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UNDERTAKING THE RESPONSIBILITY: INTERNATIONAL COMMUNITY, STATES, R2P AND HUMANITARIAN INTERVENTION

by

MİNE PINAR GÖZEN ERCAN

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by

Mine Pınar Gözen Ercan, B.A.; M.A.

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To mom and Gönenç,
and
in loving memory of my father

Undertaking the Responsibility:
international community, states, R2P and humanitarian intervention

Mine Pınar Gözen Ercan
University of Trento, 2011

Supervisor: Prof. Dr. Michele Nicoletti
Advisor: Dr. Marco Pertile
External Committee Members: Assoc. Prof. Tarcisio Gazzini, and Dr. James Pattison

In the last decades, an increasing awareness of instances of grave violation of human rights on a massive scale has brought to attention the problematic that whether states and the international community have an ethical responsibility to react to such cases, and (when the conditions require so) to undertake humanitarian military interventions. In the immediate post-Cold War environment, this has taken place parallel to the shift of focus in the security literature from national security towards human security. 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, reminded the question of an ethical duty on the part of the international community to react to mass atrocities. By December 2001, the introduction of the concept of the Responsibility to Protect (RtoP) set a new framework to take up this question with the aim of transforming the notion of the "right to intervene" into a "responsibility to react".

With all its controversies humanitarian intervention continues to be a part of international political conduct. At the current state of

affairs, humanitarian intervention has become politically relevant within the context of the RtoP doctrine. In this context, this dissertation seeks to assess the role of moral/ethical motives in the decisions and/or behaviour of the international community. Accordingly, it takes the assumption of humanitarian intervention as a moral duty as its subject matter, and puts it into test in relation to its newly defined limits and conduct within the RtoP framework.

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CONTENTS

ABSTRACT.. iv

ACKNOWLEDGEMENTS vi

TABLE OF CONTENTS viii

LIST OF ABBREVIATIONS... xii

LIST OF FIGURES... xiv

LIST OF TABLES.. xv

CHAPTER 1: Introduction.. 1

1.1. Literature Review 5

a. Ethics of Humanitarian Intervention 6

b. Theoretical Approaches 7

c. Issues of Legality and Legitimacy................................ 9

d. Human Security and R2P 10

1.2. Contributions of the Dissertation 14

1.3. Structure 16

CHAPTER 2: Theoretical Framework 18

2.1. Conceptualising the International Community 20

2.2. Utilising the Tools of Constructivism................................ 21

2.3. The "Norm Life Cycle" Model 24

2.4. Operationalisation 26

CHAPTER 3: The Road to R2P in Theory 33

3.1. Defining Humanitarian Intervention................................. 33

a. Etymological Roots 34

b. Definitions of Humanitarian Intervention 36

c. Working Definition 40

3.2. Responsibility vs. Right 42

3.3. Normative Roots 53

3.4. The Realm of International Law 67

a. Sovereignty, Non-intervention, and Non-use of Force... 68

b. Possible Legal Grounds under the UN Framework 78

CHAPTER 4: The Road to R2P in Practice 95

4.1. Historical Overview 96

4.2. The Adoption of R2P at the International Level 111

a. High-Level Panel on Threats, Challenges and Change.. 115

b. Report on UN Reform: In Larger Freedom 119

c. World Summit Outcome Document 120

d. The 2009 Report of the Secretary-General 125

4.3. R2P: A moral, legal and/or political norm? 133

CHAPTER 5: Drives for Undertaking Action 150

5.1. Human Security 154

5.2. International Norms 162

5.3. Moral Considerations 171

a. Human Suffering 174

b. Duty of Assistance 177

c. Interests and Morality 180

5.4. National Interests 183

5.5. The Question of Inaction 194

CHAPTER 6: Upholding the Responsibility: R2P in action? ... 196

6.1. R2P in Action: prevention and timely response 198

a. Kenya 198

b. Guinea 201

6.2. Decidedness vs. Hesitation 204

a. Democratic Republic of the Congo 204

b. Kyrgyzstan 207

c. Sudan 210

d. Zimbabwe 215

e. Sri Lanka 216

f. Nigeria 218

6.3. Cases of R2P? Misapplication vs. inaction 219

a. Myanmar 220

b. Georgia 224

c. Somalia 225

6.4. Evaluations 228

CHAPTER 7: Conclusion 232

ANNEX 239

BIBLIOGRAPHY 240

APPENDICES 258

Appendix A 259

Appendix B.. 260

Appendix C.. 262

ABBREVIATIONS

AMIS	African Union Mission in Sudan
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAR	Central African Republic
CSTO	Collective Security Treaty Organization
DRC	Democratic Republic of Congo
ECOWAS	The Economic Community of West African States
EU	European Union
EUFOR	European Union Force
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICRtoP	International Coalition for the Responsibility to Protect
IDPs	Internally Displaced Persons
IISS	International Institute for Strategic Studies
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
NATO	North Atlantic Treaty Organization
NAM	Non-Aligned Movement
OAU	Organization of African Unity
OCHA	UN Office for the Coordination of Humanitarian Affairs

para. Paragraph

RtoP Responsibility to Protect

SADC South African Development Community

UN United Nations

UNAMIR United Nations Assistance Mission for Rwanda

UNDP United Nations Development Programme

LIST OF FIGURES

Figure 1. Norm life cycle

Figure 2. Factors leading to humanitarian interventions

LIST OF TABLES

Table 1. Cases since 2006 considered for evaluation within the RtoP framework.

Table 2. Summarised evaluation of RtoP implementations.

CHAPTER 1

INTRODUCTION

In the last decades, an increasing awareness of instances of grave violation of human rights on a massive scale has brought to attention the problematic that whether states and the international community have an ethical[1] responsibility to react to such cases, and (when the conditions require so) to undertake humanitarian military interventions.[2] In the immediate post-Cold War environment, this has taken place parallel to the shift of focus in the security literature from national security towards human security. As noted by Robert Jackson, 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."[3]

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

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[1] For the purposes of this dissertation, the terms moral and ethical will be used interchangeably.

[2] For reasons of brevity, hereinafter, humanitarian military intervention will be referred to as humanitarian intervention. As this dissertation adopts a narrow understanding of humanitarian intervention, it excludes non-military forms of action ranging from humanitarian aid (or the activities of non-governmental organizations) to the imposition of sanctions. For the working definition of humanitarian intervention adopted in this dissertation, see Section 1.1, Part c.

[3] Robert Jackson. "The Security Dilemma in Africa" in *The Insecurity Dilemma: National Security of Third World States*, Brian Job (ed.). (Boulder: Lynne Rienner, 1992), 93.

reminding the question of an ethical duty on the part of the international community to react to mass atrocities. By December 2001, the introduction of the concept of the Responsibility to Protect (RtoP)[4] 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".

In 2005, the World Summit Outcome Document constituted a cornerstone for the international recognition and embracement of the "responsibility to protect". Following its unanimous adoption as a principle by the Member States of the General Assembly, the question of how to implement RtoP was placed in the agenda of the United Nations (UN) by 2009. While the most recent debates on humanitarian intervention (within the confines of the issue of RtoP's implementation) have been taking place under the auspices of the UN, and especially the General Assembly, in the meanwhile, the international community's commitment for upholding its responsibility has been put to test by several cases of grave crimes against humanity.

As Taylor Seybolt puts it:

> Once considered an aberration in international affairs, humanitarian military intervention is now a compelling

[4] Hereinafter the abbreviation "RtoP" will be used to represent the concept of the responsibility to protect introduced by the Report of the ICISS published in 2001 (International Commission on Intervention and State Sovereignty. *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty.* (Ottawa: International Development Research Center, 2001)), and later embraced by the UN from 2005 on.

> 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.[5]

In this vein, the mixed components of humanitarian intervention make it a legal, moral and political dilemma. In the contemporary international system, humanitarian intervention is not a legally established international norm, yet it is being practiced unilaterally or collectively by states as well as international and/or regional organisations since mass violations of human rights continue to take place in different parts of the world.

Hence, its lawfulness in question, humanitarian intervention as a moral duty can be depicted as a double-edged sword: it is questioned not only when it is practiced but also when it is not. As Nicholas Wheeler 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."[6] From a political point of view, on the one hand, action by states (especially when it is unilateral or not authorised by the Security Council) is likely to receive negative criticisms on the basis of the genuine motives of the actors involved.

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[5] Taylor Seybolt, Humanitarian Military Intervention: the conditions for success and failure (Norfolk: Oxford University Press, 2008), 1.

[6] Nicholas Wheeler, *Saving Strangers*: *Humanitarian Intervention in International Society* (Great Britain: Oxford University Press, 2000), 1.

Since the doctrine of humanitarian intervention has been abused at times by states in attempts to justify acts of self-interest, there is considerable suspicion towards humanitarian interventions undertaken without Security Council authorisation. Among all the matters, 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 key elements for sustaining international peace and security. On the other hand, when there is inaction (as in the case of Rwanda), the international community is criticised for being indifferent. This can be accepted as an implication of the existence of a sense of a moral duty to react and an expectation from the international community to this end.

With all its controversies humanitarian intervention continues to be a part of the international political conduct. At the current state of affairs, humanitarian intervention has become politically relevant within the context of the RtoP doctrine, (and it continues to be discussed/challenged as a notion by the Members of the General Assembly in the debates which followed the July 21, 2009 Report of the Secretary-General regarding the implementation of RtoP). As this dissertation seeks to assess the role of moral/ethical motives in the

decisions and/or behaviour of the international community,[7] it takes the assumption of humanitarian intervention as a moral duty as its subject matter, and puts it into test in relation to its newly defined limits and conduct within the RtoP framework.[8] Such limitation enables the researcher to analyse an extensive doctrine (which has historically been highly controversial) within a unanimously accepted framework. In this vein, as can be observed from the literature review which is in order, the doctrine of humanitarian intervention is discussed in the light of the most recent developments and in an up-to-date context, which has not yet been explored in depth.

1.1. Literature Review

Albeit the debate on humanitarian intervention is not new, it has been flourishing since the early years of the Cold War as a result of the increasing importance placed on the international protection of human rights. Humanitarian intervention has been studied from legal, political and ethical aspects mainly in international politics and international law literatures. A review of the relevant literature[9]

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[7] It should be noted that this dissertation rather than making assessments about individual state practices mainly focuses on the collective behaviour of states within the *international community* in terms of assuming and upholding their responsibility to react. Put simply, the international community is taken as the main actor. For the theoretical conceptualisation of the term, see section 2.1.

[8] Accordingly, the general approach of states towards humanitarian interventions is questioned on the basis of the recent debates on the implementation of RtoP under the auspices of the UN.

[9] The review under this section, in general, is limited to international politics literature. The ethical discussions regarding humanitarian interventions are taken into consideration within the scope of this literature.

reveals that the debate has generally revolved around the issues of the legitimacy and legality of so-called humanitarian interventions on the basis of the investigation of cases as well as an assessment of their efficacy and/or success.

a. Ethics of Humanitarian Intervention

The discussions focusing on the ethics of humanitarian intervention within international politics literature have generally taken place around ethical considerations like human suffering[10] and "just causes" for undertaking humanitarian interventions as well as appropriate ways to carry out such acts and achieving successful results, which are argued to constitute a legitimate basis or a justification for undertaking action through use of force. Accordingly, scholars have applied the just war criteria such as the availability of a legitimate authority, right purpose, just cause and *debito modo.*[11]

For instance, Lang classifies "studies of ethics of humanitarian intervention" in two as normative and descriptive. The former "provides the tools for evaluating the practices and outcomes that constitute humanitarian intervention."[12] Therefore, it is rather prescriptive than descriptive, and it focuses on how people ought to

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[10] The notion of human suffering is studied in Chapter 2, under the section on moral considerations.

[11] These criteria are studied in detail in Chapter 4 on the Responsibility to Protect as a part of the suggested decision-making criteria of the ICISS.

[12] Anthony F. Lang Jr. "Introduction: Humanitarian Intervention—Definitions and Debates" in *Just Intervention.* Anthony F. Lang Jr. (ed.) (USA: Georgetown University Press, 2003), 2.

act as in the case of just war theory. On the other hand, the latter "explains the particular moral beliefs and ideas that guide decisions to intervene."[13] In these empirical studies a major part of the analysis is based on case studies and/or the historical evolution of the doctrine.

b. Theoretical Approaches to Humanitarian Intervention

As in descriptive ethics, a similar basis is valid for studies primarily focusing on the political as well as theoretical aspects of humanitarian interventions. Although a fundamentally theoretical study of humanitarian interventions is not very common in international politics/relations literature, there are some examples like those of Nicholas Wheeler[14] and Martha Finnemore.[15] For instance, Nicholas Wheeler studies "the extent to which humanitarian intervention has become a legitimate practice in international society"[16] from a theoretical point of view through the analytical lens of the English School. Challenging the classical approaches to humanitarian intervention, Martha Finnemore with her constructivist approach introduces the notion of change into the

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[13] Lang 2003, 2.

[14] See Nicholas Wheeler. Saving Strangers: Humanitarian Intervention in International Society (Oxford: Oxford University Press, 2000).

[15] See Martha Finnemore. "Constructing Norms of Humanitarian Intervention" in *The Culture of National Security: Norms and Identity in World Politics*. Peter J. Katzenstein (ed.) (New York: Columbia University Press, 1996), 153-85. A revised version of this chapter is available in Martha Finnemore's *The Purpose of Intervention*, 2003, 52-84.

[16] Wheeler 2000, 1.

literature. Tracing the roots of the humanitarian intervention doctrine in the earlier centuries, Finnemore posits that throughout the history of the states system, there has been a change in the patterns of military intervention, and that this change does not necessarily result from a change in patterns of technology or material capabilities as traditional approaches put forth. Finnemore underlines that "what has changed is [...] not the fact of intervention but its form and meaning."[17]

Both Wheeler and Finnemore rely on case studies in their analyses. Likewise, for many other scholars and/or analysts, a common tool of research is case studies. Through these, researches seek to answer questions such as why is there inaction in certain cases while there is intervention in others; is there an emerging norm of humanitarian intervention; how can humanitarian interventions be legitimate, etc. Most case study accounts in the literature cover cases up to early 2000s, and widely covered situations are those in Northern Iraq, Bosnia, Kosovo, Somalia, Rwanda, Liberia, and Darfur. An example of a novel work based on an analysis of specific cases is Taylor Seybolt's "Humanitarian Military Intervention," where

[17] Finnemore 2003, 3. According to Finnemore, the three main factors that have changed are the following: the understanding of who is human and who can claim humanitarian intervention, the manner of intervention (e.g. unilateral and multilateral), and finally, military objectives and what the understanding of "success" comprises of (Finnemore 2003, 53).

Seybolt studies conditions[18] for success and failure of humanitarian interventions. Furthermore, the discussion of cases has also been relevant for the studies focusing on the issue of legality/legitimacy of humanitarian interventions.[19]

c. Issues of Legality and Legitimacy

The question of legitimacy and/or legality of humanitarian interventions was first taken up by scholars of international law. Unlike in any other studied aspect of humanitarian intervention, legal scholars seem to be in consensus on the point that humanitarian intervention is not (yet) a legal norm in the contemporary system. Where they disagree is its legitimacy and whether it should be established as an international legal norm or not.[20] In this regard, there is the restrictionist and counter-restrictionist divide in the international law literature arguing against or for the legalisation of humanitarian interventions.[21] Given such fragmentation, in the absence of an absolute recognition or refusal of a duty or right to intervene, legitimacy of this sort of use of force has become a prominent part of the debates in international politics literature too.

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[18] There are also examples of works that study (military) criteria for humanitarian interventions, see for instance Michael O'Hanlon. *Saving Lives with Force: Military Criteria for Humanitarian Intervention* (Washington D.C: Brookings Institution Press, 1997).
[19] For instance, a widely debated case has been the NATO intervention in Kosovo.
[20] Some of the common focuses in these discussions are the role of the Security Council in legitimisation of a case as well as the NATO operation on Kosovo.
[21] This divide is considered in a detailed manner in Chapter 2, under Section 2.2.

The evolution of the doctrine of humanitarian intervention plays a fundamental role in understanding the nature and legitimacy of this act. In this regard, some scholars study the legitimization of humanitarian interventions through the evolution of the doctrine. For instance, Francis Kofi Abiew in his book entitled "the Evolution of the Doctrine and Practice of Humanitarian Intervention," "attempts to demonstrate a legitimate basis for humanitarian intervention through an examination of the evolution of the principle and its practice [and he] argues that state sovereignty is not incompatible with humanitarian intervention."[22] As it can be inferred from Abiew's argument, whenever humanitarian intervention is in question, also is state sovereignty since outside intervention constitutes a breach of the sanctity of national sovereignty.[23]

d. Human Security and RtoP

Humanitarian intervention debates have also been taking place alongside a discussion on the changing notion of state sovereignty as a result of the shift in the security literature towards human security. King and Murray find that economic development and

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[22] Abiew 1998, 5.

[23] For examples of works focusing on the relationship between sovereignty and humanitarian interventions, see Chopra, Jarat, and Thomas G. Weiss. "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention" *Ethics and International Affairs* 6 (1992): 95-117; see Duke, Simon. "The State and Human Rights: Sovereignty versus Humanitarian Intervention" *International Relations* 12 (1994): 25-48; see Heriberto, Cairo. "The Duty of the Benevolent Master: From Sovereignty to Suzerainty and the Biopolitics of Intervention" *Alternatives: Global, Local, Political* 31(3) (2006): 285-311; see Kuznetsova, Ekaterina. "Limit Sovereignty if the State Abuses It" *International Affairs: A Russian Journal* 5 (2004): 94-105.

military security, which they label as "the two dominant strands of foreign policy," became interwoven in the 1990s, and one of the main outcomes of this was the shift in focus towards the emerging concept of human security.[24] As Pınar Bilgin observes, the "end of the Cold War provoked a long overdue interest in rethinking commonly held assumptions as well as practices concerning security."[25] Therefore, in the 1990s, academic debates moved beyond the traditional conceptions of security to include also individual and societal dimensions.[26] Certain developments of the Cold War-era surfaced in the 1990s. These

> included (a) growing disparities in economic opportunities both within and between states; (b) increasing hardships faced by peoples in the developing world who found themselves on the margins of a globalizing world economy; (c) diminishing nonrenewable resources leading families and groups to become refugees; (d) rising anti-foreigner feelings and violence in reaction to migration pressures from the developing to the developed world; and (e) proliferating intrastate conflicts increasing public interest in, and pressure for, humanitarian intervention.[27]

These developments led to practitioners' growing interest in human security. As an overall impact, especially of intrastate conflicts, at the

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[24] Gary King and Christopher J. L. Murray. "Rethinking Human Security" *Political Science Quarterly* 116(4) (2001-02): 585.
[25] Pinar Bilgin. "Individual and Societal Dimensions of Security" *International Studies Review* 5 (2003): 207.
[26] Some examples are Barry Buzan's People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era (1991); Georg Sorensen's Individual Security and National Security: The State Remains the Principal Problem (1996); Keith Krause and Michael Williams's Critical Security Studies: Concepts and Cases (1998).
[27] Bilgin 2003: 207.

beginning of 2000s scholars started asking the question whether or not states have a "responsibility to protect" populations from mass atrocities.

With the Report of the International Commission on Intervention and State Sovereignty (ICISS) that was published in December 2001, a new topic of debate was added to the international politics literature. RtoP was started to be discussed as a new norm shifting the terms of the debate from a "right to intervene" to a "responsibility to protect." One of the pioneers of the responsibility to protect doctrine, Gareth Evans, asserts 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, of really quite fundamental ethical importance and novelty in the international system."[28]

In this regard, some parts of the growing literature on this subject matter focus on the question whether or not RtoP is evolving into an international norm. An example of such a study is Carsten Stahn's article entitled "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm,"[29] in which Stahn draws attention to the uncertainties of the doctrine as well as the existing problems for RtoP

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[28] Gareth Evans. *From Humanitarian Intervention to the Responsibility to Protect,* Keynote Address to Symposium on Humanitarian Intervention, University of Wisconsin, Madison, 31 March 2006 retrieved from http://www.crisisgroup.org/home/index.cfm?id=4060&l=1 (accessed October 28, 2007).

