moral standard of appropriate behaviour for states to follow in their internal affairs and for the international community in its conduct (see Gözen Ercan 2014).

In its present form, without altering current international law or adding new mechanisms to the existing machinery of the UN, R2P constitutes a

moral standard of appropriate behaviour at two levels. The first, based on the conceptualisation of 'sovereignty as responsibility', is a responsibility to be assumed by states individually. 'Responsibility indicates a capacity to act independently and to make decisions without authorization' (Peltonen 2011, p. 65), in the case of R2P, such capacity is carried out by individual states based on their own judgement and discretion, in protecting their populations from atrocity crimes as part of their sovereign powers. The second concerns the collective responsibility of the international community to assist states in upholding their responsibility and to ensure effective enforcement to halt existing violations.

Regarding the first level, it can be argued that UN Member States unanimously accepted with the Outcome Document a national responsibility of states to protect their populations from the atrocity crimes. Thus, at the ideational level, as also reaffirmed during the plenary meetings in 2009, R2P has been recognised as an appropriate behaviour for states. Nonetheless, such recognition does not necessarily mean that states will undoubtedly follow a logic of appropriateness in their acts. Given that no original binding mechanism has been established to coerce adherence to the norm, R2P's implementation primarily depends on the moral sense and political will of states.

In light of this, the acceptance of the necessity to avoid human suffering caused by man-made disasters and prioritisation of human rights through international recognition hint at the admission of R2P as a moral norm. As the ICISS (2001b, p. 129) highlighted in its Report:

> The notion of responsibility itself entails fundamental moral reasoning and challenges determinist theories of human behaviour and international relations theory. The behaviour of states is not predetermined by systemic or structural factors, and moral considerations are not merely after-the-fact justifications or simply irrelevant.

States' commitment to R2P as a moral norm is implied in the proceedings of the preliminary meetings on the 2009 Report of the Secretary-General. For instance, the Netherlands noted: 'Our task is to translate our moral commitment into political and operational readiness' (UNGA 2009c, p. 26). New Zealand spoke of the 'moral burden' of past cases, and considered it a responsibility of the international community alongside individual states (UNGA 2009c, p. 24). In its statement, Algeria noted that it 'honours its moral obligation to protect populations threatened with genocide, war crimes, crimes against humanity or ethnic cleansing in accordance with international law and the principles of the Charter of the United Nations and of the Constitutive

Act of the African Union' (UNGA 2009d, p. 6). Chile argued that this 'is a political debate with moral underpinnings' (UNGA 2009d, p. 10) and that the issue of morality should be reintroduced into the debate, since 'the challenge of humanitarian protection is a global one' (UNGA 2009d, p. 12). In a similar vein, Israel talked about the moral imperative of non-indifference (UNGA 2009d, p. 15). Moreover, Romania asserted that '[b]esides legal and political considerations, the responsibility of the international community ultimately arises from the moral principle of humanity, which calls for action instead of indifference when fellow human beings are subjected to the most horrendous crimes' (UNGA 2009e, p. 10). Likewise, Kazakhstan maintained that 'protecting populations from grave human rights violations […] is a moral imperative', and urged that the principle of non-indifference should be embraced (UNGA 2009f, p. 19). In an affirming manner, the Holy See indicated that '[t]he international community has a moral responsibility to fulfil its various commitments' (UNGA 2009g, p. 17).

Norway argued that the UN is vested with 'the moral authority' to act in cases of R2P (UNGA 2009e, p. 7), while Jordan noted that paragraphs 138 and 139 'form a firm political and moral foundation for' R2P to be implemented through the UN (UNGA 2009e, 16). Hungary pointed that when an individual state fails to fulfil its responsibility 'the international community has the moral obligation to give a timely and decisive response' (UNGA 2009e, p. 24). With an emphasis on more controversial measures, Timor-Leste stated: 'we feel we have a moral obligation to accept the third pillar. […] The Security Council has a moral and legal responsibility to give special attention to unfolding genocide and other high-visibility crimes relating to R2P' (UNGA 2009e, p. 24).

In a nutshell, following the change of venue, with its institutionalisation through the UN, R2P has gained significance, but not as an international legal norm. That is to say, R2P currently lacks legally binding powers of its own but provides states and the international community with a standard for appropriate behaviour that is based on the prioritisation of moral considerations and where the main objective is to prevent mass atrocities from happening.

R2P as 'a Core Part of World's Armour'?

Acknowledging an idea—or assuming a (moral) responsibility—and implementing it are two different things. R2P's unanimous adoption by the General Assembly was an important first step in terms of the norm's inclusion in the

machinery of the UN. Nevertheless, the concessions made for achieving a consensus on paragraphs 138 and 139 also compromised the integrity and the potential influence of R2P in making a positive change in the existing system.

When urging states to pursue 'an ambitious vision', the Secretary-General defines R2P as 'a *principle* that has become a core part of the world's armour for protecting vulnerable populations from the most serious international crimes and violations' (UNGA–SC 2014, p. 20). Based on international community's pillar two and pillar three practices of R2P in the last decade, it is possible to contest this definition. Considering that the reports of the Secretary-General since 2009 have been addressing the issue of the implementation of R2P at different levels (and sometimes repetitiously) as well as the necessity to turn 'words into deeds', it can hardly be claimed that R2P has already become 'a *core* part of world's armour' in practice.

Limitations imposed on R2P, such as the dependence of R2P's sanctioning on the will and the authority of the Security Council without any official restraint on the veto right of the P5, lack of legal obligations on the part of the international community in upholding its pillar two and pillar three responsibilities, and the emphasis on prevention and the related move away from recognising the necessity of forceful action can be considered as weak spots at the core of the 'armour'. It remains another question to what extent individual states and the international community have matured in terms of turning their acceptance of a moral responsibility into practice. In this regard, the next chapter provides an overview of select R2P cases witnessed since late 2005 to draw a general picture of what has been accomplished to date in terms of turning words into deeds and making R2P an effective part of the UN's machinery.

5

Upholding the Responsibility?

In his various reports, Secretary-General Ban Ki-moon highlights that states have a responsibility to protect their populations from atrocity crimes, and that such responsibility arises from well-established rules of international law. Nevertheless, as Shaw (2003, p. 58) reminds, 'most of the mass killings of modern history can be laid at the door of state organizations. States are the practitioners of slaughter *par excellence*'. From an R2P point of view, this corresponds to a manifest failure of states, which would invoke the responsibility of the international community. It is the assumption of such responsibility by the international community, which arguably is the genuine point where R2P can lead to a change in the pattern of failure at the state level and become an answer to the call for 'no more Rwandas'.

By defining the responsibility of the international community, R2P aims to assure that there will be an international response to mass violations in the case of individual failures of states whether due to their inability or unwillingness. As mentioned in Chapter 4, the Outcome Document loosely defined the responsibility of the international community, that is, without imposing any legal obligations or defining the criteria of legitimacy for humanitarian military action. Given the absence of a legal duty, it is important to assess to what extent (and in what manner) the international community has been assuming its responsibilities that it pledged for in the 2005 Outcome Document.

Within the first decade of the unanimous adoption of the norm, various R2P groups[1] have been focusing on humanitarian crises such as those in

[1] Some of the prominent R2P groups are Global Centre for the Responsibility to Protect (GCR2P), the International Coalition for the Responsibility to Protect (ICRtoP) and the Asia Pacific Centre for the Responsibility to Protect (APCR2P).

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Burma, Central African Republic (CAR), Côte d'Ivoire, Darfur, Democratic Republic of Congo (DRC), the Democratic People's Republic of Korea, Guinea, Kenya, Kyrgyzstan, Libya, Mali, Nigeria, South Sudan, Sri Lanka, Yemen, Zimbabwe, and most recently Syria and Iraq. Given the considerable and still increasing number of cases, an overview of the track record of the international community in upholding its pillar two and pillar three responsibilities allows to reflect on R2P's evolution in practice vis-à-vis its conceptual deliberations within the UN.

International Community in Action?

In the post-2005 period, in its numerous resolutions targeting specific cases, the Security Council has affirmed the individual responsibility of states to protect their populations and considered various ongoing humanitarian crises as a threat to international peace and security (e.g. Resolution 1577 (2004) on Burundi, Resolution 1771 (2007) on the DRC, Resolution 1854 (2008) on Liberia, Resolution 1865 (2009) on Côte d'Ivoire). Nevertheless, such acknowledgement of humanitarian violations or threats to international peace has not necessarily led to an effective preventive action or a timely response by the international community. In general, the collective responsibility to prevent has been far from being satisfied in most of the cases, and enforcement measures under pillar three have rarely been adopted in cases that were considered a threat to international peace and security.

Regarding the implementation of the responsibility to protect, arguably the international community has been most consistent in terms of conforming to the limited interpretation of the notion as established by the Outcome Document. In this vein, instances of unilateral invocations of R2P either on grounds of natural disasters or involving acts of unauthorised use of force have not received recognition from the international community. Two prominent examples in this regard are those of South Ossetia and Myanmar. While the latter is a case which could be viewed from an R2P lens, the former is an example of unilateral use of armed force where Russia intervened in South Ossetia without a Security Council authorisation. Prior to the 2008 military operation, Prime Minister Vladimir Putin and the Permanent Representative of the Russian Federation to the UN, Vitaly Churkin, invoked R2P on grounds of the protection of Russian citizens residing in South Ossetia who, they claimed, were subjected to genocide. The Russian government argued that 'the perpetration or imminent threat of atrocity crimes against South Ossetians compelled it to step in militarily' (ICRtoP 2008). Notwithstanding

the claims of the Russian authorities, the intervention came to be accepted as an example of R2P's misapplication as well as a violation of international law. While Russia's invocation of R2P neither was recognised as a legitimate claim nor its military action was later authorised by the Security Council, the illegal use of armed force by Russia on Georgia was not sanctioned by the international community either.

In another instance in 2008, French Foreign Minister Bernard Kouchner invoked R2P on grounds that the Burmese Government was blocking humanitarian aid sent to Myanmar after Cyclone Nargis.[2] Kouchner argued: 'We are seeing at the United Nations if we can't implement the "responsibility to protect", given that food, boats and relief teams are there, and obtain a UN resolution which authorizes the delivery (of aid) and imposes this on the Burmese government' (Parsons 2008). Reaffirming the limited scope of R2P as dictated by the Outcome Document, Kouchner's controversial claim to adopt forceful measures for delivering humanitarian aid was rejected outright, while his call became an example of a wrongful R2P invocation.

Nevertheless, independent from the concerns raised on the basis of Cyclone Nargis, human rights violations perpetrated by the government forces of Burma had already been under the focus of R2P groups as they were a source of serious concern. As early as January 2007, the UK and the USA proposed a draft resolution which considered the situation in Myanmar a threat to international peace due to issues such as democratic transition, promotion and protection of human rights, HIV/AIDS, and illegal human and drug trafficking (UNSC 2007a). While the proposed draft did not necessarily view the case from an R2P lens, it would not be able lead to such consideration either, as it was vetoed by China and Russia on grounds that the issues which were regarded to threaten international peace were internal affairs of the state of Myanmar and that there was no threat to international or regional peace (UNSC 2007b).

Despite the below average record of the international community in fulfilling its responsibility to protect in the early years of R2P's adoption, at the level of pillar two, the international response to the cases of Kenya (2008) and Guinea (2009) became exceptional examples where the collective responsibility to prevent was materialised at an early stage. In both cases, regional actors such as the African Union (AU) and Economic Community of West African States (ECOWAS) had a hands-on approach. In the case of Kenya, the AU

[2] 'Packing winds upward of 120 miles an hour (193 km an hour), Cyclone Nargis became one of Asia's deadliest storms by hitting land at one of the lowest points in Myanmar (also called Burma) and setting off a storm surge that reached 25 miles (40 km) inland', which resulted with a reported 100,000 deaths (National Geographic 2010).

promptly took the initiative of mediation efforts by a group of African mediators led by Kofi Annan as of early 2008 (Cohen 2008b).

France was among the first to express grave concern about the escalating violence in the country, which erupted as 'an ethnic violence triggered by a disputed presidential election held on 27 December 2007' (ICRtoP, n.d.). It was actually Kouchner (2008) who invoked R2P in the following words: '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'.

Ban Ki-moon considers the response to the situation in Kenya as 'the first time both regional actors and the United Nations viewed the crisis in part from the perspective of the responsibility to protect' (UNGA 2009a, para. 51). Desmond Tutu (2010) evaluates that the international community acted very promptly compared to past cases in any part of the world. He also notes that the UN was involved 'at the highest political levels, the Security Council has issued a statement deploring the violence, and the secretary general and the leadership of human rights offices have been mobilized' (Tutu 2008). Later, in 2010, the ICC instigated its investigation into the alleged crimes committed in the post-electoral violence.

In the case of Guinea too, the international community quickly responded to the situation. ECOWAS implemented an arms embargo on Guinea alongside other preventive measures (ICRtoP 2010), and as a first measure, along with the AU, it called for an International Commission of Inquiry. The Commission in its December 2008 Report stated that

> the crimes perpetrated on 28 September 2009 and in the immediate aftermath can be described as crimes against humanity. These crimes are part of a widespread and systematic attack launched by the Presidential Guard, the police responsible for combating drug trafficking and organized crime and the militia, among others, against the civilian population. The Commission also conclude[d] that there are sufficient grounds for assuming criminal responsibility on the part of certain persons named in the report, either directly or as a military commander or supervisor (UNSC 2009, p. 3). Upon the call of the Commission, the ICC launched investigations for the alleged crimes and later on established that the crimes have been committed.

Arguably, in both cases, the keen interest of regional actors/organisations played a vital role in the prompt reaction to the crises. On the other hand, as the experiences of Zimbabwe (2008) and Nigeria (2010) demonstrate, lack of regional support is likely to affect the implementation of the collective responsibility to protect negatively. On the one hand, the ongoing violence

in Zimbabwe, since 2000 by the hands of state's security forces, has attracted international attention, especially in the form of condemnation from civil society groups.[3] The EU has not been silent about the crisis either. In April 2008, through a Presidential declaration, the Union conveyed its concern, and nine months later it 'extend[ed] sanctions on Mugabe and his top aides for their ongoing failure to address the most basic economic and social needs of its people' (ICRtoP 2009). Nevertheless, the EU did not invoke R2P as it did in the case of Darfur. While the UN failed to implement decisive measures to stop the serious breaches of human rights in the country, the AU condemned the post-election violence fashionably late. Furthermore, it preferred to transfer the matter to the South African Development Community (SADC), which opted for involvement through quiet diplomacy (including mediation), and failed to achieve an effective result (ICRtoP 2009).

While the case of Zimbabwe has been a contested[4] one—as to whether it fulfils the criteria for consideration as an R2P case—the case of Nigeria continues to be a matter of interest to R2P groups due to the ongoing violence by *Boko Haram* and the inability of the Nigerian authorities to contain the situation. Though the case caught the international community's attention, especially since it peaked with the 7 March 2010 events, the reaction has been of limited scope.

The situation in Nigeria has been under the preliminary examination of the Office of the Prosecutor of the ICC since 2010. In February 2015, Prosecutor Fatou Bensouda acknowledged that in Nigeria '[c]rimes under the jurisdiction of the ICC have already been committed' and noted: 'Further analysis is on-going to determine the next steps that my Office should take in accordance with its duties under the Rome Statute' (ICC 2015). As a result of the escalating situation, in a press statement in February 2015 the Security Council strongly condemned the ongoing acts of violence by Boko Haram (UNMCPR 2015). Later, in a presidential statement, it repeated its condemnation 'in the strongest terms' and reiterated 'the primary responsibility of Member States to protect civilian populations on their territories, in accordance with their obligations under international law' (UNSC 2015). Despite the increasing concern on the part of the international community, and Nigeria becoming

[3] 'On 21 April 2008, a coalition of 105 representatives from civil society, including human rights activists, faith groups, and students in Africa wrote a communiqué, which included a discussion of the applicability of RtoP, and called for a concerned and effective response by the international community to guarantee effective aid delivery and livelihoods to the Zimbabwean people' (ICRtoP 2009).

[4] 'While the severity of the crimes surrounding the 2008 elections was uncontested, there was debate among scholars and supporters of the RtoP norm as to whether the crimes committed by Mugabe against opponents and human rights activists were crimes against humanity that met the RtoP threshold' (ICRtoP 2009).

the 'Achilles heel' of ECOWAS,[5] it is not possible to argue that decisive action is on the way in the case of Nigeria considering the fact that the Security Council has not passed a single resolution on the ongoing crisis.

Contrarily, in various other cases, the Security Council has acknowledged the existence of severe violations of human rights and/or international humanitarian law with its resolutions. In the meanwhile, it urged the responsible bodies to end their violations and reminded them of their responsibility to protect their populations. In his 2011 Report, Secretary-General noted: 'the responsibility to protect has been invoked by the Security Council, myself, my two Special Advisers and other colleagues in a non-coercive manner in Darfur, Kenya, Kyrgyzstan, Côte d'Ivoire, Yemen, Abyei and Syria' (UNGA–SC 2011a, p. 9). However, the individual failure of the states in meeting the requests of the Council has not warranted R2P's implementation under pillars two or three.

Whether troubled with capacity and/or capability issues (such as the lack of a permanent UN military force), or due to lack of political will, the Security Council has refrained from employing forceful measures and interfering in the domestic affairs of these states in the absence of state consent. Darfur has been a key example of adherence to the principle of state sovereignty[6] despite the gravity of the crimes committed, and thus stands out as a prominent test case for R2P. In 2014, the Report of the UN High Commissioner for Human Rights found: 'It is clear that there is a reign of terror in Darfur. While the Government appears to employ different tactics to counter the rebellion, the mission encountered a consistency of allegations that government and militia forces carried out indiscriminate attacks against civilians', and concluded that 'The Government of the Sudan has a legal responsibility to uphold the rule of law in Darfur and to protect all its citizens in that part of the country' (UNESC 2004, pp. 3, 22). The Report was followed by the adoption of the Security Council Resolution 1556 with 13 affirmative votes and 2 abstentions, which endorsed the international monitoring team led by the African Union, including the protection force. In the absence of meaningful progress on the situation and upon the failure of the Sudanese government to comply with Resolution 1556, although the Security Council adopted Resolution 1556,

[5] *The Economist*, in an article, considered Nigeria as ECOWAS's 'Achilles heel': 'Africa's most populous country['s …] economy is twice as big as the other members' combined. The club's headquarters is in Nigeria, which, on some counts, provides a third of the cash for ECOWAS and a big chunk of its peacekeeping troops'. All these factors combined, it becomes problematic for the members of the Organisation to disapprove of what is going on within the territory of the Nigerian State (The Economist 2010).

[6] As Jackson (2007, pp. 7–8) reminds: 'Sovereignty was originally a way of escape from dictation and direction by outsiders and it remains to this day an institution that prohibits unwarranted foreign interference in the jurisdiction of state'.

it did not decide for the imposition of any sanctions. In the course of the next year, new resolutions, some of which also extended the mandate of the AU protection force (AMIS), were adopted.

The worsening situation in Darfur had in part been viewed from an R2P perspective. One of the very first resolutions that reaffirmed paragraphs 138 and 139 was Resolution 1674 (2006) on the protection of civilians in armed conflicts. The Resolution also noted 'that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict, may constitute a threat to international peace and security' (UNSC 2006a, p. 5). While the Security Council recalled Resolution 1674 in its resolutions on Darfur (such as in resolution 1679 and 1706), it also reaffirmed in the very next paragraph 'its strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan'. A year later, in its 9 March 2007 report evaluating the human rights situation in Darfur, the UN High-Level Mission determined 'that the Government of the Sudan has manifestly failed to protect the population of Darfur from large-scale international crimes, and has itself orchestrated and participated in these crimes. As such, the solemn obligation of the international community to exercise its *responsibility to protect* has become evident and urgent' (UNGA 2007, p. 25). Accordingly, the Commission urged for immediate action by the Security Council for the protection of civilians in Darfur, which included means such as 'the deployment of the proposed UN/AU peacekeeping/protection force and full cooperation with and support for the work of the International Criminal Court' (UNGA 2007, p. 27). Notwithstanding the urgency of the situation, the Security Council insisted on obtaining Sudan's consent to deploy its peacekeeping forces that would replace the AU mission. Accordingly, the Council expressed 'its determination to work with the Government of Sudan, in full respect of its sovereignty, to assist in tackling the various problems in Darfur, Sudan'. It also emphasised that 'there can be no military solution to the conflict in Darfur' (UNSC 2007, p. 5). The Security Council's insistence on waiting on the consent of the Sudanese authorities not only prolonged the time of response but also disabled the implementation of preventive measures in a timely fashion. Given the disinterest of the P5 and the lack of a rapid reaction force, Hehir (2012, p. 220) notes: 'The troops sent into Darfur were manifestly ill-equipped to deal with the situation and constituted a hastily assembled force hamstrung both by a restrictive mandate, insufficient personnel and poor equipment, all of which could have been rectified by the P5'. Putting the story of yet another international failure in a nutshell, Annan states: 'We were slow, hesitant, uncaring and we had learnt nothing from Rwanda' (BBC 2005).

Similarly, in the case of Sri Lanka—where there was a prolonged civil war between the Government and the Liberation Tigers of Tamil Eelam (LTTE), which intensified by the beginning of 2009 and rapidly led towards a humanitarian catastrophe—forceful measures under pillar three could have been adopted. Nevertheless, no action was undertaken, as 'key states—including members of the Security Council—argued that the situation was an internal matter' (GCR2P 2013). According to proponents of R2P, the mass number of deaths revealed the failure of the Government of Sri Lanka in protecting its population, and led to a call for the international community to step in. Nevertheless, 'Colombo kept the matter off the Security Council's agenda altogether with China's and Russia's assistance, while India helped defeat or deflect efforts to condemn Colombo in the' Human Rights Commission (Bloomfield 2016, p. 16). It was only after the end of the civil war on 19 May 2009 that Ban Ki-moon paid a visit to the country, with a focus on three key areas: 'immediate humanitarian relief, reintegration and reconstruction, and an equitable political solution' (UNNC 2009). During the post-conflict period, also with the support of the NAM, the government of Sri Lanka rejected an international inquiry by a UN-led commission on grounds that this would constitute interference in the internal affairs of the State (ICRtoP 2014).

After numerous failures to act in a timely and decisive manner, arguably, a coercive turn came in 2011 as the Security Council adopted two Chapter VII resolutions respectively in the cases of Libya and Côte d'Ivoire for the purpose of protecting civilians. As Thakur (2011, pp. 14–15) notes:

> Libya marks the first time the Security Council authorised an international R2P operation. Côte d'Ivoire is the first time it authorised the use of military force by outside powers solely for the protection of civilians. Between them, Resolutions 1973 and 1975 show that including R2P language in the preamble might provide the normative justification for civilian protection demands in the operational paragraphs of UN mandates.

Though the international community decided to act under pillar three in both cases, the pace of the consideration of the two situations was different.

On 22 February, in their press release concerning the rapidly escalating situation in Libya, Special Advisers Deng and Luck reminded Libyan authorities of their responsibility to protect their populations and stated: 'We are alarmed by the reports of mass violence coming from the Socialist People's Libyan Arab Jamahiriya. […] If the reported nature and scale of such attacks are confirmed, they may well constitute crimes against humanity, for which

national authorities should be held accountable' (OSAPG 2011). Regional organisations such as the Arab League, the African Union and Organisation of Islamic Cooperation (OIC) quickly joined the international protests against the actions of Colonel Qaddafi and issued statements condemning the excessive use of force against civilians. While the AU decided to 'dispatch a mission of Council to Libya' to evaluate the situation (AUPSC 2011), the strongest reaction came from the Arab League as it suspended the membership of the Socialist People's Libyan Arab Jamahiriya. Unlike in previous cases, the Security Council quickly responded to the case. First in Resolution 1970, and then in Resolution 1973 the Security Council reiterated 'the responsibility of the Libyan authorities to protect the Libyan population'. With Resolution 1973, the Council took a further step, and acting under Chapter VII it authorised 'all necessary measures […] *to protect civilians and civilian populated areas* under threat of attack in the Libyan Arab Jamahiriya, including Benghazi', as well as a no-fly zone on the basis of which NATO carried out its military operation (emphasis added, UNSC 2011a, p. 3).

Just two weeks after it adopted Resolution 1973, the Security Council passed a similar resolution on Côte d'Ivoire. The escalating situation in Côte d'Ivoire had already been under the close watch of the Special Advisers especially since 2010. On 20 December, with Resolution 1962 the Security Council extended the mandate of the UN Operation in Côte d'Ivoire (UNOCI), but the situation did not improve. In a press conference in January 2011, Special Advisers stated that '"urgent steps" should be taken, *in line with the responsibility to protect*, to avert the risk of genocide and ensure the protection of all those at risk of mass atrocities' (emphasis added, UNMCPR 2011a). Confronted by the increasing level of violence, on 30 March 2011 the Security Council adopted Resolution 1975. Different from Resolution 1973, which was adopted with ten affirmative votes and five abstentions, Resolution 1975 was adopted unanimously.

Recalling past resolutions that made reference to paragraphs 138 and 139 of the Outcome Document, in Resolution 1975 the Council reaffirmed 'the primary responsibility of each state to protect civilians' considering that the crimes committed may amount to crimes against humanity. Furthermore, considering the situation a threat to international peace and security, and acting under Chapter VII, it authorised the UN Operation in Côte d'Ivoire 'to use all necessary means to carry out its mandate *to protect civilians* under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population' (emphasis added, UNSC 2011b, p. 3). The Resolution also issued targeted sanctions against Gbagbo and his entourage.

Until 2011, the international community has been reluctant in resorting to the so-called controversial measures of pillar three. In this regard, March 2011 arguably marked a coercive turn in the implementation of the responsibility to protect. Due to the fast pace of the process as well as the discourse of the statements of various agents on the escalating situation, Libya became 'the case' that R2P proponents waited for, the one that would set the example of a timely and decisive action by the international community. Six years and many crises after, the Security Council was for the first time acting under Chapter VII in situations where it recalled the individual responsibility of states to protect their populations. In this vein, in the early days of NATO's military operation, the international community's swift action in Libya was cited as an example of a successful R2P action. In Thakur's (2013, p. 69) words: 'The outcome was thus a triumph for R2P. It showed it is possible for the international community—working through the authenticated, UN-centered structures and procedures of organized multilateralism—to deploy international force to neutralize the military might of a thug and intervene between him and his victims'.

R2P After Libya: A Coercive Turn?

Following the revolutionary movements in Tunisia and Egypt, on 15 February 2011, protests against the rule of Colonel Qaddafi began in Benghazi, Libya. Following the spread of the demonstrations to major cities, the situation 'evolved into a country-wide popular uprising against' Qaddafi (Adams 2012, p. 5), and found worldwide media coverage. On 23 February, Qaddafi openly vowed to search for the 'cockroaches' revolting against him and announced to the world that 'the leading protesters will be hunted down door to door and executed' (ABC 2011). Only two days later, alarmed by the imminent threat of mass scale atrocities, the Human Rights Council adopted a resolution which expressed 'deep concern at the deaths of hundreds of civilians and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government' and urged the Libyan Government to fulfil its responsibility to protect its population (UNGA 2011, p. 3). Quickly responding to the escalating violence, the Members of the Arab League urged the Security Council to take measures for the purpose of the protection of the Libyan population (UNGA–SC 2012, pp. 11–12).

As soon as the events started to unfold, the situation in Libya, having '*specific* connotations associated with the Rwandan genocide of 1994' (Steele and

Heinze 2014, p. 108), unarguably proved to be an R2P concern that would raise the responsibility of the international community. A point of clear consensus among all the members of the Security Council was that they opposed the violence against the Libyan population and that civilians in Libya needed to be protected (UNMCPR 2011b). Nonetheless, in considering the military option as an appropriate response, five states had their doubts. After their decision to adopt Resolution 1973, those members of the Security Council that cast an affirmative vote stated that 'the strong action was made necessary because the Qaddafi regime had not heeded the first actions of the Council and was on the verge of even greater violence against civilians. […] They stressed that the objective was solely to protect civilians from further harm' (UNMCPR 2011b). While a majority of the Security Council members were convinced that pacific means proved to be insufficient to contain the situation, the abstaining states 'contended that non-coercive measures were not given sufficient time to demonstrate results in Libya' (UNGA–SC 2012, p. 14).

As the military operation in Libya progressed, the concerns of the abstaining states have proved right, and the way of implementation as well as the limits of the mandate became issues that spurred criticisms against the leading interveners, namely France, the UK and the USA (P3). Brazil, Russia, India, China, and South Africa (BRICS) were the chief critics of the NATO-led implementation, not necessarily because of the first military response but mainly because of the P3's pursuit of regime change at any cost. Among the reasons for the criticisms, Evans (2012a) enumerates the interveners' support of the rebels in defiance of the arms embargo, rejection of potentially genuine ceasefire calls, and the targeting of fleeing personnel as well as Qaddafi's relatives.

Since the initial stages that led to the intervention, if not the responsibility to protect itself, but the primary purpose of the protection of civilians in Libya has been explicit in the statements of the P3. Likewise, when taking over the overall command, NATO (2011) stated that its purpose 'is to protect civilians and civilian-populated areas from attack or the threat of attack'. Notwithstanding the initial statements, affirming the criticisms of the BRICS countries, the discourse of the leading interveners started to change in a visible way, reflecting a move of the primary focus towards the motive of regime change. For instance, during their joint press conference with the US President Barack Obama on 25 May, Prime Minister of the UK David Cameron stated: '[…] this is why we mobilized the international community to protect the Libyan people from Colonel Qaddafi's regime, why we'll continue to enforce UN resolutions with our allies, and why we restate our

position once more: *It is impossible to imagine a future for Libya with Qaddafi still in power. He must go*' (emphasis added, The White House 2011).