[29] Carsten Stahn. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *The American Journal of International Law* 101(1) (Jan. 2007): 990-1020.

to become a legal norm. The prevalent idea in the literature at the current state of affairs is that although the RtoP notion is evolving very rapidly, it is not yet clear enough to be an international legal norm. In a similar vein, for instance, on the basis of several reports published (especially by the UN) up to 2007, Susan Breau[30] analyses the process of evolution as well as the implementation of RtoP.

Alongside these discussions, scholars like Alex J. Bellamy[31] question the nature of the doctrine, and ask whether RtoP is the new "Trojan Horse" of powerful states. In line with this, RtoP is discussed also within the confines of liberal peace theory[32] since there is the prevailing suspicion hanging in air that whether RtoP is an imperialistic imposition of Western states or not. These discussions took a new turn after the World Summit Outcome Document and various other aspects of RtoP started to be addressed.

In this context, inspired by the latest efforts within the UN regarding the embracement of the RtoP doctrine, this dissertation aims to make a contribution to the growing literature on RtoP alongside the mammoth collection of works on humanitarian intervention as explained in the following section.

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[30] Susan C. Breau. "The Impact of the Responsibility to Protect on Peacekeeping" *Journal of Conflict & Security Law* 11(3) (2006): 429-64.

[31] Alex J. Bellamy. "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq" *Ethics & International Affairs* 19(2) (Summer 2005): 31-53.

[32] See for instance, David Chandler. "The Responsibility to Protect? Imposing the 'Liberal Peace'" *International Peacekeeping* 11(1) (2004): 59-81.

1.2. Contributions of the Dissertation

The doctrine of humanitarian intervention has long been a topic of debate due its ethical, legal and political aspects. So far, the issues of legitimacy and legality of humanitarian interventions have mainly been studied in international law and politics literatures on the basis of the basic assumption that states pursue their national interests. In the meanwhile, public debates (especially those regarding the cases that found wide coverage in media throughout the world) have drawn attention to the (claimed) moral considerations of states. Although a discussion of evolving norms of humanitarian intervention as well as the responsibility to protect were added to the literature, certain prominent research questions regarding the two notions and their interrelation have been omitted.

Accordingly, this dissertation attempts to fill a gap in the literature by:

(1) determining what the approach of states towards the notion of humanitarian intervention currently is based on an analysis of the recent debates regarding the implementation of the responsibility to protect within the UN framework;

(2) questioning to what extent the notion of moral responsibility plays a role in the international community's responses to cases of humanitarian catastrophe;

(3) identifying factors (such as capacity and capability issues) other than national interest which may constrain states in taking action based on moral motives.

Given the complex nature of the notion of humanitarian intervention, different from other studies in the literature, while seeking answers to these questions this research merges the legal, political and ethical aspects of humanitarian intervention within a single study for the purpose of revealing the significant interconnection between these three areas, and how they affect and/or mutually construct each other.

Finally, while bringing together the relevant parts of the extensive literature on humanitarian intervention and the growing literature on different aspects of RtoP, this dissertation aims at making a contribution to the corpus of scholarly works also (1) by exploring and analysing the recent debates in the UN General Assembly regarding the implementation of RtoP and the implication of these on the notion of humanitarian intervention; and (2) by studying RtoP situations/cases in the aftermath of the 2005 World Summit Outcome Document and then evaluating them in relation to the conduct of humanitarian intervention. In this vein, this dissertation compares theory with practice, and develops its analysis under five main headings as explained in the next section.

1.3. Structure

This dissertation starts off with the presentation of the theoretical framework in Chapter 2 in order to lay down the limits of the dissertation and to outline the way the researcher has approached the research question. To this end, first the main actor of the research is presented and conceptualised. Then, prior to explaining how the dissertation is operationalised, the theoretical tools utilised in the research are described.

In Chapter 3, a conceptual and legal framework outlining the fundamental characteristics of the subject matter is provided. Accordingly, following a brief definitional study of humanitarian intervention, the notion of RtoP is introduced and analysed in relation to humanitarian intervention. This is followed by an overview of the normative roots of the two doctrines in order to identify common points of departure. Finally, the legal framework is introduced on the basis of a discussion on the existence of a right to intervene on the basis of fundamental principles of international law as well as possible legal grounds for practicing humanitarian interventions and RtoP.

Building on this basis, in Chapter 4, a historical overview of the chosen Cold War-era and 1990s cases, provides a milieu of comparison of theory with practice, and prepares the discussion for the adoption of the RtoP at the international level. After the brief

study of main documents on the development of the RtoP within the framework of the UN, the chapter is concluded with a discussion on the nature of RtoP as a norm.

Chapter 5 studies the theoretical aspects of the main drives for undertaking action based on a grouping under four main headings: (1) human security, (2) international norms, (3) moral considerations, (4) and national interests.

Following from these theoretical discussions, Chapter 6 briefly studies eleven cases of RtoP concern for the purpose of comparing theory with practice. These case studies constitute the test of the assertions of this dissertation. This is followed by the Conclusion where the overall account of the implications of state practices regarding RtoP and humanitarian intervention as well as the main argument of the dissertation are presented.

CHAPTER 2

THEORETICAL FRAMEWORK

The most fundamental challenge to the doctrine —or, as scholars like Gareth Evans suggest, the evolving norm— of the "responsibility to protect" stems from the traditional approaches to the notions of national interest and security. In contrast to an understanding of taking action on grounds of national interest, the "responsibility to protect" takes states as moral agents.[33] Based on such understanding, in rejection of a (neo)realist assumption that states are amoral units, this dissertation builds its research around the question of whether or not moral concerns influence the decisions and/or behaviour of the international community, specifically in cases of gross violations of human rights. In this vein, it sets the framework of its research within the limits of the conduct of humanitarian interventions in fulfilment of the responsibility to react.

Like most social phenomena, humanitarian intervention has a complex nature, in which various actors (from various levels of analysis), numerous understandings inherent in state behaviour, and multiple drives influencing action are in interaction with each other. This dissertation, not being a theoretical study per se, adopts a holistic approach towards its problem statement, and to this end it

[33] Chandler 2007: 62.

benefits from a combination of different theories in its analysis. In general terms, it utilises the tools of constructivism in order to simplify complex social phenomena. In terms of determining the main actor and the level of analysis, the dissertation benefits from the approaches of the English School and takes up on Hedley Bull's definition of the international society. In the meanwhile, it assumes a counter-restrictionist legal standing—specifically the international community approach.[34]

In this context, this chapter provides an overview of the theoretical framework of the dissertation. To this end, first the definition of international community adopted for the purposes of this research is introduced. Second, a brief explanation of the specific tools of constructivism which are utilised in the dissertation is put forth. This is followed by the description of Finnemore and Sikkink's "norm life cycle" model, which is to be implemented in the analyses of Section 4.3 of the dissertation. Finally, the general methodology of the dissertation with emphasis on the operationalisation of the case studies is presented to the readers.

[34] Although it recognises its basic principles and rules of conduct (as adopted within the context of RtoP by the ICISS), this dissertation does not utilise just war theory as its theoretical framework. As Mary Kaldor posits, "[i]n a globalized era, where global social contract is in the process of being debated, just war theory no longer applies since our concern is with the defence of individuals rather than states" (Kaldor 2008, 15).

2.1. Conceptualising the International Community

It is important to identify what the term international community within the context of this research means. Hedley Bull suggests that "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", international society comes into existence.[35] What Bull describes in here is rather an imperfect society of states (where self-interest driven behaviour is not out of question or abidance by norms is not always for granted, etc.). This is why we are not talking about a world society, but an international community with potential to improve.

In this vein, with the notions of humanitarian intervention and RtoP at its core, this dissertation defines the UN as an/the international community and establishes it as its focus in terms of the main actor. So, for the purposes of this research the notion of international community is defined as the Member States of the UN, in other words, the community of states and their activities as an international body within the UN framework, specifically in the Security Council, and above all, the General Assembly. Building up on such conceptualisation of the main actor, the dissertation in

[35] Hedley Bull. The Anarchical Society: A Study of Order in World Politics (London: Macmillan, 1977), 13.

general benefits from the tools of constructivism in terms of explicating complex phenomena.

2.2. Utilising the Tools of Constructivism

In developing its main argument this dissertation adopts certain assumptions and understandings of the constructivist framework. In this regard, mutual construction, intersubjectivity, and the acceptance of (the possibility of) social change are embraced as core features in this dissertation. Adopting a contra-(neo)realist point of view, states are not assumed to be amoral units.

Accordingly, this dissertation recognises that it is theoretically important to distinguish between elements of the logic of appropriateness and the logic of consequences in state behaviour. Following Mervyn Frost's assertion, this research takes it as a given that "[t]he social practices within which we are constituted as actors have ethical components embedded within them."[36] Thus, "[e]thical conduct is not [considered] an 'add-on' to normal non-ethical or amoral conduct,"[37] but a part of it.

Furthermore, the rights and duties of states, as well as the objectives, costs and benefits of the actions are considered as

[36] Frost in Ethics and Foreign Policy, 2001, 35.
[37] Frost in Ethics and Foreign Policy, 2001, 36.

mutually constructed as are agents and structures.[38] This opens up the possibility of change in understandings and behaviour.

In line with this, interests and behaviour are not taken exogenous to the social context.

> Neorealists and neoliberals share generally similar assumptions about agents: states are the dominant actors in the system, and they define security in 'self-interested' terms. Neorealists and neoliberals may disagree about the extent to which states are motivated by relative versus absolute gains, but both groups take the self-interested state as the starting point for theory.[39]

In this vein, while asserting that moral considerations matter, this dissertation does not suggest that self-interested motives are not exempt from the scene. Nonetheless, self-interest is interpreted in a more inclusive manner than a mere struggle for power. "Constructivists argue that understanding how non-material structures condition actors' identities is important because identities inform interests and, in turn, actions. [...] In Alexander Wendt's words, 'Identities are the basis of interests."[40]

This dissertation does not take it as its default assumption the rationalist assertion that powerful states adopt norms because it serves their interests, and that "[w]hen an individual or a state seeks

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[38] Finnemore 2003, 53.
[39] Alexander Wendt. "Anarchy is What States Make of It: the social construction of power politics" *International Organisation* 46(2) (Spring 1992): 392.
[40] Christian Reus-Smith. "Constructivism" in *Theories of International Relations* (3rd ed.), Burchill, Linklater, Devetak, Donnelly, Paterson, Reus-Smith and True (New York: Palgrave MacMillan, 2005), 197.

to justify its behaviour, they will usually appeal[41] to established norms of legitimate conduct."[42] Nevertheless, such appeal suggests "that institutionalised norms and ideas work as rationalisations only because they already have moral force in a given social context."[43]

Moreover, this dissertation recognises that it is theoretically important to distinguish between elements of the logic of appropriateness and the logic of consequences in state behaviour. Following Mervyn Frost's assertion, this research takes it as a given that "[t]he social practices within which we are constituted as actors have ethical components embedded within them."[44] Thus, "[e]thical conduct is not [considered] an 'add-on' to normal non-ethical or amoral conduct,"[45] but a part of it.

In addition to the general constructivist approach taken up in the conduct of research, while studying the development of RtoP as an international norm and determining what kind of a norm this currently is evaluated Finnemore and Sikkink's "norm life cycle" model is adopted.

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[41] One example is the case of US's intervention in Iraq where the US sought legitimacy for its conduct through the UN.
[42] Reus-Smith, 198.
[43] Reus-Smith, 198.
[44] Frost in Ethics and Foreign Policy, 2001, 35.
[45] Frost in Ethics and Foreign Policy, 2001, 36.

2.3. The "Norm Life Cycle" Model

This dissertation does not address the problematic of how and why norms are developed. It rather accepts the constructivist assumption that the international community becomes/is constrained by the norms it establishes. In this vein, within the framework of RtoP the case of humanitarian intervention it taken as a moral norm and applied as a test case for understanding the role of moral considerations in the conducts of the international community.

In this context, only for the purposes of Chapter 4, and only in a supplementary way, while making the argument that RtoP is a moral norm, this dissertation benefits from the *norm "life cycle"* scheme as presented by Finnemore and Sikkink, which can be basically summarised as follows: There are the three stages of "norm emergence," "norm cascade," and "internalization" (as shown in Figure 1).

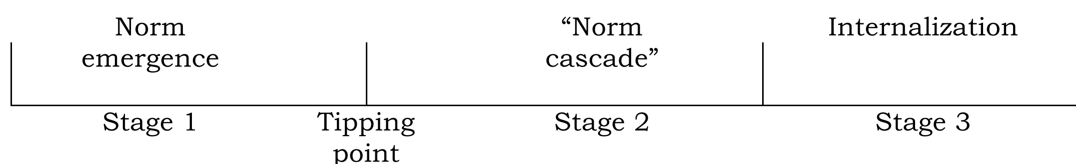

Figure 1. Norm life cycle[46]

At the first stage of the cycle, norm entrepreneurs as the human agents constitute the key actors of persuasion for the adoption of a

[46] The figure is taken from Finnemore and Sikkink 1998: 896.

norm.[47] It is through these entrepreneurs that the norm comes into being and is introduced to the international community of states. Nevertheless, in "most cases, for an emergent norm to reach a threshold and move toward the second stage, it must become institutionalized in specific sets of international rules and organisations."[48] Throughout these processes organisational platforms play a complementary role in the promotion of the new norms.[49]

It is a "tipping point" that sets the border line between the first two stages. For a norm to be considered to have reached this point, it must be adopted by "a critical mass of relevant state actors."[50] What is meant by "the critical mass" can be problematic. Nevertheless in the case of RtoP's adoption it is not. Since the World Summit Outcome document was adopted unanimously, that is to say by all the Member States without any objectors, we are able to talk about all the relevant state actors rather "a critical mass". Stage 2: "norm cascade" comes after this threshold. This is the level where the general embracement of a norm takes place.[51] Socialisation is the key mechanism of the norm cascade, and is carried out by norm leaders

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[47] Finnemore and Sikkink 1998: 896.
[48] Finnemore and Sikkink 1998: 900.
[49] Finnemore and Sikkink also note that "[o]ne prominent feature of modern organizations in particular is their use of expertise and information to change the behaviour of other actors" (Finnemore and Sikkink 1998: 899).
[50] Finnemore and Sikkink 1998: 895.
[51] Finnemore and Sikkink 1998: 895.

seeking to persuade others to adhere to the new norm.[52] "[A]t the extreme of a norm cascade, norms may become so widely accepted that they are internalized by actors and achieve a 'taken-for-granted' quality that makes conformance with the norm almost automatic."[53] This brief overview sums up the "norm life cycle" scheme that is used in the assessment of RtoP as a moral norm.

2.4. Operationalisation

A two-fold approach is followed in this research. The dissertation first seeks to "explain" the notion of humanitarian intervention and to locate it in the international political system in relation to the RtoP doctrine. To this end, the dissertation studies the conceptual, normative, historical and legal framework of humanitarian intervention and RtoP to outline how these two doctrines work in theory. Second, in its attempt to "understand" the role of moral motives in state action in undertaking humanitarian interventions within the context of the RtoP norm, it explores the drives for action and considers examples from different situations/cases.

The former analysis is fundamentally based on the study of the secondary sources in the literature as far as the conceptual framework (where political, normative and moral motives are

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[52] Finnemore and Sikkink 1998: 902.
[53] Finnemore and Sikkink 1998: 904.

analysed) is concerned. In the case of the legal framework as well as the parts devoted to the study of RtoP, the analysis is based not only on secondary sources —that is the narratives or commentaries of legal scholars— but also on primary ones such as the Charter of the UN, resolutions by the Security Council and the General Assembly, judgements of international courts, the Report of the ICISS on the "responsibility to protect" as well as interviews with practitioners and legal scholars. In this regard, a substantial part of this study is based rather on qualitative research than a quantitative one. The data and/or information used in the exemplification of different cases is comprised of collections from different databases such as that of the International Coalition for the Responsibility to Protect crisis database, the Global Responsibility to Protect database, the International Crisis Group database, and the International Institute for Strategic Studies (IISS) Armed Conflict Database. This data is accompanied by notes from the interviews conducted with practitioners, analysts and scholars from different parts of the world as well as the information available in secondary sources. Moreover, official documents, public statements, minutes of General Assembly meetings, Security Council resolutions, and other reports relevant to the focus of this dissertation are consulted as primary sources.

At the ideational level, especially after early 1990s, the international community has started to take international protection

of human rights as a higher value than national interest and state sovereignty. Nonetheless, it is a question whether or not such understanding has become so influential that it can influence state behaviour on a large scale, and a purely conceptual analysis falls short in explaining different drives. The verification, therefore, lies in the observation of state practices. Such approach also allows for comparing and contrasting theory with practice.[54]

In this regard, looking at different cases helps the researcher to understand the nature of the interventions as well as the changing contexts and conditions. Throughout the dissertation there are concise references[55] to cases/situations from 1960s to 2010 since they help to reveal not only what the legal status of humanitarian intervention has lately been but also the political constraints that continue to persist within the dynamics of the international community. Furthermore, in the detailed analysis of specific cases, the focus will be on the situations that emerged or has escalated in the years following the international community's unanimous adoption of the "responsibility to protect" in the 2005 World Summit

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[54] As Lang suggests "an intervention can only be understood in the context of motives, means, and ends, moral evaluations of intervention must address not only the initial decision to intervene but also the entire process of an intervention. In other words, understanding and evaluating requires historical descriptions of contexts, decisions, and outcomes" (Lang in *Just Intervention* 2003, 4).

[55] An exhaustive analysis of situations that arose especially in the 1990s as well as prior to the adoption of the World Summit Outcome Document is omitted for limitation purposes. The reasoning behind this is that these cases have already been widely explored in the literature, and do not have a special significance in determining the relationship between humanitarian interventions and RtoP in terms of the implementation as they date back to the period before the adoption of the RtoP doctrine.

Outcome Document. The reason for such limitation is (1) to observe whether or not the international community has been abiding by its responsibility to protect as the Member States of the General Assembly have undersigned to in 2005, and if yes, to what extent; (2) to determine the implications of these regarding the conduct of humanitarian interventions. Such analysis of cases also serves to fill a gap in the literature since there is a lack of focus on these current cases.

In determining which cases to study, two leading organisations in the promotion and the implementation of RtoP are prioritised as reference points and later presented as the basis of the comparison of interpretation of cases as RtoP ones.[56] The first is the "Global Centre for the Responsibility to Protect"[57] and the second is the "International Coalition for the Responsibility to Protect."[58] As part of

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[56] It should be noted the research conducted is not dependent solely on the information acquired from the databases of the said two organisations. Various other databases (as listed in the previous pages) have been used as references. But for reasons of brevity and in order to highlight that interpretation of cases may vary even between two cooperating organisations, only two selected institutions are brought to forefront in comparisons.

[57] "The Global Centre's mission is to help transform the principle of the responsibility to protect into a cause for action in the face of mass atrocities. Founded by leading figures in government and academia, as well as by International Crisis Group, Human Rights Watch, Oxfam International, Refugees International, and WFM-Institute for Global Policy, the Centre recognizes that this emerging norm needs to be broadly explained, clarified, defended from wilful misunderstanding, and fleshed out to serve as the basis for practical action" (http://globalr2p.org/whoweare/index.php (accessed September 22, 2010)).

[58] "The International Coalition for the Responsibility to Protect (ICRtoP) was founded on 28 January 2009 by representatives of eight regional and international non-governmental organizations (NGOs). The Coalition brings together NGOs from all regions of the world to strengthen normative consensus for RtoP, further the understanding of the norm, push for strengthened capacities to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilize NGOs to push for action to save lives in RtoP country-specific situations"

the case selection criteria, the use of coercive measures is not sought as a qualifier. As the main concern of analysis is to assess the extent of RtoP's implementation since 2005, reference is made to situations where either international actors made a call for the implementation of RtoP (due to their belief that gross violations of human rights have been taking place in a country), or a state has invoked the "responsibility to protect" as a justification for undertaking the intervention. In this vein, misapplications of RtoP, ongoing situations requiring continuous monitoring under the framework of paragraphs 138 and 139 of the World Summit Outcome Document, cases requiring action under Pillar 3 of the norm, and successful implementation(s) of RtoP realised at the preventive stage are included within the focus of Chapter 6.

Aside from the criteria adopted for case selection, in general terms, concerning the overall assessments of this research a case is considered to qualify as a humanitarian intervention if the following elements are present:

(1) The intervention has to adopt coercive measures with or without the authorisation of the Security Council under Chapter VII;

(2) The population that is the target of the mass atrocities has to be different than the nationals of the intervening state(s). States intervening for the purpose of protecting their own nationals

(http://www.responsibilitytoprotect.org/index.php/about-coalition (accessed Sept. 22, 2010).

living in another country will be assumed to act upon the principle of self-defence;

(3) The interveners, although they may have other interests involved, ought to have a driving humanitarian objective for undertaking such forceful action.

Aside from these physical elements that are considered as a must, one can also include an ethical component which dictates that the intervention ought to be taken only if it has true potential to produce a positive humanitarian outcome. Nevertheless, as the main focus of the dissertation is the moral motives in the decision-making, in the final evaluation of the cases of Chapter 6, the outcomes of the interventions undertaken will not be investigated.

In the light of the proposed criteria, an analysis of the cases provides a test for the theoretical assertions/observations of this dissertation. Following from these, in counter point to a classical/standard realist depiction of amoral states, this dissertation argues that the international community assumes a moral responsibility to react to mass atrocities. Nevertheless, both individual states and the international community are limited with their capacities and/or capabilities to intervene. Furthermore, the political structure of the main organs of the UN imposes a constraint on the decisions of the international community, leading to failure in

terms of undertaking the responsibility to protect. Thus, they do not always act upon the dictates of the moral considerations.

CHAPTER 3

THE ROAD TO RtoP IN THEORY

This chapter provides a conceptual and legal background for the analysis of humanitarian intervention within the framework of RtoP. To this end, it starts off with the definition of the notion of humanitarian intervention, and then introduces the R2P framework. Under section 3.2, it explores how and to what extend the two doctrines are related. After laying out the conceptual elements, it traces the normative and philosophical roots of humanitarian interventions and the responsibility to protect in order to understand the inherent ethical motives as well as the underlying logic for undertaking these acts. Thirdly, it places both doctrines within the context of international law with two objectives in mind: (1) questioning whether or not there exists a right to intervene, and (2) providing a basis to assess the permissive and restrictive influences of legal factors on the conduct of humanitarian interventions and upholding the responsibility to protect.

3.1. Defining Humanitarian Intervention

Although humanitarian intervention is one single phenomenon, there are numerous definitions of it with nuances or key divergences, and how it is defined matters as this definition

determines the scope of the term as well as what one specifically looks at. For this reason, first the etymological roots of the term are investigated, and then, contemporary meanings of the concept followed by differing definitions by scholars from the disciplines of international law and politics as well as the working definition are presented.

a. Etymological Roots

It is possible to trace etymological roots of the phrase "humanitarian intervention" by dividing the term into its individual elements of "humanitarian" and "intervention":

Humanitarian "n. 1819, one who affirms the humanity of Christ XIX (Moore); one devoted to humane action or the welfare of the human race *c.* 1830"[59] it is structured from the English word *humanity* with the addition of the suffix "*-arian*". "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."[60]

Intervention "n. About 1425 *intervencioun* intercession, especially by prayer; borrowed, perhaps through Middle French *intervention*, or directly from Late Latin *interventiōnem* (nominative *interventiō*) an

[59] C.T. Onions, G.W. S. Friedrichsen, and R.W. Burchfield (eds.), *The Oxford Dictionary of English Etymology* (London: Oxford University Press, 1985), 451.

[60] Robert K. Barnhart (ed.). *The Barnhart Concise Dictionary of Etymology* (New York: Harper Collins Publishers, 1995), 364.

interposing, giving security, from Latin *interven-*, stem of *intervenīre;*" and is formed by the use of the suffix "–tion."[61]

Over the centuries, the meanings 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,"[62] 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."[63] Moreover, Otte by tracing the roots of the word "intervention" back to Latin identifies 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, Otte 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."[64]

As a term, "humanitarian intervention" has its place within the literatures of international relations and international law. Since

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[61] Barnhart 1995, 539.
[62] Paul Procter (ed.). *Cambridge International Dictionary of English* (Cambridge: Cambridge University Press: 2005), 625.
[63] Procter (ed.) 2005, 670.
[64] Thomas G. Otte, in Andrew M. Dorman, and Thomas G. Otte (eds.). *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention* (Great Britain: Dartmouth, 1995), 5.

there is lack of a commonly accepted definition of the concept, nuances continue to exist. In this regard, prior to the presentation of the working definition for this dissertation, the next section focuses on different definitions of the term in order to reveal its several aspects.

b. Definitions of Humanitarian Intervention

It is possible to make a distinction between the classical and contemporary understandings of humanitarian intervention in definitional terms. 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, although this type of intervention is mostly discussed as an aspect of self-defence."[65]

On the one hand, contemporarily humanitarian intervention can be defined as a "doctrine under which one or more states may take military action inside the territory of another state in order to protect those who are experiencing serious human rights persecution, up to and including attempts at genocide."[66] On the other hand, in a limited manner, Finnemore defines humanitarian intervention as the positioning of military units within the territory of

[65] Peter Macalister-Smith (ed.). *Encyclopaedia of Public International Law* (The Netherlands: Elsevier Science B.V., 1995), 926.
[66] David Robertson. *A Dictionary of Human Rights*, 2nd edition. (London: Europa Publications, 2004), 119.

a third state in order to safeguard foreign nationals not from natural but manmade disasters.[67] Brownlie comes up with an alternative definition, which is complementary to the former two. He defines the act of humanitarian intervention not only as the use of but also as the threat to use military force. Secondly, he includes alongside states "a belligerent community or international organisation" as actors that can undertake an intervention "with the objective to protect human rights."[68]

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 interventions, or from crude use of force, not simply because it is claimed to be pursued due to motives more than a mere drive of self-interest but mainly because it puts stress on the notion of intervening militarily for the purpose of protecting individuals who are not the nationals of the interveners from atrocities against humanity or inhuman treatment on a massive scale.

Therefore, humanitarian intervention can be differentiated from other types of military interventions or aggression due to its purpose and content. By itself, the "word 'intervention' describes the

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[67] Martha Finnemore. *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca and London: Cornell University Press, 2003), 53.
[68] Ian Brownlie. "Humanitarian Intervention" in John Norton Moore (ed.) *Law and Civil War in the Modern World* (Baltimore and London: The Johns Hopkins University Press, 1974), 217.

exercise of public authority by one state in the territory of another."[69] It is considered to be a measure short of war, comprising use or threat of use of force over a state. Accordingly, intervention "may involve a desire to change or to preserve the existing distribution of power. The term [...] covers a vast array of very different sorts of political action."[70] Nonetheless, in the case of humanitarian intervention the objective of the interveners is (or ought to be) to stop the atrocities within a state, and "to protect fundamental human rights in [such] extreme circumstances." Therefore, this act neither is "meant directly to protect or promote civil and political rights"[71] nor aims the creation of a new state. 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 it to their territory.

Even though the terms humanitarian intervention and humanitarian aid are sometimes used interchangeably, these are two different concepts. The latter is, in character, not in conflict with the notion of state sovereignty as its deployment is based on the consent

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[69] Martin Griffiths, and Terry O'Callaghan. *International Relations: The Key Concepts* (New York: Routledge, 2002), 145.
[70] J. E. Hare and Carey B. Joynt. "Intervention" in *War,* Lawrence Freedman (ed.). (Oxford: Oxford University Press, 1994), 182.
[71] Seybolt 2008, 6.

of the host state. On the contrary, humanitarian intervention[72] can be undertaken with or (most commonly) without the consent of the host state as it is a forcible action.[73] It is also important to note that humanitarian intervention is not necessarily a synonym for peacemaking or peacekeeping, which are essentially conducted by UN-authorised missions. Peacemaking, as defined by the UN, "is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations."[74] In this regard, the main purposes are to achieve peace between the conflicting and/or warring parties, and to stop the aggression of any sort. Thus, it is a measure adopted against acts of aggression not limited to mass violations of human rights. Moreover, unlike in humanitarian intervention, it does not involve use of force.

On the other hand, in the case of peacekeeping, it is usual that military personnel are involved in the process, but they may be armed or not.[75]

> The standard definition of peacekeeping refers to a United Nations presence[76] in the field (normally

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[72] As Hurst Hannum notes, the problematic issue about humanitarian intervention is how to balance sovereignty and human rights of the population (Hurst Hannum, interview by author, Boston, MA, March 06, 2009).
[73] Griffiths and O'Callaghan 2002, 145-7.
[74] "An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping," A/47/277 - S/24111, 17 June 1992, http://www.un.org/Docs/SG/agpeace.html, (accessed August 30, 2009).
[75] "Mission Statement of the Department of Peacekeeping Operations," http://www.un.org/en/peacekeeping/info/mission.shtml (accessed November 25, 2010).
[76] The Security Council may authorise regional organisations like the NATO or a coalition of willing states to form the peacekeeping mission in cases where the UN itself is unable to deploy forces.

> involving civilian and military personnel) that, with the consent of the conflicting parties, implements or monitors arrangements relating to the control of conflicts and their resolution, or ensures the safe delivery of humanitarian relief. It is a technique initiated by the United Nations as a means for maintaining international peace and security.[77]

Peacekeeping is different from humanitarian intervention not only because it necessitates state consent, but also because it, in principle, does not involve implementation of coercive measures[78] unless the security of the peacekeepers is clearly threatened in a way to lead to self-defence. Additionally, it is larger in scope compared to humanitarian intervention, since it "is a technique that expands the possibilities for both the prevention of conflict and the making of peace."[79] In sum, although there may be an overlap of purpose due to the humanitarian outcomes of peacekeeping, peacemaking and humanitarian intervention, the three concepts cannot be used interchangeably.

c. Working Definition

For the purposes of this dissertation, humanitarian intervention is defined as follows: the use of forcible/military means "across state borders" by a state, a group of states, or an

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[77] United Nations website, http://www.un.org/Depts/dpko/dpko/field/body_pkeep.htm (accessed August 30, 2009).
[78] UN, The Blue Helmets: A Review of United Nations Peace-Keeping (New York: The United Nations, 1996), 4.
[79] "An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping," A/47/277 - S/24111, 17 June 1992, http://www.un.org/Docs/SG/agpeace.html, (accessed December 04, 2010).

international and/or regional organisation[80] 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,"[81] with or without the consent of the target state that becomes subject to the use of force in its territory as a result of the intervention.

In the light of this definition, humanitarian intervention is taken also as an act of coercive protection[82] through use of force due to extreme circumstances concerning fundamental human rights. This sort of an intervention, when undertaken without state consent is the most problematic and/or controversial as it results in a breach of state sovereignty. Moreover, acts that historically and legally fall under self-defence, which may be observed in the protection of nationals in a third state, are not evaluated as humanitarian interventions in the analyses of this dissertation. Based on this conceptualisation, the relationship between the doctrines of humanitarian intervention and RtoP as well as a legal analysis of the so-called right to intervene is explored.

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[80] Francis Kofi Abiew. *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1998), 18.

[81] J. L. Holzgrefe. "The Humanitarian Intervention Debate" in *Humanitarian Intervention: Ethical, legal and political dilemmas*. J. L. Holzgrefe and Robert O. Keohane (eds.) (Cambridge: Cambridge University Press, 2003), 18.

[82] "While 'coercive protection' can take a variety of forms, the most common are the maintenance of humanitarian corridors, the protection of aid convoys, and the creation of safe havens or protected areas. Prominent examples include the no-fly zone in northern Iraq and the safe areas of Bosnia. A particularly important dimension of this kind of operation is the force posture of intervening troops" (Gareth Evans and Mohammed Shanoun (eds.). *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa: International Development Research Center, 2001), 179.

3.2. Responsibility vs. Right?

Humanitarian intervention and the responsibility to protect are two doctrines both tackling the problem of grave violations of human rights. In general terms, the responsibility to protect as a conceptual whole is beyond a doctrine simply attempting to regulate/govern the act of humanitarian intervention. To begin with, RtoP is not only about halting mass atrocities, but it also aims to prevent them from happening, whereas humanitarian intervention addresses the issue upon or after occurrence. The objective of prevention is reflected in RtoP's reconceptualisation of the understanding of state sovereignty, which is a primary point of departure for the responsibility to protect understanding from that of humanitarian intervention.

As will be discussed in detail in the subsequent sections of this chapter, some legal scholars argue that there exists a "right to intervene". The ICISS makes a case for RtoP starting off from this assumption, and shifts the terms of the debate by introducing a "responsibility to protect" rather than a "right to intervene".[83] Accordingly, it raises 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, i.e. "the potential beneficiaries" of the intervention. Secondly, the emphasis placed on intervention

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[83] The notion of "the right to intervene", i.e. *droit d'ingérence*, was introduced by Bernard Kouchner (Gareth Evans 2008, 32).

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."[84]

Bearing these three criticisms of a "right to intervene" in mind, through its proposed change of mentality with the imposition of new terminology,[85] the ICISS first brings to the attention of the international community those in need of support, i.e. the subjects of human suffering, rather than the rights of the intervener(s). Moreover, it places the responsibility first and foremost with the state itself. It is only if the state fails or omits to abide by its duties towards its citizens, or if it is the state itself that is the wrongdoer, then the responsibility lies with the international community to take appropriate action.

Accordingly, the Report of the ICISS establishes the central theme of RtoP as follows: sovereign states are responsible towards their citizens for their protection "from avoidable catastrophe —from mass murder and rape, from starvation— but that when they are

[84] ICISS 2001a, 16.
[85] "The 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 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" (Finnemore and Sikkink 1998: 908). Differentiating "responsibility to protect" from the "right to intervene" serves for the attempt to remove the negative connotation. Moreover, placing the concept within the well-established principle of sovereignty can be seen as an attempt for gaining support for the notion of RtoP.

unwilling or unable to do so, that responsibility must be borne by the broader community of states."[86] Such line of reasoning is reflected in the two basic principles of the Report:

> 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.[87]

On this basis, the ICISS first attempts to transform 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. As Robertson 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."[88] Secondly, Paragraph B hints at the growing notion of an international responsibility concerning humanitarian cases as well as the need to take action at the international level.

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[86] ICISS 2001a, viii.
[87] ICISS 2001a, xi.
[88] David Robertson 2004, 119.

Finally, with regard to the third criticism, as a part of its general approach towards handling mass atrocities, RtoP offers an alternative to the traditional understanding of humanitarian interventions by providing "conceptual, normative and operational linkages between assistance, intervention and reconstruction."[89] That is to say, the operationalization of RtoP takes place through the three stages of the responsibilities to (1) prevent, (2) react, and (3) rebuild.[90] Among these three, the Commission prioritises the responsibility to prevent as it considers this aspect to be the most important one.[91] Hence, the prevalent idea is to adopt successful preventive measures so that situations do not grow into severe/extreme cases requiring the implementation of coercive measures. On the other hand, the responsibility to rebuild can be defined as a complementary stage since it is to follow a military intervention undertaken as a means of the responsibility to react. With this aspect the ICISS brings to the fore a "commitment to helping to build a durable peace, and promoting good governance and sustainable development."[92]

Of the three operational stages of RtoP, humanitarian intervention falls only under the responsibility to react, and is

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[89] ICISS 2001a, 17.
[90] Since this dissertation focuses only on humanitarian interventions undertaken in military form, aspects one and three will not be analysed in detail in the subsequent parts of this dissertation.
[91] ICISS 2001a, xi.
[92] ICISS 2001a, 39.

considered as a last resort to be employed in extreme situations. This second aspect, different from the other two, includes the use of coercive measures ranging from imposition of sanctions up to the use of force.[93] Given the possibility for the adoption of military means, which in other words can be termed as humanitarian (military) intervention, the responsibility to react stands out as the most problematic aspect of RtoP in terms of the implementation.

In the light of this, it can be concluded that the responsibility to protect is a doctrine that encloses humanitarian intervention within its components. Nevertheless, as James Pattison draws attention to, humanitarian intervention in the meantime can be interpreted to be broader than RtoP, since it "can be undertaken in response to a variety of humanitarian crises and does not require Security Council authorization."[94] As will be observed in the analysis of the documents adopted by the UN regarding RtoP,[95] there are limits to what can be addressed as an RtoP case. There is no such restraint on humanitarian interventions.[96] Thus, in the absence of a restraining document or specific criteria imposing limitations on the doctrine, humanitarian intervention can be interpreted to be broader

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[93] The Commission also underlines: "the responsibility to protect means that human protection operations will be different from both the traditional operational concepts for waging war and for UN peacekeeping operations" (ICISS 2001a, 66).

[94] James Pattison. Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene (Oxford: Oxford University Press, 2010), 13.

[95] For the analysis, see section 4.2.

[96] As established by paragraphs 138 and 139 of the World Summit Outcome Document, RtoP situations are accepted to exist on the basis of the four grave crimes of genocide, crimes against humanity, war crimes, and ethnic cleansing.

than RtoP.[97] For better comprehension of the restrictive nature of RtoP, and in order to determine the application of the humanitarian intervention doctrine within the RtoP framework, a detailed reference to the responsibility to react is required.

In general terms, the ICISS in its Report embraces the principle of non-intervention. Nonetheless, it identifies certain exceptions, and asks the question where to "draw the line in determining when military intervention is, *prima facie*, defensible?"[98] As far as forceful action is concerned, the Report focuses on acts taken for humanitarian and protective ends against a state without the consent of that state.[99]

Nevertheless, utilisation of forceful measures is not prioritised as a means of reacting: "As a matter of first principles, in the case of reaction just as with prevention, less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied."[100] In this regard, the responsibility to react also covers the imposition of sanctions on states as a preferred first reaction. Hence, humanitarian intervention is to be considered "in extreme cases,"[101] in other words, either when there is a failure or an inability to prevent mass scale of atrocities and/or when the sanctions implemented fail to stop them.

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[97] Pattison 2010, 13-4.
[98] ICISS 2001a, 31.
[99] ICISS 2001a, 8.
[100] ICISS 2001a, 29.
[101] ICISS 2001a, 29.

The ICISS acknowledges that 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."[102] Given this intrusive nature, and the fact that "humanitarian considerations have been invoked to justify intervention, it is obvious that the doctrine gives room for abuse."[103] For this reason, the Commission attempts at establishing a strict decision-making criteria[104] for undertaking humanitarian interventions under the following headings: (1) right authority, (2) just cause, (3) right intention, (4) last resort, (5) proportional means, and (6) reasonable prospects.[105]

Right authority asks "whose right is it to determine, in any particular case, whether a military intervention for human protection purposes should go ahead?"[106] According to the ICISS, the UN undoubtedly is the fundamental international "institution for building, consolidating and using the authority of the international community,"[107] and the Security Council in this regard is the

[102] ICISS 2001a, 29.
[103] ICISS 2001b, 67.
[104] Evans (2006) argues that one important contribution of the Commission was to set the criteria for the appropriateness of military action.
[105] ICISS 2001a, 32.
[106] ICISS 2001a, 47.
[107] ICISS 2001a, 48.

principal organ for the authorisation of and legitimation of an intervention.[108]

Nevertheless, history reveals that due to political reasons and through the employment of the veto right by one or more of the five permanent members, the Security Council has and may become inoperable in dealing with a case. Under such circumstances, for the adoption of a decision the General Assembly is considered as an alternative to refer the matter to, through a "meeting in an Emergency Special Session under the established 'Uniting for Peace' procedures" to employ forceful intervention.[109] The Commission considers also collective intervention by a regional or sub-regional organisation "within its defining boundaries" as a third option.[110]

Point 4.19 of the Report determines two main criteria of just cause, and considers the satisfaction of one of these two enough to assert that there is a just cause to intervene. 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.[111]

What do these mean? The Commission includes within the conditions (1) the acts that fall under the framework of the Genocide

[108] ICISS 2001a, 49.
[109] ICISS 2001a, 53.
[110] ICISS 2001a, 53.
[111] ICISS 2001a, 32.