President Obama, on the other hand, making reference to the self-determination of the peoples of the Middle East and North Africa, underlined that they are committed to supporting peoples seeking democracy as well as leaders who are willing to seek a democratic reform. While adding that they will continue their operations 'to protect the Libyan people', he also emphasised:

> Time is working against Qaddafi and he must step down from power and leave Libya to the Libyan people. […] *The goal is to make sure that the Libyan people can make a determination about how they want to proceed*, and that they'll be finally *free of 40 years of tyranny* and they can start creating the institutions required for self-determination (emphasis added, The Whitehouse 2011).

In a nutshell, Welsh (2011, pp. 58–60) highlights that in the intervention in Libya impartiality was relinquished. While it is possible to question the genuine motive(s) of the leading interveners as well as the extent they were driven by a collective responsibility to protect, the way of conduct of the military operation also revealed problematic aspects of R2P-lite at the level of pillar three implementation. For instance, taking lessons from the problematic aspects in the conduct of the military operation, Brazil[7] suggested that 'a complementary set of principles and procedures, which it has labelled "responsibility while protecting" ("RwP")' needs to supplement R2P in implementation (Evans 2012a). RwP is analysed later in Chapter 6 while discussing the way forward with R2P.

Reflecting the contention among scholars on the Libyan military intervention, Zifcak (2012, p. 1) argues that 'the fact of military victory on the ground is sufficient to justify the conclusion that the Libyan R2P operation succeeded', whereas Kuperman (2013) asserts that the military intervention 'increased the duration of Libya's civil war by about six times and its death toll by at least seven times, while also exacerbating human rights abuses, humanitarian suffering, Islamic radicalism, and weapons proliferation in Libya and its neighbors. If this is a "model intervention", then it is a model of failure'.

Evans and Thakur (2013) note that 'the R2P consensus underpinning Resolution 1973 fell apart over the course of 2011, damaged by gaps in expec-

[7] Bloomfield (2016, p. 13) refers to Brazil as a 'competitor entrepreneur' since it is 'committed to "something like R2P" even though [it] disagree[s] about the norm's exact scope and content'.

tation, communication, and accountability between those who mandated the operation and those who executed it. An important result of these gaps was a split in the international response to the worsening crisis in Syria'. Some scholars contend that the experience of Libyan intervention worked to the detriment of a robust international response to the situation in Syria, and closed the door for a possible intervention at the very beginning of the crisis.[8]

As criticisms pervaded over the sense of an R2P 'triumph', with the outbreak of violence in Syria the international community's inability to (re) act was resurrected. This time it was not necessarily the indifference of the international community towards the escalating crisis but the veto in the Security Council that prevented R2P measures from being applied. In May 2011, with its Resolution S-16/1, the Human Rights Council was quick to condemn the violence against the Syrian population in which it also decided to dispatch a team of observers to investigate the situation on the ground. On 25 May, a draft resolution condemning the situation in Syria was proposed by France, Germany, Portugal, and the UK. While the BRICS countries wanted to steer clear of the possibility of a Security Council sanctioned international military intervention, Russia and China expressly indicated their reservations arising from the broad interpretation of the mandate of Resolution 1973 on Libya as well as their adherence to the principle of sovereignty (Zifcak 2012, pp. 17–18). During the prolonged course of negotiations on the draft resolution, the intensifying situation led the President of the Security Council to issue a statement of condemnation expressing grave concern but in the meanwhile reaffirming a 'strong commitment to the sovereignty, independence, and territorial integrity of Syria' (UNSC 2011a, p. 1). Despite the changes imposed on the final text, the resolution, which reminded the responsibility of the Syrian authorities to protect their population, was rejected in early October with the vetoes of Russia and China, whereas Brazil, India, Lebanon, and South Africa abstained from vote (Zifcak 2012, p. 19).

While the UN remained seized of the matter, around ten months after the crisis broke out, the Arab League assumed a more proactive stance, and it not only suspended Syria from membership but also imposed economic and political sanctions. Later, it proposed a draft resolution to the Security Council, which took its final form under the leadership of Morocco. On 4 February 2012, despite the thirteen affirmative votes, the resolution from all

[8] See, for instance, Evans (2012a); Johnson, A. and Mueen, S. (2012); Thakur, R. (2013); Morris, J. (2013).

parties in Syria demanding an end to the violence was rejected by the vetoes of Russia and China (UNSC 2012).

During the course of the crisis, though the Security Council was later able to adopt resolutions on Syria concerning issues such as the destruction of chemical weapons (Resolution 2118), the necessity of a ceasefire in heavily populated areas (Resolution 2165) and enabling the delivery of humanitarian aid to Syria (Resolution 2139), it lacked unity to adopt concrete sanctions to stop the violence (ICRtoP 2015). Likewise, despite serious requests from the High Commissioner for Human Rights as well as the Special Advisers to the Secretary-General alongside some fifty members of the UN voicing their call in a letter, the Security Council has refrained from referring the situation to the ICC (Nichols 2013).

The question of what follows next still lingers. Summarising the situation, Annan states: 'Those who are saying mediation is a waste of time have offered no alternative, they are hoping for intervention, but I haven't seen any countries lining up to intervene. […] You have a situation where you have a sectarian war coming up and Syria can explode beyond its borders' (Nichols 2013). With the escalating violence becoming further complicated due to the advances of the Islamic State (IS), the situation is evolving into a regional crisis also given the ever-growing refugee influx as well as the shelling at the borders of neighbouring states such as Lebanon and Turkey. It has already been almost three years since Secretary-General Ban maintained that 'the international community has a moral responsibility, a political duty and a humanitarian obligation to stop the bloodbath and find peace for the people of Syria' (UNSG 2012), and we are still on the wait for the Security Council to act responsibly. Nevertheless, the Council is currently incapable of taking further steps or implementing the existing decisions, such as the six point peace plan[9] because of the divisions among its permanent members stemming from strategic considerations and/or from a suspicion of ulterior motives (such as regime change) masked with humanitarian justifications.

Blurred Lines: Non-State Armed Groups, Inter-State Crises and R2P

In his 2015 Report, the Secretary-General noted among new threats, the non-state armed groups in the following words:

[9] 'The plan calls for an end to violence, access for humanitarian agencies to provide relief to those in need, the release of detainees, the start of inclusive political dialogue, and unrestricted access to the country for the international media' (UNNC 2012).

> The scale, brutality and global impact of the acts committed by non-State armed groups like ISIL, Boko Haram and Al-Shabaab represent a powerful new threat to established international norms. Although the commission of atrocity crimes by non-State armed groups is not a new phenomenon, the brazen manner in which certain non-State armed groups seem to have embraced the use of genocide, war crimes, ethnic cleansing and crimes against humanity as a strategy for advancing their objectives is unprecedented. Confronting the challenges posed by those groups will require the international community to modify the ways in which it anticipates, prevents and responds to the commission of atrocity crimes (UNGA–SC 2015, p. 14).

While Ban speaks of devising new ways to confront this new sort of (indirect) R2P challenge, determined members of the Security Council had already taken action in good-old ways. As of September 2014, the USA led bombing campaign, accompanied by nine of the European Union Member States began on the territories of Iraq and Syria against the IS (ISIL in Iraq and ISIS in Syria), in contrast to the continuing standstill in the Security Council concerning the humanitarian situation in Syria. Thus, despite the persisting criticisms that there has been no intervention in Syria, there has been an ongoing external military intervention on the territory for other purposes.

The inconsistencies in the behaviour of states become even more striking in long-term situations like that of Gaza, which is in fact another situation requiring the immediate attention of the international community due to the allegations of war crimes. This case is of significance not only because the alleged crimes are within the scope of R2P, but also because it demonstrates the ways in which R2P can contribute to the existing machinery where the international community is stuck in a standby due to P5 veto—which in this specific case is the US veto. Though not considered very much as an R2P case, as indicated in one of the presidential statements of the Security Council, the increasing death toll and loss of civilian lives continue to create grave concern (UNSC 2014).

Most notably, and somewhat controversially, UN Special Rapporteur on the Occupied Palestinian Territories, Richard Falk had referred to Gaza as an R2P situation in the following words:

> In the last several years, the UN Security Council has endorsed the idea of humanitarian intervention under the rubric of 'a responsibility to protect' (also known as R2P), and no world circumstance combines the misery and vulnerability of the people more urgently than does the situation of the people of Gaza living under occupation since 1967. Surely the present emergency circumstances present a compelling case for the application of this protective response

> under UN auspices. If this does not happen, it will again demonstrate to the people of the world, especially those in the Middle East, that geopolitics trumps international law and humanitarian concerns and leaves those victimized with few options. Under these conditions, it should not surprise us that extremist methods and reliance on violence wins many adherents.

A prevailing reason for the disregard towards the case of Gaza as an R2P situation is arguably its perception as an interstate crisis. In this specific case, there are two states and specifically three main parties involved: Israel and its Defense Forces (IDF); the Palestinian Authority (PA) as the legitimate authority representing the State of Palestine; and finally, Hamas—the de facto government exercising authority on the territory of Gaza since it won the Palestinian Parliamentary elections in 2006.

As it is not among the purposes of this section either to discuss the international political and legal status of Palestine or of Hamas, to summarise the current picture suffice it to say that notwithstanding Israel's non-recognition of the Palestinian state, the UN granted Palestine the status of a 'non-member observer *state*' in November 2012; currently 134 of the Member States of the UN, and international organisations such as the ICC recognise Palestine as a state and the Palestinian Authority as its official government. From an R2P point of view, when Palestine is considered as an independent state governed by the PA, it is possible to argue that the national authorities are manifestly failing to protect their population living on the territory of Gaza due to their inability to prevent the rocket attacks of Hamas on Israel from the Gaza Strip and Israel's retaliatory responses to these attacks, which occasionally end up affecting heavily populated areas of Gaza. Lacking effective control over either Hamas or the IDF, given the gravity of the situation, immediately after it was admitted as a state member, the PA applied to the ICC for the investigation of the alleged war crimes. With Palestine's membership to the Court as of April 2015, it became possible to try the actions of both the Israeli officials in the Palestinian territory and of Hamas (Gözen Ercan 2015).

While the preliminary investigations of the Office of the Prosecutor into the alleged war crimes continue on the one hand, an agitated Israel under the right-wing leader Netanyahu and an ever strengthening Hamas on the other, the humanitarian situation in Gaza keeps its imminence as an R2P crisis, which so far has been among the recent failures of the international community like that of Syria. Rather than its characterisation as an interstate crisis, what is even further complicated in the case of Gaza is the question of authority. Though the PA is considered as the main authority to protect the

Gazan population, it is not the only one since there is a tri-partite control exerted over the Gaza Strip. In this vein, the two actors leading to the failure of the PA in protecting its population are arguably Hamas and Israel. While Israeli authorities consider Gazans as 'prisoners of Palestinian militant Islamist group Hamas' (BBC 2010b), Hamas assumes control inside the territory as an elected authority supported by the local population. In the meanwhile, even after withdrawing its civilian and military presence from Gaza in 2005, Israel remains a de facto occupying power[10] due to the effective blockade it imposes on the territory of Gaza, which turns the land into the 'world's largest open-air prison' for the local population.

In light of this, considering the control they exercise over Gaza, it is possible to hold Hamas and Israel as responsible to protect the Gazan population. Nevertheless, as neither Hamas ceases its attacks against the Israeli territory and population, nor the IDF is successful in avoiding loss of civilian lives in Gaza during its retaliatory attacks, unlike the case of the PA, for the former two it is possible to argue that they are unwilling to fulfil their responsibility. Considering such manifest failure, it all comes down to the international community to take the necessary measures for the protection of the Gazan population from further harm. It should be made clear that my supposition is not that R2P is 'the framework' to view the larger Israeli-Palestinian conflict from. Nevertheless, the situation in Gaza is unique and is still a humanitarian crisis whatever its international political characteristics are. In this vein, I argue that the R2P framework should have been utilised for developing an immediate international response to the ongoing conflict.

Since the crisis in Gaza is not a continuous situation of war, and attacks take place from time to time, preventive measures of R2P could/should have been implemented to avoid further civilian losses. Second, considering the already existing state of failure of the involved actors in protecting the Gazan population, the international community could have applied sanctions under pillar three (Gözen Ercan 2015). Overall, my contention is that Gaza stands out as one of the cases where the international community has been failing in terms of upholding its responsibility.

[10] In addition to its effective control in and out of the territory, in order to counter the indiscriminate rocket attacks of Hamas, Israel has been undertaking military operations such as the 2008 Operation 'Hot Winter', 2008–2009 Gaza War, 2011 cross-border attack, March 2012 Operation 'Returning Echo', October 2012 Operation 'Pillar of Defense', or 2014 Operation 'Protective Edge', some of which have been at the centre of the allegations of war crimes.

Is It Time to Say RIP to R2P?

The period between 2005 and 2011 proved that R2P's effective implementation would take time. Though there were examples of successful implementation such as the ones in Kenya and Guinea, most of the time faced with the failure to prevent situations at their early stages, and often (willingly) challenged by the sovereignty question as in the case of Darfur[11], the international community reluctantly upheld its responsibility to protect. Following the Security Council's authorisation of the enforcement of Chapter VII measures in Libya, marking the coercive turn, Secretary-General stated: 'The Security Council today has taken an historic decision. Resolution 1973 (2011) affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own Government' (UNMCPR 2011c).

Celebrated as a moment of triumph for R2P, the intervention in Libya, nevertheless, proved to be an important source of grievance soon after. Roland Paris (2014, p. 593) posits that the

> Libya operation should have been the crowning achievement for R2P—and in some ways, it was. An overt threat that raised genuine concerns about the possibility of imminent mass atrocities was countered quickly and decisively. Yet, it was also a major setback for the doctrine, displaying all the pathologies associated with the structural problems […]. Put differently, R2P failed because it worked; using the doctrine exposed its underlying flaws. Indeed, the more it is employed as a basis for military action, the more likely it is to be discredited.

Though it is clear that the examples of Libya and Côte d'Ivoire once again affirmed the reasons why humanitarian intervention has never been legalised in the past decades, it can hardly be argued that R2P has evolved to a level where it has acquired the status of an internalised norm that is capable of determining the actions of the international community.

In the case of Libya, it is curious that notwithstanding its explicit reference to paragraph 138, Resolution 1973 did not invoke international community's collective responsibility to protect populations. While there was no direct reference to paragraph 139, it is rather inferred from the goal of the 'protection of civilians' that international community's responsibility was invoked.

[11] Regarding the case of Darfur, Bloomfield (2016, p. 16) notes that even after Resolution 1706, 'mass atrocities continued largely unchecked, and sustained resistance meant it proved impossible to include R2P-like language in subsequent resolutions, causing many R2P entrepreneurs to fret about the implications for R2P's legal status'.

To date, neither the Security Council nor the General Assembly have referred to paragraph 139 in order to reaffirm the collective responsibility of the international community in any of their resolutions addressing specific cases.

Regarding the implementation of coercive measures, Chesterman (2011, pp. 279–280) notes that from an international lawyer's point of view, the case of Libya 'is interesting but not exactly groundbreaking [as] Security Council Resolution 1973 (2011) was consistent with resolutions passed in the heady days of the immediate post-cold war era'. In its current form, R2P lacks legally binding powers, and it is not possible to authorise action on the basis of the collective responsibility to protect. Though R2P can be used as a moral or political justification, it can hardly be argued that R2P has changed the existing machinery of the UN.

Although one may suggest that the international community has been much less reluctant in terms of adopting military intervention as a pillar three measure given recent examples of Côte d'Ivoire and Libya, as the situation in Syria sustains, the authorisation of use of force remains dependent on political factors rather than moral considerations and humanitarian necessity. It can be observed that in the case of Côte d'Ivoire, the AU and ECOWAS were actively involved in the crisis resolution process. Similarly, concerning Libya, Ban Ki-moon notes that in the adoption of Resolution 1973 'the Security Council placed great importance on the appeal of the League of Arab States for action' (UNMCPR 2011c). Likewise, the clear support of regional actors such as the League of Arab States, the Gulf Cooperation Council, and the Organisation of the Islamic Conference, left Qaddafi without allies, and made Russia and China refrain from casting a veto (Steele and Heinze 2014, pp. 108–109). On the other hand, in the case of Syria there was no decisive regional response to the escalating crisis at the initial phases due to the strong ties of the Syrian Government with regional countries and organisations. While Qaddafi 'had virtually no allies who had a stake in his continued rule' (Steele and Heinze 2014, pp. 108–109), al-Asad continues to have influential allies. Because of Russia's and China's recurring vetoes in the Security Council, it has not been possible to adopt effective measures under pillars two or three to halt the mass atrocities against the Syrian population. As Weiss (2014, p. 13) asserts, '[i]t was not the R2P norm that explained action in Libya and inaction in Syria, but rather geopolitics and collective spinelessness combined with a difficult military situation on the ground. In addition to the politics in the Security Council, Syria confounded easy generalisations and looked distinctly more complicated, chancy, and confused than Libya'.

For some, the Libyan experience signalled the demise of R2P, and Syria has eventually been its end, whereas for others 'R2P is not about to die. Indeed,

it is not even on life-support' (Bellamy 2012, p. 12). The international community's mixed track record reveals that R2P has not yet been internalised by states or the international community. While the responsibility to protect has found itself a place in the discourse of various agents of the UN such as those of the Secretary-General, the Human Rights Council, and the Special Advisers to the Secretary-General on the Prevention of Genocide and the Responsibility to Protect, it is not possible to observe such importance placed on R2P in the practices of the Security Council. In this vein, putting rhetoric aside, as displayed by the recent examples of standby in the cases of Syria and Gaza, or for that matter Nigeria, it remains another question to what extent individual states and the international community have matured in terms of turning their acceptance of a moral responsibility into practice.

Nevertheless, the failure in implementation does not necessitate the failure of the norm too. It rather shows the weaknesses that need to be addressed to ensure the effectiveness as well as the internalisation of the norm. The limitations of 'R2P-lite' render the responsibility to protect at best as a moral norm defining appropriate behaviour for states and the international community. In its current form, R2P cannot contribute much as it is bound with the existing bureaucratic processes and machinery of the UN. In this regard, it is important to asses what can be done to improve 'R2P-lite' to enhance it into an effective tool for responding to atrocity crimes, and this task is taken up in Chapter 6. As the President of the General Assembly remarked in the 2009 deliberations:

> I would ask whether it was the absence of responsibility to protect that led to non-intervention in Gaza as recently as this year, or was it rather the absence of reform of the Security Council, whose veto power remains unchecked and its membership unreformed? Need I remind anyone here that we already have a genocide Convention and various conventions concerning international humanitarian law, whose implementation remains erratic? […] Has the time for a full-fledged R2P norm arrived, or, […] do we first need to create a more just and equal world order, including in the economic and social sense, as well as a Security Council that does not create a differential system of international law geared towards the strong protecting, or not protecting, whomever they wish?' (UNGA 2009c, p. 3).

Part III

To Protect or Not to Protect?

6

The Way Forward

As explained in Chapter 1, this book is neither a mere attempt to make a case for the utility of the responsibility to protect nor a sheer criticism of it. Instead, based on an analysis of R2P's evolution so far, it attempts to draw an alternative path for the future of the norm with the aim to make it a functioning part of the international system. Though it is important to question the progress achieved on the R2P front since the norm's instigation, an enquiry into the future of R2P would be far from complete without an assessment of the norm's limitations and an examination of proposals on how to overcome them. The primary goal of this chapter is to take up such task with a twofold analysis.

As presented in Chapter 5, an overview of R2P situations demonstrated that the track record of the international community's R2P practice has been mixed in the very first decade of the norm's adoption. Such inconsistency in implementation mainly stems from the nature of the institution tasked with implementing R2P, that is, the UN and its Security Council. In this regard, the chapter begins by outlining the problems inherent in R2P's implementation through the UN. Then, it examines the existing proposals for changes to the UN machinery in the context of R2P implementation. These are namely the initiatives of 'Responsibility while Protecting', 'Code of Conduct', and 'Human Rights Up Front'. In addition to providing an overview of recent initiatives, I also devise alternative strategies to move forward with R2P. Though this latter task seems like an ambitious attempt, it consists of do-able and realistic strategies, which nevertheless require genuine political will of the Member States of the UN, especially that of the Security Council, for realisation. Finally, in light of such analysis, I focus on the question of how to move

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forward with the responsibility to protect in order to make this moral norm into a working and consistent part of the legal machinery of the international system.

'R2P-lite' in a Dis-United Nations: Inherent Problems

Following its instigation by the ICISS, the institutionalisation of R2P made it part of the UN's machinery without imposing any structural or procedural changes to the organisation's system. In the aftermath of the Cold War, humanitarian crises have, in part, been viewed as a threat to international peace based on the discretion of the Security Council. Conforming to the idea of such an expanded scope for interpretation of threats to international peace, the Outcome Document under paragraph 139 endowed the Security Council with the power to decide on which course to take in R2P crises on behalf of the international community. This meant that the most authoritative and also the most politicised international body—which frequently deadlocked on many occasions during the Cold War years upon political differences—was placed in charge of the implementation of this evolving international norm. In other words, while under the authority of the Council, it was made possible to apply R2P in a binding manner (through measures of non-coercive or coercive sort), its implementation also became vulnerable to the inherent problems of this political body and the UN in general.

Some of these problems can be enumerated as: the outdated aspects of the UN and its Charter in relation to the clash between system and human rights values; capacity and capability issues of an ill-equipped world organisation; the North-South divide among the Member States; the issue of representation in the Security Council; the veto wielded by the P5; and the UN's inability to 'deliver as one', or act as a unified actor. In order to be able to draw an alternative path for R2P's future implementations, it is necessary, at least briefly, to address these issues.

An Organisation à la Mode?

Lori F. Damrosch detects two groups of values in the UN Charter, namely system and human rights values, which 'intersect with each other and […] may sometimes work at cross-purposes' (Ramsbotham and Woodhouse 1996 p. 57). Human rights values provide the basis for international activism,

but in the meanwhile they cause tension because such activism conflicts with basic system values designed to ensure the general stability of the international system, such as the prohibition of the use of force, and non-interference in states' internal affairs as well as sovereignty, political independence, and territorial integrity of states. In this complicated situation, the Security Council, with its authority and legally binding powers, has to decide which group of values would/should proceed in a specific case, and whether to take action or to remain inactive.

In various instances of humanitarian crises, it has most often been the case that a permanent member whose interests are involved in a specific situation—whether in a direct manner or due to the involvement of an ally or state of interest—would veto a resolution on the grounds that such decision constitutes a breach of the concerned state's sovereignty and political independence and/or a breach of the non-interference principle. For instance, in the recent example of Syria, countries like Russia and China vetoed draft resolutions arguing on the basis of system values. Explaining the reasons for Russia's veto on October 2011 Vitaly Churkin stated:

> It is clear that the result of today's vote reflects not so much a question of acceptability of wording as a conflict of political approaches. […] From the outset, the Russian delegation undertook intensive, constructive efforts to develop an effective response on the part of the Council to the dramatic events in Syria. The first such response was reflected in a consensual statement issued by the President on 3 August (S/PRST/2011/16). Based on that approach, together with our Chinese partners we prepared a draft resolution. […] Of vital importance is the fact that at the heart of the Russian and Chinese draft was the logic of *respect for the national sovereignty and territorial integrity of Syria* as well as *the principle of non-intervention*, *including military, in its affairs*; the principle of the unity of the Syrian people; refraining from confrontation; and inviting all to an even-handed and comprehensive dialogue aimed at achieving civil peace and national agreement by reforming the socio-economic and political life of the country (UNSC 2011b, p. 3).

Four months later, another resolution on Syria was yet again vetoed, and on behalf of China, Li Baodong emphasised that Syria's 'sovereignty, independence and territorial integrity [as well as] the purposes and principles of the United Nations Charter must be respected' (UNMCPR 2012).

Based on various examples in history, also as discussed previously in Chapter 3, it can be argued that compared to the Cold War period, adherence to system values is now more of a question of existing circumstances (based on the relative interests of any of the P5) rather than a general pattern by which

each superpower routinely blocked the other's initiatives. Notwithstanding the post-Cold War consensual enlargement of the scope of what constitutes a threat to international peace in detriment to the sacrosanct sovereignty understanding, there has been no official attempt to make this change a part of the UN Charter. Instead, most cases have been referred to as exceptions to the rule, so that when the card of global protection of human rights is played to justify an intervention, if doing so is perceived to favour any of the P5, another P5 power can invoke system values to deliver a 'royal flush'.

For instance, in Resolution 794 on Somalia, the Security Council recognised 'the *unique character* of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, *requiring an immediate and exceptional response*' under Chapter VII of the UN Charter (emphasis added, UNSC 1992b, p. 1). Similarly, two years later in Resolution 940 on Haiti while considering the situation as a threat to international peace and security, the Security Council yet again recognised 'the *unique character* of the present situation in Haiti and its deteriorating, complex and extraordinary nature, *requiring an exceptional response*' and 'acting under Chapter VII of the Charter of the United Nations, authorize[d] Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means' (emphasis added, UNSC 1994b, p. 2). Commenting on the tendency of the Security Council to note in each resolution that allowed for action under Chapter VII that the adoption of such measures were an exception, the Danish Institute of International Affairs (1999, p. 74) observes that there is 'an unwillingness on the part of the Security Council to set precedents for humanitarian intervention in internal conflicts'.

Although the language preferred in the authorisation of the use of force might have reduced the persuasive weight of the precedent, these decisions are to remain as precedents. In this regard, Krisch (2008, p. 151) argues that the debates over the authority of the Council to intervene in internal conflicts on humanitarian grounds is now left behind. He further notes: 'This expansion of the Council's powers is remarkable, and it reflects a process of incremental normalization of practice. […] One might interpret this as a shift in states' normative beliefs, or merely as the breakdown of focal points of resistance. On either interpretation, it amounts to considerable change' (Krisch 2008, p. 151). Still, such change has been limited with the practice of the Security Council deciding on pillar three interventions on a case-by-case basis as provided for specifically in paragraph 139 of Outcome Document. Despite the rise of new challenges and the fact that some parts of the Charter such as Chapters XI–XIII on 'Non-Self-Governing Territories', 'International Trusteeship System', and 'The Trusteeship Council' have already become

obsolete with the end of colonisation, curiously enough the UN Charter has been amended[1] only five times in the last seventy years, starting in 1965 and ending in 1971, which were adopted to increase the number of member states to the Security Council as well as to the Economic and Social Council.

Leaving behind the apparent rivalries of the past era, since the 1990s it has rather been the Security Council, in fact an administrative organ of the UN, that has been actively involved in (quasi-)judicial and (quasi-)legislative activities to deal with new challenges such as international terrorism. Along these lines, based on Resolution 1566, Cohen (2008a), p. 461) comments that 'the Council has arrogated to itself a judicial function in listing individuals as terrorists—by implication as global outlaws—although in doing so under Chapter VII it avoids formally making a determination of criminal activity which would warrant due process regulations and careful evaluation of evidence'. Considering the implications of Resolutions 1373 and 1540, she further argues:

> There is no great stretch in construing transnational terrorism, as a threat to international peace and security. However, there is indeed a very great stretch when the Security Council arrogates to itself the competence to identify not particular, but general, permanent yet amorphous threats to the existing order, and responds by legislating for the international community as a whole, thereby informally amending the Charter, usurping constituent authority, and radically changing the way international law is made and its function (Cohen 2008a, p. 461).

[1] 'Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968. The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council. The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from eighteen to twenty-seven. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from twenty-seven to fifty-four. The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a "vote, of any seven members of the Security Council", the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council' (UN, *Introductory Note*).

Arguably, avoiding a formal amendment of the Charter, in line with their interests, the Great Powers of the Council have kept the organisation up to date by using the powers granted to the Council under Chapter VII. In this vein, R2P's timely and effective implementation at any level lies at the hands of the members of the Council since there are no explicit alternative mechanisms or obligations set out by the Charter or the later adopted resolutions and conventions.

While the revision of the UN Charter to transform it into a state-of-the-art legal and political instrument that is also capable of dealing with human rights challenges of the new century without being fully reliant on the political will of the P5 remains an unresolved issue, another matter that arguably needs to be addressed is capacity and capability issues of the UN. In cases where members of the Council agree regarding a specific situation that they should prioritise human rights values over system values and, let us say, decide to authorise a military intervention to this end, then there arises the question of dispatching of troops.

In general terms, the UN is an ill-equipped organisation. It does not have a standing army and its budget is provided by the contributions of its state members. Hence, when the practice of the coercive end of R2P—pillar three—is in question, the UN can authorise an intervention if and only if it has the financial means and state members (or for that matter regional organisations such as the AU or NATO) that are willing to offer troops to carry out the military operation. Though shortages in terms of the financial capabilities or the military capacity of the UN may not fully rule out the possibility of undertaking a military intervention, it is likely to affect the 'success' or the outcome of the intervention in a negative manner. In this vein, capacity and capability are two key elements for R2P's implementation, not only for the employment of effective preventive strategies under pillar two, but also for the exercise of pillar three responsibilities either by enabling a timely and effective humanitarian intervention or leading to its success or failure. For instance, Barnett (2003, p. 23) notes that the failure in Somalia led to the UN's reconsideration of the criteria for conducting peacekeeping operations, while the concern to avert a failure was a determining factor in the reluctance to intervene in the case of Rwanda. In the 'Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda' inaction was noted in the following words:

> There was a persistent lack of political will by Member States to act, or to act with enough assertiveness. This *lack of political will affected* the response by the Secretariat and decision-making by the Security Council, but was also evident

> in the *recurrent difficulties to get the necessary troops* for the United Nations Assistance Mission for Rwanda (UNAMIR). Finally, although UNAMIR *suffered from chronic lack of resources and political priority*, it must also be said that serious mistakes were made with those resources which were at the disposal of the United Nations (emphasis added, UNSC 1999, p. 3).