Convention involving "large scale threatened or actual loss of life;" (2) "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;" (3) various sorts of ethnic cleansing;[112] (4) "crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions and Additional Protocols and elsewhere, which involve large scale killing or ethnic cleansing;" (5) "situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war;" (6) 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."[113]

The third criterion, i.e. right intention, is concerned with the aims of the intervention. Accordingly, stopping the atrocities and ending human suffering have to be the main objectives. In this vein, objectives such as changing the state's regime, assisting self-determination, or occupation[114] cannot be accepted as justifiable

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[112] These 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, 33).

[113] ICISS 2001a, 33.

[114] "Occupation of territory may not be able to be avoided, but it should not be an objective as such, and there should be a clear commitment from the outset to returning the territory to its sovereign owner at the conclusion of hostilities or, if that is not possible, administering it on an interim basis under UN auspices" (ICISS 2001a, 35).

causes.[115] Moreover, the ICISS suggests certain subcomponents to ensure right intention: The first is the collective or multilateral character of the intervention undertaken, which in other words suggests that unilateral interventions are not encouraged. 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."[116] In this regard, the positive response of those who have been suffering from the mass violations of human rights is sought for the assurance of the right intention. "Another is to look to whether, and to what extent, the opinion of other countries in the region has been taken into account and is supportive."[117] This suggests that it is important to consider the views of and to obtain the support of the neighbouring countries for the intervention since it indicates their consent for the act undertaken.

The last resort criterion reflects the general attitude of the Commission throughout the Report. In this vein, the Report states that military intervention must be the last remedy[118] to be adopted due to the exhaustion of diplomatic and peaceful means and as a result of the failure to successfully implement the responsibility to

[115] ICISS 2001a, 35.
[116] ICISS 2001a, 36.
[117] ICISS 2001a, 36.
[118] "This does not necessarily mean that every such option must literally have been tried and failed: often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, in all the circumstances, if the measure had been attempted it would not have succeeded" (ICISS 2001a, 36).

prevent.[119] The Commission necessitates the employment of proportional means in course of the 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.[120]

In light of these conditions, it can be argued that the Commission, in an awareness of the notion of double effect, attempts at minimising the negative effects 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 the need for reasonable prospects to undertake the intervention. As indicated in Chapter 2, human suffering can be approached in two ways. In the case of RtoP, human suffering may occur first as a result of the atrocities conducted against masses —which is considered as a moral requirement for taking action—, and second due to the negative outcomes that may arise from the collateral damage caused or the intervention’s failure to succeed. Thus, as the Commission posits, without reasonable chance for success, one cannot justify resorting to military action. Accordingly, the outcome of the intervention needs to be positive in comparison to the pre-

[119] ICISS 2001a, 36.
[120] ICISS 2001a, 37.

intervention situation, or what it would have been like in case of inaction.[121]

All in all, the "just cause threshold" of the ICISS imposes limitations on the conduct of humanitarian interventions within the framework of the responsibility to react in an attempt to prevent arbitrary or wrongful invocation/implementation of the RtoP doctrine. The proposed criteria alongside the general tenets of RtoP have their roots in the writings of the philosophers of earlier centuries. In this vein, an overview of the normative roots helps the researcher in tracing the similarities and shared components between the two doctrines.

3.3. Normative Roots

Certain features of just war principles, specifically to *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).

St. Augustine 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."[122] The similarity between the just war understanding of St. Augustine and contemporary humanitarian

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[121] ICISS 2001a, 37.
[122] Saint Augustine, City of God, Vol. VI, Book xix, translated by W. C. Greene, (Great Britain: William Heinemann Ltd., 1969), 165.

interventions lies in the fact that the latter as a coercive act undertaken through use of force as a means to re-establish the order[123] and human rights within a country, which also results in the reestablishment of (domestic and/or international) peace although this is not an explicitly pronounced objective. In the waging of just wars, St. Augustine differentiates between the wise man and the other, and asserts that it is the injustice done by the other 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.[124]

Consideration of war as a necessity under certain circumstances emanates from the injustice or the wrong done. As a just war arises from injustice, in ideationally parallel terms, the need to undertake a humanitarian intervention in the contemporary world arises from an unjust act of the man, that is the gross and systematic violations of human rights committed.

In this vein, the basis of the idea of a legitimate intervention against unjust acts can be based on the writings of St. Augustine. As for the idea of responsibility, the roots can be traced back to Thomas

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[123] This can also be international order in case the internal situation poses a threat to or breach of international peace and security.

[124] Saint Augustine1969, 151.

Aquinas who talks about the existence of a notion of responsibility all over the Christian Republic. Aquinas (1225-1274) 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.” He accordingly posits that a prince “may be called upon to resist aggression or unjust treatment of subjects any place in the *Respublica Christiana*.”[125] Though in a limited manner, what Aquinas put forth is parallel to the idea of a “responsibility to react”[126] of the doctrine of the responsibility to protect. In the responsibility to react, the responsibility pertains to the international community where it has to display a collective response to grave violations of human rights whereas in the responsibility of Aquinas the community concerned is limited to the *Christian Republic* and the primary responsibility is that of the princes.

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 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

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[125] Hiroki Kusano. “Humanitarian Intervention: the interplay of norms and politics” in *International Intervention in the Post-Cold War World: moral responsibility and power politics.* Michael C. Davis, Wolfgang Dietrich, and Bettina Scholdan (eds.), 2003, 125.

[126] This is the second aspect of the RtoP doctrine as established by the ICISS. For further details see Chapter 4.

punishing evil-doers, and of uplifting the good."[127] One similarity between the ancient and contemporary theories in terms of undertaking just wars concerns the "securing of peace." As proponents of humanitarian intervention and/or interveners argue, humanitarian interventions serve to "secure peace", which can be peace within a country as well as international peace and security. Nevertheless, what is meant by the "good" may vary depending on the interpretation of the theorist/analyst/philosopher. In general terms, can be a social order (whether religious, moral, economic or political, etc.) or as in the case of humanitarian interventions and RtoP something concrete (since it is the lives of human beings and the protection of their fundamental rights that is the main concern). Thus, from the spectacle of RtoP, Aquinas's proposition of a responsibility of the rulers to "uplift the good" if necessary through military means provides a basis of a more restricted interpretation of the notion (rather than its interpretation as a general social order), that is in terms of confining it to ensuring human rights as established by international law, and stopping mass atrocities against humanity.

Its theological roots providing the moral basis, just war notion has been elaborated within the natural law tradition. Although some legal scholars consider humanitarian intervention as a "relatively

[127] Thomas Aquinas, *Summa Theologica*, II-II, (Cambridge : Cambridge University Press, 2006), 40, 1.

new doctrine," 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).[128] 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.[129] 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.'"[130] This understanding is, for instance, prevalent in the responsibility to protect doctrine where sovereignty is understood as the responsibility of the sovereign state towards its citizens.[131]

Hersch Lauterpacht posits that Grotius[132] made "the first authoritative statement of the principle of humanitarian intervention –the principle that exclusiveness of domestic jurisdiction stops when outrage upon humanity begins."[133] Grotius maintains that there may

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[128] Theodor Meron. "Common Rights of Mankind in Gentili, Grotius and Suarez" *American Journal of International Law* 85(1) (January 1991): 115.
[129] Cited in Meron 1991: 115.
[130] Gentili quoted in Simon Chesterman. *Just War or Just Peace: Humanitarian Intervention and International Law.* Oxford: Oxford University Press, 2001), 14.
[131] The norm of the responsibility to protect will be explored in detail in the forthcoming chapter.
[132] 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.
[133] Hersch Lauterpacht, "The Grotian Tradition in International Law." *British Yearbook of International Law.* 23 (1946) 1, 46.

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.[134]

> [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.[135]

It is therefore up to another state/sovereign to take the necessary measures "to help the persecuted" since the subjects themselves are incapable of taking action.[136]

Based on historical examples 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.[137] In his *De jure praedae*, Grotius argues that "the protection of infidels from injury (even from injury by Christians) is never unjust".[138] As can be inferred from Grotius's statement, his main emphasis is 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.[139] In this vein, Samuel Pufendorf (1632-94) following a similar

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[134] Grotius quoted in Meron 1991: 111. (Original reference: Hugo Grotius. *De Jure Belli Ac Pacis Libri Tres*, Book II, Chapter XXV, pt. VIII(1) (Carnegie ed., F. Kelsey trans. 1925) (1625)).
[135] Quoted in Chesterman 2001, 15.
[136] Meron 1991: 11, and Chesterman 2001, 15.
[137] Hugo Grotius. *Savas ve Baris Hukuku (De Iure Belli Ac Pacis): Secmeler*. Translated by Seha L. Meray. (Ankara: Ankara Universitesi Basimevi, 1967), 171.
[138] Quoted in Terry Nardin and Melissa S. Williams (eds.). *Humanitarian Intervention* (New York: New York University Press, 2006), 15.
[139] Here, it is important to make a distinction between the notions of lawful and just. Although both suggest an ethical content, lawful stands for "according to or

line of thought, in an attempt to establish a just principle for undertaking action asserts: "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."[140] With this argument, Pufendorf brings in lawfulness of the act alongside its justness.

Similar lines of reasoning for justification of intervention in the name of humanity in the domestic affairs of another state followed 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.[141]

In the light of the referred assertions, it is possible to argue that although not named essentially as humanitarian intervention in the then times, philosophers of law have articulated just reasons for undertaking action in order to stop atrocities against humanity.

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acceptable to the law", whereas just means "fair and/or morally correct" (Cambridge International Dictionary of English 2005, 774, 801).

[140] Quoted in Chesterman 2001, 15.

[141] Emmerich de Vattel quoted in Jean-Pierre L. Fonteyne. "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter." *California Western International Law Journal.* (1973-1974), Vol. 4: 215. (Original source Emmerich de Vattel, *Le Droit des Gens*, Ch. IV, paragraph 55, Pradier-Fodéré, ed., 1863).

Moreover, it can be observed that they have provided moral arguments based on ethical constraints rather than legal ones.

In a similar way, some of the contemporary scholars from strands of liberal internationalism[142] 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 notes:

> For Hugo Groius, Pufendorf, Vattel and the rest (sorry comforters as they are) are still dutifully quoted in *justification* in 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.[143]

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

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142 Ann-Marie Slaughter is an example of a liberal internationalist scholars.

143 H.S. Reiss (ed.) "Perpetual Peace" in *Kant: Political Writings* (Cambridge: Cambridge University Press, 2000), 103.

> 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.[144]

Immanuel Kant, while establishing that a cosmopolitan right and a moral capacity exists, 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]oninterference is the general rule, to which cases of justifiable interference form exceptions limited by the necessity of each particular case."[145] In this vein, by suggesting that it is unlikely to have a definitive statement/judgement about the absoluteness of non-interference, Wheaton, on the basis of 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.[146]

An intellectual of the same century, John Stuart Mill, presents his thoughts regarding the issue of non-intervention on a more

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[144] Reiss (ed.) 2000, 107-8.
[145] Tonny Brems Knudsen. "The History of Humanitarian Intervention. The Rule or the Exception?" Paper for the *50th ISA Annual Convention*, New York, February 15-18, 2009: 7.
[146] Knudsen 2009: 7.

general background. In his short essay entitled "A Few Words on Non-Intervention" Mill 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.[147]

While raising the controversial issue of interference in the domestic affairs of states, Mill raises the question on what grounds an intervention, (for instance in case of a civil war or in terms of providing assistance for the people of another country in struggling for liberty), can be justified. 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

[147] John Stuart Mill. "A Few Words on Non-Intervention" *Foreign Policy Perspectives* 8 (1859): 4.

necessary for the security of its neighbours."[148] The traces of Mill's rationalisation can be found in the contemporary understanding of "failed states". Furthermore, a resemblance with the principles emanating from the UN Charter can be seen in Mill's question since he raises the issue of the security of neighbours. On the basis of Chapter VII of the UN Charter, threats to or breaches of international peace and security 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 asserts that the principle of non-intervention prevails in the case 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 talks about the possibility of an intervention that receives "general approval, that is [to say] legitimacy may be considered to have passed into a maxim of what is called international law."[149]

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[148] Mill 1859: 5.
[149] Mill 1859: 5.

In the absence of a delineation between the understandings of humanitarian war and humanitarian intervention in its contemporary sense, the end of the nineteenth century has been marked by raising humanitarian concerns, and leading to the conclusion of Geneva Conventions in the meantime. Following the natural law tradition, in the following century 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'.[150]

It should be noted that the invocation of "humanity" for undertaking action is also likely to constitute a point of criticism. For instance, Carl Schmitt 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 civilization in order to claim these as one's own and to deny the same to the enemy. The concept of

[150] Duke 1994: 33.

> humanity is an especially useful ideological instrument of imperialist expansion.[151]

Nonetheless, differing from the just causes that have been put forth by philosophers of law in the earlier centuries, Bouchard touches upon the lawfulness of coercive action undertaken for humanitarian purposes. He 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.[152]

Bouchard’s assertions, which are based on the conditions of the pre-Charter period, reflect only one faction of the legal positions regarding humanitarian intervention, and these lie at the far end of the counter-restrictionist side of the spectrum.

Malcolm N. Shaw argues that in the nineteenth century there is an acceptance, at least in appearance, of “a right of humanitarian intervention, although its range and extent were unclear.”[153] Likewise, Ulrich Beyerlin indicates an acceptance of “the idea of lawful humanitarian intervention” while emphasizing the doctrinal confusion concerning “the legal foundation and the extent of that

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[151] Carl Schmitt. *The Concept of the Political.* (Chicago: The University of Chicago Press, 2007), 54.
[152] Duke 1994: 33.
[153] Malcolm N. Shaw. *International Law.* Fifth Edition. (Cambridge: Cambridge University Press, 2005), 252.

institution."[154] Nonetheless, neither prior to World War I nor in its aftermath, there is any substantial evidence (e.g. consistent and accepted state practice) to suggest that humanitarian intervention was a soundly established principle of customary international law.[155]

Olivier Corten posits that basing the conduct of humanitarian intervention on an existent "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."[156]

In this regard, the argument for the existence of a right to intervene (allowing unilateral humanitarian interventions) is highly contested in the post-Charter period, and the assessment of the validity of such argument requires a deeper analysis of the international legal framework, which is in order.

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[154] Ulrich Beyerlin. "Humanitarian Intervention" in *Encyclopaedia of Public International Law*, Rudolf Bernhardt, (ed.) vol. II, 926-36, Amsterdam: North-Holland, (1992), 927.

[155] Beyerlin in Bernhardt 1992, 927.

[156] Olivier Corten. The Law Against War: The Prohibition of Use of Force in Contemporary International Law (Oxford: Hart Publishing, 2010), 496.

3.4. The Realm of International Law

Especially after experiencing two major wars, states have tried to find ways to avoid large scale armed conflicts. To this end, in the aftermath of World War I and particularly World War II, different legal rules on the basis of the customary rules of international law of the then days have been adopted. Following the end of the First World War, recognising the cruelty of war, states engaged in developing norms, for instance of *jus in bello,*[157] like the 1929 Geneva Convention.[158] Norm development continued in the aftermath of the Second World War with the conclusion of multilateral agreements, and the first example was the 1949 Geneva Convention, which revised the prior Geneva Convention.

The second line of rules emerged under the UN framework through the establishment of the Charter as well as the adoption of decisions and resolutions by the relevant organs of the Organisation. On this basis, war and aggression were outlawed while "non-use of force" and "non-intervention" have become two fundamental principles of international law as well as a part of *jus cogens*[159]

[157] It can be observed that philosophers of law of the earlier centuries who focused on just causes of war, or helped the evolution of the just war theory for that matter, mainly directed their attention to *jus ad bellum*. Distinctively, the Geneva Convention brought in the *jus in bello* aspect to international law.

[158] This 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.

[159] Articles 53 and 64 of the 1969 Vienna Convention on the Law of Treaties are on peremptory norms. Article 53 reads: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general

norms in interstate relations. This was a fundamental change that took place since recourse to force in the conduct of international affairs was not prohibited in the pre-Charter period.

Within the context of the post-Charter period, to argue for the existence of a right to intervene means assuming that unilateral humanitarian interventions undertaken without Security Council authorisation can be accepted as lawful. The fundamental challenge to this assertion comes from restrictionist scholars who base their arguments on the basic principles of the UN Charter.[160]

a. Sovereignty, Non-Intervention and Non-use of Force

The core of the restrictionist arguments lies in the Westphalian notion of national sovereignty, according to which States are not legally permitted to intervene in the internal affairs of another state for any reason. According to the terms of Article 1 of the 1933 *Montevideo Convention on the Rights and Duties of States*, which as a model is also reflected in the UN Charter, "[t]he state as a person of

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international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."
Article 64 states: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates." Retrieved from: http://untreaty.un.org/ilc/texts/instruments /english/conventions/1_1_1969.pdf (accessed September 19, 2009).

[160] Bruno Simma describes the UN Charter as "not just one multilateral treaty among others, but an instrument of singular legal weight, something akin to a 'constitution' of the international community" (Cited in House of Commons, Foreign Affairs Committee, *Fourth Report,* Session 1999-2000, http://www.publications. parliament.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm (accessed July 29, 2011).

international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[161] Such qualities of statehood are also connected with the understandings of territorial integrity and political independence.

In this context, as it can be observed from its several resolutions throughout the years, the Security Council has expressly reaffirmed its "commitment to the sovereignty, territorial integrity and political independence of" states, and underlined this as a priority while taking action. There are numerous examples of such resolutions, like for instance Resolution 688 (1991) concerning Iraq, Resolution 1079 (1996) concerning the Republic of Croatia, Resolution 1802 (2008) concerning Timor-Leste, and Resolution 1858 (2008) concerning Burundi. Although it is placed as a higher value, from an international law point of view it is important not to confuse sovereignty by considering it an equivalent of "unlimited power" on the part of a 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." Therefore, as Hélène Ruiz Fabri suggests it can be conceived as a freedom, naturally having its limitations.[162]

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[161] Full text of the 1933 Montevideo Convention on Rights and Duties of States is available at http://avalon.law.yale.edu/20th_century/intam03.asp (accessed September 06, 2009).

[162] Hélène Ruiz Fabri. "Human Rights and State Sovereignty" in *Human Rights, Intervention, and the Use of Force.* Philip Alston and Euan MacDonald (eds.) (Oxford: Oxford University Press, 2008), 34.

The notion of sovereignty is interconnected with the principle of non-intervention, which is in Article 2(7) of the UN Charter laid out 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.

Although this paragraph neither defines the principle of non-intervention nor is directed towards organizing interstate relations, it identifies the boundaries of action under the framework of the UN. Therefore, it is of importance when it comes to discussing actions to be undertaken by the Organisation as well as the expected behaviour in upholding general principles of the UN Charter.

The UN General Assembly, in its 1408th plenary meeting on 21 December 1965, by a resolution 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.[163]

[163] Resolution adopted by General Assembly. (A/RES/2131 (XX)), *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,* 21 December 1965. Available at: http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/218/94/IMG/NR021894.pdf?OpenElement (accessed February 08, 2009).

This provision not only reaffirms the sanctity of state sovereignty and the principle of non-intervention, but also carries these two principles to the level of interstate relations.[164] Although a direct reference by the Security Council in its resolutions to Article 2(7) is not very common, an example of this can be seen in Resolution 688 on Iraq dated 5 April 1991 where the Council explicitly recalls "the provisions of Article 2, paragraph 7 of the Charter.[165]

In addition, the judgements of the International Court of Justice (ICJ) provide precedents as well as confirmation of fundamental principles. For instance, in the Judgement of the Case Concerning the Military and Paramilitary Activates in and Against Nicaragua (Nicaragua *v.* United States of America) dated 27 June 1986, the ICJ in paragraph 241 found 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 to 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

[164] The same principle is established also in Article 3, paragraph 2 of the Additional Protocol II to the Geneva Conventions.
[165] Security Council, Resolution 688 (1991), preambular paragraph 2. Available at http://www.un.org/Docs/scres/1991/scres91.htm (accessed September 23, 2009).

> internal affairs, whatever the political objective of the State giving support.[166]

Therefore, this sort of an act is taken as an undisputed breach of the customary law principle of non-intervention.[167]

Restrictionists also argue that humanitarian intervention falls contrary to the prohibition of the use of force,[168] which is established

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[166] "Case Concerning the Military and Paramilitary Activates in and Against Nicaragua" (Nicaragua *v.* United States of America), *Summary of the Judgement of the Court*, 27 June 1986, http://www.icj-cij.org/docket/files/70/6505.pdf (accessed January 29, 2009). For the full text of the judgement, see http://www.icj-cij.org/docket/files/70/6503.pdf.

[167] Nonetheless, in Paragraph 242 of the Judgement, the Court goes for a differentiation in a way to establish that humanitarian assistance, no matter what its underlying reasons may be, is not to be considered as illegal intervention. From this, it follows that humanitarian action through various means of supply, in order not to be considered as a breach of non-intervention principle, or as intervention in general, should cover all people without any discrimination. "The Court recalls that if the provision of 'humanitarian assistance' is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes allowed in the practice of the Red Cross, and above all be given without discrimination" ("Case Concerning the Military and Paramilitary Activates in and Against Nicaragua" (Nicaragua *v.* United States of America), *Judgement of the Court*, 27 June 1986), http://www.icj-cij.org/docket/files/70/6505.pdf (accessed January 29, 2009). It is also important to underline that humanitarian intervention is a forceful action whereas humanitarian assistance is not.

[168] The principle of non-use of force has its place in numerous international documents of the 20th Century. Fundamental documents related to non-use of force can chronologically be listed as follows: Covenant of the League of Nations of 1924 (Article 10 tries to guarantee the borders, territorial integrity and the independence of States against external aggression); Geneva Protocol of 1924 (it was not put into force); Locarno Agreement of 1925 (wars waged to acquire territory were declared to be illegal); Briand-Kellogg Pact of 1928 (called that war should not be a means of national policy and States should refrain from it. In addition, it stated that resort to war in order to settle a dispute is declared to be illegal. The use of the right to self-defence for the purpose of protecting its own nationals at abroad was found to be legal); 1928 Geneva Final Act (determines various means of peaceful settlement); Briand-Kellog Pact of 1928 (aimed at outlawing war as a means of foreign policy); the Litvinof (Moscow) Protocol of 1929; Stimson Doctrine of 1931 (later was also accepted by the League of Nations); the Montevideo Convention on the Rights and Duties of States of 1933 (it did not come into force); Rio de Janeiro Agreement of 1933 (repeats the 1931 Stimson Doctrine); 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 (A/RES/43/51); and finally the 1990 Paris Charter for a New Europe.

in the UN Charter by Article 2(4). This provision, in principle, requires that "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," (e.g. providing assistance to one of the parties during the course of a civil war,[169] engaging in humanitarian violations, or getting involved in acts of aggression, etc). It prohibits war and any sort of aggression.[170] Moreover, Resolution 2625 (XXV), entitled the Declaration on Principles of International Law (24 October 1970) 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.

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[169] In view of the Institute of International Law, an exception to this can be found in the provisions of "the Principle of Non-Intervention in Civil Wars" determined by the Institute. Article 5 reads: "Whenever it appears that intervention has taken place during a civil war in violation of the preceding provisions, third States may give assistance to the other party only in compliance with the Charter and any other relevant rule of international law, subject to any such measures as are prescribed, authorized or recommended by the United Nations" (The Institute of International Law, The Principle of Non-Intervention in Civil Wars, (English translation), Session of Wiesbaden 1975). Available at http://www.idiiil.org/idiE/resolutionsE/1975_wies_03_en.pdf (accessed September 23, 2009).

[170] Two explicit references to this principle with almost exact wording are present in Resolutions 573 (1985) and 611 (1988) concerning the conflict between Israel and Tunisia (Resolution 573 concerning Israel-Tunisia dated 4 October 1985. Available at http://www.un.org/Docs/scres/1985/scres85.htm (accessed September 09, 2009); and Resolution 611 concerning Israel-Tunisia dated 25 April 1988. Available at http://www.un.org/Docs/scres/1988/scres88.htm (accessed September 09, 2009). An implicit reference to non-use of force can be seen 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" (S/RES/1318 (2000), available at http://www.un.org/Docs/scres/2000/sc2000.htm (accessed September 11, 2009).

> 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.[171]

The wording of the Resolution strengthens the principle laid out in Article 2(4) of the Charter. Likewise, a number of Security Council resolutions[172] and presidential statements[173] make affirmative references to this principle.

The acquisition of territory through use of force is declared as illegal, and thus, outlawed. It is for this reason that no acquisition of this nature shall receive recognition from other states or international organisations. This provision, despite the fact that it addresses only

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[171] General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, 6th Committee, 25th session, 2625 (XXV), 24 October 1970, pp. 122-3. Retrieved from http://www.un.org/documents/ga/res/25/ares25.htm (accessed September 12, 2009).

[172] For instance, a Security Council resolution reaffirming this principle is S/RES/884 (1993) on Armenia-Azerbaijan dated 12 November 1993, which in its 7th preambular paragraph states "the inviolability of international borders and the inadmissibility of the use of force for the acquisition territory. Available at http://www.un.org/Docs/scres/1993/scres93.htm (accessed October 20, 2009). Another example is Resolution 748 which reaffirmed "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." S/R/748 (1992) of 31 March 1992, adopted at the 3063rd meeting, http://www.un.org/documents/sc/res/1992/ scres92.htm (accessed October 19, 2009).

[173] Some examples of these presidential statements are as follows: S/21418 of 31 July 1990; S/22176 of 30 January 1991; S/22862 of 31 July 1991, S/23495 and S/23496 of 29 June 1992, S/23597 of 14 February 1992, S/23610 of 19 February 1992, S/23904 of 12 May 1992, S/23945 and S/23946 of 18 May 1992, S/23982 of 20 May 1992, S/24241 of 6 July 1992 and S/24362 of 30 July 1992. S/25185, para. 2; S/26183, para. 2; S/PRST/1994/5, para. 2; S/PRST/1994/37, para. 2; S/PRST/1995/4, para. 2; S/PRST/1995/35, para. 2.

the Member States in a direct manner, also covers non-Member States since it has become an *erga omnes* principle of law as well as a *jus cogens* rule. Paragraph 6 of Article 2 also reads 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."[174] Therefore, this provision acquires a binding nature also upon non-Member States as far as international peace and security are concerned. From an undisputed legal point of view, as established by the UN Charter, the Security Council is the primary organ that can authorise or legitimise use of force for the protection of international peace and security.[175]

General Assembly Resolutions 2131 (1965)[176] and 2625 (1970),[177] which do not have legally binding effect but can be interpreted under certain circumstances as evidence of state practice, are also taken as references in support of the restrictionist approach. Resolution 2131 (UN Doc. A/6220) states that "[n]o state

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[174] An example of such an attempt can be observed in Resolution 558 (1984) on South Africa dated 13 December 1984, where the Council "*[r]equests* all States, including States not Members of the United Nations, to act strictly in accordance with the provisions of the present resolution" (Retrieved from: http://www.un.org/documents/sc/res/1984/scres84.htm (accessed October 20, 2009).

[175] Boutros-Boutros Ghali once noted: "Our whole philosophy is based on talk-negotiate-and then talk again. To use force is an expression of failure. Our job is diplomacy, the peaceful resolution of disputes… If you read the UN Charter …the whole philosophy of the charter is to avoid military force." (Boutros-Boutros Ghali cited in Barnett, Eyewitness to a Genocide 2003, 116).

[176] Retrieved from http://www.un-documents.net/a20r2131.htm (accessed October 20, 2009).

[177] Retrieved from http://www.un.org/documents/ga/res/25/ares25.htm (accessed October 20, 2009).

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 (UN Doc. 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.

Restrictionists 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."[178] Disagreeing with this, 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."[179] Since humanitarian interventions are directed neither at the territorial integrity nor the political independence of a state, Reisman posits, "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."[180] In support of this view, Garrett notes that the purpose of humanitarian intervention is

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[178] Ulrich Beyerlin cited in Duke 1994: 34.
[179] Reisman quoted in Jean-Pierre L. Fonteyne. "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter" *California Western International Law Journal* 4 (1973-1974): 253.
[180] Reisman quoted in Fonteyne 1974: 254.

"to compel the state to observe fundamental international norms of human rights."[181]

On the other hand, Olivier Corten criticises these *contrario* interpretations of the UN Charter by asserting that

> no provision of the Charter provides for a right of humanitarian intervention, whether in its parts on armed action or those on human rights. Then because article 2(3) of the Charter very generally compels States to settle their disputes peacefully. 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.

Furthermore, in objection to Reisman, Fonteyne 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. Moreover, in the specific case of humanitarian intervention, Fonteyne notes that this is a far serious breach since an effective long-term solution to the issue often times rests in the "change of government or even a secession." Therefore, the intervention eventually ends up with a vital impact on the

[181] Stephen A. Garrett. Doing Good and Doing Well: an examination of humanitarian intervention (Westport: Praeger Publishers, 1999), 47.

domestic political and/or legal order of the state that has been subjected to the humanitarian intervention.[182]

b. Possible Legal Grounds under the UN Framework

Despite the fact that the principles of sovereignty, non-intervention and non-use of force have been widely recognized by the international community, the aftermath of World War II brought about new challenges to the implementation of these principles. First, with the drafting of the Charter of Nuremberg Tribunal in 1945, "crimes against humanity" were recognized in international law. Then, especially after genocide was officially defined to be a crime by the "Convention on the Prevention and Punishment of the Crime of Genocide" in 1948, humanitarian concerns and human rights became paramount issues of international law. It was within such a context that states have begun to assume a right or (put more mildly) a responsibility to take action, up to and including use of force, against atrocities towards people.

Such direct connection is seen in the formulation of RtoP by paragraphs 138 and 139 of the World Summit Outcome Document, where RtoP is termed as a "Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity", and established within the limits of the four grave

[182] Fonteyne 1974: 255.

crimes.[183] In this vein, 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 constitute the two key documents where the four grave crimes are defined. Additionally, for war crimes, International Humanitarian Law establishes the legal basis.[184]

Article I of the Genocide Convention states that both in times of war and peace, genocide is considered as a crime under international law. According to the terms of Article II, as repeated in Article 6 of the Rome Statute,[185]

> genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.

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183 For a detailed analysis of the 2005 Outcome Document, see Section 4.2.c.

184 International humanitarian law and human rights law are different from each other, nonetheless, they share a common objective: the safeguarding of "human dignity in all circumstances." The former "applies in situations of international or non-international armed conflict. Human rights law establishes rules for the harmonious development of the individual in society" (Inter-Parliamentary Union and ICRC. *Respect for International Humanitarian Law*, (Geneva: Inter-Parliamentary Union and ICRC, 1999), 11). Fundamental international instruments of international humanitarian law can be listed as the Hague Regulations of 1899 and 1907, Geneva Conventions of 1929 and 1949 as well as the Additional Protocols of 1977.

185 Rome Statute deals with the crime of genocide, war crimes, and crimes against humanity. For a detailed definition of crimes against humanity see Article 7, for war crimes see Article 8(2). Full text of the Statute is available at http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/ (accessed September 07, 2009).

In addition, Article VIII states: "Any Contracting Party may 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 of genocide or any of the other acts enumerated in article III."[186] In this vein, UN involvement can be made possible on the basis of the international criminal law —that is to say in case the crimes defined under this law are committed— which in the end may invoke a humanitarian intervention under the auspices of the UN upon the determination of a gross violation of human rights. It is important to note that, in general terms, humanitarian interventions are not authorised on the basis of international criminal law itself, but rather the crimes that are defined by this law fall under the scopes of humanitarian intervention and the responsibility to protect.

Also given the exception to the general rule implied under Chapter VII[187] as well as the exceptions[188] of cases listed under Article 2(7), towards the end of the twentieth century the principles of sovereignty and non-use of force validated by the UN Charter under

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[186] Article III states the following acts as punishable: "(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide." Retrieved from http://www.icrc.org/IHL.nsf/FULL/357?OpenDocument (accessed September 01, 2009).

[187] Article 51 of the Charter defining self-defence also constitutes an exception to the general rule of non-use of force. Nonetheless, it is outside the context of humanitarian intervention, and thus not a relevant reference as a cause for undertaking such an intervention.

[188] Reference to Article 2(7) as a legal basis is especially made in cases of intervention in civil wars for humanitarian purposes.

Article 2 began to lose their solid character due to substantial infringements of human rights taking place in Yugoslavia and in some African States. These post-Cold War events[189] weakened the idea that humanitarian intervention is an indisputably illegal act.[190] In this vein, the question of what to do in cases of mass humanitarian atrocities and the legal basis of taking action once again became a prominent area of attention.

According to counter-restrictionist scholars, the UN Charter leaves room for legitimacy and/or legality of humanitarian interventions, although, as Sean D. Murphy 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."[191] Olivier Corten in his criticism of a *contrario* interpretation of the UN Charter asserts that the wording of the Charter, in terms of its prohibition of the use of force, was

> devised to strengthen and not weaken the stringency of the prohibition. Allowance for context argues along the same lines. First because no provision of the Charter provides for a right of humanitarian intervention, whether in its parts on armed action or those on human rights. Then because article 2(3) of the Charter very generally compels States to settle their disputes peacefully. As humanitarian intervention invariably follows from a disagreement between the intervening State and the State that is the target of allegations

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[189] Robertson 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" (Robertson 2004, 199).

[190] Griffiths and O'Callaghan 2002, 146.

[191] Sean D. Murphy 1996, 83.

> 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.[192]

In this vein, Corten argues against any claim for justification of humanitarian intervention doctrine on the basis of the UN Charter. Addressing the same aspects of the legal context, Hersch Lauterpacht defines humanitarian intervention as an act signifying "dictatorial interference of the State", involving threat or use of force.[193] Nevertheless, he considers intervention as permissible in legal terms when a state commits atrocities against fundamental human rights.[194]

In this regard, counter-restrictionist scholars take the Preamble to the Charter as well as Articles 1, 13, 55 and 56 as a legal basis for humanitarian intervention.[195] In other words, the arguments in favour of the legitimacy and/or legality of humanitarian intervention are based on the purpose of 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[196] as a higher value. The referred paragraphs, in a consecutive order, read as follows:

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[192] Olivier Corten 2010, 501.
[193] Cited in Garrett 1999, 4.
[194] Duke 1994: 33.
[195] Duke 1994: 35.
[196] There are also references in Security Council resolutions. An example of this can be seen in Annex I of Resolution 1318 (2000) where it is stated that the Security Council "*[p]ledges* to uphold the Purposes and Principles of the Charter of the United Nations, *reaffirms* its commitment to the principles of sovereign

> 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.

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 establishes that "[a]ll 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."

In addition to what has been stated in the UN Charter, the 1948 Universal Declaration of Human Rights in Article 28 recognizes

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equality, national sovereignty, territorial integrity and political independence of all States, and *underlines* the need for respect for human rights and the rule of law." Retrieved from http://www.un.org/Docs/scres/2000/sc2000.htm (accessed September 12, 2009).

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.”[197] 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.

In this vein, 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.”[198] For instance, Oppenheim 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

[197] Full text of the Declaration is available at http://www.un.org/en/documents/udhr/ (accessed June 15, 2009).
[198] Garrett 1999, 47.

necessarily true concerning the state's legal responsibility in so far as its international duties are concerned.[199]

> 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[200] and even intervention in the interest of humanity might be legally permissible.[201]

Evaluated from this perspective, RtoP as established by the Outcome Document does not leave much of a leeway for States since it defines sovereignty primarily as responsibility, in which the international society is to monitor and assist states in keeping up with this duty. In this regard, the protection of the fundamental rights of populations/masses is placed in the international realm rather than the domestic.

In this vein, the implications of "sovereignty as responsibility" understanding —built on Francis Deng's conceptualisation— can be summarised as follows:

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[199] L.F. Lawrence Oppenheim. *International Law: a treatise*. Vol. 1 Peace, ed. Hersch Lauterpacht. (Great Britain: Longmans, 1955), 336-7.

[200] For instance, in the case of *Duško Tadić*, "the Appeals Chamber (in considering jurisdictional issues) concluded that article 3 of its Statute, which gave it jurisdiction over 'violations of the laws or customs of war', provided it with jurisdiction 'regardless of whether they occurred within an internal or international armed conflict'" (Shaw 2001, 1070).

[201] L.F. Lawrence Oppenheim, *Oppenheim's International Law*, vol. 1 Peace, Sir Robert Jennings and Sir Arthur Watts (eds.) (Harlow: Longman,1992), 442.

> First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission.[202]

José Alvarez interprets this treatment of sovereignty as "more hindrance than protection; the UN Charter (and the Security Council) less as sovereignty's guarantor than the guarantor of the rights of the individuals."[203]

Concerning the principle of non-use of force, Richard B. Lillich argues for "a right of forcible humanitarian intervention"[204] and makes reference to the argument, also cited by Brownlie, that "Article 2(4) does not constitute an absolute prohibition against all unilateral humanitarian interventions."[205] On the other hand, Ian Brownlie argues that the "position taken up by Lillich is completely outside the general consensus of state practice and the opinion of experts of various nationalities,"[206] and that no such right exists. Likewise, José Alvarez considers unilateral interventions undertaken in the absence of a UN Security Council resolution as legally problematic.[207]

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[202] ICISS 2001a, 13.
[203] José E. Alvarez. "The Schizophrenias of RtoP" in *Human Rights, Intervention, and the Use of Force*, Philip Alston and Euan MacDonald (eds.) (Oxford: Oxford University Press, 2008), 279.
[204] Ian Brownlie in Law and Civil War in the Modern World 1974, 218.
[205] Richard B. Lillich in Law and Civil War in the Modern World 1974, 241.
[206] Ian Brownlie in Law and Civil War in the Modern World 1974, 227.
[207] José Alvarez, interview by author, New York, NY, November 06, 2008.

As Corten notes, on the basis of the UN Charter one may possibly talk about lawful use of force in relation to humanitarian intervention only under the three circumstances of self-defence, State consent, or Security Council authorisation. He adds that "in all cases where there is genuine use of force, the protection of nationals cannot be considered as a distinctive argument but must be connected up with others such as the consent of the State in question, self-defence or Security Council authorisation."[208] Nevertheless, self-defence when invoked on the basis of the protection of nationals, in general terms, does not qualify as a humanitarian intervention. An example in this regard is the US intervention in Grenada, where the US 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."[209] The intervention was debated in the Security Council and a draft resolution that condemned the US's action failed due to a veto by the US itself.[210] Therefore, in a sense, the Security Council process was hindered by Washington. Nevertheless, the US was not able to prevent the drafting of a General

[208] Corten 2010, 547.
[209] Murphy 1996, 109.
[210] ICISS 2001b, 65.

Assembly resolution condemning the intervention as a "flagrant violation of international law."[211]

In the incidence of the 1989 US intervention in Panama, the Security Council convened upon the request of Nicaragua.[212]

> 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.[213]

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

Oppenheim 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 a conduct of abuse by a state.[214] Nonetheless, he adds, such a case is not applicable to collective

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[211] Murphy 1996, 111.
[212] ICISS 2001b, 66.
[213] Ramsbotham and Woodhouse 1996, 56.
[214] Oppenheim 1995, 443.

interventions,[215] because "the growing involvement of the international community on both a global and a regional basis, with the protection of human rights diminishes any need for states to retain or exercise an individual right of humanitarian intervention."[216] In this vein, what is legally contested by default is the existence of a right for unilateral intervention.