Furthermore, as a witness of the deliberations on Rwanda in the UN, Barnett also remarks: 'I was (and still am) unaware of a single member state who offered their troops for' an operation by UNAMIR to intervene 'to halt the escalating violence' (in Hehir 2012, p. 218). As Wheeler (2002, p. 227) notes, though there were smaller states who argued for intervention, these were simply willing to 'volunteer the soldiers of other states for UN intervention'. Likewise, Chesterman (2001) concludes that lack of political will was the main failing of the humanitarian intervention of the 1990s.

Though peacekeeping and R2P military operations are not the same, the similarities between the processes in terms of putting them into effect gives an idea of what is lacking in the UN. In this vein, Annan's response to a question on the effectiveness and promptness of the UN's peacekeeping summarises the current picture:

> The United Nations can be as effective and as strong as the governments want it to be. And when it comes to peacekeeping the United Nations can be there on time, well-equipped and ready to act, if those member states with capacity and help take the decisions would also participate in these operations. […] Where the will is not there and the resources are not available, the UN peacekeepers will arrive late. It takes us on the average 4–5 months to put troops on the ground because *we have no troops. The UN doesn't have an army. We borrow from our governments*. So we can put on the ground the troops the *governments offer*. And as fast as they come, and not always with the equipment that they *promised. If those with the capacity were to cooperate, the UN can do the job, we would arrive on time, not late* (emphasis added, UNSG 2000).

As Hehir (2012, p. 221) concludes, 'this twin problem—the lack of will and the absence of sufficient military resources—has been responsible for arguably all those cases where the international response to a particular crisis has been lamentable'. In sum, the UN quite often suffers from lack of political will, bureaucratic inertia as well as capacity and capability issues to respond efficiently to humanitarian crises. A relevant question is, in this regard, what else entraps the UN into a group of dis-United Nations in dealing with R2P matters in specific.

North-South Divide, Representation, and P5 Veto

Weiss (2013, p. 53) argues that the 'well-known divisions between East and West during the Cold War have disappeared, but the United Nations continues to struggle with Member States that align themselves along regionally defined ideological and economic divisions, especially the North-South axis'. Such divisions are also apparent in states' approaches to R2P, given that the ICISS's propositions were evaluated with caution as there were 'several developing countries that were consistently wary of R2P, for fear that it could erode sovereignty and permit excessive intervention' (Welsh 2013, p. 376). Since its introduction to the international community, a dominant and lingering question has been the one that whether or not R2P is a disguise for neo-imperialistic drives.

Such concern[2] regarding especially the third pillar of the norm (and specifically the practice of humanitarian intervention as a measure under R2P) has been relevant even after the unanimous adoption of R2P in 2005. Summarising the general view of African states towards R2P, Okumu (2008) and Issaka (2008) note that the responsibility to protect is seen as a potential Trojan Horse because of their past colonial connections. For other states of the so-called South, similar arguments reflecting apprehension exist. For instance, during the informal debates following the Secretary-General's first comprehensive report on R2P in 2009, delivering a statement on behalf of the NAM, Egypt reminded that 'there are concerns about the possible abuse of RtoP by expanding its application to situations that fall beyond the four areas defined in the 2005 World Summit Outcome, and by misusing it to legitimise unilateral coercive measures or intervention in the internal affairs of States' (UNGA 2009c, p. 5). The Philippines urged that 'RtoP should be universal, that is, *applied equally and fairly to all States*, although the manner of implementation would be on a case to-case basis' (emphasis added, UNGA 2009c, p. 11). Guatemala raised many concerns among which was the 'lingering suspicion that the responsibility to protect can, in specific moments or situations, be *invoked as a pretext for improper intervention*' (emphasis added, UNGA 2009c, p. 15). Likewise, Pakistan urged that R2P should not be a tool to constrain the national sovereignty and territorial integrity of states, and its misuse should be prevented (UNGA 2009d, p. 3).

[2] For a summarised overview of individual states' and regional groups' perception of R2P on the basis of the statements presented during the 2009 plenary meetings following Secretary-General's report on the implementation of R2P, see the Appendix.

While some argue that the inherent suspicion towards R2P arises from the perception that R2P was born out of Western ideology, and that it can serve as a tool for neo-imperialistic ambitions (see Chomsky, in Cunliffe 2011; Mallavarapu in Thakur and Maley 2015), others posit that the notion underlying at the core of the responsibility to protect is not alien to other cultures. One example put forth in this regard, is Article 4(h) of the 2000 Constitutive Act of the African Union, which provides the Union with the right to intervene in a Member State upon the decision of the Assembly in cases of war crimes, genocide, and crimes against humanity. As Okumu (2008) explains, what the AU talks about is rather a 'right to intervene' in the case of grave violations taking place in the case of a failed state situations. In this vein, it is not Article 4(h) per se that relates to paragraph 139, given that R2P aims to shift the debate from the existence of a 'right to intervene' towards the assumption of a responsibility to protect populations. Also note that Article 4(g) codifies the principle of non-intervention, establishing that there is no 'inherent precedence' of one principle over the other. Nevertheless, an ideological similarity with R2P rests on the principle of non-indifference embraced by the AU in 2000, which primarily aims to contain crises before state failure occurs (Issaka 2008). Also speaking of the adoption of this principle, the co-chair of the ICISS, Algerian diplomat Sahnoun (2009) reminds:

> The idea itself of 'sovereignty as responsibility' was developed by the Sudanese scholar and diplomat, Francis Deng. And, unlike other regions, our legal systems have long acknowledged that in addition to individuals, groups and leaders having rights, they also have reciprocal duties. So the responsibility to protect is in many ways an African contribution to human rights.

It is also important to note that the idea of the responsibility to protect was the cooperative work of quite an inclusive commission composed of members from various nationalities. As Acharya (2013, p. 467) notes, 'sensitive to the prevailing divisions among Western and developing countries […] over the issue of humanitarian intervention, Canada, as the Commission's sponsor, deliberately sought to balance the representation in the Commission', which suggests that the composition of the Commission was constrained by 'the prospects for resistance and rejection by the developing countries'.

Though the human rights values promoted by the Charter or the World Summit Outcome Document may generally reflect western values, R2P arises as a product of mutual consent under paragraphs 138 and 139 as it was adopted by all the members of the General Assembly unanimously. Thakur (2012, p. 2) reminds that 'many non-Western societies have a historical

tradition of reciprocal rights and obligations that bind sovereigns and subjects'. McDougall (2014, pp. 76–77) notes that there has been considerable support from the Global South to R2P (see also Quinton-Brown 2013). Similarly, Claes (2012, p. 87) observes that states with past experiences of mass atrocities, such as Argentina, Bosnia-Herzegovina, Chile, Guatemala, Rwanda, Sierra Leone, and Timor-Leste, are strong supporters of R2P. Different initiatives such as the restraint on veto in cases of atrocity crimes, or the establishment of National Focal Points to enhance the implementation of R2P have been supported by countries like Costa Rica, Ghana, Argentina, Botswana, Côte d'Ivoire, Guatemala, and Uruguay. Furthermore, the achieved consensus on Resolution 1970 concerning the situation in Libya reveals that it is rather the means that creates the division among different powers than a general opposition against R2P. In this vein, as two vocal proponents of R2P, Thakur and Weiss (2009, p. 20) argue that 'sovereignty as responsibility is not really a North-versus-South issue other than a misleadingly superficial level, even though that is how, like so many other international issues, it is usually parsed'. In this context, regarding R2P's implementation under the auspices of the UN, though the North-South divide plays its part especially when cases are politicised, I would argue what matters even more is the issue of representativeness in the decision-making.

Claude maintains that the 'crucial feature of the United Nations is not its Charter but its members. What the Charter purports to require of the organization is less significant than what its members require it to import: their biases, objectives, rivalries, and concerns' (in Moore 1974, p. 243). Given that the implementation of R2P does not depend on a decision taken by a body that represents the whole of the United Nations, like the General Assembly, the biases and interests imported into the decision-making become of significance. While all of the state members of the UN are represented in the General Assembly, the same is not true for the Security Council. To date, around seventy percent of the Member States have never occupied a seat in the Council (UNSC n.d.). With its fifteen members, five of which enjoy a privileged status, only around eight percent from the totality of the UN can have a seat in the Council to make the most critical decisions on behalf of the international community. Furthermore, the decision process in the Council is likely to be an outcome of informal negotiations between the Great Powers of the Council taking place behind closed doors, which in return weakens the impact of the other members and non-members of the Security Council. As Krisch (2008, p. 136) exemplifies, the discussions on the 1986 Iran–Iraq war were in general built on the informal negotiations between the USA and the Soviet Union that took place before the official meetings of the Council.

This turned into a usual practice in which the rest of the P5 got involved in the negotiations at later stages, and during the 1990s majority of the decisions of the Council were shaped in the closed meetings among the P5 before the official Council debates (Krisch 2008, p. 136). In essence, the privileged position of the P5 allows them to dominate the discussions in the Council, and thus, when it comes to the evaluation of R2P cases, it arguably is mainly the biases and interests of the P5 that primarily drive the Council towards action or inaction.

Drawing a general picture of the Cold War period, Gaddis (2005, p. 159) concludes that 'the United Nations could act only when its most powerful members agreed on the action, an arrangement that obscured the distinction between might and right. And the veto-empowered members of the Council were unlikely to reach such agreements'. In the post-Cold War era, the number of vetoes cast by the P5 has significantly decreased in number, that is, from 193 to 27 (UNA-UK, n.d.). After the unanimous adoption of paragraphs 138 and 139, in R2P related situations veto was cast seven times, twice on Gaza, once on Myanmar, once on Zimbabwe, and three times on Syria. Notwithstanding the general positive drop in statistics, behind the scenes, the threat of veto continues to hamper the Council's process of adopting resolutions on international and/or internal crises. In short, as Luck (2008, p. 85) maintains, 'the Council remains, as it was in 1945, undependable, unaccountable, and unrepresentative'.

'Delivering as One'

Considering its various problems, one can hardly argue that the UN functions as a well-oiled machine all the time. The 2006 Report of the Secretary-General's High-Level Panel, which was embargoed, pinpoints the need for reform, and to this end, makes 'recommendations to overcome the fragmentation of the United Nations so that *the system can deliver as one*, in true partnership with and serving the needs of all countries in their efforts to achieve the Millennium Development Goals and other internationally agreed development goals' (emphasis added, UN 2006).

The UN suffers from lack of cooperation between its various agents as well as bureaucratic inertia. Regarding the former, in his comprehensive effort to identify what is wrong with the UN, Weiss (2013, pp. 8–9) differentiates between three UNs: the first UN, that is, 'the stage or arena for state decision making'; the second UN, 'the secretariats who work for member states but who have a certain margin for manoeuvre'; and the third UN, comprising of

'nongovernmental organisations (NGOs), independent experts, consultants, and committed citizens whose roles include pressing for action, research, policy analysis, and idea-mongering'. In this three-staged layering of the UN, the lack of communication and cooperation between the agents leads to failure.

In the specific case of R2P, a relationship that matters is the one between the Security Council and the Special Advisers to the Secretary-General on the Prevention of Genocide and the Responsibility to Protect, who are responsible 'to alert relevant actors where there is a risk of genocide, and to advocate and mobilize for appropriate action' (OSAPG, n.d.). Considering that the Security Council is the assigned authority to evaluate R2P cases, it is important for the Special Advisers to inform the Council on relevant situations. Nevertheless, past experience has proven of an unfavourable relationship. As Hehir (2012, p. 223) notes,

> the Security Council has often refused to even allow the Special Adviser to address the Council lest his address would focus too much attention on a particular case. The Security Council is, in effect, willing to countenance the existence of the Special Adviser so long as the powers afforded to Deng are minimal and the P5's engagement with the Special Adviser is discretionary.

On the path to 'delivering one UN', overcoming bureaucratic inertia is an important step. Therefore, it is important that there is correspondence between the three stages of the UN and their relevant agents. When it comes to a consistent practice of the collective responsibility to protect, a Security Council that is indifferent to the evaluations of relevant agents cannot deliver for the UN. In a nutshell, the Security Council has the authority to implement R2P through any means necessary but it is not obliged to do so. In this vein, as Buchanan and Keohane (2011, p. 51) assert, '[t]he central problem with the Security Council is, […] not what it does, but what it fails to do'.

R2P and UN Reform

> The current architecture of managing global affairs is broken and needs to be fixed. […] We cannot continue to run the world based on countries that won a war 60 years ago (Annan, in Hooper 2009).

While considering the Security Council as the most appropriate body 'to deal with military intervention issues for human protection purposes', the ICISS (2001a, p. 49) also questions the Council's 'legal capacity to authorize military intervention operations; its political will to do so, and generally

uneven performance; its unrepresentative membership; and its inherent institutional double standards with the Permanent Five veto power'. Hence, the Commission concludes that '[t]here are many reasons for being dissatisfied with the role that the Security Council has played so far' (2001a, p. 49). Alas, the first decade of R2P under the auspices of the UN has once more reaffirmed such dissatisfaction thanks to the inconsistent application of the norm.

Besides various other occasions, the shortcomings of the Security Council in terms of taking effective action were also raised by Member States in an R2P context during the 2009 follow-up meetings, and put forth as one of the reasons why the UN should be reformed. The issue of reform—either a general reformation of the UN or a specific reformation of the Security Council—has been a recurring theme. To date, there have been several reform proposals either by prominent individuals or groups of states, most of which have never been realised.

In the case of the Security Council's reformation, most of the proposals have been focused on the enlargement of the membership to the Council (either with or without veto powers for the new members). In this context, a common goal pursued in the Security Council reform models has been the transformation of the Council into a more representative one. As Thakur (2004, p. 7) notes, a reformation of the Security Council is needed for 'realigning the composition of the Security Council with the contemporary realities, not historical nostalgia'. With its feasibility on the one hand and the willingness of the P5 for pursuing such change on the other, how to fix the Security Council remains a question to be answered. Recently, in relation to the practice of the responsibility to protect, three initiatives have been at the forefront in considering ways to enhance the implementation of the responsibility to protect through the Security Council and under the auspices of the UN in general. Prior to dwelling on more challenging ways to rethink the machinery of the responsibility to protect, these proposals will be overviewed.

Responsibility While Protecting (RwP)

Though the decisions on Libya and Côte d'Ivoire may seem to have affirmed a move of the international community from reluctance towards decisive action, the way the two military operations were carried out have proven right the scepticism against humanitarian interventions as raised by a large number of Member States during the plenary meetings of 2009. Abstained from the vote on Resolution 1973 as it felt uneasy about the article authorising 'all necessary means', 'Brazil's reaction to what it saw as an abuse of the mandate

in Libya' was put into words in the 'concept note entitled *Responsibility While Protecting: Elements for the Development and Promotion of a Concept*', with the aim to supplement the responsibility to protect in implementation (Stuenkel and Tourinho 2014, p. 391).

Presented as an annex to the letter addressed to the Secretary-General by the Permanent Representative of Brazil to the UN, the note placed emphasis on nine points to pay attention to, which can be categorised under three groups. Firstly, the note placed the understandings of prevention and preventive diplomacy at the heart of R2P with the belief that they can diminish the possibility of atrocity crimes, as the contention of Brazil was that the priority for operationalisation should be on the first two pillars of the responsibility to protect, and thus, the non-coercive aspects of the norm (Stuenkel and Tourinho 2014, p. 391). Accordingly, the note referred to the prioritisation of prevention to avoid 'the risk of armed conflict and the human costs associated with it, and the exhaustion of pacific means' (UNGA–SC 2011b, para. 11/a, b).

Second, on the issue of the use of military force, it emphasised that the use of force must be authorised by the Security Council, and in exceptional circumstances by the General Assembly in accordance with the 'Uniting for Peace' Resolution. Following a similar logic to that of the ICISS's threshold criteria, it urged for limitations to be imposed on the extent of military action as well as 'prudent and judicious use of military force that did not generate more harm than good' (Stuenkel and Tourinho 2014, p. 391), Accordingly, reaffirming past understandings, it suggested that military force should be adopted only as a last remedy, applied proportionally, and kept in conformity with the set goals of the mandate established by the Security Council and international law (UNGA–SC 2011b, para. 11/c–f).

Lastly, maintaining that the Security Council is the ultimate authority, it argued for the necessity to follow these guidelines starting with the instigation of the authorisation until its suspension. Furthermore, it suggested that there is need for the improvement of Security Council's procedures for monitoring and assessing 'the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting' as well as ensuring the accountability of those to whom authority is granted to resort to force' (UNGA–SC 2011b, para. 11/g–i).

The initiative found support from groups such as the Union of South American Nations (UNASUR), the Arab League, and the South Atlantic Peace and Cooperation Zone (ZOPACAS). On the basis of the informal General Assembly dialogues of 5 September 2012, McDougall (2014, p. 78) observes that including Russia and China, major powers of the Global South were

those to welcome the initiative first due to their cautious approach towards R2P, whereas pro-R2P countries of the North, including some countries of the Global South, seemed to be open to the idea of further discussion of RwP 'as a means of refining and improving the concept'.

The year after it was introduced, in his subsequent fourth report on R2P, the Secretary-General welcomed the RwP initiative of Brazil (UNGA–SC 2012, p. 13). In his report, Ban defines the essence of RwP as 'doing the right thing, in the right place, at the right time and for the right reasons', and considers it as a call 'for vigilance and sober judgment in identifying where threats of magnitude exist and are growing' (UNGA–SC 2012, p. 14). Furthermore, in his latest report, the Secretary-General following up on the RwP initiative determines that '[a]n additional priority for the responsibility to protect's next decade is to consider how protection missions authorized by the Security Council, but conducted by third parties, should be reported and reviewed, thereby addressing the concerns expressed after the Libya intervention in 2011' (UNGA–SC 2015, p. 17).

All in all, it can be observed that Brazil's RwP acquired positive responses from fellow Member States. Nevertheless, on its own, RwP does not warrant an enhanced implementation of the collective responsibility to protect as it rather focuses on the way of implementation than ensuring implementation. In this regard, there is still need for additional measures to improve the mechanisms for timely and effective implementation of the responsibility to protect at all three pillars, and one of the efforts to this end, is the French proposal of 'Code of Conduct'.

Code of Conduct

At the time of the establishment of the UN, the veto power was enacted to ensure the continued participation of the five major powers to the Organisation. In this regard, smaller states were not offered the option to challenge the privileged position of the Great Powers, as this was a given and the alternative was 'no organisation at all' (Krisch 2008, pp. 136). Nevertheless, over the years, the uneasiness about the veto power of the P5 has been voiced at various occasions. One of the first proposals to restrain veto, which was put to vote and failed, was made during Dumbarton Oaks meetings, where Australia suggested suspending the veto right regarding decisions on peaceful settlement of disputes (Krisch 2008, p. 135). In the later periods, proposals on the reform of the veto right were brought up on a regular basis. While African states and groups such as the NAM ask for the abolishment of the veto considering it an

'anti-democratic practice', some others more simply argue for its restriction. In both cases, a common understanding is the perception of the veto right as a 'violation of the principle of sovereign equality among states' (Fassbender 2004, p. 351).

Aside from the general disparities it creates among the Member States of the UN, in the context of R2P, the veto becomes a roadblock against the second and third pillars, and thus, against the effective and timely implementation of the norm. For instance, focusing specifically on this aspect, in his speech delivered on behalf of the Caribbean Community in the 2009 debates, Mr. Wolfe commented:

> How can we guarantee that the Security Council will refrain from the use of the veto and will not be stymied into inaction in future cases where crimes of genocide, ethnic cleansing, war crimes and crimes against humanity have occurred, are occurring or are on the brink of occurring? This is one area where urgent reform of the Security Council is required and around which virtual unanimity exists' (UNGA 2009f, p. 6).

As mentioned previously, since 2005, in its consideration of R2P situations, the Security Council has officially been blocked seven times due to the vetoes of some of the P5. Notwithstanding the overt vetoes cast, various times the Council was rendered incapable with the threat of veto so that either the draft resolutions were shelved without a vote, or inefficacious resolutions were adopted.

At the Sixty-Eighth Session of the General Assembly that took place on 24 October 2013, in the face of the worsening situation in Syria, reflecting on the worsening circumstances French President Francois Hollande stated that 'the most serious threat of all was inaction; the worst decision was no decision; and the worst danger was to see no danger. Every time the United Nations did not act, peace suffered'. Seeing the P5 veto as the core of the problem, Hollande called for 'a code of good conduct', which is a mutual commitment of the P5 to temporarily put aside their veto right when considering cases of atrocity crimes. The working principles of the code include the determination of the nature of the crimes committed in a specific situation as atrocity crimes upon the referral of the situation to the Secretary-General by at least fifty members of the General Assembly. Following this, with the decision of the Secretary-General, the 'Code of Conduct' becomes effective. Yet, there is one exception for this voluntary restraint on veto, and that is the cases affecting the 'vital national interests' of the P5 (UNA-UK n.d.).

Notwithstanding the fact that it was actually proposed by one of the P5, the idea itself is not new. Prior to France's call, in its report on R2P the ICISS

(2001a, p. 51) too suggested a restraint on veto through a 'Code of Conduct' while discussing the legitimacy of R2P in relation to the veto power. This call was reiterated by the then Secretary-General Kofi Annan in his High Level Panel Report in 2004, but it was not enshrined into paragraph 139 of the Outcome Document. Later on, similar calls were made in 2008 by the US Genocide Prevention Task Force (USHMM n.d.); in 2009 with the Report of the Secretary-General on R2P's implementation, where Ban urged the P5 'to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect' (UNGA 2009a, pp. 26–27); in 2012 by the Small Five (S5) in their proposal, which was withdrawn upon pressure by some of the P5; and then in 2013 by the Accountability, Coherence and Transparency (ACT) Group.

Considering that members of the P5 act in good faith and display the political will to do so, in theory, the French proposal of 'Code of Conduct' can easily be adopted because it does not necessitate any official amendments to the Charter, or for that matter, a permanent removal of the powers of the P5. Yet, for the very same reasons, it is also questionable what can be achieved by such practice since it requires a genuine commitment by the P5, which so far has not been persistently displayed, and since the 'good conduct' can be waived on the vague grounds of the involvement of national interests. Most recently, taking up on France's proposal, in his latest report on R2P published in July 2015, Ban urged the P5 to refrain from exercising their veto right in matters of atrocity crimes. Different from the 'Code of Conduct', Ban introduced the condition for the members which were to veto a draft resolution to 'explain publicly what alternative strategy they propose to protect populations at risk' (UNGA–SC 2015, p. 17). This slight change aims to devise alternative strategies for action in the cases of deadlock in the Council and increase communication and/or collaboration among the Member States. Nevertheless, without a formal change in the powers of the P5, no one can assure a consistent and timely implementation of the collective responsibility to protect through practices of voluntary restraint on veto.

Rights up Front

The 'Human Rights up Front' action was launched by the Secretary-General Ban Ki-moon in late 2013 as an initiative aiming to protect human rights worldwide through the pursuit of cultural transformation within the UN system

(UNSG n.d.). A main drive for the pursuit of such an initiative is indicated in the International Review Panel's 2012 report on Sri Lanka, which characterised the UN action in the country as a 'systemic failure' (UNDG 2014).

Taking lessons from past failures, under the initiative, action is planned in six main areas for 'anticipating and responding to crises affecting civilian populations'. The first action is to place the mentality of human rights into the very centre of the Organisation in the sense that the staff have a complete understanding of the UN's and their individual human rights obligations. Action 2 concerns the flow of information, and aims to provide the Member States with true information on peoples at risk from a human rights and/or humanitarian law perspective. Action 3 is about 'ensuring coherent strategies of action on the ground and leveraging the UN System's capacities to respond in a concerted manner'. Action 4 targets 'early and coordinated action' by improving communication between the Headquarters and the filed. Action 5 aims to boost the human rights capacity of the Organisation through the improvement of coordination between its current human rights bodies. Finally, Action 6 focuses on information management and developing a common organisational system to this end (UNDG 2014).

As Ban puts it, the initiative 'seeks to embed a commitment to protecting populations from serious violations of international human rights and humanitarian law in the operational culture of the United Nations' (UNGA–SC 2015, p. 16). In this vein, 'Rights up Front' can be considered as a long-term effort in terms of enhancing the capacity of the UN, which does not require a radical formal change.

Rethinking the UN/R2P Machinery

As explained in the first part of the chapter, R2P's implementation at the international level suffers from the problems inherent in the structure of the UN and its Security Council. In light of a decade-long R2P experiences, it is possible to deduce that as long as it remains dependent on the usual practices of the Security Council and on the questionable commitment of its Member States, the responsibility to protect cannot achieve what was envisioned for it by the ICISS, or by the past and present Secretaries-General. While the initiatives of the 'Code of Good Conduct' and 'Rights up Front' are positive developments for more consistent implementations of pillar two and pillar three measures of R2P, they are, arguably, not sufficient to transform R2P into a functional gear of the UN's machinery. In this vein, as implied throughout the chapter, there is need to reconsider R2P's dependence on the Security

Council, which Hehir (in Hehir and Murray 2013, p. 50) calls the 'perennial problem' for R2P. To this end, this last section puts forth proposals requiring rather drastic changes in the machinery of the UN in relation to the implementation of the responsibility to protect by the international community.

Quis Judicabit? Seeking an Agent for Enforcement

In its current state, considering that R2P is not a legal norm, a supposed strength that is attached to its mandate under the Security Council is that, this enables not only the authorisation of the use of military force in a legal manner, but also the adoption of uniform multilateral sanctions under pillar three, which are binding and much more assertive compared to a mass of unilateral measures. As Krisch (2008, p. 145) asserts, 'the Security Council has indeed become the source of "collective legitimization" that Inis Claude had already identified in the UN in the 1960s'. Nevertheless, the 'Council is not set up as a law-enforcement agency but deliberately as a political organ. […] It has been established largely as a policeman, not as a jury, and it operates in an essentially political fashion' (Krisch 2008, p. 143). It is such nature of the Security Council endowing the P5 with the right to veto that is prone to hamper the decision-making in cases of atrocity crimes.

In terms of transforming R2P into an effectively exercised norm, under the question of the reform of the Security Council, the suspension of the veto in R2P implementations stands out as a primary consideration. For instance, Ayoob (2010, p. 136) argues that if the Security Council must remain as the central authority on the decisions for humanitarian intervention, not only that its membership has to be enlarged to make it more representative and 'geographically equitable', but also that the veto right has to be suspended for cases concerning humanitarian interventions. Ayoob (2010, p. 136) also highlights that past attempts to materialise such change have so far failed due to P5 veto. Under the current circumstances, there is also no good reason to believe that the political will is there, since there are no constraints on the major powers wielding the power of veto. As Krisch (2008, 134) explains, 'the only real constraint is that [a permanent member] needs to ensure the consent (or acquiescence) of the other Permanent Members. Even if this consent is not forthcoming, the Security Council does not truly operate as a constraint: given it cannot act against a Great Power, the Council merely fails to be a useful instrument'. Hence, returning to the original proposition of the ICISS, I argue for the placement of R2P under the mandate of the General Assembly, but in a permanent manner.

Prior to discussing the details of my proposal, which requires a structural change in the system of the UN, three relevant proposals deserve attention—namely those of Mohammed Ayoob, Heather Roff, and Aidan Hehir—arguing for the establishment of new international bodies for the consideration of humanitarian interventions. Ayoob (2010, p. 136) argues for the establishment of a 'Humanitarian Council' within the UN to remove the jurisdiction of humanitarian interventions from the Security Council. Regarding this Council's composition, he suggests that it 'should have adequate representation from all regions and consist of a rotating, fixed-term membership of about fifty, similar to the number of members in the Economic and Social Council', and its decision-making should be based on the understanding of a two-thirds majority vote without the right to veto as applied by the General Assembly in discussing substantial matters. 'The oversight function vested in this council should be exercised through the UN Secretary-General who ought to report periodically to the proposed body about every authorized intervention. All interventions not authorized by the Humanitarian Council should be considered illegal and illegitimate' (Ayoob 2010, p. 136).

In a similar fashion, Roff (2013, p. 111) asserts 'that the duty to protect must be institutionalised. Institutionalisation is required because it is a duty of justice in a state of nature which renders it provisional, and provisional duties must become peremptory'. To this end, she suggests the establishment of an independent institution, an R2PI—authorised by, but autonomous from, the UN—which can [first and foremost] 'promulgate public rules for the practice of R2P; […] monitor domestic governments to ensure compliance with those rules; and […which] must be able to act as an ombudsperson for the UN' (Roff 2013, p. 205). In Roff's formulation, when there is an escalating humanitarian situation, the R2PI is to urge the Security Council for the deployment of the UN Rapid Reaction Force (RRF), which according to Roff (2013, p. 215) is 'not just a standing army; it is the necessary coercive mechanism capable of protecting each person in his freedom, equality, and independence'. Different from other proposals on RFF, Roff (2013, p. 216) suggests that this force, which is 'under the direction of the UN', would not only act as a military one but also as a police force which would be able to, for instance, execute arrest warrants issued by the ICC. In the case of the Council's incapability to take action due to the P5 veto, following the path the ICISS previously put forward, Roff (2013, p. 216) suggests the referral of the matter to the General Assembly. Nevertheless, Roff (2013, p. 217) also posits that for R2P to become fully authoritative, the R2PI accompanied by 'a reformed ICC and implemented cosmopolitan RFF' should become 'a surrogate to the state of states'.

Last but not least, focusing on the military end of the responsibility to protect, in his book Hehir (emphasis added, 2012, p. 210) puts forth 'two major innovations; a new *international judicial body* charged with judging the most appropriate response to *intra-state crises*, and a standing UN military force'. While Hehir (2012, p. 233) does not suggest this new body as a higher authority above the Security Council, he argues that the Council's dismissal of the independent judicial body's recommendation for the authorisation of a military intervention would make it legitimate and may be even legal for other states to act without the Council's authorisation. He further argues that if the Security Council decides to intervene in an intra-state crisis, then the judicial body would not get involved in the situation, as the driving idea is to make the judicial body functional upon the failure of the Security Council to take the necessary measures. Thus, in the case of the Security Council's failure to respond to a specific situation, the judicial body takes the matter into its hands and decides on one of the two determinations: whether one or more of the atrocity crimes have been taking place, and 'the appropriate response'. If the judicial body would decide that military means should be employed, then the implications of its decision would be twofold. In the first scenario, given the legal weight of its decisions, the judicial body could ask the Security Council to revisit its response and to act more decisively. In the second scenario, the decision of the judicial body may be a catalyst for individual states to come together and take action upon the failure of the Security Council to do so. On the grounds of the ruling of the judicial body the intervening states would be able to claim for the legitimacy and even the legality of their action (Hehir 2012, p. 233). Lastly, Hehir suggests the formation of a standing army, which in essence would be a rapid reaction force, to be able to carry out the decisions of the judicial body without being dependent on the will of the Member States of the UN. With a military ready to be deployed, in the case of a persisting failure of the Security Council in taking the necessary measures, 'the judicial body could declare the Security Council to be paralysed and to appeal for states to unilaterally take the requisite action. Failing this, the body could deploy the UN standing army' (Hehir 2012, p. 235).

In the three formulations overviewed, the common point has been the establishment of an independent body. While Ayoob's focus was on determining the legitimacy and legality of humanitarian interventions through a newly established commission, Roff's emphases were on the promulgation of R2P rules, and the norm's institutionalisation as well as its implementation through 'a state of states' sort of R2PI. Finally, Hehir's focus was on ensuring action, through the creation of an independent judicial body which could exert its influence on the Security Council, and if not, on individual states,

or alternatively which could itself deploy the standing UN army to undertake the necessary decisive action. While the idea of creating a new international political or judicial body that is capable of authorising military intervention is an appealing one, in the attempt to rethink the UN's R2P machinery, I believe that all the three scenarios are more far-fetched than the possibility of changes that can be imposed on the powers of the General Assembly. In this vein, what I suggest is the transfer of R2P matters to the General Assembly in a permanent manner. Representative of the whole of the world organisation and based on an egalitarian understanding, the Assembly can create collective pressure on states that are failing to uphold their responsibility towards their populations. Arguably, the evolution of R2P has been taking place under the auspices of the General Assembly, so should its implementation, but with changes relating to the powers of the General Assembly in a way to make its resolutions *legally binding* in the exceptional cases of R2P situations.

Regarding practice, taking into consideration the limited nature of the membership to the institutions proposed in alternative formulations, a relevant concern is whether or not it would be more difficult to achieve a decision in an assembly of 193 states compared to one that is composed only of fifteen states. Without the roadblock of veto, the General Assembly could adopt decisions on R2P situations with a vote requiring a two-thirds majority of the members present and voting, and excluding those who have abstained from the vote. Since the decision would not require unanimity, adopting resolutions would be much more possible through the General Assembly in comparison to a Security Council that is driven by the conflicting interests of its Great Powers, and that is always prone to be blocked by a veto. A demonstration of this is the adoption of a resolution by the General Assembly condemning the violence in Syria at a time when the Russian and Chinese vetoes had already blocked draft resolutions on the very same matter in the Security Council (UNMCPR 2013).

For a humanitarian crisis to be discussed in the General Assembly with legally binding consequences, which would allow to employ measures up to and including the use of the force, the Secretary-General would have to urge the General Assembly for a preliminary vote on the matter. Previously briefed about the humanitarian crisis in detail by the Secretary-General and/or his special advisers, upon the call of the Secretary-General, the General Assembly would convene to discuss the matter and to put it into vote. If the matter achieves to acquire a simple majority in this preliminary vote, then it would be considered as an R2P situation and carried to the formal agenda of the General Assembly for further discussion at the shortest term possible. At the end of the process, on the basis of a two-thirds majority vote, the

General Assembly would be expected to pass a resolution listing the measures to be adopted and the mandate carefully stated. In making its decision, the Assembly is to prudently determine the necessary measures on the basis of the relevant UN human rights agents' reports and fact-finding missions. In organising these different agents at play, Secretary-General assumes the central stage.

Based on experience, it is plausible to expect the Secretary-General, who is also an institutional moral agent, to act objectively on R2P matters. In this regard, at the initial stages of the evaluation of R2P matters, the Secretary-General would play a key role in the process. In his/her decision to bring a case before the General Assembly, the Secretary-General may consult the work of two different agents. The first is the Joint Office of the Special Advisers to the Secretary-General on Genocide and on the Responsibility to Protect, which so far has displayed a hands-on approach in R2P crises and openly urged for the effective implementation of the responsibility to protect on various occasions in a timely manner. It should be reminded that Member States have already pledged their full support for 'the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide' under paragraph 140 of the World Summit Outcome (UNGA 2005b). In this vein, informed in real-time by the two (supposedly) impartial special advisers, the Secretary-General could decide in a timely fashion on the deliberation of an R2P case within the General Assembly. Such direct communication and uncensored flow of information would allow situations to attract the immediate attention they deserve and possibly enable the implementation of the responsibility to protect at the earlier stages of humanitarian crises, rather than leaving issues lingering (as the Security Council did in the past by refusing the address of the Special Adviser Francis Deng to avoid focusing too much on a specific case).

The second agent is the Human Rights Council, among the functions of which come 'making recommendations on the promotion and protection of human rights, contributing to the further development of international human rights law, mainstreaming human rights within the UN system, and conducting a universal periodic review of each state's compliance with its human rights obligations and commitments' (Schrijver 2007, p. 817). Though at times the devotion of some state members of the Human Rights Council to human rights has been questioned, upon the events of 2011 the suspension of Libya from the Council, which was an elected state, has set a promising precedent (Weiss 2013, p. 153). To date, the Human Rights Council has proven to be vocal in R2P situations including those cases where the Security Council kept its silence. In this vein, taking up on the recommendations of

the Human Rights Council, the Secretary-General would be able to bring an issue before the General Assembly for consideration as an R2P matter, and light the fire for timely and decisive action.

Though I believe that the transfer of the mandate over R2P-relevant matters from the Security Council to the General Assembly would increase the efficiency of the norm in terms of implementation, I am also aware that the materialisation of such scenario requires a mammoth transformation within the UN, which is also subject to the approval of the P5, and therefore problematic. Article 108 of the Charter reads that

> [a]mendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, *including all the permanent members of the Security Council* (emphasis added).

In this vein, like in any other critical matter of concern for the implementation of R2P, the UN Charter empowers the permanent members with a veto over Charter amendments. Considering past resistance to the reform of the UN, especially of some of the P5, given its magnitude the proposal I put forth is not very likely to secure the affirmative votes of all of the P5. Arguably, the same assumption applies to the formulations of Ayoob, Hehir, and Roff too. Thus, it may help to consider a more modest proposal as an alternative that is possible to materialise in a shorter term.

'Uniting for the Collective Responsibility'

In its discussions on the right authority, when considering the scenario of the deadlock of the Security Council with a veto on an R2P situation, the ICISS (2001a, p. 53) suggests to carry the matter to the General Assembly under the 'Uniting for Peace Resolution' in order to be able to apply coercive measures. Although such an option did not find a place in the wording of paragraph 139, later, in his report on the implementation of R2P, the Secretary-General reiterated the availability of such an alternative in the case of a veto cast (UNGA 2009a, p. 25). Aside from the references to the procedure in various documents, there have also been actual calls for the application of the 'Uniting for Peace' procedure, as did Cotler and Genser (2013) concerning the humanitarian crisis in Syria.

Established under Resolution 377(V) A, the underlying idea for uniting for peace is that,

> if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security (UNGA 1950, p. 10).

At the heady days of the Cold War, the procedure was applied a few times, and in most of its decisions, the General Assembly decided to apply measures not including the use of force.

Building on the precedent of the 'Uniting for Peace' procedure and the existing iterations to invoke the procedure in cases of R2P emergencies, what I suggest as a substitute is the adoption of a 'Uniting for the Collective Responsibility' approach, which can be used to bring a matter before the General Assembly in times when the Security Council is rendered incapable due to a veto while dealing with specific R2P crises requiring immediate attention. Although it cannot be the ultimate remedy, the adoption of a resolution following a similar logic to that of Resolution 377 A (V) for the implementation of the responsibility to protect may increase the effectiveness of the norm, by at least creating a not-inconsiderable degree of political pressure, if not the necessary legal grounds for collective action.

Why adopt another procedure while there is already an accepted and practiced one? My answer is pretty straightforward. The current problem with the R2P of the World Summit Outcome is that it is stuck in the vicious loops of the UN, and it lacks its own instruments for implementation. Since the 'Uniting for Peace' Resolution refers to threats to international peace (as well as breaches of the peace and acts of aggression), it is capable of creating the necessary grounds for invoking action; yet, I believe, it conceptually and philosophically falls short in scope for R2P matters. Not all R2P situations constitute a threat to international/regional peace and security, especially at their early stages. R2P has its own framework and logic for humanitarian action—whether of preventive or reactionary sort—which places human rights at the forefront rather than the security of states, thus, its ideology should not be undermined to that of a threat perception against regional/international peace and security. In this vein, for the timely exercise of the collective

responsibility to protect, there is need to devise an alternative strategy as well as an instrument for implementation. In light of this, with the adoption of a resolution of 'Uniting for the Collective Responsibility', following the idea set by Resolution 377 A (V), I suggest that the General Assembly should be made capable to deal with R2P matters through emergency special sessions to take immediate measures to contain escalating situations. This proposition, I believe, is still idealistic but more feasible than my first proposition.

A Militarily Capable World Organisation

An additional issue that needs to be addressed in relation to my two proposals, as also raised by Hehir (2012) and Roff (2013), is the creation of a UN army. While Article 47 of the UN Charter envisions the idea of a standing Military Staff Committee, this has not yet been realised mainly because of the resistance from the P5 (Weiss 2013, p. 186). In commemoration of the tenth anniversary of the Rwandan genocide, Annan remarked:

> The genocide in Rwanda should never, ever have happened. But it did. The international community failed Rwanda, and that must leave us always with a sense of bitter regret and abiding sorrow. If the international community had acted promptly and with determination, it could have stopped most of the killing. But *the political will was not there, nor were the troops*' (emphasis added, UNMCPR 2004).

As Weiss (2013, p. 186) notes, the need for a UN rapid reaction capability has been voiced many times, especially when the debate was rekindled with the 1994 case of Rwanda or its anniversaries. The criticisms against the lack of UN troops ready for action and the arguments for the development of one have been recurring themes in academia.[3]

[3] Some examples from the mounting literature discussing the creation of a standing UN army are: Roff, H. (2013) *Global Justice, Kant and the Responsibility to Protect: A Provisional Duty* (Oxon: Routledge, 2013); Hehir, A. (2012) *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (London: Palgrave Macmillan); Pattison, James. (2008) 'Humanitarian Intervention and a Cosmopolitan UN Force', *Journal of International Political Theory,* 4/1, pp. 126–145; Caney, S. (2005) *Justice Beyond Borders* (Oxford: Oxford University Press); Woodhouse, T. and Ramsbotham, O. (2005) 'Cosmopolitan Peacekeeping and the Globalisation of Security', *International Peacekeeping*, 12/2, pp. 139–156. Kinloch-Pichat, S. (2004) *A UN 'Legion': Between Utopia and Reality* (London: Frank Cass); Held, D. (1998) 'Democracy and Globalization' in Archibugi, D., Held, D., and Köhler, M. (eds.) *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge: Polity Press); Kaysen C., and Rathjens, G. (1996) *Peace Operations by the United Nations: The Case for a Volunteer UN Military Force* (Cambridge: American Academy of Arts and Sciences); Conetta, C. and Knight C. (1995) *Vital Force: A Proposal for the Overhaul of the UN Peace Operations System and for the Creation of a UN Legion*

The literature also has examples of work drawing on alternative paths. For instance, Erskine (2014, p. 116) asks 'which body, or bodies, can be expected to discharge a duty to safeguard those who lack the protection of—or, indeed, come under threat from—their own government?' Her answer is 'informal associations such as coalitions of the willing' (Erskine 2014, p. 137), which seems to go along the lines of the suggestion of the ICISS (2001a, p. 55) that it is reasonable to expect concerned states to take action in grave cases requiring immediate reaction. Nevertheless, considering their limits, Erskine (2014, p. 137) states that these associations

> have neither the potentially sophisticated capacity for deliberation manifest in highly developed mechanisms for accessing and processing information nor the capacity for institutional learning whereby an organization is able to reflect on past experiences (and the consequences of previous acts and omissions) in a way that allows calculated revisions to policies, practice, codes of conduct, and organizational culture. Nor is there the same potential within such informal associations to integrate coherently the roles of their constituents and thereby achieve a comparably complex level of coordinated action.

In light of this, accompanying the rest of the pro-RFF scholars in the literature, she concludes that 'both individual human and institutional moral agents also have an obligation to create, empower, or reform those formal organizations best able to respond to crisis so that such ad hoc arrangements do not exhaust our options in the future' (Erskine 2014, p. 137). Following the arguments for the creation of a permanent military force for the UN, as I have already mentioned in different sections of this chapter, I argue that the military (in)capability of the UN obstructs the timely and effective implementation of R2P under its third pillar.

As demonstrated in Chapter 4 with the overview of the reports on R2P from 2009 to 2015, in the second half of R2P's first decade, the Secretary-General at various times underlined that R2P is not only about military intervention, and generally focused his reports on the preventive aspects of the norm as established under pillar two. While such emphasis is of significance in developing an early response to R2P crises, this should not distract us from enhancing the tools of pillar three in the meanwhile. Arguably, the absence of a standing UN military force is not only a reason for inaction due to lack of political will, but also one of the relevant factors for the continued suspicion

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(Cambridge: Commonwealth Institute); Hillen, J. (1994) 'Policing the New World Order: The Operational Utility of a Permanent UN Army', *Strategic Review*, 22/2, pp. 54–62. Urquhart, B. (1993) 'For a UN Volunteer Military Force', *New York Review of Books* (10 June).

towards the coercive measures of R2P. As the interventions in Libya and Côte D'Ivoire revealed, the issue of the extent of the mandate in carrying out the military operations through volunteering states or organisations, and the genuine motives of the interveners are problematic aspects of pillar three implementation. The absence of UN's own military force requires the Organisation to appeal to its Member States or other international/regional organisations—for instance, like NATO, which has a mixed track record in terms of the legality and legitimacy of its operations. Assuming that there are states willing to contribute troops for an operation, then, there arises the possibility that other states may question the motives of the intervening states, leading to tension/suspicion later in decisions on other situations—as did the Libyan precedent in the case of Syria.

In light of this, disputably, building a permanent military capability for the UN may help to overcome the issue of lack of political will towards coercive action as well as to lessen problems that would arise in relation to conduct and mandate. As Roff (2013, p. 119) summarises the arguments of the proponents of an RRF, the availability of an RRF would enable the deployment of troops quickly in any part of the world at any time, and as this would be a 'voluntary force, and not subject to any state, the RRF would be truly cosmopolitan, an army for the protection of human rights'. In this vein, I would suggest that an RRF under the direct mandate and jurisdiction of the UN—with soldiers accountable for any crime they might commit, and thus, subject to prosecution by the ICC—would help to ease the suspicion towards the coercive measures of R2P, and may encourage states to make their decisions more objectively.

R2P and the Existing Legal Machinery

Last but not least, as an additional consideration, I suggest to rethink R2P's place in international law. As discussed in Chapter 4, Paragraphs 138 and 139 of the Outcome Document did not establish the responsibility to protect as a legal duty or norm, though it is possible to argue that states are individually bound by the existing legal instruments that they are already part of, such as the Genocide Convention or the Rome Statute. Furthermore, as the Secretary-General Ban Ki-moon emphasises:

> All acts constituting the crimes and violations related to the responsibility to protect are prohibited under international customary law, which is binding on all States regardless of their treaty obligations. Ethnic cleansing, while not defined as a distinct crime under international criminal law, is often a result of

> a combination of acts that could constitute genocide, war crimes or crimes against humanity' (UNGA–SC 2013, p. 3).

In a nutshell, the idea is that all Member States of the UN have common obligations regarding the protection of human rights under international law. In this vein, regarding the legal implications of the responsibility to protect, the problem is not necessarily lack of legal duties on the part of individual states but rather on the part of the international community. With its reluctant and loose language, Paragraph 139 does not define or even hint at any legal obligations for the international community to respond to manifest failures of states in protecting their populations. As explained in Chapter 4, this was actually what states like the USA purposefully tried to avoid in the formulation of the Summit Outcome, and thus pushed for a wording speaking of preparedness to act rather than a duty to respond. In this regard, on grounds of the Outcome Document there is, indisputably, no legal obligation for the international community to act in all R2P crises, let alone a possibility to punish the failure of the international community to uphold its pillar two and three responsibilities.

Regardless of how often Member States indicate in their individual statements that non-indifference should be the driving principle, and that there is a necessity to take precautions to avoid inaction, in the absence of a legally defined responsibility to protect it does not seem likely that proper R2P response will be warranted on a case-by-case basis. Without assuring states that there would be consequences for their violations, and that they would be held accountable for their acts, it is not possible to restrain illegal behaviour or create deterrence. This is why we need to seek for, on the one hand, the transformation of R2P into a legal norm in the short term, and on the other, a reformation of the international legal system in the longer term.

What 'R2P-lite' and international law in general both suffer from is not necessarily the lack of rules regulating conduct but rather the absence of influential and impartial institutions for implementation. There are widely accepted and well-grounded rules of international law such as the prohibition of the threat or use of force, nevertheless, when this principle is breached by Russia as in its intervention in South Ossetia, or by the USA as in its invasion of Iraq, there are no (critical) consequences for Russia or the USA to deter them from doing the same in the future. Though history has often times been the witness of Great Powers' crippling of the Security Council processes to protect themselves or the interests of their allies, to date, a self-sanctioning state, or a Great Power not objecting to the punitive measures or

condemnation in a resolution drafted against it, is unheard of. Therefore, it would be naïve to believe that as a political body with privileged members, the Security Council would be able to carry out its duties arising from the Charter in an impartial manner.

For an effectively operationalised R2P, it is not enough that states' individual duties are defined by international law; we also need legal mechanisms for the materialisation and carrying out of international community's pillar two and three responsibilities. This is why there is need to adopt supplementary legal measures such as strengthening international courts like the ICJ and ICC to make them capable of dealing with violations relating to R2P without being reliant on the consent or political will of states. In this vein, from an R2P point of view, a transformed ICJ having automatic jurisdiction[4] over cases—for instance, the European Court of Human Rights would be a good precedent to follow—can play a critical role in the imposition of punitive measures on violators: be it a state falsely invoking the responsibility to protect and committing the crime of aggression or a state which is illegally assisting the rebel forces in a civil war and escalating the humanitarian situation in a country or a state acting beyond its mandate during an R2P military operation—that is, an *ultra vires* situation during the exercise of humanitarian intervention or (more controversially) a state that is purposefully obstructing the decision-making processes or the operationalisation of the necessary R2P measures or a state obstructing justice by providing safe haven to persons against whom arrest warrants have been issued by the ICC. As a trusted legal medium, a strengthened ICJ may help more effective implementation of R2P by making the imposition of sanctions possible on the basis of an impartial judicial decision rather than an output of a political compromise.

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[4] Under Article 36 of the Statute of the ICJ, which reads as follows, although the Court may have jurisdiction over any matter, it lacks automatic jurisdiction over cases as the consent of the parties is required:

'1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they *recognize as compulsory ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time […].

4. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court' (emphasis added, ICJ 1945).

In addition to, or aside from, this ambitious proposition, a supplementary alternative to consider is enhancing the relationship between the ICC and R2P. In his 2009 report on the implementation of the responsibility to protect, Ban had already suggested an appeal to the ICC in the following words:

> It is now well established in international law and practice that sovereignty does not bestow impunity on those who organize, incite or commit crimes relating to the responsibility to protect. In paragraph 138 of the Summit Outcome, States affirmed their responsibility to prevent the incitement of the four specified crimes and violations. When a State manifestly fails to prevent such incitement, the international community should remind the authorities of this obligation and that such acts could be referred to the International Criminal Court, under the Rome Statute (UNGA 2009a, p. 23).

Also as suggested by his call for states to join 'the relevant international instruments on human rights, international humanitarian law and refugee law, as well as to the Rome Statute of the International Criminal Court' (2009a, p. 11), Ban sees such involvement as an initial step in the full implementation of the responsibility to protect, which in Acharya's (2013) words, can be seen as a step in strengthening the global diffusion of the norm.

As Mills (2013, p. 334) summarises: 'While the responsibility to protect aims to stop the most heinous of human rights abuses, international criminal justice—[…] the responsibility to prosecute—holds people to account after the fact for these same crimes'. So while R2P is considered to be a normative and political framework for action, the ICC serves to the function of the prosecution of the concerned crimes. As established by the Rome Statute, the Chief Prosecutor of the ICC 'can initiate an investigation on the basis of a referral from any State Party or from the United Nations Security Council. In addition, the Prosecutor can initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court received from individuals or organisations' (ICC n.d.). In this vein, it is possible to initiate proceedings against both member and non-member states. On these grounds, R2P's implementation can be assisted (judicially) through the ICC at two levels: first, for determination, that is to establish that an authority has manifestly failed to protect its population; and second, for enforcement, that is to begin proceedings on alleged crimes, or if the individuals are found guilty, to impose punitive measures on the individual perpetrators of the mass atrocity crimes so that they can no longer continue to commit these crimes.[5]

[5] While the ICC proceedings may help to stop atrocities, in certain cases, there arises the possibility that such process may reduce the chances for a political solution. As Schiff (2011, pp. 10–11) remarks: 'All

Nevertheless, like R2P, the ICC also has its weaknesses. For instance, because it 'lacks certain enforcement resources (such as a police force), the ICC must depend on state and interstate cooperation to bring the accused before the court,[6] detain suspects, acquire evidence, and so forth' (Teitel 2011, p. 9). There is also the principle of complementarity[7]—favouring justice through local courts because the ICC is devised as a court of last resort— which may further complicate or prolong the process, for instance, due to sham trials at national courts to clear the accused from the indictments. Notwithstanding the weakness of the Court, Ban, in his most recent report suggests:

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other things being equal, and given limited resources, pursuit of cases in a situation in which prosecution would be more likely to stop ongoing criminality should have priority over a purely retrospective prosecution. Critics charge, however, that the reverse is also possible—that a prosecution might increase the likelihood of continued crimes. This argument has been pressed by critics of the Prosecutor's indictment of Sudanese President Omar Al-Bashir (for genocide, war crimes and crimes against humanity) who claim that the indictments diminished chances for a political solution to the Darfur situation and damaged humanitarian services in Darfur due to President Al-Bashir's expulsion of non-governmental humanitarian organizations. Similarly, the ICC has been accused of reducing chances for peace in northern Uganda by indicting Lord's Resistance Army leaders who otherwise might have proven amenable to deals offered in negotiations with the government.'

[6] For instance, in contravention to its obligations arising from the Rome Statute as a full State Member, Chad disregarded the arrest warrant against Sudan's President Omar Al-Bashir and allowed him to travel to and from Chad in 2010 instead of arresting him as he set foot on the territory of Chad (BBC 2010a).

[7] Regarding issues of admissibility, Article 17 of the Rome Statute reads as follows:

'1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings' (ICC 1998, pp. 12–13).

> Formal processes of transitional justice must be coupled with concrete efforts to redress violations of international human rights and humanitarian law and be grounded in inclusive processes of political dialogue. The International Criminal Court has a particularly important role to play, both by holding perpetrators of atrocity crimes to account and through the support it provides to national mechanisms under the principle of positive complementarity (UNGA–SC 2015, p. 18)

Furthermore, the Chief Prosecutor of the ICC Fataou Bensouda suggests that 'holding leaders accountable for RtoP crimes will have a deterrent effect on others who may be considering their commission' (ICRtoP 2012). Atrocity crimes are indeed committed by individuals within states. In this regard, holding individuals accountable for their acts at the international level is without doubt of great importance. Even though the longer-term goal of deterrence may not create the desired impact, from an R2P point of view, the ICC's involvement in a specific case would help to attract international attention to it as well as to make a case that an R2P situation exists since the Court would establish that one or more of the atrocity crimes have been committed. So, for instance, if the scenario of transfer of R2P's mandate to the General Assembly is materialised, the ICC prosecution in a specific situation can also be used by the Secretary-General as evidence of the existence of an R2P situation and to bring it before the General Assembly for consideration. Yet, it is important to note that while the ICC proceedings may help in attracting international attention to a case as well as creating more pressure on other states of the international community to uphold their collective responsibility, it cannot provide a solution to the crisis itself in the short term because of the long processes of prosecutions. In this vein, a complementary R2P-ICC process can only serve as a supplement to other measures for the reform of the UN/R2P machinery.

Moving Along: R2P2

> 'Until it is possible to remove from the interested states the prerogative of resolving questions of law and transfer this permanently and universally to an impartial authority, all further steps along the road to world peace are to be excluded' (Kelsen in Archibugi 1993, p. 309).

I am neither the first nor will be the last to raise the issue of the necessity to reform the United Nations or its Security Council. Because of the privileges they wield, Morgenthau (1949, p. 381) depicted the P5 of the Security

Council as the 'international government of the Great Powers', and arguably, it has been obvious for quite a long time that this government does not necessarily pursue the interests of the international community, or for that matter the greater interest of humanity at all times. Therefore, any consideration attempting for a better implementation of the responsibility to protect by the international community eventually touches upon the issue of reform whether of a milder or more radical sort.

In the previous sections, I discussed a number of propositions to consider the way forward in R2P's second decade, and most of these targeted the authority of the Security Council over R2P implementation. Though the current French proposal of the 'Code of Conduct' and the Brazilian 'RwP' can be deemed as positive efforts to enhance R2P's operationalisation, these are unoriginal initiatives, which happen to highlight important aspects of the ICISS report that were left out in the Summit Outcome upon the pressure from certain Member States. In this vein, for the way forward with RwP, Evans (2012b) understandably suggests

> not just to single out, as the November 2011 Brazilian Elements note does, two or three criteria, but to return directly and deliberately to the so-far-unimplemented recommendations of my ICISS Commission and the reports which followed it, from the High Level Panel on Threats Challenges and Change, and from Secretary-General Kofi Annan himself, which are that the Security Council apply *five specific prudential guidelines* whenever considering *any* authorization of coercive military action (not just in R2P cases) under Chapter VII of the Charter.

The point Evans raises is an important one because 'R2P-lite' of 2005 was a product of concessions which trimmed many important components of the norm, including the third element of R2P—the responsibility to rebuild—as well as the criteria for intervention. Though the implementation of R2P through the UN is important in terms of its legitimacy as well as legality, it is also of significance to incorporate the collective responsibility into international law to ensure that the norm is applied consistently in cases of individual states' failure to protect their populations.

How to overcome states' lack of political will is a question that will probably remain lingering for many more years to come. Still, this does not mean that we can/should not work on alternative scenarios. Though I consider it to be a positive step forward that R2P has already been assumed as a moral norm, this is not enough for the norm to take full effect. An original legal framework for R2P action is necessary to free R2P from the chains of politicisation and

inaction. If/when R2P becomes a legal norm, this will not mean that there would not be any abuses of the norm. Whether domestic or international, there is no legal rule or system that is capable of preventing all kinds of abuses or violations. Take for instance the inherent right of self-defence, one of the well-established principles of international law being practiced for over centuries. It has been wrongly invoked at many instances, or as attempted by George W. Bush, tried to be stretched in a way to include pre-emptive strikes in the name of self-defence, but the rule remains as it is.

Rather than fretting from potential abuses, we need to focus on the consequences of such violations. As discussed in the previous section, with capable and independent legal institutions, punishment of abuses would be possible. A reinforced ICJ could help the sanctioning of states' abuses of the R2P norm. When there is a crime, if there will be punishment regardless of the power of the violating state, this will have a deterring effect in the future for all states. A breach of law is indeed a breach, no matter how it is labelled. For instance, in the case of the US invasion of Iraq, a number of justifications were put forth: first was the presence of weapons of mass destruction (WMDs), then came mass violations of human rights, and finally it became the democratisation and liberation of the Iraqi population, so on and so forth. In the case of the Russian intervention in South Ossetia, Russia invoked the responsibility to protect; if R2P as a notion did not exist at the time, Russia's justification could have been humanitarian intervention or self-defence for the purpose of protection of nationals abroad. In short, in the case of R2P, instead of fearing potential abuses, our main concern should be non-implementation where it is necessary to take R2P action in a timely and decisive manner. R2P's evolution into a legal norm, especially if supplemented with strengthened judicial bodies, would enable the punishment of not only violations but also abuses of the norm. R2P's legalisation would, though restricted to the R2P framework, also include the legalisation of humanitarian interventions. Making humanitarian interventions legally possible would not mean that it is practically or morally possible/necessary to practice the use of force in each and every case. In this vein, it is important to reintroduce the ICISS's criteria for intervention back into the R2P framework in order to clarify the limits for coercive action. This, in turn, would not only make it possible to increase the efficiency and success of R2P actions but also would make it easier to sanction abusive implementations of the norm.