Furthermore, Bruno Simma argues that the availability of Security Council authorisation for a humanitarian intervention that would take place through threat or use of force is of vital importance in order to assess whether this act violates international law or not.[217] Nicholas J. Wheeler argues that:

> norms have clearly changed since the debates in the UN over India's, Vietnam's and Tanzania's use of force in the 1970s, and Kofi Annan is right to believe that there is a 'developing international norm' in support of intervention. However, this normative change is subject to the very important caveat that the society of states shows little or no enthusiasm for legitimating acts of humanitarian intervention not authorized by the Security Council.[218]

In this vein, Security Council authorisation becomes an important criterion in assessing the legitimacy, and above all, legality of a humanitarian intervention.

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[215] An example of a UN authorised multilateral intervention is the July 1994 intervention in Haiti.

[216] Oppenheim 1995, 443-4.

[217] Bruno Simma. "NATO, the UN, and the Use of Force: Legal Aspects" *European Journal of International Law* 10 (1999): 4.

[218] Wheeler 2000, 286.

The basis of such authorisation may be found in the last part of Article 2(7), where it is stated 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 Chapter VII of the Charter dealing with "action with respect to threats to the peace, breaches of the peace, and acts of aggression". Despite the fact that there is not yet a legal norm on humanitarian intervention, as can be inferred from a review of the literature, international law scholars seem to agree that the UN Security Council is legally capable –but not necessarily morally obliged– to authorize humanitarian interventions given 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, Brownlie notes, then action can be undertaken within the terms of Chapter VII. "Such action may relate to Articles 40 (provisional measures), 41 (economic sanctions), or 42[219] (military

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[219] "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." *Charter of*

sanctions).”[220] Provisions of this Chapter take into consideration measures (up to and including use of force) to be adopted in order to ensure international peace and security, specifically in cases of “threats to the peace, breaches of the peace, and acts of aggression”.

The case of Somalia is considered to be a prominent example of the invocation of Chapter VII. Security Council Resolution 794 dated 3 December 1992 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.”[221] Resolution 929 (1994) of 22 June 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, authorizes the Member States cooperating with the Secretary-General to conduct the operation referred to in paragraph 2 above using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994). Resolution 940 (1994) of 31 July 1994 on Haiti adopted a similar language and

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the United Nations, retrieved from http://www.un.org/en/documents/charter/chapter7.shtml (accessed September 27, 2009).

[220] Ian Brownlie in Law and Civil War in the Modern World 1974, 226.

[221] Resolution 794 (1992) adopted by the Security Council at its 3145th meeting on 3 December 1992. Retrieved from http://www.un.org/documents/sc/res/1992/scres92.htm (accessed August 02, 2009).

considered the situation “a threat to peace and security in the region.” On the basis of Chapter VII, it authorized

> Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States.

Similarly, Security Council Resolution 1264 (1999) established “that the present situation in East Timor constitutes a threat to peace and security”, and acted under the mandate of Chapter VII. With this Resolution, the Security Council also authorized

> the establishment of a multinational force under a unified command structure, pursuant to the request of the Government of Indonesia conveyed to the Secretary-General on 12 September 1999, with the following tasks: to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations, and authorizes the States participating in the multinational force to take all necessary measures to fulfil this mandate.

In another instance, concerning the case of Bosnia and Herzegovina, in Resolution 1305 (2000), the Council determined “that the situation in the region continues[222] to constitute a threat to international

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[222] Similar statements are present in numerous Security Council resolutions, some of which are the following: Resolution 1865 (2009) concerning Côte d’Ivoire, adopted by the Security Council at its 6076th meeting, on 27 January 2009

peace and security."[223] Moreover, Resolutions 1199 and 1203 on Kosovo have also urged the UN to act under Chapter VII.

Despite all the disagreements between the restrictionist and counter-restrictionist legal scholars, there is one point of clear consensus, that is, on the basis of the UN Charter the Security Council stands out as the organ with the power to authorize lawful use of force. In this vein, humanitarian interventions, whether unilateral or collective, undertaken without Security Council authorisation have always been contested in terms of legality as scholars have failed to reach a consensus at the theoretical level about the existence of a right to intervene. As Ian Brownlie posits: "a jurist asserting a right of forcible humanitarian intervention has a very heavy burden of proof".[224] If such proof exists, it is to be found in the examples of past state practices. The subsequent brief historical overview of past conducts of humanitarian interventions prior to the introduction of RtoP serves to (1) question the existence/acceptance of a right to intervene; (2) have a general

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(available at http://www.un.org/Docs/sc/unsc_resolutions09.htm (accessed October 14, 2009)); Resolution 1854 (2008) concerning the case of Liberia, adopted by the Security Council at its 6051st meeting, on 19 December 2008 (available at http://www.un.org/Docs/sc/unsc_resolutions08.htm (accessed October 14, 2009)); Resolution 1771 (2007) concerning the situation in the Democratic Republic of Congo, adopted by the Security Council at its 5730th meeting, on 10 August 2007, (available at http://www.un.org/Docs/sc/unsc_resolutions 07.htm, (accessed October 14, 2009)); Resolution 1577 (2004) concerning the situation in Burundi, adopted by the Security Council at its 5093rd meeting, on 1 December 2004 (available at http://www.un.org/Docs/sc/unsc_resolutions04.html (accessed October 14, 2009)).

[223] Resolution 1305 (2000), adopted by the Security Council at its 4162nd meeting, on 21 June 2000, http://www.un.org/Docs/scres/2000/sc2000.htm (accessed September 21, 2009).

[224] Brownlie in Law and Civil War in the Modern World 1974, 218.

opinion about state practice, and (3) outline the remaining constraints about the humanitarian intervention doctrine.

CHAPTER 4

THE ROAD TO RtoP IN PRACTICE

The subsequent overview on practices of humanitarian intervention focuses on two main periods: the Cold War-era, and the 1990s. The reason for differentiating between these two periods is to reflect the change in state behaviour as well as the evolution of a sense of moral responsibility within the international community, which paved the way to the development of RtoP.

As will be seen, in the three cases from the Cold War-era, which are widely accepted by scholars as the primary examples of humanitarian intervention —namely the cases of East Pakistan, Cambodia, and Uganda— intervening states justified their actions on grounds of self-defence,[225] and "humanitarian" concerns, when (and if) mentioned, were not claimed to be the main motives for action. It was the humanitarian results of these unilateral acts that constituted the foundations of the contemporary debate on humanitarian intervention from various aspects.[226] On the other hand, "[s]ince 1990 there haven been many precedents of military operations conducted essentially in the context of internal conflicts formally motivated by humanitarian interventions. In this sense,

[225] ICISS 2001b, 47.
[226] The ICISS observes that "[i]n retrospect, these three cases have become clear examples of necessity —and even legitimacy— of humanitarian intervention, even though few such arguments were made at the time" (ICISS 2001b, 67).

humanitarian intervention has without contest taken on a new dimension compared with the Cold War years".[227]

4.1. Historical Overview

While arguing for the existence of a right to intervene Oppenheim bases his observations on the interventions that have taken place in 1800s. Nevertheless, speaking about a right of humanitarian intervention, state practices as well as the debates[228] within the UN in the period between 1945 and 1990 reveal neither a foundation of nor support for it.[229] The evidence suggests an adherence to the principles of state sovereignty, non-intervention and non-use of force more rigidly than before.

The period was characterised by the ideological differences between the two blocks which frequently resulted with the use of the veto right by one or more of the five permanent members during the Security Council meetings. As a consequence, there are no examples

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[227] Corten 2010, 537.
[228] For instance, "on the occasion of the armed action by the USA in Lebanon in 1958, Ethiopia stated in the GA [General Assembly]: 'Ethiopia strongly opposes any introduction or maintenance of troops by one country within the territory of another country under the pretext of national interest, protection of lives of citizens or any other excuse. This is a recognized means of exerting pressure by stronger Powers against smaller ones for extorting advantages. Therefore, it must never be permitted (see GAOR, 3rd Emergency Special Session, 742nd Plenary Meeting, 20 August 1958, para. 75). On the same occasion Poland argued that the protection of nationals abroad constituted an 'old pretext' (ibid. 470th plen. meeting, at §84)." See *Keesings' Contemporary Archives* (1978), at 29128 - cited in Antonio Cassese. *International Law*. 2nd edition (Oxford: Oxford University Press, 2005), 368.
[229] ICISS 2001b, 68.

of humanitarian interventions authorised by the Security Council or undertaken by the UN itself during the Cold War.[230]

In numerous cases of the Cold War the Council was made inoperable by the use of the veto. The end result was a deadlock which was followed by a call –through a General Assembly resolution, based on the authorisation of the Uniting for Peace Resolution, and Article 10[231] of the UN Charter– for an immediate withdrawal of all foreign forces, which in nature implicitly addressed the intervening state itself but none other. A prominent example of this is the Indian intervention in Pakistan, which followed the civil war that erupted in March 1971 in East Pakistan. During the war, the actions of the West Pakistani troops led ten million people to take refugee in India, which in the end caused tension between India and Pakistan. India did not refrain from supporting the "Bengali liberation movement," and following the bombardment of its military airfields by Pakistan, it recognized the newly independent state of Bangladesh in December.

This was followed by the occupation of the province of former East Pakistan by Indian forces for the purpose of ousting the Pakistani Army. Upon this, the Security Council was asked for a session where India presented its main justification as an act of self-

[230] Murphy 1996, 84.
[231] Article 10 establishes that "the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

defence. The Indian claim was that "the influx of 10 million refugees amounted to 'refugee aggression' and represented such an intolerable burden that it constituted a kind of 'constructive' attack."[232] A minor point of justification raised was the necessity to aid the "Bengali victims of the Pakistani Army's onslaught."[233]

In this conflict, the United States along with China sided with Pakistan whereas India found support from the Soviet Union on the basis of their 1971 *Treaty of Peace, Friendship and Cooperation*. In the eyes of the United States and China, a victory of India —a country that aligned itself with the Soviets— would mean a possibility for the Soviet Union to exercise "some control over the new state of Bangladesh, and, most important of all, [this] gave Moscow important advantage in the geopolitical competition against China and the USA."[234] The superpower rivalry, eventually, prevented the Security Council from taking effective action, and therefore, the first step that could be taken towards a peaceful settlement by the Secretary General U Thant remained limited to an international aid programme.[235]

In the Security Council meeting, India's justifications of self-defence and humanitarian action for its use of force against Pakistan found support from the Soviet Union. The United States and China

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[232] ICISS 2001b, 54-55.
[233] ICISS 2001b, 54-55.
[234] Wheeler 2000, 72.
[235] Wheeler 2000, 59.

objected to the claimed justifications and "condemned India's action as 'an unjustified move that could lead to international anarchy.'"[236] During the discussions, the United States argued for an "immediate ceasefire" and China repeated its condemnation of India many times, whereas the Soviets asked for a "ceasefire as part of a political settlement." Later on, the Soviet Union vetoed the Security Council draft resolutions asking for an "immediate ceasefire," and caused a deadlock.[237] Upon the pressure of the non-aligned group, the issue was brought before the General Assembly for a discussion, and as a result Resolution 2793 (XXVI) which called for the withdrawal of all military forces was adopted.[238] The Soviet Union and Poland were among the states that voted against this Resolution. Nevertheless, Resolution 2793 was indeed a compromise between the superpowers, as it was a decision calling for an immediate ceasefire without a condemnation on India.[239]

A similar situation existed in the 1978 intervention of Vietnam in Cambodia where the UN Security Council was made inoperable through the use of the veto right. From March 1978 to March 1979, human rights abuses in Cambodia were recorded in the resolutions

[236] Wheeler 2000, 65-6.
[237] Wheeler 2000, 68.
[238] ICISS 2001b, 55-6.
[239] Wheeler 2000, 70.

of the UN Commission on Human Rights.[240] In the ongoing war between Cambodia and Vietnam on the border, "humanitarian" reasons were available for Vietnam to claim as a justification of its acts. However, as in the example of India, the primary reasoning for intervention was presented as the right of "self-defence" against the aggression by the Khemer Rouge regime.[241]

The opposition to the Vietnamese intervention came from three different groups. The first was "the USA and its allies, who interpreted Vietnam's action as a move in the game of cold-war power politics".[242] The second was the Association of Southeast Asian Nations (ASEAN) which interpreted the intervention in Cambodia as a sign of the Vietnamese ambition to become a regional hegemon, and the last group was of the neutrals and non-aligneds which considered the Vietnamese intervention as an erosion of "the rule of law in international relations."[243]

The Soviet Union and the eastern block countries were the supporters of the Vietnamese argument that the Khemer Rouge regime was overthrown by the Cambodian people themselves through a revolution.[244] The western block, on the other hand, not only rejected such an argument but also refused the justification of

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[240] Oliver Ramsbotham and Tom Woodhouse. "Forcible Self-Help" in *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*, (Cambridge: Polity Press, 1996), 55.
[241] ICISS 2001, 58.
[242] Wheeler 2000, 89.
[243] Wheeler 2000, 89-90.
[244] ICISS 2001b, 59.

Vietnamese action through the right of self-defence and further investigated the "humanitarian" aspect of the intervention. Nonetheless, no "humanitarian" cause was accepted to constitute a reason to permit a breach of the principle of non-intervention, which served the purpose of preventing 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."[245]

The debate in the General Assembly was crucial in the sense that the question "whether substantial human rights violations could provide a justification for intervention" was raised.[246]

> 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."[247]

The end result was the same as in the case of India since an immediate withdrawal of Vietnamese forces was called for. Moreover, the new Cambodian government was not recognized and the ousted

[245] ICISS 2001b, 59.
[246] ICISS 2001b, 60.
[247] Wheeler 2000, 91.

government remained as the official government by a decision of the General Assembly.[248]

Although the incidents were similar to the ones in the Vietnamese case, in the 1979 Tanzanian intervention in Uganda, the international community reached a contrary outcome. In April 1979, President Idi Amin's government of Uganda was overthrown, and Idi Amin was considered responsible for mass murder of Ugandan people. The course of events reached its peak when the atrocities were made public by the British press, and Britain asked the UN Commission on Human Rights for an international investigation in Uganda concerning human rights violations. There was international condemnation by the heads of governments. In the course of events, in April 1978, internal unrest also reached its peak. "Amin was forced to suppress mutinies at a number of army bases. Loyal troops pursued some of the mutineering soldiers across the border into the Kagera region of northwest Tanzania."[249] Later on, Idi Amin declared his annexation of Kagera region in an Ugandan radio.[250] This declaration was followed by a counter-attack by Tanzania in November.[251]

Upon the growing success of Tanzanian forces and Ugandan rebel forces against those of Uganda, Amin asked for foreign support,

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[248] Ramsbotham and Woodhouse 1996, 55.
[249] ICISS 2001b, 61.
[250] ICISS 2001b, 61.
[251] ICISS 2001b, 60.

and this constituted the reason for Tanzania to move deeper in Uganda. Following this, Tanzanian forces captured the capital and Amin's government was ousted. 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.'"[252] The main difference of the Tanzanian intervention from Indian and Vietnamese interventions was that, there was almost no international reaction to the Tanzanian intervention. Despite the fact that the Soviet Union was a supplier of advisers and arms to Uganda throughout the 1970s up until Amin's invasion of Kagera region, the Soviets did not intend to support Idi Amin against Tanzania.[253] The superpower competition for spreading influence did not stretch to Tanzania as there was another issue at stake between the United States and the Soviet Union: the conflict between Somalia and Ethiopia. Moreover, the Sino-Soviet competition, where "China [was] acting as a patron for Tanzania while the Soviet Union backed Amin," was not aggravated, first due to non-involvement by the US, second because of "the Soviet Union's growing embarrassment at Amin's actions."[254]

"At the sixteenth OAU [Organization of African Unity] summit in Monrovia in July 1979, most states 'remained silent, thereby

[252] ICISS 2001b, 60.
[253] Wheeler 2000, 123.
[254] Wheeler 2000, 123.

indicating a tacit approval of Tanzanian action.'"[255] Western states, including the United States, refrained from commenting on Tanzania's use of force and the toppling of Idi Amin.[256] Contrary to the outcome of the Vietnamese intervention, the new government in Kampala was recognized by most countries in a short period of time, and there were no condemnations regarding the actions of Tanzania.[257] Nonetheless, the Tanzanian intervention was never authorised by the Security Council.

As Corten observes:

> A review of precedents characteristic of the Cold War clearly show that States remain 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.[258]

In this context, in the aftermath of the Cold War two fundamental changes of understanding come to the fore on the part of the international community: (1) the description of "civil war and internal strife [...] as threats to international peace and security" and the acceptance that these may constitute "the basis for Chapter VII

[255] Ramsbotham and Woodhouse 1996, 52.
[256] Wheeler 2000, 124.
[257] Wheeler 2000, 125.
[258] Corten 2010, 534.

enforcement action";[259] and (2) the possibility of the consideration of refugee influxes as a threat to international peace and security.[260]

In the 1990s, nine cases, namely Liberia, Northern Iraq, Bosnia-Herzegovina, Rwanda, Haiti, Sierra Leone, Kosovo and East Timor come to the fore as the main examples of invocation of humanitarian reasons in the period prior to the announcement of RtoP by the ICISS. The cases of Bosnia-Herzegovina, Somalia and Rwanda can be presented as precedents of use of force justified on humanitarian grounds, and undertaken with Security Council authorisation based on Chapter VII. Likewise, for instance in the case of Liberia, the Security Council with Resolution 788 (1992) determined that "deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole."

Thus, in contrast to the Cold War-era, it is observed that the Security Council assumed a much more active role in addressing cases of mass atrocities and did not necessarily refrain from adopting coercive measures. Alongside military interventions, two preferred

[259] "[B]y 1995, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia summarized that it is the 'settled practice of the Security Council and the common understanding of the United Nations membership in general' that a purely internal armed conflict may constitute a "threat to the peace" (ICISS 2001b, 119).
[260] "This has enabled them to justify Chapter VII actions to create safe havens in the Balkans and Rwanda. The Council also determined that 'serious' or 'systematic, widespread and flagrant' violations of IHL [International Humanitarian Law] within a country also threaten international peace and security" (ICISS 2001b, 119).

methods (generally prior to the adoption of the use of force) were sanctions and international prosecution.[261]

Furthermore, as the ICISS notes:

> Unlike the earlier cases, in which the rescue of nationals and self-defence were the prominent justifications, the conscience-shocking and truly 'humanitarian' elements of the post-1990 cases were explicitly recognized as important justifications for international action. Instead of single-state military operations, the interventions of the 1990s were also genuinely multilateral."[262]

Furthermore, in cases where the interventions were carried out by forces other than that of the UN, it can be observed that the operations were authorised by the Security Council. For instance, the bombings of the Serbian forces (from 1994 to 1995) by the NATO directed to stop the atrocities in Bosnia-Herzegovina had Security Council authorisation through resolutions such as 770, 776 and 836.[263]

One major exception to this prevalent trend is the case of Kosovo. Occurring in the aftermath of the international community's failure[264] to take effective action in Rwanda –where the death toll was

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[261] "The 1990s have been labelled the "sanctions decade" because the Security Council imposed 12 sanctions regimes, several times more than in the previous 40 years combined. As well as being used more frequently, sanctions were also applied more widely, including against nonstate actors in Angola and Cambodia" (ICISS 2001b, 118).

[262] ICISS 2001b, 117.

[263] Corten 2010, 539.

[264] "The failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system as a whole. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there" (UN Document S/1999/1257 (December 15, 1999), 3).

around 800,000 due to the "systematic slaughter of men, women and children which took place over the course of about 100 days between April and July of 1994"[265]–, the Kosovo case constituted a fundamental test of morality.

Despite the fact that the Security Council in its Resolutions 1199 (23 September 1998) and 1203 (24 October 1998) described the situation in Kosovo as a "threat to peace and security in the region", and indicated that it is acting under Chapter VII, the NATO action was never authorized by the Council.[266] Thus, in the absence of a clear Security Council authorisation, state consent or NATO's coercive action against the Federal Republic of Yugoslavia (specifically Serbia and Montenegro),[267] undertaken collectively upon the decision of 19 states, is considered to be an example of an illegal intervention.[268]

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[265] Carnegie Commission on Preventing Deadly Conflict. *Preventing Deadly Conflict– Final Report; Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, UN Document S/1999/1257 (December 15, 1999), 3.

[266] Nevertheless, "it is a fact that the draft resolution sponsored in the Security Council by Belarus, India and the Russian Federation (UN Doc. S/1999/328) aimed at condemning NATO's use of force by a vote of 12 to three (China, Namibia and the Russian Federation" (Cassese 1999: 28-29).

[267] For detailed discussions of the NATO action in Kosovo, see Tarcisio Gazzini. "NATO Coercive Military Activities in the Yugoslav Crisis (1992-1999)" *European Journal of International Law* 12(3) (2001): 391-435; Jens Elo Rytter. "Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond" *Nordic Journal of International Law* 70 (2001): 121-160; Frederik Harhoff. "Unauthorised Humanitarian Interventions – Armed Violences in the Name of Humanity?" *Nordic Journal of International Law* 70 (2001): 65-119. Bruno Simma. "NATO, the UN and the Use of Force: Legal Aspects" *European Journal of International Law* 10 (1999): 1-22.

[268] "Legal authorities, ranging from Professor Brownlie, the sternest critic of the legality of NATO action, to Professor Greenwood, the firmest supporter of legality, agree that the provisions of the UN Charter were thus not complied with" (House of Commons, Foreign Affairs Committee, *Fourth Report,* Session 1999-2000,

The ICISS notes:

> NATO's intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely unargued; the moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more carnage than it averted; and there were many criticisms of the way in which the NATO allies conducted the operation.[269]

Although the intervening states argued for the legality[270] of their action, not all the 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

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http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm (accessed August 20, 2011)). Likewise, Bruno Simma (1999) and Antonio Cassese (1999) are among the scholars who argue that "NATO's action falls outside the scope of the United Nations Charter and, by that token, is illegal under international law" (Antonio Cassese. "*Ex iniuria ius oritur*: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" *European Journal of International Law* 10 (1999): 23).

[269] ICISS 2001a, vii.

[270] The House of Commons of the UK notes that "the Government's position on the legality of *Operation Allied Force* was ... clearly set out by the then Defence Secretary on 25 March 1999. He told the House that the Government was 'in no doubt that NATO is acting within international law' and that 'the 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, Foreign Affairs Committee, *Fourth Report,* Session 1999-2000, http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm (accessed August 20, 2011)). "The Netherlands evoked a right of intervention to prevent 'genocide' or 'to avert large-scale and massive violation of basic human rights in the framework of a humanitarian emergency situation'. Germany declared over the need to secure authorization that 'derogation from this principle could only be exceptional: to prevent humanitarian catastrophes and grave violations of human rights, when an immediate intervention is absolutely necessary for humanitarian reasons'. Belgium argued in the International Court of Justice for a 'right of humanitarian interference'." (Corten 2010, 542).

proposed a draft resolution for the condemnation of NATO's forceful action, but this was turned down by twelve votes to three.[271]

Taking into consideration the veto issue, and the fact that the intervention was carried out without Security Council authorisation, it is possible to trace certain similarities between the Kosovo case and those of the Cold War period. Nevertheless, the claimed humanitarian justifications for undertaking action instead of invocation of self-defence (as it was the case in the Cold War) and the undertaking of the humanitarian intervention in a consistent manner with the claimed reasons constitutes a genuine case for the assumption of a moral responsibility and the prioritisation of human rights matters over legality concerns.

At the heat of political rivalries, throughout the Cold War, the Security Council was neither able to authorise nor to condemn the use of force by States. This, from a political point of view, reveals the politicised nature of the relationship and is classically interpreted as a prevalence of interests over moral concerns. Thus, it is not possible to claim that importance was genuinely placed on humanitarian norms.

From a legal point of view, in the light of the cases mentioned, it can be argued that there is no solid proof to support the arguments in favour of the existence of a (unilateral) right to intervene. In the

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[271] House of Commons, Foreign Affairs Committee, *Fourth Report,* Session 1999-2000, http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm (accessed August 20, 2011).

Cold War-era there is no assertive evidence of states undertaking action based on motivations of humanitarian concerns. Yet, one can talk about an increasing importance of human rights within the international community as through the conventions, resolutions and declarations it adopted the UN has assumed the mission of law-making for the purpose of protecting human rights while trying to avoid interference in states' domestic affairs. That is to say, there was an increasing consciousness regarding human rights alongside adherence to fundamental principles of international law in the international conduct.

Unlike the previous decades, the 1990s were characterised in general by collective humanitarian interventions based on Security Council resolutions that invoked action under Chapter VII. 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 UN, once again led practitioners and researchers to question the legitimate bases for action in the name of halting mass atrocities. In the meanwhile, the humanitarian situations that arose in the 1990s reaffirmed a sense of moral duty, which later on was translated into language of RtoP.

4.2. Adoption of RtoP at the International Level

In the foreword to the report on RtoP it is indicated that "it was in response to [Kofi Annan's] challenge that the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty".[272] As the Secretary-General to the UN, Annan first in 1999 and then in 2000 addressed the Members of the General Assembly with the following 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?"[273]

The ICISS taking up on this challenging question, in the light of the experiences of Rwanda, Kosovo, Bosnia and Somalia affirmed in December 2001 an increasing concern regarding human security within the international community with its Report on RtoP.[274] The Commission identified its purpose as to find a "new common ground" in order to respond to "gross and systematic violations of human rights that affect every precept of our common humanity."[275] Published in the immediate aftermath of 9/11 events the Report

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[272] ICISS 2001a, vii.
[273] ICISS 2001a, vii.
[274] This also brought back into the debate the relevance of the issue of human suffering.
[275] ICISS 2001a, vii.

attracted varying responses.[276] The US's invocation of RtoP as one of its justifications for its intervention in (or —as scholars like Gelijn Molier[277] put it— invasion of) Iraq in 2003 did not help to ease the suspicion that RtoP could be a "Trojan Horse" for Western states to interfere in the domestic affairs of weaker states.

While addressing the negative comments about RtoP, in an attempt to gain support for the Report, Gareth Evans argued that "the RtoP concept was first seriously embraced in the doctrine of the newly emerging African Union, created in 2002" since non-indifference was emphasized over non-interference[278] by the Organisation as a main principle.[279] Nevertheless, the connection between RtoP and African Union's position are not as direct as Evans posits. The AU recognizes in Article 4(g) of its Constitutive Act the principle of "non-interference by any Member State in the internal

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[276] For instance, area specialist Lawrence Woocher gives the example of classical just war theory references in the Report as well as noting that "sovereignty as responsibility" idea existed before the ICISS introduced it via RtoP (Lawrence Woocher, interview by author, Washington D.C., October 17, 2008).

[277] See Gelijn Molier. "Humanitarian Intervention and the Responsibility to Protect after 9/11." *Netherlands International Law Review,* LIII (2006): 37-62.

[278] Wafula Okumu highlights that the adoption of the principle of non-indifference by the African Union (AU) is a major difference with the Organization of African Unity (OAU). He also notes that among the number of catastrophic situations Africa has faced Rwanda was a case where the prevailing idea became to be the one that Africa could not be dependent on the West all the time when there was need to take action" (Wafula Okumu, phone interview by author, November 03, 2008). Similarly, Mashood Issaka notes that the case of Liberia was signalling the need for change. The situation was affecting other states, and when Liberia was collapsing, the OAU stood back because of the non-intervention principle. ECOWAS eventually intervened to contain the situation and to prevent it from further affecting regional/neighbouring states in a negative way (Mashood Issaka, interview by author, New York, NY, November 06, 2008).

[279] Evans 2008, 44.

affairs of another,"[280] whereas in Article 4(h) it endorses "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."[281] As Mashood Issaka notes, this is rather an embracement of the principle of non-indifference (where the AU Member States are expected to intervene before state failure) than a "responsibility to protect."[282] As can be read in the paragraph, the Article talks about "a right to intervene," which in fact is exactly the language that was rejected and/or purposefully avoided in the Report of the ICISS because of its negative connotations.[283]

The fundamental challenge to introducing a new doctrine/international norm and making it real is putting it into practice and obtaining international recognition for that practice.[284] As indicated at the beginning of the Chapter, the ICISS's RtoP was not welcomed very warmly by numerous states. As far as the discussions within the UN are concerned, on the one hand two permanent members of the UN Security Council, namely China and Russia, were in favour of outlawing unauthorized interventions without exception. On the other hand, the rest of the permanent

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[280] The Constitutive Act of the African Union was adopted on 11 July 2000, which is before the Report of the ICISS was published.

[281] Retrieved from http://www.africa-union.org/About_AU/AbConstitutive_Act.htm #Article4 (accessed October 28, 2009).

[282] Mashood Issaka, interview by author, New York, NY, November 06, 2008.

[283] For further information on this aspect of RtoP, see Section 4.1. Conceptual Contributions.

[284] For a list and short description of the documents adopted by the UN and the African Union, see Appendix B.

members, i.e. the US, the UK, and France, supported the doctrine. Nevertheless, they too had certain concerns: "[i]n particular, they worried that agreement on criteria would not necessarily produce the political will and consensus required to respond effectively to humanitarian crises."[285]

Foreseeing potential problems in the implementation of the principles introduced, the Commission made recommendations in the Report both to the General Assembly[286] and the Security Council[287] taking these two organs as the main and the most influential bodies of the international community for norm enforcement. From these recommendations, those concerning the Security Council have hitherto been far from achievable in light of

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[285] Alex J. Bellamy. "Whither the Responsibility to Protect." (Summer 2006): 151-2.

[286] "The Commission recommends to the General Assembly:
That the General Assembly adopt a draft declaratory resolution embodying the basic principles of the responsibility to protect, and containing four basic elements:
(1) an affirmation of the idea of sovereignty as responsibility;
(2) an assertion of the threefold responsibility of the international community of states – to prevent, to react and to rebuild – when faced with human protection claims in states that are either unable or unwilling to discharge their responsibility to protect;
(3) a definition of the threshold (large scale loss of life or ethnic cleansing, actual or apprehended) which human protection claims must meet if they are to justify military intervention; and
(4) an articulation of the precautionary principles (right intention, last resort, proportional means and reasonable prospects) that must be observed when military force is used for human protection purposes" (ICISS, 2001a, 74).

[287] "The Commission recommends to the Security Council:
(1) That the members of the Security Council should consider and seek to reach agreement on a set of guidelines, embracing the "Principles for Military Intervention" summarized in the Synopsis, to govern their responses to claims for military intervention for human protection purposes.
(2) That the Permanent Five members of the Security Council should consider and seek to reach agreement not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support" (ICISS, 2001a, 74-5).

the political realities of the day whereas those relating to the General Assembly have been partially realised thanks to the efforts of the latest two Secretary Generals Kofi Annan and Ban Ki-Moon.

a. High-level Panel on Threats, Challenges and Change

For the implementation of RtoP, the initiative was first taken by the then Secretary-General Kofi Annan in 2004 through the "Report of the Secretary-General's High-level Panel on Threats, Challenges and Change" entitled "A More Secure World: our shared responsibility." This report in Part 3 deals with Chapter VII of the Charter of the United Nations as well as internal threats and the responsibility to protect.[288] For instance, the opening sentence of Paragraph 199 addresses the ambiguities in the Charter concerning cases of "saving lives within countries in situations of mass atrocity," and adds that the Charter "'reaffirm(s) faith in fundamental human rights' but does not do much to protect them." Paragraph 200 posits that the

> principle of non-intervention in internal affairs cannot be used to protect genocidal acts or other atrocities, such as large-scale violations of international humanitarian law or large-scale ethnic cleansing, which can properly be considered a threat to international security and as such provoke action by the Security Council.

This Paragraph in a way asserts that the non-intervention principle should not lead to indifference within the UN. In accordance with this

[288] See pages 65 to 66.

understanding, the Secretary-General introduces the "responsibility to protect" in Paragraph 201.[289]

The subsequent paragraph addresses the inefficiency of the Security Council in responding to catastrophic cases and raises the issue of authorisation of action by the Security Council under Chapter VII.[290] Finally, Paragraph 203 endorses

> the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, 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.

In seeking an answer to the legitimacy question, the Report proposes in Paragraph 207 the adoption of criteria similar to those in the ICISS's report. The first is the "seriousness of threat"[291] which

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[289] The paragraph reads as follows: "[…] There is a growing recognition that the issue is not the "right to intervene" of any State, but the "responsibility to protect" of *every* State when it comes to people suffering from avoidable catastrophe –mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community -with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies. The primary focus should be on assisting the cessation of violence through mediation and other tools and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force, if it needs to be used, should be deployed as a last resort."

[290] "[…] step by step, the Council and the wider international community have come to accept that, under Chapter VII and in pursuit of the emerging norm of a collective international responsibility to protect, it [/the Security Council] can always authorize military action to redress catastrophic internal wrongs if it is prepared to declare that the situation is a 'threat to international peace and security', not especially difficult when breaches of international law are involved."

[291] (a) *Seriousness of threat*. Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military

corresponds to the “just cause” criterion of RtoP. Nevertheless, this one is more limited in scope as it does not make reference to “large scale of loss of life,” or “cases of natural and environmental disasters.” The second criterion is “proper purpose” according to which the goal of the intervention is to stop a threat. This clause refers to the same understanding as that of the “right intention” of ICISS with different wording. Paragraph (c) makes reference with the exact wording to the principle of “last resort” according to which military intervention should be the final alternative to be employed. That is to say, peaceful and non-military options should be tried and exhausted first. The fourth criterion is “proportional means”, which uses the same wording and is the same in essence with the principle proposed in the Report of the ICISS. Finally, there is the “balance of consequences,” which shares the same understanding with the “reasonable prospects” criterion of RtoP but is named differently in a way to make the principle clearer in essence. In this regard, in order to undertake a military intervention there needs to be reasonable chance of success of the act, and the crucial point is that the aftermath of the intervention should improve the conditions, not make things worse compared to the pre-intervention period.

Last but not least, Part 4, Paragraph 256 asks “the permanent members, in their individual capacities, to pledge themselves to

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force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

refrain from the use of the veto in cases of genocide and large-scale human rights abuses." Carsten Stahn 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."[292] Moreover, the Report links ICISS's "vision of shared responsibility directly to the United Nations" and utilizes the concept as a "means to strengthen the collective security system under the Charter."[293]

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 deals with the concept of the Responsibility to Protect under Part B, which is entitled "collective security and the use of force." Accordingly, the document accepts the criteria of the Panel concerning 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."[294] Secondly, the Union makes reference to regional organisations regarding their vital role as actors with the ability to take action due to their proximity to the areas of conflict especially in cases where the UN is not in a position to assess the situation

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[292] Stahn 2007: 106.
[293] Stahn 2007: 105.
[294] African Union, Executive Council 7th Extraordinary Session. The Common African Position On The Proposed Reform Of The United Nations: The Ezulwini Consensus. (7- 8 March 2005), Addis Ababa, Ethiopia, 6.

effectively.[295] Finally, while reiterating the idea of sovereignty as responsibility, the Consensus underlines that "this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states."[296] This emphasis affirms the remaining concern among states regarding potential abuses of norms by governments for legitimising their interventions in pursuit of their states' national interests.

b. Report on UN Reform: In Larger Freedom

In continuing his efforts to establish RtoP on a concrete basis, Kofi Annan prepared the report entitled "Report on UN Reform: In Larger Freedom", and presented it on 21 March 2005. In Paragraph 135 Annan states:

> I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it. This responsibility lies, first and foremost, with each individual State, whose primary *raison d'être* and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations.[297]

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[295] "The African Union agrees with the Panel that the intervention of Regional Organisations should be with the approval of the Security Council; although in certain situations, such approval could be granted "after the fact" in circumstances requiring urgent action. In such cases, the UN should assume responsibility for financing such operations."

[296] Ezulwini Consensus (2005, 6).

[297] Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all," (March 21, 2005) A/59/2005, 35.

In this report the responsibility to protect is placed under the chapter on “Freedom to Live in Dignity” whereas in the High Level Panel Report it is covered under the heading of “Collective Security and Use of Force.” This change is relevant to the arguments of the proponents of RtoP who each and every time emphasise that the concept is beyond an attempt to legitimise the use of force, and that RtoP is not a synonym for humanitarian intervention.

c. World Summit Outcome Document

Later, on 24 October 2005, the General Assembly unanimously adopted the “World Summit Outcome Document” (A/RES/60/1). The Document in Paragraph 121 assigns all states, on an equal basis, “the duty to promote and protect all human rights and fundamental freedoms.”[298] Under the separate heading of “Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity,” Paragraph 138 takes states individually responsible for the protection of their populations from these four grave crimes, and includes the prevention of these crimes as well as

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[298] Resolution adopted by the General Assembly (A/RES/60/1), 2005 World Summit Outcome, 24 October 2005, 27-28. Full text is available at daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement, accessed: 10 May 2008. Furthermore, paragraph 122 reads that: “We emphasize the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status” (pp. 27-8).

their incitement.[299] Moreover, Paragraph 139 urges for collective action:

> 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.[300]

In an implicit manner, these two paragraphs consecutively refer to the "responsibility to prevent" and "the responsibility to react" aspects of RtoP. Nevertheless, concerning the latter, unlike the Report of the Secretary-General's High-Level Panel, the text of the Summit does not touch upon any criterion of legitimacy for the authorisation of forceful action by the Security Council. As far as the third and final feature of RtoP, in other words the "responsibility to rebuild" is concerned, there is no explicit reference in the Outcome

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

[300] Resolution adopted by the General Assembly (A/RES/60/1), p. 30. Paragraph 143 adds that the General Assembly is committed to discuss and define "the notion of human security" for the full exercise of the rights to "live in freedom and dignity" (p. 31).

Document under the "Responsibility to Protect" heading. Yet, peace-building is separately considered through paragraphs 97 to 105 under the framework of the peace-building commission to be established as an advisory intergovernmental body by the General Assembly.

Wafula Okumu interprets the way the UN adopted the notion of the "responsibility to protect" as a compromise. He notes that the Document was done in such a way that it would be adopted without objection.[301] A careful reading of the text of the 2005 World Summit exemplifies his point. In comparison to the Report of the ICISS, the acts invoking a responsibility to protect, as enumerated in Paragraph 138, are limited in the Outcome Document to a set of four fundamental crimes defined by international criminal law. This restriction can be seen as an attempt to make the terms of the concept less ambiguous, less flexible, and less open to interpretation.

The document adopts a cautious language while assigning responsibility to the international community. In Paragraph 138, it uses the phrase "as appropriate" and makes the conditions of action more flexible. In Paragraph 139, the Heads of State talk about their preparedness "to take collective action" signalling that they refrain from undertaking a responsibility in a strict manner, which in essence would be an obligation. This attitude is strengthened by the

[301] Wafula Okumu. Phone interview by the author. 03 November 2008, South Africa.

phrase "case-by-case basis", which enables the international community to leave certain cases out upon consideration.[302]

Hurst Hannum stresses that the limiting nature of the Outcome Document while defining the extent of RtoP is unfortunate since it only focuses on a specific set of international crimes as opposed to focusing on saving people's lives. He notes that this simply distracts us from the problematic issue and does not add much to what already exists.[303] Thomas Weiss posits that the "responsibility to protect" of the World Summit can be named as "RtoP lite" since it does not leave room for interventions not authorised by the Security Council.[304] In a similar fashion, Mr. Puri, the representative of India, in the General Assembly meeting (A/63/PV.99) considered the Document as "a cautious go ahead" for the embracement of the responsibility to protect.[305]

In affirmation of what was adopted in the Document, the Security Council at times has referred to paragraphs of the World Summit Outcome. For instance, Resolution 1674 (2006)[306] unanimously adopted by the Security Council at its 5430th meeting on 28 April 2006, concerning the protection of civilians in armed

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302 It is important to note that although the case-by-case consideration understanding of Paragraph 139 is subject to criticism based on the concern of differential treatment, it can also be considered as a precautionary principle to avoid abuses of the norm.