Succinctly, there will always be states trying to abuse notions or political/legal principles, but this does not mean that the problem is with the principle itself. At the centre of all the abuses lies the weaknesses of the international legal system. It is not only the implementation of R2P but also of

international law, in general, that suffers from lack of political will. As long as breaches of international law continue to go unpunished and implementation of measures remain based on the political will and under the restraint of the P5 veto, it would not be possible to move forward to a more law-abiding community of states. Ultimately, what is really needed is a legal reform of the international system.

As we are now at the end of the decade long test drive of 'R2P-lite', it is time to move on to R2P2, and take the necessary revolutionary measures to release R2P from its 'arrested development' as Bloomfield (2016) labels it. In order to achieve what was envisioned for R2P in 2001, there is need to complement the sense of moral responsibility established under paragraph 139 of the Summit Outcome with a legal responsibility. As the President of the General Assembly (UNGA 2009c, p. 2) reminded during the plenary meetings of 2009: 'in terms of the United Nations Charter, it is the General Assembly that develops international law'. According to this, the General Assembly should take up the task of turning the 'R2P-lite' of the World Summit into a genuine legal, political, and moral commitment for the international community.

7

Conclusion: One's Reality, Another's Illusion

> I watched a little baby die today, absolutely horrific. Just a two-year old been hit […] That is happening over and over and over. No one can understand how the international community can let this happen. Particularly when you have an example of Srebrenica, shelling of a city, lots of investigations by the United Nations after that massacre or lots of vows to never let it happen again.

Remarked the *Sunday Times* journalist Marie Colvin (BBC 2012) when she reported from Homs, Syria, just a day before she and French photographer Remi Ochlik were killed by the shells that hit where they resided. No matter how many times we may have heard the slogans, 'never again', 'no more Srebrenicas', and 'no more Rwandas' (just to name few striking cases among many others) in the early 2000s, with the situation in Darfur there came yet another call: 'Genocide No More—Save Darfur', and since the early 2010s, there has been a 'never again is now' cry for the appalling humanitarian crisis in Syria, where the international community has been rendered ineffective, if not idle.

As of early 2007, in a piece on R2P that he wrote for the *Washington Post*, Feinstein (emphasis added, 2007) asked:

> In elevating this principle, the nations of the world said that they prioritize the right of people to live over the right of states to do as they please. The question now is whether this pledge was humanitarian hypocrisy, or did they have something serious in mind?

At the end of the first decade of R2P with so many controversial cases, some of which are still continuing, some would posit that the pledge has proven to

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be humanitarian hypocrisy, or simply hot air, whereas some others like myself would argue otherwise despite the mixed track record of the international community.

Having in mind the question of whether or not R2P can make a change in the existing system, in this book, with an eye on the future, I have critically focused on the conceptual and practical evolution of the responsibility to protect following its institutionalisation within the UN. Though it is clearly visible that the international community has been inconsistent in turning its pledge into practice, arguably, R2P has not proven to be without any significance. The added value of R2P does not lie in the novelty of the concept—because the idea itself is not a novel one to begin with—but instead it lies in the commitment of individual states and the international community to protect populations as enshrined in paragraphs 138 and 139 of the World Summit Outcome Document. As discussed in chapters 2 and 3, in the post-Charter period humanitarian intervention, or the right to intervene, has never been granted recognition as a legitimate/legal means of action—unless a specific instance of intervention was authorised by the Security Council. In this vein, R2P's unanimous recognition cracked the door open for a change of understanding with which it became possible to invoke an international responsibility to take action, and since 2005, as an idea, R2P has been stated in various General Assembly and Security Council resolutions as well as other UN documents.

Old Wine in a New Bottle (and on a Fancy Shelf)

Hehir (2012, p. 251) argues that what is proposed by R2P has been tried previously and resulted in failure numerous times, and that by rebranding the appeals for 'Never Again!' as 'R2P' cannot 'persuade states to behave better'; the only solution 'to the problem of inhumanitarian non-intervention' is extensive reform. Though I agree with Hehir regarding the need for fundamental change, I disagree on his point that R2P is mere rebranding. On the one hand, R2P brings to attention the understanding of sovereignty as responsibility, which was suggested by Francis Deng and his colleagues in the 1990s. On the other hand, it asks the age-old question 'when, if ever, it is appropriate for states to take coercive—and in particular military—action, against another state for the purpose of protecting people at risk in that other state' (ICISS 2001a, p. vii). Considering these two main aspects, although R2P stands out as an old wine in a new bottle, it is still different from past 'never again' attempts as it is a full-fledged strategy, which not only aims to

address crises when they are at a peak, but also, if possible, at earlier stages so that a peaceful plan can be worked out.

In this regard, what is of importance is not necessarily the originality of the norm but the path it draws for tackling the problem of inaction in cases of mass atrocities. In the post-R2P era, arguably, the question is no longer what Chesterman (2001, p. 219) labels as 'inhumanitarian non-intervention', but rather 'inhumanitarian indifference/inaction' in the face of a crisis breaking out. While returning the focus fully on the question of humanitarian intervention would be unfruitful because intervention may not be a viable solution in each case, R2P has not yet delivered its promise, and thus, Hehir's criticism is not without good reason. Reinold (2010, p. 67) intriguingly suggests:

> We do not need the notion of the responsibility to protect to understand that it is *morally* objectionable to remain passive while scores of innocent civilians are being slaughtered. We also do not need R2P to understand that the host state has a duty to prevent genocide within its area of jurisdiction– this duty was accepted by states sixty years ago when they signed onto the Genocide Convention. What we do need is an international consensus that the international community's fallback duty to intervene is a *binding* obligation under international law that is applied in a more or less consistent fashion, and this is exactly what the US (and most other states) seek to obstruct.

In this vein, while R2P itself could have been the trigger for the much needed change, it has so far failed to accomplish that task due to the lack of will among some of the members of the international community. Thus, unless we have an originally customised shelf for the new bottle, which has been served to the public in the good-old UN, the desired impact cannot be achieved.

The Future of a Moral Norm

Fourteen years have passed since R2P was introduced by the ICISS, and it has already been ten years since the norm was formally adopted under the roof of the UN. Despite its many ups and downs, the progress R2P has made has not been without any merit. So far, there have been over thirty-five Security Council resolutions and six presidential statements referring to R2P; the Secretary-General on an annual basis has published seven reports specifically on R2P, which were followed by, in total, a formal and six informal interactive dialogues in the General Assembly; the Human Rights Commission adopted thirteen resolutions highlighting R2P (UNGA–SC 2015, p. 4); quite

controversially, concerning the humanitarian situation in Syria, the General Assembly strongly condemned the Security Council because of its failure to implement effective measures (UNGA 2012). In the form of a moral norm, R2P has already penetrated into the discourse of the UN; however, it has not yet created the 'revolutionary'[1] impact that was expected from it.[2]

Roff (2013, p. 200) explains the primary reason for the inconsistent, and possibly arbitrary, implementation of the norm as the lack of R2P's institutionalisation following its adoption by the UN. Rather than suggesting that R2P has not been institutionalised, I would define the problem as the crippling way that R2P has been institutionalised since the very first time it was placed in the agenda of the UN. Starting with the 2004 Report of the then Secretary-General Kofi Annan, limitations were imposed on the R2P in comparison to the original suggestions of the ICISS. Ultimately, the totality of the norm was reduced to two paragraphs in the Outcome Document, which not only limited the scope of the norm but also left out most of the strategies devised by the ICISS. In this vein, though I consider the restriction of R2P to the four atrocity crimes as a positive change in terms of clarifying what the norm is about, in many other respects, I believe that 'R2P-lite' of the 2005 World Summit has transformed the aspired guardian of populations into a dwarf rather than a giant.

For a consistently applied R2P, it is not enough that a moral responsibility has been established. Notwithstanding my belief that R2P is different from past calls of 'never again', we will not be able to speak of an influential norm of R2P unless it breaks apart from the recurring loops of the ill-functioning Security Council. Hence, Chapter 6 focused on making R2P an effective part of the UN's machinery by examining the inherent problems in the implementation of R2P via the Council, and then, by surveying alternative scenarios of change in the UN system.

The issue of the UN reform has been voiced while discussing matters related to R2P not only by scholars but also by states during the interactive dialogues in the General Assembly. Curious that it came from Sudan, the following is a statement underlining the problematic of R2P's implementation by the Security Council:

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[1] Regarding R2P, Feinstein (2007) commented: 'The General Assembly's endorsement of this *revolutionary principle* removes blind reverence for national sovereignty as an excuse to look the other way when innocents are being wiped out'.

[2] Furthermore, at 'a regional level, the African Commission on Human and Peoples' Rights has adopted a resolution [ACHPR/Res.117 (XXXXII) 07] on strengthening the responsibility to protect in Africa, and the European Parliament has recommended full implementation of the principle by the European Union [P7_TA(2013)0180]' (UNGA–SC 2015, p. 4).

> what is needed are not romantic words to dress up the failures of the United Nations, but serious reform within the Security Council to achieve the desired paradigm shift towards a world that enjoys security while respecting human rights and the autonomy of States to run their own affairs. […] However, even if the concept of the responsibility to protect becomes an accepted instrument under international law, its effective use will not be immune to the political influence of some members of the Security Council. To give the Security Council the privilege of being executor of the concept of the responsibility to protect would be tantamount to giving a wolf the responsibility to adopt a lamb (UNGA 2009g, p. 11).

To be fairer, if not a wolf, the Security Council may be depicted as a toddler going through its 'terrible twos' and into its 'horrible threes', waiting to mature: when things are to its liking, it all goes well—that is, if the interests of the members of the Council are not affected or when there is something not to like, no one (or no grave humanitarian concern) can make it do what ought to be done—that is, for instance, when the interests of any of the P5 (or its ally's) are involved.

While the question that if the Security Council will ever be mature enough to accomplish the task of carrying out R2P on behalf of the international community remains to be answered, it seems like its continuing failures will not be tolerated for long. Criticising the lack of unity in its consideration of the situation in Syria, in August 2012 when resigning as UN-Arab League Joint Special Envoy for Syrian Crisis, Annan remarked:

> At a time when we need – when the Syrian people desperately need action – there continues to be *finger-pointing and name-calling* in the Security Council. […] *Without serious, purposeful and united international pressure*, including from the powers of the region, *it is impossible for me, or anyone,* to compel the Syrian government in the first place, and also the opposition, to take the steps necessary to begin a political process (emphasis added, UNNC 2012).

Quite strikingly, a couple days later, in its resolution, the General Assembly '*deplor[ed] the failure of the Security Council* to agree on measures to ensure the compliance of Syrian authorities with its decisions' (emphasis added, UNGA 2012).

Not only the situation in Syria but also as ten years of R2P experience—backed up with the failures in the 1990s—demonstrate that the Security Council is not the most appropriate authority to assume the mandate over the responsibility protect. If there is a genuine will among states to make R2P live up to its objective, then drastic changes need to be imposed on the

currently constrained structure and the under-capacitated machinery of the UN. More generally, reform of the UN is necessary for the better functioning of the international political system as well as international law.

Whether or not R2P can be a trigger for a larger UN reform is a prominent question. Though the way the norm was institutionalised suggests otherwise, with all the debates it has created within the first decade of its adoption, R2P still holds a potential to that end. Though I do not consider R2P as 'the ultimate remedy' to man-made humanitarian disasters, I believe that it is (still) of value. While Ban suggests that 'if principles relating to the responsibility to protect are to take full effect and be sustainable, they must be integrated into each culture and society without hesitation or condition, as a reflection of not only global but also local values and standards' (UNGA 2009a, p. 12), this 'ultimate goal' of internalisation (UNGA 2010, p. 4) cannot be achieved in the short-run. In a period of fourteen years, R2P has evolved into a moral norm, which sets a moral standard of appropriate behaviour for states and the international community. This means that R2P has a limited capacity in terms of determining states' behaviour as it lacks legally binding powers either over individual states or over the international community. In this vein, diverging from previous works in the literature advocating R2P, I posit that, given its limitations, we cannot expect much from R2P in its current form, that is, from 'R2P-lite'. Thus, as discussed in Chapter 6, there is need to reinforce/re-equip R2P in certain respects in order for it to have a real positive impact in the short or mid-term on the conduct of international politics. As past cases reveal, in the absence of the desired fundamental changes in the system of the UN, regional organisations' assumption of the responsibility to protect may help a more effective implementation and allow for early responses to crises breaking out.

At the end of the decade long test-drive of R2P, it has been affirmed through experience that by tying R2P to the existing machinery of the UN, and by placing it under the authority of the Security Council, state members of the international community have stripped it from its original powers. Even though the range of the changes that can be imposed is vast, starting with the reincorporation of some of the original suggestions of the ICISS—such as the responsibility to rebuild and the criteria for intervention—R2P needs to be enhanced. Placing the emphasis simply on prevention and brushing the question of intervention aside is simply unrealistic and faint-hearted. What makes R2P a full-fledged strategy is the three elements of responsibility: to prevent, to react, and to rebuild. When one measure fails, the other is to be implemented, and coercive means is part of this cycle. All in all, the plan introduced by the ICISS on the one hand and ten years of experience on the other, it is time for the international community to reconsider how it wants to proceed

with the responsibility to protect—whether to leave it as rhetoric or to make it a reality and a functioning gear of the UN's machinery—by designing a courageous R2P2. As scholars, we can only make critical evaluations and/or suggestions and show alternative paths, but it requires the genuine will of states to listen to, evaluate, and materialise what is already possible.

Appendix - Initial Responses to Secretary-General's 2009 Report

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1. *Sweden* on behalf of the EU, Turkey, Croatia and the Former Yugoslav Republic of Macedonia, countries of the Stabilization and Association Process as well as Albania, Bosnia and Herzegovina, Montenegro, Ukraine, the Republic of Moldova, Armenia and Georgia

\+ States that '[f]ocus should be on operationalization and implementation' (p. 4)
Welcomes the approach that keeps 'the scope of the principle narrow and the range of possible responses deep' (p. 4)
Notes that when peaceful methods fail, 'enforcement measures in accordance with the United Nations Charter, through the Security Council or approved by the Security Council, should be possible, if needed' (p. 4)

2. *Egypt on behalf of the non-aligned movement*

\+ ! Points that '[t]here are concerns about the possible abuse of RtoP by expanding its application to situations that fall beyond the four areas defined in the 2005 World Summit Outcome, and by misusing it to legitimize unilateral coercive measures or intervention in the internal affairs of States' (p. 5)
Highlights that there is need for the clarity of the concept

3. *United Kingdom*

\+ States that '[e]very situation is different, and we must guard against an overly prescriptive and, I would say, overly simplistic checklist approach to action' (p. 7)
Highlights the role of regional organisations and enhancement of collective prevention efforts
Supports the narrow but deep conception of RtoP

4. *Indonesia*

\+ States that implementation is the task ahead
Considers prevention as the key aspect of RtoP

P. Gözen Ercan, *Debating the Future of the 'Responsibility to Protect': The Evolution of a Moral Norm*, DOI 10.1057/978-1-137-52427-0

5. *France*

\+ Consider RtoP '[b]y virtue of both its preventive dimension and its operational aspect, which can, if necessary, result in a collective action under Chapter VII, […] a key element in the fight against mass atrocities on a par with international humanitarian law, international human rights law and the international criminal justice' (p. 9)
Argues that 'the responsibility to protect […] already largely exists,' thus, the task is to 'debate the means to strengthen its implementation and its respect' (p. 9)
Considers the third pillar as the one that gives the concept its full meaning
Notes that 'France will also remain vigilant to ensure that natural disasters, when combined with deliberate inaction on the part of a Government that refuses to provide assistance to its population in distress or to ask the international community for aid, do not lead to human tragedies in which the international community can only look on helplessly' (p. 9)

6. *Philippines*

\+ ! Emphasises that RtoP 'should be limited to those four crimes and applied only to them. Any attempt to enlarge its coverage even before RtoP is effectively implemented will only delay, if not derail, such implementation; or worse yet, diminish its value or devalue its original intent and scope' (p. 11)
Underlines that the 'concept of RtoP should be universal, that is, applied equally and fairly to all States, although the manner of implementation would be on a case to-case basis'
Urges that '[d]eliberations should lead to more clarity with respect the use of force in enforcing RtoP' (p. 12)

7. *Brazil*

\+ Notes its adherence to the current form of RtoP as outlined by the World Summit Outcome Document
Puts emphasis on the understanding of the use of force as a last resort
States that 'the third pillar is subsidiary to the first one and a truly exceptional course of action, a measure of last resort'
'Advocates the concept of non-indifference'

8. *Guatemala*

\+ ! Has many concerns:
The representative notes: 'For countries like mine that greatly value the principle of non-intervention in the internal affairs of sovereign States, there is a lingering suspicion that the responsibility to protect can, in specific moments or situations, be invoked as a pretext for improper intervention. […] There are divergences with regard to the character of the crimes that the responsibility to protect is designed to address' (p. 15)
Draws attention to the issue of reforming the Security Council

9. *Bosnia-Herzegovina* (endorses EU's statement)

\+ Approaches military intervention much more positively in comparison to the Member States of the NAM.

10. *United States*

\+ Notes that measures to be adopted in cases of RtoP '[r]arely and in extremis would […] include use of force' (p. 18)
Draws attention to lack of political will in the international community

11. *Belgium*
+ Draws attention to the issue of implementation regarding all of the three pillars
12. *Republic of Korea*
+ Puts emphasis on the collective character of RtoP in accordance with the UN Charter. Distinguishes RtoP from unilateral humanitarian interventions (p. 19)
Places importance on pillar two
Underlines that coercive measures are to be implemented in accordance with the UN Charter
Urges the permanent members of the Security Council to refrain from employing or threaten to employ veto
13. *Australia*
+ Considers humanitarian intervention discredited
Considers implementation as the task ahead
Welcomes the narrow understanding of RtoP
14. *Liechtenstein*
+ Considers all three pillars as integral parts
Calls for implementation of RtoP in strict conformity with the World Summit Outcome Document
15. *Costa Rica and Denmark*
+ Calls for consideration of legitimacy of the concept on the basis of the World Summit Outcome Document
Puts more emphasis on peace-building compared to other statements
Notes that RtoP is 'far from authorising unilateral interventions'
Refers to crimes that pose a threat to international peace and security as well as refraining from the employment of veto in cases of RtoP
16. *New Zealand*
+ Notes that the task is implementation of RtoP
Praises the limited scope of the World Summit Outcome Document
Commends the emphasis on prevention instead of intervention
Is not necessarily against the structural reformation of the Security Council, nevertheless is concerned that such change is 'a prior condition for implementing the responsibility to protect'
Supports the restrained employment of the veto in the Security Council
17. *Netherlands* (presented complementary remarks to the statement of the EU)
+ Underlines that the current task of translating their 'moral commitment into political and operational readiness […] is not a legal discussion, nor should it be' (p. 26)
Notes that the four crimes basis is a solid ground for the operationalization of RtoP
18. *Italy*
+ Argues that implementation is the task to focus on
Makes reference to the use or threat of veto by the permanent members of the Security Council

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19. *Austria* (aligns itself with the statement of the EU)
+ Notes that the primary responsibility lies with the State
Considers international community's assistance of 'supplementary nature'
Argues that all three pillars are of equal importance

20. *Pakistan*
+ ! Has indicated many concerns and presented reminders
Asks for clarity regarding the limited scope of RtoP, that is, it should not be open to discussion in the future
Urges that RtoP should not be a tool to constrain the national sovereignty and territorial integrity of states, and its misuse should be prevented
Argues that the international community's responsibility in 'the event of a situation involving RtoP should be to provide 'appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter'
Draws attention to the issue of 'consistency of language and expression' to improve the concept of the RtoP
Notes that RtoP should be an exception to the case
Considers pillar three as a reappearance of 'the right to intervene'
21. *Switzerland*
+ Indicates that the distinction between RtoP and humanitarian intervention needs to be made clear
Notes that measures of the third pillar should be the last resort
Points to the lack of political will to react in a timely fashion
Underlines the importance of refraining from the use of veto in cases of RtoP
22. *Algeria* (aligns itself with the statement of the NAM)
+ Is supportive of the Secretary-General's Report while endorsing African Union's non-indifference principle
Considers prevention 'a fundamental element of the responsibility to protect,' and indicates its support for what was recommended in the report
Notes that decision-making in the Security Council is affected by political factors
23. *Singapore*
+ Indicates its full commitment to the responsibility to protect doctrine
Notes that '[i]t is clear that fears and doubts about RtoP still persists'
Indicates a concern about misuse of RtoP
Considers it necessary to 'define clear parameters for when a situation is or is not an RtoP issue'
24. *Ecuador* (aligns itself with the statement of the NAM)
! Indicates its concerns
Places importance on having a balanced approach towards all three pillars
Reiterates the limitations of RtoP as determined by the World Summit Outcome
Questions the impartiality and effectiveness of the Security Council as the primary authority to implement RtoP. Accordingly, raises the issue of the reform of the Council
Notes: 'so long as there is no clarity on the conceptual scope, normative parameters or the actors involved, we cannot take any decision committing our States with regard to the application of this concept'
25. *Chile*
+ Considers use of force as a last resort
Is in favour of more involvement by regional organisations while undertaking action under pillar three
Suggests that 'a prevention strategy could include the promotion of democracy'
Argues that morality should be reintroduced into the debate

26. *Morocco* (aligns itself with the statement of the NAM)
+ ! Raises its concerns about 'a mismanaged operationalization' of RtoP
Asks for a clear distinction between RtoP and the right to humanitarian intervention
Does not consider RtoP as an international legal norm
Commits itself to 'moving [the] discussion forward'

27. *Colombia*
+ Stats that the scope of the World Summit should not be open to discussion, and reaffirms its commitment to the terms of the Document
Embraces the view that RtoP 'should be an ally, not an adversary, of national sovereignty'

28. *Israel*
+ Argues that the 'responsibility to protect lies primarily in enhancing existing tools and mechanisms, rather than creating them anew' (p. 15)
Refers to 'the need to reach agreement on relevant guidelines and the appropriate threshold for response'
Concerning the concept of RtoP, notes that there is a need to 'ensure that it does not become a political tool for exploitation or abuse'

29. *South Africa*
+ Agrees that a possible development of the concept can only take place under the auspices of the UN, and considered the General Assembly as the most appropriate milieu for further discussion of the issue to 'ensure the maximum transparency and participation'
Favours the limited approach of the Summit Outcome Document
Argues against a possible extension of the RtoP concept to include natural disasters and other issues
Agrees with the Secretary-General's presentation of pillars one and two
Refers to pillar three and various measures that are to be employed under this pillar but does not consider use of force under Chapter VII
Asks for increased cooperation with regional organisations, especially the African Union
Points to the problems within the Security Council such as clashes of national interest and use of the veto power in a way to block passing resolutions

30. *Uruguay*
+ Favours the limited scope of RtoP
Agrees that the responsibility lies first with the states
Raises the issue of national and regional capacity building for prevention and early warning
Argues that in cases where use of force is a measure to be applied, 'the General Assembly should not be underestimated or marginalized in the debate on the development of this pillar'

31. *Ghana*
+ Argues that the focus should be 'on how to garner the needed collective political will to act and take concrete measures at the national, regional and international levels towards the prevention of those four crimes'
Asks for support for the continuing efforts of the African Union
Prioritises prevention

32. *Japan*
+ Favours the limited scope of the RtoP concept
Considers first pillar the most important one
Argues that use of force should be implemented as a last resort and in accordance with the UN Charter
Makes reference to collective action by the international community, and indicates that consent of the host state makes this action more effective
Also talks about collective forceful action when necessary under the framework of Chapter VII of the UN Charter

33. *Czech Republic* (aligns itself with the statement of the EU)
+ Favours the limited/narrow scope of the RtoP
'Supports the way forward suggested in the report of the Secretary-General, and particularly his emphasis on the responsibility of the States themselves and the importance of early prevention'

34. *China*
+ Points that there is need for clarity concerning the meaning and implementation of the RtoP
Favours the limited scope of the concept
Underlines that '[n]o state should expand the concept or interpret it in an arbitrary manner. It is imperative to avoid abuse of the concept and to prevent it from becoming a kind of humanitarian intervention'
Is against any unilateral implementation of RtoP when undertaking action
Argues that the 'Security Council must view the responsibility to protect in the broader context of maintaining international peace and security and must take care not to abuse the concept'
Points that there is need for the General Assembly and the Security Council to establish a mechanism to avoid double standards and politicization

35. *Mali* (aligns itself with the statement of the NAM)
+ Agrees that responsibility lies first and foremost with the individual states
Refers to establishing mechanisms of early warning, and capacity building
Given that forceful measures are also an option in responding to cases of RtoP, states that 'discussion on the third pillar must continue in the General Assembly'

36. *Canada*
+ Strongly supports the report of the Secretary-General
Argues that focus should be on operationalisation of prevention
Argues that it is in the case of failure to prevent that collective action must be taken

37. *Nigeria*
+ Argues that '[e]mphasis should be placed on prevention rather than on intervention'
Calls for focusing on developing and improving regional mechanisms

38. *Viet Nam* (aligns itself with the statement of the NAM)
+ Favours the narrow scope of the World Summit Outcome Document
Agrees that the responsibility first and foremost lies with the state itself
Puts emphasis on five qualifiers: 'the voluntary engagement of States; the taking of timely and decisive collective action; the taking of decisions on a case-by-case basis; conformity with the Charter, including Chapter VII; and cooperation with relevant regional organisations, as appropriate'
Opts for a careful consideration on a 'case-by-case basis, free from politicization, selectivity, and double standards, before a decision is made'

39. *Guinea-Bissau*
+ Finds that RtoP is rooted in the UN Charter
Agrees that responsibility lies first and foremost with the individual states
Notes that the task ahead is implementation
Argues that Security Council has not been effective enough in acting

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40. *Ireland* (fully aligns itself with the statement of the EU)
+ Argues that '[p]rimary responsibility rests with the State,' and the '[i]nternational community has a responsibility to assist States' (pp. 1-2)
Talks about development assistance (p. 2)
Suggests to 'approach, with similar imagination and openness, the third pillar', including 'peace enforcement measures under Chapter VII' by the UN in accordance with its Charter (p. 2)
Reiterates 'the very real fears that RtoP could be misused for ulterior motives' (p. 2)
Agrees with the limited scope of the RtoP (p. 2)
Raises the issue of 'selective application of the responsibility to protect or its misuse with a view to furthering a State's own strategic national interests'
Argues that 'military intervention that is not in line with the Charter of the United Nations and does not have prior Security Council approval when such approval would be required is not in line with, nor it can be regarded as having been authorized by, the responsibility to protect.' (p. 3)
Points that there is lack of trust in the Security Council
Notes that the implementation of the concept can be a question of the responsibility to protect vs. national interests of states

41. *Bolivarian Republic of Venezuela*
? Has a very suspicious and cautious approach towards the implementation of RtoP
Makes reference to 'imperial Powers' determining the course of international politics according to their own interests
Asks for an extensive revision of the UN Charter, and a reform of the Security Council
Argues that it is 'necessary to build a legal basis for the potential implementation of the responsibility to protect
Argues that RtoP as a 'multilateral mechanism for collective action' should be 'through the General Assembly'
Raises many potential problematic aspects of intervention, and rejects Security Council as the authority to take such decision since it is concerned about a selective implementation of the concept. Suggest that the General Assembly should be the main body taking the decisions regarding the implementation of the RtoP
Criticises the report of the Secretary-General for being selective in giving examples of grave atrocities against humanity, and argues that there were many unmentioned cases in the Report
Considers the third pillar as 'a challenge to the basic principles of international law, such as the territorial integrity of States, non-interference in internal affairs and, of course the indivisible sovereignty of States'
States: 'We live in a world dominated by the Great Powers of the West'

42. *Norway*
+ Argues that when a state fails to fulfil its responsibility to protect, 'the responsibility should and must be taken up by the wider international community.' 'This responsibility should weigh heavily on the members of the Security Council, and especially on those that exercise the veto power'
Argues that the UN has 'the moral authority'

43. *Germany* (aligns itself with the statement of the EU)
+ Welcomes the Report, 'especially the practical measures for implementation proposed in the report'
Argues that '[i]ndividual States and the international community have a common responsibility to help prevent genocide situation from occurring the first place'
Notes that third pillar comes to question when prevention fails, and thus is only of complementary nature

44. *Plurinational State of Bolivia*
+ Is sceptical about the impartiality of the Security Council, and argues that it should not be the authority to take the decision for the implementation of RtoP in a specific case
Suggests a reform of the Council
Like some other states which have indicated likewise, 'expressed concern that the responsibility to protect will be used as a guise for military interventions that violate sovereignty and territorial integrity and whose intentions are quite other than preventing mass crimes'

45. *Romania* (aligns itself with the statement of the EU)
+ Is highly supportive of the report
Favours the narrow scope of the concept
Agrees that prevention comes first

46. *Slovenia* (aligns itself with the statement of the EU)
+ Argues that with the events in Rwanda and Srebrenica 'the credibility of the United Nations was damaged, and it still has not fully recovered'
Argues: 'The responsibility to protect is our common responsibility'
Notes that RtoP is not an equivalent for military intervention
Considers prevention as 'the key element'
Notes that '[a]ssistance to States and capacity-building' are also vital for the implementation of RtoP
Agrees that responsibility lies first and foremost with the state itself
Talks about collective action by the international community under Chapters VI, VII and VII of the UN Charter
Urges the permanent members to refrain from using their veto power
Notes that '[a]ddressing RtoP and potential RtoP situations ultimately remains a matter of political will. Indifference is not an option'

47. *Monaco*
+ 'Positively welcomes' the Report
Notes that 'it is time to start to 'work constructively to ensure that the emerging concept of responsibility to protect becomes positive law as soon as possible"

48. *Qatar* (aligns itself with the statement of the NAM)

+ Argues that the 'implementation of the responsibility to protect must be subject to regulation in line with international law, must not affect or undermine the territorial sovereignty of States, and must prioritize the protection of populations under occupation and States and populations subject to foreign invasion in violation of their sovereignty'
Refers to the General Assembly as the 'principal political forum of the world'
Argues that the concept needs to be clarified further, and that conditions for implementation need to be determined
Points to the need to reform the Security Council
Refers to a recent and some former examples: 'The recent events in Gaza and, before that, in Somalia, Iraq and Afghanistan highlighted that the international community's reluctance to implement the responsibility to protect principle fairly, justly and politicization
Notes that there are misuses of the concept as well as double standards in implementation
Argues that 'preventive peaceful solutions are more effective and legitimate than the use of force'

49. *Solomon Islands*
+ Talks about reform of the Security Council, specifically the issue of the use of veto
Urges that abuse of the concept must not to be allowed
Argues: 'We must broaden the implementation of the responsibility to protect to include non-State actors or other mechanisms not provided for under the Charter of the United Nations'
Argues: 'We need to increase the legitimacy of the General Assembly'
Notes that further discussion concerning pillar three is necessary (for effective implementation)

50. *Croatia* (aligns itself with the statement of the EU)
+ Considers prevention as the key aspect
Notes that RtoP is not an equivalent for the right to intervene
Argues that the 'Security Council […] has a special responsibility'
Posits that political will is necessary to be able to implement the RtoP

51. *Jordan* (aligns itself with the statement of the NAM)
+ Argues that Paragraphs 138 and 139 'form a firm political and moral foundation for' RtoP to be implemented through the UN
Favours the narrow interpretation of the scope of the RtoP
Posits that '[f]irmly established criteria' is needed for credible implementation
Points that there is lack of political will in the international community
Notes that special focus on the second pillar, specifically on international assistance and capacity building, is of importance

52. *Luxembourg* (aligns itself with the statement of the EU)
+ Reiterates the narrow scope of the RtoP
Considers prevention as the key aspect
Agrees that responsibility, first and foremost, lies with individual states
Argues that collective action by the international community can be taken on a case-by-case basis
Considers rapid response vital
Notes that the task ahead is implementation
Argues that political will is needed

53. *Mexico*

+ Indicates its full support for the Report
Has a more normative approach towards the concept compared to other states
Points that RtoP as a concept 'arose as a response to the historical indifference of the international community when faced with massive violations of human rights and humanitarian atrocities because interests other than the protection of persons came first'
Argues that 'the concept draws upon and is based on existing international law, in particular human rights and international humanitarian law'
On the basis of the World Summit, considers RtoP 'an obligation that […] falls primarily to each individual State'
Believes 'that developing the concept's normative nature is of great importance'
Argues that pillar three requires more specifics in order to prevent abuse
Is against unilateral action no matter what the immediacy of the case is
Posits that states should 'refrain from the use of force'
Considers prevention as the key aspect

54. *Rwanda*

+ Argues that the three pillars 'offer an unambiguous framework for the implementation of RtoP'
Notes that there is need for further clarity concerning issues such as the threshold for intervention, the use of the veto power in the Security Council, and 'the role of the General Assembly and the Security Council' concerning the implementation of the responsibility to protect
Urges that the 'objective of RtoP should be to eliminate the need for intervention'

55. *Turkey*

+ Favours the narrow scope of RtoP as established by the 2005 World Summit
Notes that further clarity is needed to 'avoid misperceptions'
Agrees that the responsibility rests first and foremost with individual states
Argues that collective action should be a last resort
Believes that 'RtoP […] also covers post-conflict rehabilitation'

56. *Cuba* (aligns itself with the statement of the NAM'

+ Posits that RtoP is not a legal obligation that has its place in international law
Points that there are the issues of double standards, lack of political will, selective application, and 'dysfunction of the Security Council'
Argues that the General Assembly functions more effectively than the Security Council
Supports the idea of the reform of the Security Council
'Reaffirms that international humanitarian law does not provide for the right of humanitarian intervention as an exception to the principle of non-use of force'
States that further clarity regarding the implementation of the concept is needed
Favours the narrow scope of the RtoP. Argues that '[a]ny attempt to expand the term to cover other calamities—such as AIDS, climate change or natural disasters—would undermine the language of the 2005 World Summit Outcome Document'
Finds that 'the ambiguous reference to regional mechanisms or agreements and the extraregional aspect is highly controversial'
Notes that the Report 'fails to duly delineate the principles of voluntary acceptance and of the prior request and consent of each State for assistance and capacity-building, including that of a military nature.'
Argues that extensive analysis is needed under the roof of the General Assembly

57. *Hungary* (aligns itself with the statement of the EU)

+ Argues that the 'three pillars […] together constitute a complete implementation of the concept'
  Agrees that the responsibility first and foremost lies with the individual states
  Posits that the 'international community has the moral obligation to give a timely and decisive response'
  Notes that when prevention is concerned there is 'lack of institutional capacity'

58. *India*
+ Considers the 2005 World Summit Outcome a 'cautious go-ahead' for the responsibility to protect
  Argues that measures to be undertaken under Chapter VII should be adopted on a case-by-case basis as a last resort
  Emphasises that the 'responsibility to protect should in no way provide a pretext for humanitarian intervention or unilateral action'
  Favours the narrow scope of the RtoP
  Notes that there is need for willingness of the international community to act as well as a need to reform of the UN, specifically the Security Council

59. *Andorra*
+ Agrees that the responsibility lies first and foremost with the state itself
  Points that the 'need to protect applies to all continents'

60. *San Marino*
+ Strongly welcomes the Report
  Notes that strict guidelines are required to avoid misuse and misinterpretation
  Argues that the 'General Assembly must develop a final and effective implementation policy'

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61. *Sri Lanka*
+ Shares the concerns raised in the statement of the NAM
  Argues that '[a]ny simplistic or loosely selective application of the RtoP notion' has to be 'avoided and discouraged'
  Notes that further clarification is needed, and there are many questions to be answered
  Highlights that 'many Member States are particularly sensitive to the way in which this new intervention is to be operationalized'
  Agrees that the responsibility lies first and foremost with the state itself
  Argues that 'responsible sovereignty must also apply to key issues such as the prohibition of the use of nuclear weapons and other weapons of mass destruction, nuclear disarmament, non-proliferation, counter-terrorism, global warming, biological security and economic prosperity'
  Posits that the 'mechanisms for implementing RtoP also need to be agreed upon,' and the General Assembly is the place for discussion

62. *Sierra Leone*
+ Is highly supportive of the Report
  Notes that early response at the national and international levels is necessary
  Believes that concerns related to the third pillar can be overcome 'by putting proper guidance and modalities in place, buttressed by the institutional reform

63. *Jamaica* on behalf of the 14 States Members of the Caribbean Community (CARICOM) (Associates itself with the statement of the NAM)
+ Favours the narrow scope of RtoP
  Considers prevention as the key aspect
  Concerning pillar three, takes use of force as a measure of last resort
  Notes that '[u]rgent reform of the Security Council is required'

64. *Myanmar*

+ Supports the narrow scope of RtoP
  Notes that the task ahead is to develop a strategy to implement the concept, and the General Assembly is the milieu for this
  Argues that the text of the 2005 World Summit should not be open to renegotiation

65. *The Former Yugoslav Republic of Macedonia* (associates itself with the statement of the EU)

+ 'Supports the three-pillar approach as outlined'
  Notes that the tasks ahead are operationalization and implementation
  Considers prevention a key element
  In case of a failure to prevent, 'the international community should ensure an early and flexible response, not through graduated measures, but through collective action to be taken by the Security Council in accordance with Chapter VII'
  Considers this the adoption of 'the right to protect'

66. *Slovakia* (aligns itself with the statement of the EU)

+ Embraces all the three pillars equally
  Agrees that the primary responsibility lies with individual states
  Argues that the international community should act when necessary
  Notes that prevention and early warning as well as timely and effective crisis management are of vital importance

67. *Islamic Republic of Iran* (supports the statement of the NAM)

+ Points that further clarification regarding the RtoP is required
  Agrees that the primary responsibility lies with individual states
  Notes that international response should be on a case-by-case basis. 'This by no means whatsoever may imply permission to use of force against another State under any pretext, such as humanitarian intervention'
  States that misuse of the concept as well as double standards and selective application in implementation should be avoided
  Points to lack of political will
  Urges for the acceleration of 'the reform process'
  Favours the narrow scope of RtoP

68. *Russian Federation*

+ Agrees that the primary responsibility lies with individual states
  Places emphasis on prevention
  Considers intervention as a last resort under exceptional circumstances
  Asks for caution in while implementing RtoP
  Regarding the implementation of the concept argues that 'conditions for turning those ideas into practical mechanisms and institutions have not yet been met'

69. *Nicaragua* (aligns itself with the statement of the NAM)

+ Supports the report but favours a limited approach
  Notes that careful consideration is required to avoid the turning of the concept into a right to intervene
  Argues that the 'concept cannot be placed above the sovereignty of States or the United Nations

70. *Iceland*

+ Considers the conception of sovereignty as responsibility the basis of RtoP
Points to the importance of prevention
Argues that measures based on Chapter VII should be a last resort
'Fully supports giving the General Assembly a leading role in fashioning an effective international response to crimes and atrocities relevant to RtoP'

71. *Armenia*

+ Notes that RtoP cases do not happen over night
Urges for 'an early and strong reaction by the international community to systematic and egregious violations of human rights'
Is highly supportive of the responsibility to protect, and considers it 'one of the cornerstones of the overall human security system'

72. *Timor-Leste*

+ Strongly supports the three-pillar system, and takes these pillars as a part of the whole concept of the RtoP
Places considerable importance on the second pillar, especially given its individual experience in 2006
Notes that political will is required to obtain success through the second pillar
Underlines that peaceful measures to be undertaken on the basis of Chapters VI and VII of the UN Charter should take precedence over coercive ones of Chapter VII when responding to cases of RtoP
Supports 'the Secretary-General's appeal to the Security Council to refrain from employing or threatening to employ the veto in situations where there is clear failure to meet obligations relating to the responsibility to protect and to reach a mutual understanding to that effect'

73. *Panama*

+ Agrees that the primary responsibility belongs to the state
Argues that the use of force should be a last resort
Emphasises that the 'concepts of the responsibility to protect and humanitarian intervention are so dissimilar that they must not be confused'
States that the forceful act undertaken should comply with the international legal framework

74. *Democratic People's Republic of Korea* (aligns itself with the statement of the NAM)

+! Notes that in the past, humanitarian intervention has been used as a pretext for military attacks. Currently, there is the justification of the 'war on terror'
Posits that super-power politics is still a part of the conduct of international politics
Identifies 3 main concerns that are needed to be addressed in the debates: (1)'whether this theory is in conformity with the principles of respect for sovereignty, equality and non-interference in others' internal affairs, '(2) 'whether military intervention can be as effective as envisaged,' (3) 'the concept of the responsibility to protect may be used to justify interference in the internal affairs of weak and small countries'
Believes that 'it is all the more urgent to take steps towards the fundamental resolution of wars and conflicts within the current framework rather than creating a new protection arrangement'

75. *Botswana*

+ Agrees with the three-pillar approach
  Notes that state sovereignty should not be undermined 'under the pretext of providing support and assistance'
  States: the 'international community, for its part, must demonstrate political will and support by ensuring that all peaceful means of preventing or resolving a conflict are fully explored. That also means that we must all be prepared to take collective and appropriate action in a timely and decisive manner'

76. *Kazakhstan*

+ Believes that 'protecting populations from grave human rights violations […] is a moral imperative.' In this regard, the principle of non-indifference should be embraced
  Opts for a case-by-case consideration in order to avoid the abusive use
  'Fully supports the simultaneous implementation of the three pillars'
  Notes that the use of force should be a last resort

77. *Swaziland* (aligns itself with the statement of the NAM)

+ 'Is concerned that little or no reference is made in the report to the degree of responsibility of States when they occupy the land of others,' so asks for further clarification
  Suggests to reconsider the meaning and extent of ethnic cleansing
  Questions whether the Security Council as an avenue to approve military intervention in cases of RtoP is an effective one

78. *Bangladesh*

+ 'Subscribes to the concept of RtoP as an emerging normative framework and believes that its implementation should conform to the principles of objectivity and non-selectivity' while agreeing with the narrow scope of RtoP
  Reiterates that primary responsibility rests with the state
  Places emphasis on prevention
  Notes that the use of force should be a last resort
  Supports the idea of the reform of the Security Council

79. *Papua New Guinea*

+ Notes that the task ahead is implementation
  Favours the narrow scope of RtoP
  Agrees with the statement of the NAM
  Argues that further discussion is required to 'give better definition to the implementation process of the RtoP concept'
  Accepts that 'the notion that the responsibility to protect is [the] primary obligation'

80. *Benin* (aligns with the statement of the NAM)

+ Takes the three pillars as an inseparable whole
  Argues that the 'kind of use of force provided for in Paragraph 4 of Article 2 of the Charter is completely different from that undertaken by the United Nations or by regional organisations on behalf of the United Nations to resolve or to stop serious violations of the Organisation's fundamental principles. […] The responsibility to protect is related to that second type of use of force. That interpretation arises from Chapters VII and VIII of the Charter'
  Points to the 'inconsistent practice of the Council'
  States that there are the issues of national interests prevailing over other concerns as well as lack of political will in the international community
  'Calls for a multinational rapid deployment force to be set up pursuant to Article 45 of the Charter'

81. *United Republic of Tanzania*

+ Welcomes the report of the Secretary-General
  Notes that the task ahead is implementation

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82. *Peru* (aligns itself with the statement of the NAM)
+ Notes that implementation without reinterpretation of the concept is the task ahead
  Argues that the 'crimes of genocide, war crimes, ethnic cleansing and crimes against humanity' need to be defined openly
  Considers prevention as a key element
  Highlights that there is need for the establishment of an early warning mechanism

83. *Kenya*
+ Notes that implementation without reinterpretation of the concept is the task ahead
  Argues that the 'three pillars that are the basis of the strategy can withstand the test of time if implemented in a consistent manner and in good faith'
  Reiterates that if use of force is necessary, 'it must be consistent with the principles of the Charter of the United Nations and international law'

84. *Malaysia* (aligns itself with the statement of the NAM)
+ Raises the problematic aspects of prevention: 'it will be difficult to hold a State responsible for not acting against a crime that has yet to be committed.' Thus, argues that 'the United Nations needs to sit down and iron out details of the principle of the RtoP.' Therefore, further clarification for purposes of implementation is required
  Notes that '[v]eto use should be restrained'

85. *Lesotho*
+ Argues that the task is not to redefine but to implement
  States that prevention is vital
  Favours the understanding that takes use of force as a last resort
  Supports the Secretary-General's 'call for restraint in the use of the veto by the Security Council' in matters of RtoP
  Posits that the 'role of the General Assembly needs to be further strengthened'

86. *Azerbaijan*
+ Points that the 'General Assembly has an important role to play, especially when the Security Council fails to exercise its responsibility with regard to international peace and security'
  Argues that both individual states and international institutions have proven to be inadequate in responding to cases of RtoP

87. *Georgia* (aligns itself with the statement of the EU)
+ There is the potential for RtoP for misuse, and thus the question is its 'proper implementation'

88. *Argentina*
+ Supports pillar one
  Considers prevention as a key element
  Notes: 'With regard to pillar three on mounting a timely and decisive response, Argentina believes that it would be very useful for the United Nations system to adopt measures to implement the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'

89. *Sudan* (aligns itself with the statement of the NAM)

+! Aggress that primary responsibility rests with the state itself
Notes that '[t]here is a tendency to misinterpret the notion of the responsibility to protect to mean the right of intervention in the affairs of a sovereign State'
Points that '[t]here is still no consensus as to the applicability of RtoP to our political realities'
Is sceptical about the implementation of RtoP as it can be abused by states driven with their national interests
Considers RtoP and humanitarian intervention to be 'two sides of the same coin'
Urges for the reform of the Security Council
Argues that '[t]o give the Security Council the privilege of being executor of the concept of the responsibility to protect would be tantamount to giving a wolf the responsibility to adopt a lamb'
Notes regarding RtoP: 'we know that it can be misused by some powerful countries to achieve imperial hegemony over less powerful ones'
Posits that the 'way forward should be the establishment of an effective early warning mechanism, as articulated in the report of the Secretary-General, and not the usurpation of the doctrine of State sovereignty'

90. *Gambia* (aligns itself with the statement of the NAM)

+ Embraces the concept as presented in the 2005 World Summit
Argues: 'We must anchor the implementation of RtoP in rule-of-law-based approaches that will prevent its abuse or misuse by the international community, while allowing flexibility for genuine action. We must find a cure for our collective inertia'
Points that capacity constraints need to be taken into consideration for effective implementation of pillar two
Agrees that primary responsibility rests with the state itself
Notes that there is the 'likelihood of abuse of the principle of RtoP through politicization,' and that the Security Council is not the best option as the milieu for the implementation of RtoP. Thus, suggests a more neutral arbiter such as a representative committee

91. *Serbia*

+ Considers RtoP a necessity but this does not imply that it has yet acquired a legal nature
Notes that there is a potential for the abuse of the concept
'Believe[s] in the mutual complementarity and interdependence of all three pillars.' Nevertheless, notes that there is the 'greatest need for investing genuine effort and resolve in further elaborating the third pillar'

92. *Cameroon*

+ Argues that RtoP 'is not a legal concept but a political one'
Favours the limited scope of the concept
Believes that pillar one is clearly established
States that the implementation of pillar three should be on a case-by-case basis, and the primary focus should be prevention
Posits that the 'United Nations must itself be strengthened and democratized'
Points that reform of the Security Council needs to be accelerated

93. *Holy See* (OBSERVER)

+ Notes that the 'international community has a moral responsibility to fulfil its various commitments'
Argues that '[t]imely intervention that places emphasis on mediation and dialogue has greater ability to promote the responsibility to protect than military action'
Posits that '[i]f the third pillar is to gain momentum and efficacy, further efforts must be made to ensure that action taken pursuant to the powers of the Security Council is carried out in an open and inclusive manner and that the needs of the affected populations, rather than the whims of those engaging in geopolitical power struggles, are placed in the forefront'
Points that '[i]n addition to national and international institutions, religious and community leaders have an important role in promoting the responsibility to protect'

94. *Palestine* (OBSERVER) (aligns itself with the statement of the NAM)

+ Points that double standards need to be avoided
Reminds the right to self-determination
Argues that there is selectivity in focusing on situations around the world
Notes that the role of the Security Council in the implementation of RtoP is crucial

+	generally positive towards R2P
!	cautious towards R2P
+!	generally positive towards but also cautious about R2P
?	not necessarily positive towards R2P, highly cautious in general

Bibliography

ABC. (2011). *Defiant Gaddafi issues chilling threat*. Retrieved April 12, 2015, from http://www.abc.net.au/worldtoday/content/2011/s3146582.htm

Abiew, F. K. (1998). *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. The Hague, The Netherlands: Kluwer Law International.

Acharya, A. (2000–2001). Human Security: East versus West. *International Journal, 56*, 442–460.

Acharya, A. (2013). The R2P and Norm Diffusion: Towards A Framework of Norm Circulation. *Global Responsibility to Protect, 5*, 466–479.

Adams, S. (2012). Libya and the Responsibility to Protect. *Global Centre for the Responsibility to Protect, 3*, 1–24.

African Union. (2001). *Constitutive Act of the African Union*. Retrieved October 15, 2014, from http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf.

African Union (AU). (7–8 March 2005). Executive Council 7th Extraordinary Session. The Common African Position On The Proposed Reform Of The United Nations: The Ezulwini Consensus, Addis Ababa, Ethiopia.

African Union Peace and Security Council (AUPSC). (2011). *Communiqué, 261st meeting, AU Doc PSC/PR/COMM(CCLXI)*. Retrieved June 13, 2014, from http://www.au.int/fr/sites/default/files/PSC%20Communique%20on%20the%20situation%20in%20Libya.pdf.

Akehurst, M. (1984). 'Humanitarian Intervention'. In H. Bull (Ed.), *Intervention in World Politics (*pp. 95–118). Oxford: Clarendon Press.

Amer, R. (1994). The UN's Reactions to Foreign Military Interventions. *Journal of Peace Research, 31*(4), 425–444.

Annan, K. (2004). A More Secure World: Our Shared Responsibility. *Report of the Secretary General's Report High-level Panel on Threats, Challenges and Change*. Retrieved October 10, 2007, from http://www.un.org/secureworld/report2.pdf.

P. Gözen Ercan, *Debating the Future of the 'Responsibility to Protect': The Evolution of a Moral Norm*, DOI 10.1057/978-1-137-52427-0

Aquinas, T. (2006). *Summa Theologica, II-II*. Cambridge, MA: Cambridge University Press.

Arbuckle, J. (2006). *Military Forces in the 21st Century*. London: Routledge.

Archibugi, D. (1993). The Reform of the UN and Cosmopolitan Democracy: A Critical Review. *Journal of Peace Research, 30*(3), 301–315.

Art, R. J. (1998–1999). Geopolitics Updated: The Strategy of Selective Engagement. *International Security, 23*(3), 79–113.

Augustine, S. (1969). *City of God*. Book xix (Vol. 6, trans: Greene, W. C.). London: William Heinemann.

Ayoob, M. (2010). Making Sense of Global Tensions: Dominant and Subaltern Conceptions of Order and Justice in the International System. *International Studies, 47*(2–4), 129–141.

Aziakou, G. (2009). *UN debates responsibility to protect threatened populations*. Retrieved May 8, 2010, from http://www.google.com/hostednews/afp/article/ALeqM5jUBFUNA723tsQokBAIMj-KcEYYug.

Badescu, C. G. (2007). Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers. *Canadian Journal of Political Science, 40*(1), 51–78.

Badescu, C., & Bergholm, L. (2009). Responsibility to Protect and the Conflict in Darfur: The Big Let-Down, *Security Dialogue 40*(3), 287–309.

Bain, W. (2001). The Tyranny of Benevolence: National Security, Human Security, and the Practice of Statecraft. *Global Society, 15*(3), 277–294.

Bannon, A. L. (2006). The Responsibility to Protect: The U.N. World Summit and the question of unilateralism. *The Yale Law Journal, 115*, 1157–1165.

Barbour, B., & Gorlick, B. (2008). Embracing the 'Responsibility to Protect': a repertoire of measures including asylum for potential victims, *International Journal of Refugee Law, 20*(4), 533–66.

Barnett, M. (2003). *Eyewitness to a Genocide: The United Nations and Rwanda*. Ithaca, NY: Cornell University Press.

Barnhart, R. K. (Ed.). (1995). *The Barnhart Concise Dictionary of Etymology*. New York: Harper Collins.

BBC. (2005). Annan criticises Darfur response. Retrieved May 26, 2015, from http://news.bbc.co.uk/2/hi/africa/4643647.stm.

BBC. (2010a). *Sudan's President Bashir defies arrest warrant in Chad*. Retrieved May 26, 2015, from http://www.bbc.com/news/world-africa-10718399.

BBC. (2010b). *David Cameron describes blockaded Gaza as a 'prison'*. Retrieved May 26, 2015, from http://www.bbc.com/news/world-middle-east-10778110.

BBC. (2012). *Journalist Marie Colvin in Homs: 'I saw a baby die today'*. Retrieved April 23, 2015, from http://www.bbc.com/news/world-middle-east-17120484.

BBC. (2015a). *Guide: Why are Israel and the Palestinians fighting over Gaza?* Retrieved May 26, 2015, from http://www.bbc.co.uk/newsround/20436092.

BBC. (2015b). *Syria: The Story of the Conflict*. Retrieved February 15, 2015, from http://www.bbc.com/news/world-middle-east-26116868.

Bellamy, A. J. (2003). Humanitarian Responsibilities and Interventionist Claims in International Society. *Review of International Studies, 29*, 321–340.

Bellamy, A. J. (2005). Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs, 19*(2), 31–53.

Bellamy, A. J. (2006). Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit. *Ethics & International Affairs, 20*(2), 143–169.

Bellamy, A. J. (2010). The Responsibility to Protect—Five Years On, *Ethics & International Affairs, 24*(2), 143–169.

Bellamy, A. (2012). R2P—Dead or Alive? In M. Brosig (Ed.), *The Responsibility to Protect—from Evasive to Reluctant Action? The Role of Global Middle Powers*. Berlin, Germany: Hans Seidel Foundation.

Bernhardt, R. (Ed.). (1992). *Encyclopaedia of Public International Law* (vols. 2–3). Amsterdam: Elsevier.

Beyerlin, U. (1982). 'Humanitarian Intervention'. In R. Bernhardt (Ed.), *Encyclopaedia of Public International Law* (Vol. 3). New York: North-Holland Publishing Company.

Bledsoe, R. L., & Boleslaw, A. B. (1987). *International Law Dictionary* (pp. 371–374). Oxford, England: ABC Clio.

Bloomfield, A. (2016). Resisting the Responsibility to Protect. In A. Bloomfield & S. V. Scott (Eds.), *Norm Antipreneurs and the Politics of Resistance to Global Normative Change*. Oxon, England: Routledge.

Bolton, J. R. (2005). *Letter from John R. Bolton, Representative of the United States of America to the UN, to Jean Ping, President of the UN General Assembly*. Retrieved January 22, 2014, from http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05[1].pdf.

Boniface, P. (1997). The Changing Attitude towards Military Intervention. *International Spectator, 32*, 53–63.

Booth, K. (Ed.). (1991). *New Thinking about Strategy and International Security*. London: Harper Collins.

Booth, K. (1995). Human Wrongs and International Relations. *International Affairs, 71*(1), 103–126.

Booth, W., & Eglash, R. (2015). Palestinian move at International Criminal Court signals a volatile new stage. *The Washington Post.* Retrieved June 18, 2015, from http://www.washingtonpost.com/world/middle_east/palestinian-move-at-international-criminal-court-signals-a-volatile-new-stage/2015/01/18/15336c6e-9ed5-11e4-86a3-1b56f64925f6_story.html.

Bouchard, E. M. (1922). *The Diplomatic Protection of Citizens Abroad*. New York: The Banks Law.

Brands, H. W. (1999). The Idea of the National Interest. *Diplomatic History, 23*(2), 239–261.

Breau, S. C. (2006). The Impact of the Responsibility to Protect on Peacekeeping. *Journal of Conflict & Security Law, 11*(3), 429–464.

Brinkerhoff, D. W. (2006). *Governance in Post-Conflict Societies: Rebuilding Fragile States*. London: Routledge.

Brock, G. (2006). Humanitarian Intervention: Closing the Gap between Theory and Practice. *Journal of Applied Philosophy, 23*(3), 277–291.

Brownlie, I. (1974). Humanitarian Intervention. In J. N. Moore (Ed.), *Law and Civil War in the Modern World*. Baltimore: The Johns Hopkins University Press.

Buchanan, A., & Keohane, R. (2011). Precommitment Regimes for Intervention: Supplementing the Security Council. *Ethics and International Affairs, 25*(1 Spring), 41–63.

Bull, H. (1968). Strategic Studies and Its Critics. *World Politics, 20*(4), 593–605.

Bull, H. (1977). *The Anarchical Society: A Study of Order in World Politics*. London: Macmillan.

Bull, H. (Ed.). (1984). *Intervention in World Politics*. Oxford, England: Clarendon Press.

Buzan, B. (1991). *People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. New York: Harvester Wheatsheaf.

Beyerlin, U. (1982) 'Humanitarian Intervention'. In R. Bernhardt (ed.), *Encyclopaedia of Public International Law*, vol. 3. New York: North-Holland Publishing Company.

Caney, S. (2005). *Justice Beyond Borders*. Oxford, England: Oxford University Press.

Carment, D. (2003). Assessing state failure: implications for theory and policy. *Third World Quarterly, 24*(3), 407–427.

Carnegie Commission on Preventing Deadly Conflict. (1999, December 15). *Preventing Deadly Conflict—Final Report; Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*.

Carr, E. H. (1991). *The Twenty Years' Crisis, 1919–1939: An Introduction to the Study of International Relations*. Basingstoke, England: Macmillan.

Cassese, A. (1999). Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World community? *European Journal of International Law, 10*, 23–30.

Cassidy, J. (2014). Israeli Pullback Won't Quell Questions About "War Crimes". *The New Yorker.* Retrieved July 6, 2015, from http://www.newyorker.com/news/john-cassidy/israeli-pullback-wont-quell-questions.

Chandler, D. (2004). The Responsibility to Protect? Imposing the "Liberal Peace". *International Peacekeeping, 11*(1), 59–81.

Checkel, J. (2008). Process Tracing. In A. Klotz & D. Prakash (Eds.), *Qualitative Methods in International Relations: A Pluralist Guide*. New York: Palgrave Macmillan.

Chesterman, S. (2001). *Just War or Just Peace: Humanitarian intervention and international law*. Oxford, England: Oxford University Press.

Chesterman, S. (2011). Leading from Behind: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya. *Ethics & International Affairs, 25*(3), 279–285.

Chomsky, N. (2006). *Failed States: The Abuse of Power and the Assault on Democracy*. New York: Metropolitan Books.

Chomsky, N. (2011). The Skeleton in the Closet: The Responsibility to Protect in History. In P. Cunliffe (Ed.), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*. Oxon, England: Routledge.

Chopra, J., & Thomas, G. W. (1992). Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention. *Ethics & International Affairs, 6*, 95–117.

Claes, J. (2012). Protecting Civilians from Mass Atrocities: Meeting the Challenge of R2P Rejectionism. *Global Responsibility to Protect, 4*(1), 67–97.

Clinton, W. D. (1986). The National Interest: Normative Foundations. *The Review of Politics, 48*(4), 495–519.

Cohen, J. (2008a). A Global State of Emergency or the Further Constitutionalization of International Law: A Pluralist Approach. *Constellations, 15*(4), 456–484.

Cohen, R. (2008b, August 27). How Annan rescued Kenya from genocide. *The Observer*. Retrieved June 19, 2010, from http://www.observer.ug/index.php?option=com_content&view=article&catid=34:news&id=918:how-annan-rescued-kenya-from-genocide&Itemid=59.

Coleman, K. P. (2013). Locating Norm Diplomacy: venue change in international norm negotiations. *European Journal of International Relations, 19*(1), 163–186.

Commission on Human Security. (2003). *Human Security Now*. New York: Commission on Human Security.

Conetta, C., & Knight, C. (1995). *Vital Force: A Proposal for the Overhaul of the UN Peace Operations System and the Creation of a UN Legion*. Cambridge, MA: Commonwealth Institute.

Coppieters, B., & Fotion, N. (Eds.). (2008). *Moral Constraints on War: Principles and Cases* (2nd ed.). Lanham, MD: Lexington Books.

Corten, O. (2010). *The Law Against War: The Prohibition of Use of Force in Contemporary International Law*. Oxford, England: Hart.

Cotler, I., & Genser, J. (2013, August 30). Our Response to Syria Must Be Effective, But Also Legal. *The Huffington Post*. Retrieved August 01, 2015, from http://www.huffingtonpost.ca/irwin-cotler/syria-crisis_b_3845195.html.

Cox, B. (2009). United Nations Security Council Reform: Collected Proposals and Possible Consequences. *South Carolina Journal of International Law and Business, 6*(1), 89–128.

Coyne, C. J. (2006). Reconstructing Weak and Failed States: Foreign Intervention and the Nirvana fallacy. *Foreign Policy Analysis, 2*, 343–360.

Crocker, C. A. (2003). Engaging Failing States. *Foreign Affairs, 82*(5), 32–44.

Cushman, T., & Stjepan, G. M. (Eds.). (1996). *This Time We Knew: Western Responses to Genocide in Bosnia*. New York: New York University Press.

Damrosch, L. F. (1993). Changing conceptions of intervention in international law. In L. Reed & C. Kaysen (Eds.), *Emerging Norms of Justified Intervention* (pp. 91–110). Cambridge, MA: American Academy of Arts and Sciences.

Danish Institute of International Affairs (DIIA). (1999). *Humanitarian Intervention: Legal and Political Aspects*. Copenhagen, Denmark: Danish Institute of International Affairs.

Debiel, T., & Klein, A. F. (2002). *Peace: State Failure, Violence and development in crisis regions*. London: Zedbooks.

Deitelhoff, N., & Zimmermann, L. (2013). Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms. *Peace Research Institute Frankfurt, 18*, 1–17.

Deng, F. M. (1995). State Collapse: The Humanitarian Challenge to the United Nations. In I. W. Zartman (Ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority* (pp. 207–219). London: Lynne Rienner.

Department of State, Counterterrorism Office. (2002). *Patterns of Global Terrorism*. Retrieved November 20, 2007, from http://www.state.gov/documents/organization/20177.pdf.

Duke, S. (1994). The State and Human Rights: Sovereignty versus Humanitarian Intervention. *International Relations, 12*, 25–48.

Edel, A., Flower, E., & O'Connor, F. W. (Eds.). (1989). *Morality, Philosophy, and Practice: Historical and Contemporary Readings and Studies*. New York: Random House.

Elfstrom, G. (1998). *International Ethics: A reference handbook*. Santa Barbara, CA: ABC-Clio.

Erskine, T. (2014). Coalitions of the Willing and Responsibilities to Protect: Informal Associations, Enhanced Capacities, and Shared Moral Burdens. *Ethics & International Affairs, 28*(1), 115–145.

Etzioni, A. (2005). Genocide Prevention in the New Global Architecture. *British Journal of Politics and International Relations, 7*, 469–484.

European Commission Humanitarian Organization (Ed.). (1996). *Ethics in humanitarian aid*. Brussels, Belgium: ECHO.

Evans, G. (2006, March31). *From Humanitarian Intervention to the Responsibility to Protect*. Keynote Address to Symposium on Humanitarian Intervention, University of Wisconsin, Madison. Retrieved October 28, 2007, from http://www.crisisgroup.org/home/index.cfm?id=4060&l=1.

Evans, G. (2008a). *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. Washington, DC: Brookings.

Evans, G. (2008b, August 5). 'Lecture by Gareth Evans, President of the International Crisis Group', to 10th Asia Pacific Programme for senior military officers, S. Rajaratnam School of International Studies, Singapore. Retrieved September 12, 2010, from http://www.gevans.org/speeches/speech302.html.

Evans, G. (2012a, July 20). The Responsibility to Protect After Libya and Syria. *Annual Castan Centre for Human Rights Law Conference*, Melbourne, Australia. Retrieved October 11, 2014, from http://www.gevans.org/speeches/speech476.html.

Evans, G. (2012b, August 23). 'R2P and RwP After Libya and Syria', Keynote address by professor the Hon Gareth Evans, co-chair, Global Centre for the Responsibility to Protect, to GCR2P/FGV/Stanley Foundation workshop, responsibility while

protecting: What's next? Rio de Janeiro, Brazil. Retrieved June 20, 2015, from http://gevans.org/speeches/speech485.html.

Evans, G., & Thakur, R. (2013). *Correspondence: Humanitarian Intervention and the Responsibility to Protect (R2P)*. Retrieved June 17, 2014, from http://www.gevans.org/opeds/PapeResponseEvansThakurReview2xi12edfin.pdf.

Fabri, H. R. (2008). 'Human Rights and State Sovereignty'. In P. Alston & E. MacDonald (Eds.), *Human Rights, Intervention, and the Use of Force*. Oxford: Oxford University Press.

Fassbender, B. (2004). Pressure for Security Council Reform. In D. M. Malone (Ed.), *The UN Security Council: From the Cold War to the 21st Century*. Boulder, CO: Lynne Rienner.

Feinstein, L. (2007, January 26). Beyond Words: Building Will and Capacity to Prevent More Darfurs. *The Washington Post*. Retrieved May 12, 2015, from http://www.washingtonpost.com/wp-dyn/content/article/2007/01/25/AR2007012501250.html.

Feinstein, L., & Slaughter, A.-M. (2004). A Duty to Prevent. *Foreign Affairs, 83*(1), 136–150.

Fierke, K. M. (1998). *Changing Games, Changing Strategies: Critical Investigations in Security*. Manchester, England: Manchester University Press.

Finnemore, M. (1996a). Constructing Norms of Humanitarian Intervention. In P. J. Katzenstein (Ed.), *The Culture of National Security: Norms and Identity in World Politics* (pp. 153–185). New York: Columbia University Press.

Finnemore, M. (1996b). *National Interests in International Society*. Ithaca, NY: Cornell University Press.

Finnemore, M. (2000, April 14). Paradoxes in humanitarian intervention. *Symposium on Norms and Ethics of Humanitarian Intervention at the Center for Global Peace and Conflict Studies*, University of California at Irvine, Irvine, CA (revised in 2000 September). Retrieved November 28, 2010, from http://www.cgpacs.uci.edu/files/cgpacs/docs/2010/working_papers/martha_finnemore_humanitarian_intervention.pdf.

Finnemore, M. (2003). *The Purpose of Intervention: Changing Beliefs about the Use of Force*. Ithaca, NY: Cornell University Press.

Finnemore, M., & Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization, 52*(4), 887–917.

Fixdal, M., & Smith, D. (1998). Humanitarian Intervention and Just War. *Mershon International Studies Review, 42*, 283–312.

Fonteyne, J-P. L. (1973–1974). The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter. *California Western International Law Journal, 4*, 203–270

Franck, T., & Rodley, N. (1973). After Bangladesh: The law of humanitarian intervention by military force. *American Journal of International Law, 67*, 275–305.

Frankel, J. (1970). *National Interest*. London: Pall Mall Press.

Freedman, L. (Ed.). (1994). *Military Intervention in European Conflicts*. Oxford, England: Blackwell.

Frost, M. (2001). The Ethics of Humanitarian Intervention: protecting civilians to make democratic citizenship possible. In K. E. Smith & M. Light (Eds.), *Ethics and Foreign Policy* (pp. 34–54). Cambridge, MA: Cambridge University Press.

Fukuyama, F. (1994). The Ambiguity of National Interest. In S. Sestanovich (Ed.), *Rethinking Russia's National Interests* (pp. 10–23). Washington, DC: Center for Strategic and International Studies.

Fukuyama, F. (2004). *State Building: Governance and World Order in the Twenty-First Century*. London: Profile Books.

Gaddis, J. L. (2005). *The Cold War: A New History*. New York: The Penguin Press.

Garrett, S. A. (1999). *Doing Good and Doing Well: an examination of humanitarian intervention*. Westport, CT: Praeger.

Gaubatz, K. T. (1995). Intervention and Intransitivity: Public Opinion, Social Choice, and the Use of Military Force Abroad. *World Politics, 47*(4), 534–554.

Gazzini, T. (2001). NATO Coercive Military Activities in the Yugoslav crisis (1992–1999). *European Journal of International Law, 12*(3), 391–435.

Girardet, E., Bartol, A., & Carmel, J. (Eds.). (1995). *Somalia, Rwanda, and Beyond: The Role of the International Media in Wars and Humanitarian Crises*. Geneva, Switzerland: Crosslines Communications.

Global Centre for the Responsibility to Protect (GCR2P). (2013). *Sri Lanka*. Retrieved July 12, 2015, from http://www.globalr2p.org/regions/sri_lanka.

Goertz, G., & Diehl, P. F. (1994). International Norms and Power Politics. In F. W. Wayman & P. F. Diehl (Eds.), *Reconstructing Realpolitik* (pp. 101–122). Ann Arbor, MI: University of Michigan Press.

Goldstein, J., & Keohane, R. O. (Eds.). (1993). *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca, NY: Cornell University Press.

Goodby, J. E. (1993). Collective Security in Europe after the Cold War. *Journal of International Affairs, 46*(2), 299–321.

Goodman, R. (2006). Humanitarian Intervention and Pretext for War. *The American Journal of International Law, 100*, 107–141.

Goodwin-Gill, G. S., & Talmon, S. (Eds.). (1999). *The Reality of International Law: essays in honour of Ian Brownlie*. Oxford, England: Clarendon Press.

Gowing, N. (1997). *Media Coverage: Help or Hindrance in Conflict Prevention?* Washington, DC: Carnegie Commission on Preventing Deadly Conflict.

Gözen Ercan, P. (2014). R2P: From Slogan to an International Ethical Norm. *Uluslararası Ilişkiler (International Relations), 43*(1), 35–52.

Gözen Ercan, P. (2015). Responsibility to Protect and Inter-State Crises: Why and How R2P applies to the case of Gaza? *International Journal of Human Rights, 19*(8), 1098–1111.

Griffiths, M., & O'Callaghan, T. (2002). *International Relations: The Key Concepts* (pp. 145–148). New York: Routledge.

Gros, J.-G. (1996). Towards a Taxonomy of Failed States in the New World Order. *Third World Quarterly, 17*(3), 455–471.

Grotius, H. (1967). *Savas ve Baris Hukuku (De Iure Belli Ac Pacis): Secmeler* (trans: S. L. Meray). Ankara, Turkey: Ankara Universitesi Basimevi.
Group of 77. (2000, April 10–14). South Summit, Havana, Cuba. Retrieved June 18, 2010, from http://www.g77.org/summit/Declaration_G77Summit.htm.
Hajjar, L. (2014). *Is Gaza Still Occupied and Why Does It Matter?* Retrieved June 5, 2015, from http://www.jadaliyya.com/pages/index/8807/is-gaza-still-occupied-and-why-does-it-matter.
Handel, M. I. (1990). *Weak States in the International System*. London: Cass.
Hannum, H. (2009, March 06). *Interview between author and Professor Hurst Hannum, Professor of International Law at the Fletcher School of Tufts University*, Boston.
Harhoff, F. (2001). Unauthorised Humanitarian Interventions–Armed Violences in the Name of Humanity? *Nordic Journal of International Law, 70*, 65–119.
Harris, J. (Ed.). (1995). *The Politics of Humanitarian Intervention*. New York: Pinter.
Hawkins, V. (2001, May). The Price of Inaction: The Media and Humanitarian Intervention. *Journal of Humanitarian Assistance*. Retrieved January 23, 2013, from http://www.jha.ac/articles/a066.htm.
Hehir, A. (2010). The Responsibility to protect: "Sound and fury signifying nothing"? *International Relations, 24*, 218–239.
Hehir, A. (2012). *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*. London: Palgrave Macmillan.
Hehir, A. (2014). Is Gaza in Israel? R2P and Inter-State Crises. *Justice in Conflict*, Retrieved June 4, 2015, from http://justiceinconflict.org/2014/07/23/is-gaza-in-israel-r2p-and-inter-state-crises.
Hehir, A., & Lang, A. (2015). The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect. *Criminal Law Forum, 26*(1), 153–179.
Hehir, A., & Murray, R. (2013). *Libya: The responsibility to Protect and the Future of Humanitarian Intervention*. Basingstoke, England: Palgrave Macmillan.
Held, D. (1998). Democracy and Globalization. In D. Archibugi, D. Held, & M. Köhler (Eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy*. Cambridge, England: Polity Press.
Helman, G. B., & Ratner, S. R. (1992–1993). Saving failed states. *Foreign Policy, 89*, 3–20.
Heriberto, C. (2006). The Duty of the Benevolent Master: From Sovereignty to Suzerainty and the Biopolitics of Intervention. *Alternatives: Global, Local Political, 31*(3), 285–311.
Hilaire, M. (1997). *International Law and the United States Military Intervention in the Western Hemisphere*. The Hague, The Netherlands: Kluwer Law International.
Hillen, J. (1994). Policing the New World Order: The Operational Utility of a Permanent UN Army. *Strategic Review, 22*(2), 54–62.
Hironaka, A. (2005). *Neverending Wars. The International Community, Weak States, and the Perpetuation of Civil War*. Cambridge, MA: Harvard University Press.

Holm, H.-H. (2001). A Disaggregated World Order in the Making: Policy towards Failed States as an Example. *International Politics, 38*, 357–374.

Holt, V. K., & Berkman, T. C. (2006). *The Impossible Mandate? Military preparedness, the responsibility to protect and modern peace operations*. Washington, DC: The Henry L. Stimson Center.

Holzgrefe, J. L., & Keohane, R. O. (Eds.). (2003). *Humanitarian Intervention, Ethical, Legal, and Political Dilemmas*. Cambridge, England: Cambridge University Press.

Hooper, S. (2009). Annan: World faces "crisis of governance". *CNN*. Retrieved June 2, 2015, from http://edition.cnn.com/2009/BUSINESS/01/28/davos.wef.annan/index.html?eref=rss_.

House of Commons. (1999–2000). *Foreign Affairs Committee, Fourth Report, Session 1999–2000.* Retrieved August 20, 2011, from http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm.

Institute of International Law. (1975). *The Principle of Non-Intervention in Civil Wars*. English translation, Session of Wiesbaden. Retriever April 23, 2015 from http://www.justitiaetpace.org/idiE/resolutionsE/1975_wies_03_en.pdf.

International Commission on Intervention and State Sovereignty (ICISS). (2001a) *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty*. Ottawa, Canada: International Development Research Center.

International Commission on Intervention and State Sovereignty (ICISS). (2001b) *The Responsibility to Protect: Research, Bibliography, Background*. Ottawa, Canada: International Development Research Center.

International Cooperation for the Responsibility to Protect (ICRtoP). (2008). *Georgia-Russia Crisis and RtoP*. Retrieved July 17, 2014, from http://www.responsibilitytoprotect.org/index.php/crises/178-other-rtop-concerns/2749-the-crisis-in-georgia-russia.

International Cooperation for the Responsibility to Protect (ICRtoP). (2008–2009). *The Crisis in Gaza: An RtoP Situation?* Retrieved October 21, 2014, from http://www.responsibilitytoprotect.org/index.php/crises/178-other-rtop-concerns/2750-the-crisis-in-gaza.

International Cooperation for the Responsibility to Protect (ICRtoP). (2010). *Crisis in Guinea*. Retrieved July 17, 2014, from http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea.

International Cooperation for the Responsibility to Protect (ICRtoP). (n.d.) *The Crisis in Kenya*. Retrieved October 21, 2014, from http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya#2.

International Cooperation for the Responsibility to Protect (ICRtoP). (2009). *Crisis in Zimbabwe*. Retrieved July 16, 2014, from http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-zimbabwe.

International Cooperation for the Responsibility to Protect (ICRtoP). (2012, January 24). *Practitioners and Academics Assess RtoP from 2001–2022 at R2P: The Next Decade*. Retrieved August 16, 2015, from http://icrtopblog.org/category/event/.

International Cooperation for the Responsibility to Protect (ICRtoP). (2014). *Crisis in Sri Lanka*. Retrieved July 17, 2015, from http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka#R_up_F.

International Cooperation for the Responsibility to Protect (ICRtoP). (2015). *The Crisis in Syria*. Retrieved July 12, 2015, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria.

International Court of Justice (ICJ). (1945). *Statute of the International Court of Justice*. Retrieved July 17, 2014, from http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0.

International Court of Justice (ICJ). (1986, June 24). Case Concerning the Military and Paramilitary Activates in and Against Nicaragua (Nicaragua vs. United States of America). *Summary of the Judgement of the Court*. Retrieved January 29, 2009, from http://www.icj-cij.org/docket/files/70/6505.pdf.

International Criminal Court. (2015, February 02). *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, ahead of the general and state elections in Nigeria*. Retrieved April 04, 2015, from http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-02-02-2015.aspx.

International Criminal Court (ICC). (1998). *Rome Statute of the International Criminal Court*. Retrieved February 12, 2015, from http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

International Criminal Court (ICC). (n.d.) *Situations and Cases*. Retrieved April 22, 2015, from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx.

Issaka, M. (2008, November 06). Interview between author and Mashood Issaka, Senior Policy Analyst at International Peace Institute, Africa Program. New York.

Jackson, R. H. (1992). The Security Dilemma in Africa. In B. Job (Ed.), *The Insecurity Dilemma: National Security of Third World States*. Boulder, CO: Lynne Rienner.

Jackson, R. (1993). *Quasi-states: Sovereignty, International Relations and the Third World*. Cambridge, MA: Cambridge University Press.

Jackson, R. (2007). *Sovereignty: Evolution of an idea*. Cambridge: Polity.

Jakobsen, P. V. (1996). National Interest, Humanitarianism or CNN: What Triggers UN Peace Enforcement after the Cold War? *Journal of Peace Research, 33*(2), 205–215.

Jentleson, B. W. (1992). The Pretty Prudent Public: Post-Vietnam American Opinion on the use of Military Force. *International Studies Quarterly, 36*(1), 49–74.

Jentleson, B. W., & Britton, R. (1998). Still Pretty Prudent: Post-Cold War American Public Opinion on the Use of Military Force. *Journal of Conflict Resolution, 42*(4), 395–417.

Johansen, R. C. (1980). *The National Interest and the Human Interest*. Princeton, NJ: Princeton University Press.

Johnson, A., & Mueen, S. (2012). 'Short War, Long Shadow: The Political and Military Legacies of the 2011 Libya Campaign', *RUSI—Whitehall Report.*

Kaldor, M. (2008). *Human Security: reflections on globalization and intervention*. Cambridge, England: Polity Press.

Katz, M. (2006, May 15). Bush Channels N. Chamberlain. A very Long Engagement. *The New Republic*, pp. 20–25.

Kaul, I. (1995). Peace Needs No Weapons: From Military Security to Human Security. *The Ecumenical Review, 47*(3), 313–319.

Kaysen, C., & Rathjens, G. (1996). *Peace Operations by the United Nations: The Case for a Volunteer UN Military Force*. Cambridge, MA: American Academy of Arts and Sciences.

Kersbergen, K. V., & Verbeek, B. (2007). The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union. *European Journal of International Relations, 13*(2), 217–238.

King, G., & Murray, C. J. L. (2001–2002). Rethinking Human Security. *Political Science Quarterly, 116*(4), 585–610.

Kinloch-Pichat, S. (2004). *A UN "Legion": Between Utopia and Reality*. London: Frank Cass.

Klein, B. S. (1994). *Strategic Studies and World Order*. Cambridge, MA: Cambridge University Press.

Knudsen, T. B. (2009, February 15–18). The History of Humanitarian Intervention. The rule or the Exception? *Paper for the 50th ISA Annual Convention*, New York.

Kouchner, B. (2008). Statement by Bernard Kouchner on the situation in Kenya, January 31, 2008. *France in Kenya and Somalia*. Retrieved August 23, 2015, from http://www.ambafrance-ke.org/Statement-by-Bernard-Kouchner-on.

Kratochwil, F. (1982). On the Notion of 'Interest' in International Relations. *International Organization, 36*(1), 1–30.

Krause, K., & Williams, M. (Eds.). (1998). *Critical Security Studies: Concepts and Cases*. London: UCL Press.

Krisch, N. (2008). The Security Council and the Great Powers. In V. Lowe, A. Roberts, J. Welsh, & D. Zaum (Eds.), *The United Nations Security Council and War*. Oxford, England: Oxford University Press.

Kritsiotis, D. (1998). Reappraising Policy Objections to Humanitarian Intervention. *Michigan Journal of International Law, 19*(4), 1005–1050.

Krook, M. L., & True, J. (2010). Rethinking the Life Cycle of International Norms: The United Nations and the Global Promotion of Gender Equality. *European Journal of International Relations, 18*(1), 103–127.

Kuperman, A. J. (2013). *Lessons from Libya: How not to intervene*. Retrieved July 02, 2015, from http://belfercenter.ksg.harvard.edu/publication/23387/lessons_from_libya.html.

Kusano, H. (2003). Humanitarian Intervention: the interplay of norms and politics. In M. C. Davis, W. Dietrich, & B. Scholdan (Eds.), *International Intervention in the Post-Cold War World: moral responsibility and power politics*. Armok, NY: ME Sharpe.

Kuznetsova, E. (2004). Limit Sovereignty if the State Abuses It. *International Affairs, 5*, 94–105.

Lang, A. F., Jr. (Ed.). (2003). *Just Intervention*. Washington, DC: Georgetown University Press.

Lauterpacht, H. (1946). The Grotian Tradition in International Law. *British Yearbook of International Law, 23*, 1–53.

Lauterpacht, H. (1950). *International Law and Human Rights.* London: Stevens and Sons Ltd.

Lillich, R. B. (1974). Humanitarian Intervention: A Reply to Ian Brownlie and Plea for Constructive Alternatives. In J. Moore (Ed.), *Law and Civil War in the Modern World* (pp. 229–251). Baltimore: The Johns Hopkins University Press.

Lingelbach, W. F. (1900). The Doctrine and Practice of Intervention in Europe. *The Annals of the American Academy of Political and Social Science, 16*(1), 1–32.

Lipschutz, R. D. (Ed.). (1995). *On Security*. New York: Columbia University Press.

Luck, E. C. (1996). The United Nations, Multilateralism, and US Interests. In C. W. Maynes & R. S. Williamson (Eds.), *US Foreign Policy and the United Nations System* (pp. 27–53). New York: W.W. Norton.

Luck, E. C. (2008). A Council for All Seasons: The Creation of the Security Council and Its Relevance Today. In V. Lowe, A. Roberts, J. Welsh, & D. Zaum (Eds.), *The United Nations Security Council and War*. Oxford, England: Oxford University Press.

Luck, E. C. (2009). Remarks to the General Assembly. Retrieved July 23, 2014 from http://www.un.org/en/preventgenocide/adviser/pdf/EL%20GA%20remarks%202009.pdf.

Lynch, C. (2014, July 31). U.N. Chief: Israel Responsible for 'Reprehensible' School Attack. *Foreign Policy*. Retrieved July 6, 2015, from http://foreignpolicy.com/2014/07/31/u-n-chief-israel-responsible-for-reprehensible-school-attack/.

Lyons, G. M. (1995). International Organizations and National Interests. *International Social Sciences Journal, 144*, 261–276.

Macalister-Smith, P. (Ed.). (1995). *Encyclopaedia of Public International Law*. Amsterdam: Elsevier.

MacFarlane, S. N. (2000). *Politics and Humanitarian Action*. Providence, RI: Thomas J. Watson Jr. Institute for International Studies.

Macfarlane, N. S., Thielking, C. J., & Weiss, T. G. (2004). "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly*, *25*(5), 977–92.

Mallavarapu, S. (2015). Colonialism and the Responsibility to Protect. In R. Thakur & W. Maley (Eds.), *Theorising the Responsibility to Protect*. Cambridge, MA: Cambridge University Press.

Mandelbaum, M. (1994). The Reluctance to Intervene. *Foreign Policy, 95*, 3–18.

Maninger, S. (1997). The West, the Rest, and the Will to Project Power. *African Security Review, 6*(6), 34–45.

Mason, A., & Wheeler, N. J. (1996). Realist Objections to Humanitarian Intervention. In B. Holden (Ed.), *The Ethical Dimensions of Global Change* (pp. 94–110). Basingstoke, England: Macmillan.

McDougall, D. (2014). Responsibility While Protecting: Brazil's Proposal for Modifying Responsibility to Protect. *Global Responsibility to Protect, 6*, 64–87.

McKoy, T. (2014). Why Hamas stores its weapons inside hospitals, mosques and schools. *The Washington Post*. Retrieved July 6, 2015, from http://www.washingtonpost.com/news/morning-mix/wp/2014/07/31/why-hamas-stores-its-weapons-inside-hospitals-mosques-and-schools/.

Meron, T. (1991). Common Rights of Mankind in Gentili, Grotius and Suarez. *American Journal of International Law, 85*(1), 110–116.

Meurant, J. (1987). Inter Arma Caritas: Evolution and Nature of International Humanitarian Law. *Journal of Peace Research, 24*(3), 237–249.

Mill, J. S. (1859). A Few Words on Non-Intervention. *Foreign Policy Perspectives, 8*, 1–6.

Milliken, J. (2003). *State Failure, Collapse and Reconstruction*. Cornwall, England: Blackwell.

Mills, K. (2005). Neo-Humanitarianism: the Role of International Humanitarian Norms and Organisations in Contemporary Conflict. *Global Governance, 11*, 161–183.

Mills, K. (2013). R2P^3: Protecting, Prosecuting, or Palliating in Mass Atrocity Situations. *Journal of Human Rights, 12*(3), 333–356.

Mills, K. (2014). The Responsibility to Protect and the International Criminal Court: Complementary or Conflicting? *Asia Pacific Centre for the Responsibility to Protect (AP R2P) Brief, 4*(2), 1–17.

Minear, L., & Weiss, T. G. (1995). *Humanitarian Politics*. New York: Foreign Policy Association.

Moreillon, J. (1987). Focus on Contemporary Challenges to Humanitarian Law. *Journal of Peace Research, 24*(3), 215–218.

Morgenthau, H. (1949). *Politics Among Nations: The Struggle for Power and Peace*. New York: Knopf.

Morris, J. (2013) 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum', *International Affairs, 89*/5, pp. 1265–1283.

Murphy, S. D. (1996). *Humanitarian Intervention: The United Nations in an Evolving World Order*. Philadelphia: University of Pennsylvania Press.

Nardin, T., & Williams, M. S. (Eds.). (2006). *Humanitarian Intervention*. New York: New York University Press.

National Geographic. (2010, October 28). Why the Cyclone in Myanmar Was So Deadly. *National Geographic News*. Retrieved June 01, 2015, from http://news.nationalgeographic.com/news/2008/05/080508-AP-the-perfect.html.

Neack, L. (1994). UN Peace-Keeping: Community or Self? *Journal of Peace Research, 32*(2), 181–196.

Nichols, M. (2013). Over 50 countries ask Security Council to refer Syria to Court. *Reuters*. Retrieved June 10, 2015, from http://in.reuters.com/article/2013/01/14/syria-crisis-un-icc-idINDEE90D0J320130114.

North Atlantic Treaty Organisation (NATO). (2011). Operation UNIFIED PROTECTOR Protection of Civilians and Civilian-Populated Areas. Retrieved March 22, 2015, from http://www.nato.int/nato_static/assets/pdf/pdf_2011_06/20110608_Factsheet-UP_Protection_Civilians.pdf.

Nuruzzaman, M. (2013). The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria. *Insight Turkey, 15*(2), 57–66.

O'Hanlon, M. (1997). *Saving Lives with Force: Military Criteria for Humanitarian Intervention*. Washington, DC: Brookings Institution Press.

Oberleitner, G. (2005). Human Security: A Challenge to International Law. *Global Governance, 11*, 185–203.

Office of the Special Adviser of the Secretary-General on the Prevention of Genocide (OSAPG). (2011, February 22). *UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Libya*. Retrieved 22 April 2015, from http://www.un.org/en/preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Libya,%2022%20February%202011.pdf.

Office of the Special Adviser on the Prevention of Genocide (OSAPG). (n.d.) *Mission Statement*. Retrieved July 12, 2015, from http://www.un.org/en/preventgenocide/adviser/index.shtml.

Okumu, W. (2008, November 03). Phone interview between author and Dr. Wafula Okumu, Executive Director of the Borders Institute, Kenya.

Olsen, G. R. (1998). Europe and the Promotion of Democracy in Post Cold War Africa: How Serious is Europe and for What Reason? *African Affairs, 97*(388), 343–367.

Onions, C. T., Friedrichsen, S., & Burchfield, R. W. (Eds.). (1985). *The Oxford Dictionary of English Etymology*. London: Oxford University Press.

Oppenheim, L. F. (1955). International Law: A treatise. In H. Lauterpacht (Ed.), *Peace* (Vol. 1). London: Longman.

Oppenheim, L. F. (1992). Oppenheim's International Law. In R. Jennings & A. Watts (Eds.), *Peace* (Vol. 1). Harlow, Englamd: Longman.

Orford, A. (1999). Muscular Humanitarianism: Reading the Narratives of the New Interventionism. *European Journal of International Law, 10*(4), 679–711.

Orford, A. (2003). *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*. Cambridge, MA: Cambridge University Press.

Otte, T. G. (1995). Introductory Remarks. In A. M. Dorman & T. G. Otte (Eds.), *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention*. Devon, England: Dartmouth.

Paris, R. (2001). Human Security: Paradigm Shift or Hot Air? *International Security, 26*(2), 87–102.

Paris, R. (2014). The "Responsibility to Protect" and the Structural Problems of Preventive Humanitarian Intervention. *International Peacekeeping, 21*(5), 569–603.

Parsons, C. (7 May 2008). France urges U.N. council to act on Myanmar cyclone, *Reuters*. Retrieved October 22, 2011 from http://www.reuters.com/article/idUSL07810481.

Pattison, J. (2008). Humanitarian Intervention and a Cosmopolitan UN Force. *Journal of International Political Theory, 4*(1), 126–145.

Pattison, J. (2010). *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene*. Oxford, England: Oxford University Press.

Pearson, F. S., Baumann, R. A., & Pickering, J. J. (1994). Military Intervention and Realpolitik. In F. W. Wayman & P. F. Diehl (Eds.), *Reconstructing Realpolitik* (pp. 205–225). Ann Arbor, MI: University of Michigan Press.

Peltonen, H. (2011). Sovereignty as Responsibility, Responsibility to Protect and International Order: On Responsibility, Communal Crime Prevention and International Law. *Uluslararası İlişkiler, 7*(28), 59–81.

Perault, M. (2005). Moving Beyond Kosovo: Envisioning a Coherent Theory of Humanitarian Intervention. *Journal of Public and International Affairs, 16*, 1–25.

Popper, K. (1978). Aestheticisim, perfectionism, Utopianism. In R. Beehler & A. R. Drengson (Eds.), *The Philosophy of Society* (pp. 212–234). London: Methuen.

Price, R. (2008). Moral Limit and Possibility in World Politics. *International Organization, 62*(2), 191–220.

Procter, P. (Ed.). (2005). *Cambridge International Dictionary of English*. Cambridge, MA: Cambridge University Press.

Quinn, W. S. (1989). Actions, Intentions, and Consequences: The Doctrine of Double Effect. *Philosophy and Public Affairs, 18*, 334–351.

Quinton-Brown, P. (2013). Mapping Dissent: The Responsibility to Protect and Its State Critics. *Global Responsibility to Protect, 5*(3), 260–282.

Ramsbotham, O. (1997). Humanitarian Intervention 1990–1995: A Need to Reconceptualize? *Review of International Studies, 23*, 445–468.

Ramsbotham, O., & Woodhouse, T. (1996). *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*. Oxford, England: Polity Press.

Rawls, J. (1999). *The Law of Peoples with 'The Idea of Public Reason Revisited'*. Cambridge, MA: Harvard University Press.

Reinold, T. (2010). The Responsibility to Protect: Much Ado About Nothing? *Review of International Studies, 36*, 55–78.

Reiss, H. S. (2000). Perpetual Peace. In H. S. Reiss (Ed.), *Kant: Political Writings* (pp. 93–130). Cambridge, England: Cambridge University Press.

Rieff, D. (1995). *Slaughterhouse: Bosnia and the Failure of the West*. New York: Simon and Schuster.

Rieff, D. (2000). The Crusaders: Moral Principles, Strategic Interests, and Military Force. *World Policy Journal, 17*(2), 39–47.

Rieff, D. (2011, November 7). R2P, R.I.P. *The New York Times*. Retrieved March 17, 2015, from http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?_r=0.

Roberts, A. (1993). Humanitarian War: Military intervention and human rights. *International Affairs, 69*(3), 429–449.

Robertson, D. (2004). *A Dictionary of Human Rights* (2nd ed., p. 119). London: Europa.

Robinson, P. (1999). The CNN Effect: Can the News Media Drive Foreign Policy? *Review of International Studies, 25*(2), 301–309.

Roff, H. (2013). *Global Justice, Kant and the Responsibility to Protect: A Provisional Duty*. Oxon, England: Routledge.

Rotberg, R. I. (2002). The New Nature of Nation-State Failure. *The Washington Quarterly, 25*(3), 85–96.

Rotberg, R. I. (2004). *When States Fail. Causes and Consequences*. Princeton, NJ: Princeton University Press.

Rotberg, R. I., & Weiss, T. G. (Eds.). (1996). *From Massacres to Genocide: The Media, Public Policy, and Humanitarian Crises*. Washington, DC: Brookings Institution.

Ruggie, J. G. (1998). What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge. *International Organization, 52*(4), 855–885.

Rytter, J. E. (2001). Humanitarian Intervention without the Security Council: From San Francisco to Kosovo–and Beyond. *Nordic Journal of International Law, 70*, 121–160.

Sahnoun, M. (2009, July 21). Africa: Uphold Continent's Contribution to Human Rights, Urges Top Diplomat. *all Africa*. Retrieved October 27, 2014, from http://allafrica.com/stories/200907210549.html.

Schiff, B. (2011, March 16). The ICC and R2P: Problems of individual culpability and state responsibility. *2011 Montreal International Studies Association Annual Meeting*, Montreal, Canada.

Schmitt, C. (2007). *The Concept of the Political*. Chicago: The University of Chicago Press.

Schrijver, N. (2007). The UN Human Rights Council: A new "Society of the Committed" or Just Old Wine in New Bottles? *Leiden Journal of International Law, 20*, 809–823.

Seybolt, T. B. (2008). *Humanitarian Military Intervention: The Conditions for Success and failure*. Norfolk, VA: Oxford University Press.

Shaw, M. (2003). *War and Genocide: Organized killing in modern society*. Cambridge, England: Polity.

Shaw, M. N. (2005). *International Law* (5th ed.). Cambridge, MA: Cambridge University Press.

Simma, B. (1999). NATO, the UN and the Use of Force: Legal Aspects. *The European Journal of International Law, 10*(1), 1–22.

Simons, W. (1931). *The Evolution of International Public Law in Europe Since Grotius*. New Haven, CT: Yale University Press.

Slater, J., & Nardin, T. (1986). Nonintervention and Human Rights. *The Journal of Politics, 48*, 86–96.

Slaughter, A-M. (2011). 'A Day to Celebrate, But Hard Work Ahead', Foreign Policy. Retrieved June 2014, 18, from http://foreignpolicy.com/2011/03/19/does-the-world-belong-in-libyas-war-2/.

Smith, K. E., & Light, M. (Eds.). (2001). *Ethics and Foreign Policy*. Cambridge, MA: Cambridge University Press.

Sonderman, F. A. (1977). The Concept of the National Interest. *Orbis, 21*(1), 121–138.

Sorensen, G. (1996). Individual Security and National Security: The State Remains the Principal Problem. *Security Dialogue, 27*, 371–386.

Stahn, C. (2007). Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *The American Journal of International Law, 101*(1), 990–1020.

Steele, B. J., & Heinze, E. A. (2014). Norms of Intervention, R2P and Libya: Suggestions from Generational Analysis. *Global Responsibility to Protect, 6*, 88–112.

Steiner, H. J., & Alston, P. (2000). *International Human Rights in Context: Law, politics, Morals* (2nd ed.). Oxford, England: Oxford University Press.

Stromseth, J. (2003). Rethinking Humanitarian Intervention: The Case for Incremental change. In J. L. Holzgrefe & R. O. Keohane (Eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge, MA: Cambridge University Press.

Stuenkel, O., & Tourinho, M. (2014). Regulating intervention: Brazil and the responsibility to protect. *Conflict, Security, & Development, 14*(4), 379–402.

Suhrke, A. (1999). Human Security and the Interests of States. *Security Dialogue, 30*(3), 265–276.

Teitel, R. G. (2011). *Humanity's Law*. New York: Oxford University Press.

Terrif, T., & Keeley, J. F. (1995). The United Nations, Conflict Management and Spheres of Interest. *International Peacekeeping, 2*(4), 510–535.

Thakur, R. (2004). United Nations Security Council reform. Retrieved January 12, 2015, from https://www.issafrica.org/pubs/ASR/13No3/EThakur.pdf.

Thakur, R. (2011). 'R2P, Libya and International Politics as the Struggle for Competing Normative Architectures', 7 September. Retrieved June 12, 2015, from http://www.e-ir.info/2011/09/07/r2p-libya-and-international-politics-as-the-struggle-for-competing-normative-architectures/.

Thakur, R. (2012). Emerging Powers and the Responsibility to Protect after Libya. *NUPI Policy Briefs, 15*, 1–4.

Thakur, R. (2013). 'R2P After Libya and Syria: Engaging Emerging Powers', *Washington Quarterly, 36*/2, pp. 61–76.

Thakur, R., & Weiss, T. G. (2009). R2P: From Idea to Norm—and Action? *Global Responsibility to Protect, 1*(1), 22–53.

The Economist. (2010, March 25). *West Africa's Regional Club: Quietly Impressive*. Retrieved November 23, 2010, from http://www.economist.com/node/15772983?story_id=15772983.

The White House. (2002, September). *The National Security Strategy of the United States of America*. Retrieved November 20, 2007, from http://www.whitehouse.gov/nsc/nss.pdf.

The White House, Office of the Press Secretary. (2011, May 25). *Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference in London*. Retrieved May 8, 2015, from https://www.whitehouse.gov/the-press-office/2011/05/25/remarks-president-obama-and-prime-minister-cameron-united-kingdom-joint-.

Thomas, N., & Tow, W. T. (2002). The Utility of Human Security: Sovereignty and Humanitarian Intervention. *Security Dialogue, 33*(2), 177–192.

Thussu, D. K. (2000). Legitimizing "Humanitarian Intervention"? CNN, NATO and the Kosovo crisis. *European Journal of Communication, 15*(3), 345–361.

Tutu, D. (9 November 2008). Taking the Responsibility to Protect, *The New York Times*. Retrieved August 20, 2010, from http://www.nytimes.com/2008/02/19/opinion/ 19iht-edtutu.1.10186157.html.

United Nations (UN). (1948). *Universal Declaration of Human Rights*. Retrieved July 01, 2015, from http://www.un.org/en/documents/udhr/.

United Nations (UN). (1996). *The Blue Helmets: A Review of United Nations Peace-Keeping*. New York: The United Nations.

United Nations (UN). (2006, November 09). *Delivering as One: Report of the Secretary-General's High-level panel*. Retrieved July 01, 2015, from http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf.

United Nations (UN). (n.d.) *Introductory note*. San Francisco: Charter of the United Nations. Retrieved July 01, 2015, from http://www.un.org/en/documents/charter/intro.shtml.

United Nations Association—UK (UNA-UK). (n.d.) *UN Security Council and the Responsibility to Protect: Voluntary Restraint of the veto in situations of mass atrocity.* Retrieved July 01, 2015, from http://www.una.org.uk/sites/default/files/Briefing%20-%20Veto%20code%20of%20conduct.pdf.

United Nations Development Group (UNDG). (2014). *Rights Up Front*. Retrieved July 11, 2015, from https://undg.org/wp-content/uploads/2014/09/Rights-up-Front-May-2014.pdf.

United Nations Economic and Social Council (UNESC). (2004, May 07). Situation of human rights in the Darfur region of the Sudan. *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, *Commission on Human Rights, Sixty-first session,* E/CN.4/2005/3. Retrieved May 15, 2015, from http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/863d14602aa82caec1256ea80038e268/$FILE/G0414221.pdf.

United Nations General Assembly (UNGA). (1950, November 03). Uniting for Peace. *Resolution adopted by the General Assembly*, A/Res/377 A (V).

United Nations General Assembly (UNGA). (1965, December 21). Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. *Adopted by the General Assembly*, A/RES/2131 (XX).

United Nations General Assembly (UNGA). (1970, October 24). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. *Adopted by the General Assembly*, A/Res25/2625 (XXV).

United Nations General Assembly (UNGA). (2005a, March 21). Fifty-ninth Session, In larger Freedom: Towards Development, Security and Human Rights for all. *Report of the Secretary-General*, A/59/2005.

United Nations General Assembly (UNGA). (2005b, October 24). *Resolution Adopted by the General Assembly on 16 September 2005,* '60/1. 2005 World Summit Outcome', A/Res/60/1.

United Nations General Assembly (UNGA). (2007, March 09). Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101. *Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council*, A/HRC/4/80.

United Nations General Assembly (UNGA). (2008, January 21). Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/7/17.

United Nations General Assembly (UNGA). (2009a, January 12). Implementing the Responsibility to Protect. *Report of the Secretary-General*, A/63/677.

United Nations General Assembly (UNGA). (2009b, July 21). *Sixty-third session, 96th plenary meeting*, A/63/PV.96

United Nations General Assembly (UNGA). (2009c, July 23). *Sixty-third session, 97th plenary meeting*, A/63/PV.97.

United Nations General Assembly (UNGA). (2009d, July 24). *Sixty-third session, 98th plenary meeting*, A/63/PV.98.

United Nations General Assembly (UNGA). (2009e, July 24). *Sixty-third session, 99th plenary meeting*, A/63/PV.99.

United Nations General Assembly (UNGA). (2009f, July 28). *Sixty-third session, 100th plenary meeting*, A/63/PV.100.

United Nations General Assembly (UNGA). (2009g, July 28). *Sixty-third session, 101st plenary meeting*, A/63/PV.101.

United Nations General Assembly (UNGA). (2010, July 14). Early Warning, Assessment and the Responsibility to Protect. *Report of the Secretary-General*, A/64/864.

United Nations General Assembly (UNGA). (2011, February 25). *Report of the Human Rights Council on its fifteenth special session,* A/HRC/S-15/1.

United Nations General Assembly (UNGA). (2012, August 07). The Situation in the Syrian Arab Republic. *Resolution Adopted by the General Assembly,* Sixty-sixth session, A/RES/66/253 B.

United Nations General Assembly (UNGA). (2015). *High-level plenary meeting of the General Assembly of September 2005*, (revised draft outcome document). Retrieved June 14, 2015, from http://www.un.org/ga/president/59/draft_outcome.htm.

United Nations General Assembly Department of Public Information (DPI). (2007, December 17). *Fifth Committee Takes Up Financing for Special Political Missions, Procurement*, GA/AB/3832. Retrieved 14 June 2014, from http://reliefweb.int/sites/reliefweb.int/files/resources/C5D6B2A69E883417852573B5005895ED-Full_Report.pdf.

United Nations General Assembly–Security Council (UNGA–SC). (2011a, June 27). The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect. *Report of the Secretary-General*, A/65/877–S/2011/393.

United Nations General Assembly–Security Council (UNGA–SC). (2011b, November 11). *Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General*, A/66/551–S/2011/701.

United Nations General Assembly–Security Council (UNGA–SC). (2012, July 25). Responsibility to Protect: Timely and Decisive Response. *Report of the Secretary-General*, A/66/874–S/2012/578.

United Nations General Assembly–Security Council (UNGA–SC). (2013, July 9). Responsibility to Protect: State responsibility and prevention. *Report of the Secretary-General*, A/67/929–S/2013/399.

United Nations General Assembly–Security Council (UNGA–SC). (2014, July 11). Fulfilling our collective responsibility: International assistance and the responsibility to protect. *Report of the Secretary-General*, A/68/947–S/2014/449.

United Nations General Assembly–Security Council (UNGA–SC). (2015, July 13). A vital and enduring commitment: Implementing the responsibility to protect. *Report of the Secretary-General*, A/69/981–S/2015/500.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2004, March 26). *Rwanda Genocide 'Must Leave Us Always with a Sense of Bitter Regret and Abiding Sorrow', says Secretary-General to New York Memorial Conference*. Retrieved June 29, 2015, from http://www.un.org/press/en/2004/sgsm9223.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2007, September 25). *Secretary-General, in Address to General Assembly, Lays out Vision of Stronger, More Flexible, Efficient, Accountable United Nations*, SG/SM/11182. Retrieved June 18, 2013, from http://www.un.org/press/en/2007/sgsm11182.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2008, February 21). *Secretary-General Appoints Edward C. Luck of United States Special Adviser,* SG/A/1120-BIO/3963. Retrieved July 19, 2014, from http://www.un.org/press/en/2008/sga1120.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2011a, January 19). *Press Conference by Secretary-General's Special Advisers On Responsibility to Protect, Genocide, in Connection with Situation in Côte D'Ivoire*. Retrieved June 18, 2013, from http://www.un.org/press/en/2011/110119_Guest.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2011b, March 17). *Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions'*, SG/SM/13454-SC/10201-AFR/2144. Retrieved September 12, 2014, from http://www.un.org/press/en/2011/sc10200.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2011c, March 18). *Secretary-General Says Security Council Action on Libya Affirms International Community's Determination to Protect Civilians from Own Government's Violence*. Retrieved September 12, 2014, from http://www.un.org/press/en/2011/sgsm13454.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2012, February 04). *Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan*. Retrieved July 01, 2015, from http://www.un.org/press/en/2012/sc10536.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2013). *General Assembly Adopts Text Condemning Violence in Syria, Demanding That All Sides End Hostilities*. Retrieved August 23, 2014, from http://www.un.org/press/en/2013/ga11372.doc.htm.

United Nations Meetings Coverage and Press Releases (UNMCPR). (2015, February 02). *Security Council Press Statement on Boko Haram Attacks in Nigeria and against Chadian Troops in Cameroon*. Retrieved February 12, 2015, from http://www.un.org/press/en/2015/sc11763.doc.htm.

United Nations News Centre (UNNC). (2009, May 24). *Durable political solution key to development in post-conflict Sri Lanka—Ban*. Retrieved November 23, 2010, from http://www.un.org/apps/news/story.asp?NewsID=30904&Cr=sri+lanka&Cr1=.

United Nations News Centre (UNNC). (2012, August 02). *Kofi Annan resigns as UN-Arab League Joint Special Envoy for Syrian crisis*. Retrieved December 23, 2012, from http://www.un.org/apps/news/story.asp?NewsID=42609#.VeAI2rS-XeQ.

United Nations News Centre (UNNC). (2014). *Gaza: Ban condemns latest deadly attack near UN school as 'moral outrage and criminal act'*. Retrieved May 12, 2015, from http://www.un.org/apps/news/story.asp?NewsID=48396#.VZEY7GDldFI.

United Nations Secretary-General (UNSG). (2000, June 01). Secretary-General's appearance in CNN's one-hour news programme entitled "Global Forum", Atlanta, Georgia, 1 June 2000 (unofficial transcript). *The Secretary-General off the Cuff*. Retrieved June 11, 2015, from http://www.un.org/sg/cuffarch/sgcu0500.shtml.

United Nations Secretary-General (UNSG). (2012, October 19). *Highlights of the Noon Briefing by Martin Nesirky, Spokesperson for Secretary-General Ban Ki-Moon*. Retrieved June 11, 2015, from http://www.un.org/sg/spokesperson/highlights/?HighD=10/19/2012&d_month=10&d_year=2012.

United Nations Secretary-General (UNSG). *'Human Rights Up Front' Initiative*. Retrieved June 20, 2015, from http://www.un.org/sg/rightsupfront/.

United Nations Security Council (UNSC). (1984, December 13). *Resolution 558 Adopted by the Security Council at its 2564th Meeting*, S/RES/558.

United Nations Security Council (UNSC). (1985, October 04). *Resolution 573 Adopted by the Security Council at its 2615th Meeting*, S/RES/573.

United Nations Security Council (UNSC). (1988, April 25). *Resolution 611 Adopted by the Security Council at its 2810th Meeting*, S/RES/611.

United Nations Security Council (UNSC). (1992a, March 31). *Resolution 748 Adopted by the Security Council at its 3063rd Meeting*, S/RES/748.

United Nations Security Council (UNSC). (1992b, December 03). *Resolution 794 Adopted by the Security Council at its 3145th Meeting*, S/RES/794.

United Nations Security Council (UNSC). (1993, November 12). *Resolution 884 Adopted by the Security Council at its 3313th Meeting*, S/RES/884.

United Nations Security Council (UNSC). (1994a, June 22). *Resolution 929 Adopted by the Security Council at its 3392nd Meeting*, S/RES/929.

United Nations Security Council (UNSC). (1994b, July 31). *Resolution 940 Adopted by the Security Council at its 3413th Meeting*, S/RES/940.

United Nations Security Council (UNSC). (1998a, March 31). *Resolution 1160 Adopted by the Security Council at its 3868th Meeting*, S/RES/1160.

United Nations Security Council (UNSC). (1998b, September 23). *Resolution 1199 Adopted by the Security Council at its 3930th Meeting*, S/RES/1199.

United Nations Security Council (UNSC). (1998c, October 24). *Resolution 1203 Adopted by the Security Council at its 3937th Meeting*, S/RES/1203.
United Nations Security Council (UNSC). (1998d, September 15). *Resolution 1264 Adopted by the Security Council at its 4045th Meeting*, S/RES/1264.
United Nations Security Council (UNSC). (1999, December 16). *Letter dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, S/1999/1257.
United Nations Security Council (UNSC). (2000, September 07). *Resolution 1318 Adopted by the Security Council at its 4194th meeting*, S/RES/1203.
United Nations Security Council (UNSC). (2004, July 30). *Resolution 1556 Adopted by the Security Council at its 5015th Meeting*, A/RES/1556.
United Nations Security Council (UNSC). (2006a, April 28). *Resolution 1674 Adopted by the Security Council at its 5430th Meeting*, S/RES/1674.
United Nations Security Council (UNSC). (2006b, May 16). *Resolution 1679 Adopted by the Security Council at its 5439th Meeting*, S/RES/1679.
United Nations Security Council (UNSC). (2006c, August 31). *Resolution 1706 Adopted by the Security Council at its 5519th Meeting*, S/RES/1706.
United Nations Security Council (UNSC). (2007, January 12). *United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution*, S/2007/14.
United Nations Security Council (UNSC). (2011a, March 17). *Resolution 1973, 'Adopted by the Security Council at its 6498th meeting'*, S/RES/1973.
United Nations Security Council (UNSC). (2011b, March 30). *Resolution 1975, 'Adopted by the Security Council at its 6508th meeting'*, S/RES/1975.
United Nations Security Council (UNSC). (2011c, August 03). *Statement by the President of the Security Council*, S/PRST/2011/16.
United Nations Security Council (UNSC). (2011d, October 04). *6627th Meeting*, S/PV.6627. Retrieved June 24, 2015, from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6627.
United Nations Security Council (UNSC). (2012, February 04). *Bahrain, Colombia, Egypt, France, Germany, Jordan, Kuwait, Libya, Morocco, Oman, Portugal, Qatar, Saudi Arabia, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution*, S/2012/77.
United Nations Security Council (UNSC). (2014, February 12). *Statement by the President of the Security Council: Protection of Civilians in Armed Conflict,* S/PRST/2014/13.
United Nations Security Council (UNSC). (2015, January 19). *Statement by the President of the Security Council*, S/PRST/2015/4.
United Nations Security Council (UNSC). (n.d.) *Current Members*. Retrieved June 24, 2015, from http://www.un.org/en/sc/members/.
United Nations, General Assembly–Security Council (UNGA–SC). (1992, June 17). *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*,

A/47/277–S/24111. Retrieved December 04, 2010, from http://www.un.org/Docs/SG/agpeace.html.
United Nations, Security Council (UNSC). (2007a, January 12). *5619th Meeting*, S/PV.5619.
United Nations, Security Council (UNSC). (2007b, July 31). *Adopted by the Security Council at its 5727th meeting,* S/Res/1769.
United Nations, Security Council (UNSC). (2007c, December 07). *Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council*, S/2007/721.
United Nations, Security Council (UNSC). (2009, December 18). *Letter dated 18 December 2009 addressed to the President of the Security Council by the Secretary-General*, S/2009/693.
United States Holocaust Memorial Museum (USHMM). (n.d.) *Genocide Prevention Task Force Report: Chapter 6*. Retrieved July 01, 2015, from http://www.ushmm.org/m/pdfs/20081124-genocide-prevention-report-chapter-six-international-action.pdf.
Urquhart, B. (1993). For a UN Volunteer Military Force. *New York Review of Books, 40*(11), 3–4.
Vertzberger, Y. Y. I. (1998). *Risk Taking and Decisionmaking: Foreign Military Intervention Decisions*. Stanford, CA: Stanford University Press.
Von Hippel, K., & Clarke, M. (1999). Something Must Be Done. *The World Today, 55*(3), 4–7.
Waal, A., & Omaar, R. (1994, March–June). Can Military Intervention Be 'Humanitarian'? *Middle East Report*, pp. 3–8.
Walt, S. M. (1991). The Renaissance of Security Studies. *International Studies Quarterly, 35*(2), 211–239.
Wedgwood, R. (1999). Anticipatory Humanitarian Intervention in Kosovo. *The American Journal of International Law, 93*, 834–841.
Weil, C. (2001). The Protection-Neutrality Dilemma in Humanitarian Emergencies. *International Migration Review, 35*(1), 79–116.
Weisburd, A. M. (1997). *The Use of Force: The Practice of States since World War II*. University Park, PA: The Pennsylvania State University Press.
Weiss, T. (2006–2007) 'R2P after 9/11 and the World Summit', *Wisconsin International Law Journal, 24/3*, pp. 741–760.
Weiss, T. G. (1995). Overcoming the Somalia Syndrome: "Operation Rekindle Hope?". *Global Governance, 1*(2), 171–187.
Weiss, T. G. (2000). The Politics of Humanitarian Ideas. *Security Dialogue, 31*(1), 11–23.
Weiss, T. G. (2001). Researching Humanitarian Intervention: Some Lessons. *Journal of Peace Research, 38*(4), 419–428.
Weiss, T. G. (2004). The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era. *Security Dialogue, 35*, 135–153.
Weiss, T. G. (2008, November 07). *Interview Between author and Professor Thomas G. Weiss, Presidential Professor of Political Science and Director of the Ralph Bunche Institute for International Studies, The CUNY Graduate Center,* New York.

Weiss, T. G. (2011). R2P Alive and Well After Libya. *Ethics & International Affairs, 25*(3), 287–292.
Weiss, T. G. (2013). *What's Wrong with the United Nations and How to Fix It* (2nd ed.). Cambridge, England: Polity Press.
Weiss, T. G. (2014). Military Humanitarianism: Syria Hasn't Killed It. *The Washington Quarterly, 37*(1), 7–20.
Weiss, T. G., & Collins, C. (1996). *Humanitarian Challenges and the Dilemmas of Help*. Oxford, England: Westview Press.
Weldes, J. (1996). Constructing National Interests. *European Journal of International Relations, 2*(3), 275–318.
Welsh, J. (2011). Civilian protection in Libya: Putting Coercion and Controversy Back into RtoP'. *Ethics & International Affairs, 25*(3), 25–62.
Welsh, J. (2013). Norm Contestation and the Responsibility to Protect. *Global Responsibility to Protect, 5*, 365–396.
Wendt, A. (1992). Anarchy is What States Make of It: the social construction of power politics. *International Organisation, 46*(2), 391–425.
Wesley, M. (2005). Towards a Realist Ethics of Intervention. *Ethics & International Affairs, 19*(2), 55–72.
Western, J. (2002). Sources of Humanitarian Intervention. Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia. *International Security, 26*(4), 112–142.
Wheeler, N. J. (2001). Humanitarian Intervention after Kosovo: Emergent Norm, Moral Duty or the Coming Anarchy? *International Affairs, 77*(1), 113–128.
Wheeler, N. J. (2002). *Saving Strangers: Humanitarian Intervention in International Society*. Oxford, England: Oxford University Press.
Wheeler, N. J., & Dunne, T. (2001). East Timor and the New Humanitarian Interventionism. *International Affairs, 7*(4), 805–827.
Wheeler, N. J., & Morris, J. (1996). Humanitarian Intervention and State Practice at the End of the Cold War. In R. Fawn & J. Larkins (Eds.), *International Society after the Cold War* (pp. 135–171). New York: St. Martin's Press.
Wicclair, M. R. (1979). Human Rights and Intervention. In P. G. Brown & D. MacLean (Eds.), *Human Rights and U.S. Foreign Policy*. Lanham, MD: Lexington Books.
Wiener, A. (2007). Contested Meanings of Norms: A Research Framework. *Comparative European Politics, 5*, 1–17.
Williams, J. (1999). The Ethical Basis of Humanitarian Intervention, the Security Council and Yugoslavia. *International Peacekeeping, 6*(2), 1–23.
Williamson, R. (Ed.). (1998). *Some Corner of a Foreign Field*. London: Macmillan.
Wohlforth, W. (2001). Superpowers, Interventions and the Third World. *Cold War History, 6*(3), 365–371.
Woodhouse, T., & Ramsbotham, O. (2005). Cosmopolitan Peacekeeping and the Globalisation of Security. *International Peacekeeping, 12*(2), 139–156.
Zifcak, S. (2012). The Responsibility to Protect After Libya and Syria. *Melbourne Journal of International Law, 13*, 1–35.

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