303 Hurst Hannum, interview by the author, Boston, MA, March 06, 2009.

304 Thomas Weiss. Interview by the author. 07 November 2008, CUNY, New York.

305 General Assembly, (A/63/PV.99), p. 25.

306 Full text of the Resolution is available at http://www.un.org/Docs/sc/unsc_resolutions06.htm (accessed October 28, 2009).

conflict, in Paragraph 4 reaffirmed "the provisions of paragraphs 138 and 139 of the 2005 *World Summit Outcome Document* regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." Resolution 1706 (2006)[307] adopted by the Security Council at its 5519th meeting on 31 August 2006 makes reference to

> its previous resolutions 1325 (2000) on women, peace and security, 1502 (2003) on the protection of humanitarian and United Nations personnel, 1612 (2005) on children and armed conflict, and 1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document, as well as the report of its Mission to the Sudan and Chad from 4 to 10 June 2006.

It should be noted that in the name of further exploration and clarification of the concept, the Outcome Document in the last part of Paragraph 139 stresses

> the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law.[308]

In line with this proposition, the General Assembly has been continuing its efforts for the implementation of the responsibility to protect in the following years.

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[307] Full text of the Resolution is available at http://www.un.org/Docs/sc/unsc_resolutions06.htm (accessed October 28, 2009).

[308] Resolution adopted by the General Assembly (A/RES/60/1), p. 30. Paragraph 143 adds that the General Assembly is committed to discuss and define "the notion of human security" for the full exercise of the rights to "live in freedom and dignity" (p. 31).

d. The 2009 Report of the Secretary-General

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."[309] To this end, he prepared Report A/63/677 (dated 12 January 2009) addressing the issue of the implementation of the responsibility to protect pursuant to the World Summit Outcome Document. In this vein, Ban Ki-Moon in a press conference on 23 July stated that the Report

> "seeks to situate the responsibility to protect squarely under the UN roof and within our Charter, where it belongs," he added, stressing the need for the world body to sharpen its capacities for early warning and assessment.
>
> When prevention fails, the United Nations needs to pursue an early and flexible response tailored to the circumstances of each case. Military action is a measure of last, not first, resort and should only be undertaken in accordance with the provisions of the Charter.[310]

This report on the implementation of the responsibility to protect is based on the three pillars of (1) state responsibility, (2) international assistance and capacity-building, and (3) timely and decisive response. Pillar one addresses the individual responsibility of

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[309] SG/SM/11182, retrieved from: http://www.un.org/News/Press/docs/2007/sgsm11182.doc.htm, accessed: 29 November 2009.

[310] Gerard Aziakou (AFP). *UN debates responsibility to protect threatened populations.* July 23, 2009. Retrieved from http://www.google.com/hostednews/afp/article/ALeqM5jUBFUNA723tsQokBAIMj-KcEYYug (accessed September 20, 2009).

states to protect their populations from the four crimes as well as from their incitement. The second pillar is concerned with the role of the international community in assisting states to meet their responsibilities. Finally, pillar three is concerned about "timely and decisive response" where Member States of the UN are expected to act in a collective manner in case of a failure of a state to fulfil its obligations towards its population. In accomplishing this task, an array of measures ranging from pacific (under Chapter VI) to coercive (under Chapter VII)[311] can be adopted alongside regional arrangements (under Chapter VIII). It is under this pillar that humanitarian interventions can be undertaken by the authorisation of the Security Council.[312]

In line with the understanding of not remaining silent as the international community against grave atrocities, the Secretary-General draws attention to the issue of the use of veto, and urges the permanent members of the Security Council "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

[311] "In accordance with the Charter, measures under Chapter VII must be authorized by the Security Council. The General Assembly may exercise a range of related functions under Articles 10 and 14, as well as under the 'Uniting for peace' process set out in its resolution 377(V)" (A/63/677), p. 9.

[312] It is important to note that under the framework of the Uniting for Peace Resolution, the General Assembly has recommendatory power.

mutual understanding to that effect."[313] The Secretary-General also notes that the UN has not yet established a rapid-response military capacity to respond to the four crimes. Addressing an issue not dealt within the Summit Outcome, he adds, there may be a need to "consider the principles, rules and doctrine that should guide the application of coercive force in extreme situations relating to the responsibility to protect."[314]

Concerning the way forward, in Section V the Secretary-General suggests the discussion of the implementation of the responsibility to protect without revisiting the unanimously adopted paragraphs 138 and 139 of the Summit Outcome.[315] On this basis, on 21 July 2009 Ban Ki-Moon presented his report to be discussed in the plenary meetings of the General Assembly as agenda items 44 and 107 ("Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields," "Follow-up to the outcome of the Millennium Summit", Report of the Secretary-General) on 21, 23, 24, and 28 July 2009.[316] During these four days, 94 speakers (of whom one representative spoke on behalf of the European Union and the other on behalf of the Non-Aligned

[313] (A/63/677), p. 27.
[314] (A/63/677), p. 27.
[315] (A/63/677), p. 29.
[316] The minutes of the meetings are documented under the following call numbers: A/63/PV.97, A/63/PV.98, A/63/PV.99, A/63/PV.100, A/63/PV.101.

Movement) presented their countries' positions regarding the Report of the Secretary-General.[317]

During the meetings, Member States argued that their current task should be the implementation of the responsibility to protect on the basis of Paragraphs 138 and 139 of the 2005 World Summit. In this vein, they have welcomed the narrow understanding of the responsibility to protect as outlined by these paragraphs. The vast majority of States indicated that these criteria should not be subject to change or renegotiation. In other words, they opted for adhering to the criteria of four major crimes instead of extending the scope of the responsibility to protect to include the war against terrorism,[318] natural disasters, pandemics or other calamities[319] that may require the assistance of the international community.

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[317] For a summary of the views (with a special focus on points relating to humanitarian intervention and use of force) presented by states during the preliminary meetings, see Appendix C.

[318] Sri Lanka favoured a possible extension 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" (A/63/PV.100, p. 4).

[319] For instance, France in its statement noted that it "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" (A/63/PV.97, p. 9), whereas states like Cuba and South Africa openly opposed any possible extension of the concept. For example, 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" (A/63/PV.99, p. 16). Likewise, the representative of Philippines indicated: "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" (A/63/PV.97, p. 11).

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[320] in responding to cases of RtoP while others considered the general role of the international community in the implementation of RtoP as complementary. "Many Member States have spoken of the root causes of RtoP situations and highlighted the urgency of addressing development issues."[321] The importance of early warning[322] has been emphasised, and prevention[323] 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.[324] It was often highlighted that prevention must be prioritised over other methods in order to provide early and effective responses to cases of RtoP.

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[320] Some of the Members States that pointed to this issue were Chile, South Africa, Vietnam and the UK.
[321] A/63/PV.101, p. 20.
[322] Mali, Slovakia, Sudan and Uruguay were among the States that made reference to this point. For instance, Sudan suggested that "[t]he 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" (A/63/PV.101, p. 11).
[323] Algeria, Canada, Czech Republic, Ghana, Indonesia, New Zealand, and Uruguay were among the many states that considered prevention the key element of RtoP. For instance, Nigeria argued that "Emphasis should be placed on prevention rather than on intervention" (A/63/PV.98, p. 27). Bringing an additional element to prevention understanding, Chile suggested that "a prevention strategy could include the promotion of democracy" (A/63/PV.98, p. 11).
[324] Gambia, Jordan, Mali, Sudan and Uruguay were among those that raised the issue.

Most states in their statements considered the three pillars complementary.[325] Regarding taking action under the third pillar, there was consensus that use of force should be a last resort[326] employed in accordance with the provisions of the UN Charter.[327] In this regard, the understanding of a case-by-case implementation of the responsibility to protect[328] (as suggested by the 2005 Outcome Document) 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."[329]

Many states of the developing world, especially those that have aligned themselves with the Non-Aligned Movement (NAM), expressed their concern that the concept is prone to abuse.[330] As can be

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[325] For instance, Austria noted that the three pillars are "of equal importance, and at the same time there is no automatism and no necessary sequencing between one and the other" (A/63/PV.98, p. 1). Liechtenstein indicated that the three pillars are integral parts (A/63/PV.97, p. 21). Moreover, Benin noted that "the three pillars constitute inseparable elements of a single body of law that is unique in itself" (A/63/PV.100, p. 24).

[326] Bangladesh, Chile, Iceland, India, Jamaica, Japan, Kazakhstan, Lesotho, Panama, Russian Federation, Switzerland and Turkey were among the states that made a specific reference to use of force as a last resort.

[327] According to Brazil "[t]he responsibility to protect a population from genocide, war crimes, ethnic cleansing and crimes against humanity is first and foremost an obligation of the State. Only if and when a State manifestly fails to fulfil such obligation may the international community take collective action in accordance with the Charter. In other words, the third pillar is subsidiary to the first one and a truly exceptional course of action, a measure of last resort." (A/63/PV.97, p. 13).

[328] Some of the states that indicated their position in this direction were Cameroon, India, Islamic Republic of Iran, Kazakhstan, Luxembourg and Viet Nam.

[329] A/63/PV.101, p. 20.

[330] Egypt in its statement that it delivered on behalf of the NAM noted the "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

inferred from the statements, the question of national interest remains for many states, especially for those of the non-Western world, as a concern.[331] The President of the General Assembly reiterated such concern in his opening statement with 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 (RtoP) 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.[332] [...] It seems unlikely that it [/General Assembly] will be able to agree any time soon on definitions of just cause and right intentions.[333]

In this vein, many small and/or developing states in their statements have pointed to the issues politicization of cases,[334] selective implementation[335] as well as double standards[336] existent within the

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Outcome, and by misusing it to legitimize unilateral coercive measures or intervention in the internal affairs of States" (A/63/PV. 97, p. 5). China, Gambia, Israel, Serbia, Solomon Islands and Sudan were among states that indicated a concern about possible abuse/misuse of the concept.

331 Benin, Ireland, South Africa and Sudan were among those that raised this point. Ireland indicated that "there is the question of the selective application of the responsibility to protect or its misuse with a view to furthering a State's own strategic national interests. This is another issue on which we must stand firm. It should be stated clearly and unambiguously, as it is in the Secretary-General's report, that the responsibility to protect does not lower the threshold for legitimate use of force" (A/63/PV.99, p. 3)

332 The cynicism about the real motives of humanitarian intervention is not new. For instance, "in 1978, on the occasion of the French and Belgian military operation in Zaire, the Soviet official news agency TASS stated that 'humanitarian intervention' was merely 'a fig leaf to cover up an undisguised interference in the internal affairs of Zaire'." (*Keesings' Contemporary Archives* (1978), at 29128 cited in Antonio Cassese. *International Law*. 2nd edition (Oxford: Oxford University Press, 2005), 368).

333 A/63/PV.97, p. 3.

334 China, Gambia, Qatar and Viet Nam were some of the states that made reference to this issue.

335 Bolivarian Republic of Venezuela, Cuba, Ireland, Islamic Republic of Iran and Sri Lanka were some of those that made reference to the presence of selective

UN, and urged for adopting measures to avoid these.[337] The issue of the reform[338] of the UN, especially the Security Council,[339] as well as the use of the veto right by the Permanent Members have also been raised in line with these concerns.[340] Finally, numerous states noted the lack of political will in the international community to react to cases of mass humanitarian atrocities.[341]

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application in the Security Council. Likewise, political scholar Mohammed Ayoob suggests that "the selectivity of human rights interventionism generates considerable cynicism in the post-colonial world, among populations to whom it appears that some humans' rights are more worthy of protection than others'." Wesley (2005): 65.

[336] Among the states that mentioned double standards within the UN come China, Cuba, Islamic Republic of Iran, Pakistan, Palestine (observer), Qatar and Viet Nam. Likewise, in his closing speech the President noted: "In responding to massive failures by Governments to protect their populations, we should not fall back on double standards that would ultimately unravel the credibility of international law and of the United Nations itself" (A/63/PV.101, p. 20).

[337] On the issue of intervention, the Bolivarian Republic of Venezuela raised the following questions: "Which organ of the United Nations will determine when it is necessary to intervene? What are the parameters to be taken into account when classifying a situation as sufficiently urgent to require military intervention? Who will ensure that such intervention is not undertaken for political reasons? Will all 192 States Members of this Organization enjoy the same right to participate and to determine whether situations are emergencies?" (A/63/PV. 99, p. 5).

[338] For instance, Inis Claude notes 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" (Lillich in *Law and Civil War in the Modern World* 1974, 243).

[339] Shortcomings of the Security Council in taking effective action were considered among reasons for the reform of the UN.

[340] Some of the states that referred to the issue of restraining the use of the veto right were Lesotho, Malaysia, Rwanda, Slovenia, Solomon Islands, and Timor-Leste.

[341] Among the states that mentioned this issue were Benin, Botswana, Croatia, Cuba, Ghana, Islamic Republic of Iran, Jordan, Luxembourg, Slovenia, Switzerland, Timor-Leste, and the US. For instance, Iran argued that "there is no illusion that tragic cases of genocide, crimes against humanity and outrageous acts of aggression have been left unanswered not because of a lack of empowering legal norms, but simply due to a lack of political will dictated by power politics —that is, political and strategic considerations— on the part of certain major Powers permanently seated in the Security Council" (A/63/PV.100, p. 11). Switzerland highlighted that "the problem is not usually the lack of information; rather, it is the absence of political will at the right time that is at the heart of our past failures" (A/63/PV. 98, p. 5).

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) in which it recalls the two paragraphs of the Outcome Document. Accordingly, the General Assembly,

> 1. Takes note of the report of the Secretary-General and of the timely and productive debate organized by the President of the General Assembly on the responsibility to protect, held on 21, 23, 24 and 28 July 2009, with full participation by Member States;
> 2. Decides to continue its consideration of the responsibility to protect.

In this respect, it can be concluded that under the auspices of the General Assembly the international community continues its efforts to establish the framework for the implementation of RtoP in an effective manner while trying to improve the inner mechanisms of the Organisation.

4.3. RtoP: A moral, legal, and/or political norm

Initially perceived as a phenomenon imposed by Western countries (also given its endorsement by the Canadian Government), RtoP has often been approached suspiciously (or at best cautiously)

by numerous governments.[342] After it was placed in the agenda of the General Assembly, certain modifications and/or limitations were imposed on the concept. Through such delimitation, an intersubjective meaning for RtoP was adopted within the UN framework, which is to become the standard in the implementations by the international community.

The 2005 World Summit Outcome Document in terms of the acceptance of the RtoP notion by the Member States of the UN has constituted a milestone as it was adopted unanimously. This also became the tipping point[343] for the evolution of an RtoP norm, and carried it to the second level of "norm cascade." Since then, the socialisation process has been taking place through the efforts of the current Secretary-General. Nevertheless, the points that Ban Ki-Moon has raised in his 2009 Report as well as the debates at the General Assembly that followed the report signal the problems on the

[342] For instance, the Chinese government "had opposed *The Responsibility to Protect* throughout the ICISS process and insisted that all questions relating to the use of force defer to the Security Council. In its position paper on UN reform, however, China accepted that "massive humanitarian" crises were "the legitimate concern of the international community." While Russia supported the rhetoric of the responsibility to protect, it shared China's belief that no action should be taken without Security Council approval [...] and suggested that, by countenancing unauthorized intervention, the Responsibility to Protect risked undermining the Charter. [...] The Non-Aligned Movement (NAM) rejected the concept. India, for example, argued that the council was already sufficiently empowered to act in humanitarian emergencies and observed that the failure to act in the past was caused by a lack of political will, not a lack of authority. Speaking on behalf of the NAM, the Malaysian government argued that *The Responsibility to Protect* potentially represented a reincarnation of humanitarian intervention for which there was no basis in international law" (Alex J. Bellamy. "Whither the Responsibility to Protect. (Summer 2006): 151-2).

[343] In the case of RtoP as the members of the General Assembly unanimously accepted the norm, this can be considered as an acceptable number to meet the "tipping point criteria".

way of the internalisation of RtoP by individual states and the international community as a whole.[344]

Although RtoP as a norm in evolution can be seen as a part of *de lege ferenda*, at this phase of the "norm life cycle", it is far from being established as a legal norm. The language adopted in this Document avoided any legal commitment on the part of the international community.[345] 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.'"[346] In a similar

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[344] Ban Ki-Moon noted 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" (Follow-up to the Outcome of the Millennium Summit: Implementing the responsibility to protect, Report of the Secretary-General, 12 January 2009, para. 20, p. 12). In this vein, political concerns rather than humanitarian ones have been at the core of the implementation debate. For instance, Wafula Okumu indicates that in 2006 a series of studies were conducted to answer the question "how to operationalise RtoP in Africa?" According to the study, participants indicated their fear that RtoP would turn into a Western imposition on Africa to interfere in the domestic affairs of states. Nevertheless, Okumu also notes that RtoP as a concept is not alien to Africa. The South African principle of *ubundu*, (which is essentially about humanity, caring about each other as human beings, helping other human beings when they need, and respecting human life), already exists in many African cultures. In this regard, although RtoP is not alien to Africa, Africans need to somehow Africanize it so as not to fear from it as a foreign concept or a Western imposition being tested on Africa. Since Africans were not much involved in the processes of the making of RtoP, and given the example of Iraq, the fear that the case of Darfur would become a test case for RtoP's implementation seems to have played a role towards such perception. (Wafula Okumu, phone interview by author, November 03, 2008).

[345] Based on the framework of the Outcome Document, Coppieters, Ceulmans, and Hartle argue that "the concept of a 'responsibility to protect' […] does not amount to a legal norm that would legitimize unilateral intervention in domestic affairs by individual states or regional organizations, but refers on the contrary to the encouragement and support the international community has to give to states so that they exercise this responsibility" (Coppieters and Fotion (eds.) 2008, 48).

[346] Office of the President of the General Assembly. Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes

vein, the representative of Singapore noted in the preliminary meeting of the General Assembly: “[f]or my delegation, it is clear that, four years ago, our leaders pledged their strong resolve to the notion of RtoP. Certainly, that did not make RtoP part of international law or a legally binding commitment.”[347]

The debates in the General Assembly pursuant to the Report of the Secretary-General regarding the implementation of the responsibility to protect followed a similar trend. For example, the representative of the Netherlands argued that the ongoing discussion about the implementation of the responsibility to protect “is not a legal discussion, nor should it be.”[348] Also concerned about possible abuse of the concept, states refrained from making any legal commitment. Numerous states pointed to the need of the embracement of the principle of non-indifference. In terms of taking precautions to avoid inaction, a fundamental proposition made was the reform of the UN, especially of the Security Council.

It should be reminded that individual states’ behaviour (in terms of failure or unwillingness to protect their populations from mass atrocities or to take timely action for that matter) is subject to punishment by the international community and/or authorities like the International Criminal Court (ICC) through the penalisation of

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against humanity. Retrieved from www.un.org/ga/president/63/interactive/protect/conceptnote.pdf (accessed October 21, 2009).

[347] A/63/PV.98, pp. 6-7.

[348] A/63/PV. 97, p. 26.

the individuals who have committed the atrocities. In this regard, it becomes possible to talk about a legal responsibility of the individuals on the part of the state.[349] Nevertheless, inaction by the international community goes without a sanction. Legal scholar Hurst Hannum indicates that states purposefully avoid legal responsibility and the consideration or discussion of a possibility of sanctioning of inaction by the international community.[350]

Both in the 2005 Outcome Document and the follow-up documents, states have refrained from turning the responsibility to protect into a legal obligation on the part of the international community as far as undertaking of collective action is concerned. Therefore, at this stage it is not possible to interpret this notion of “responsibility” as a legal one. Thus, the question that arises is whether RtoP is genuinely an obligation, (legal or moral), also for the international community or just a label? As indicated previously, the wording of Paragraph 139 hints at a flexible, not clear-cut interpretation of the word responsibility since there is the phrase “case-by-case”, which leaves room for inaction depending on the case. Such wording was reiterated in the Report of the Secretary-General in 2009 as well as the statements of various Member States during the follow-up preliminary meetings.

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[349] In the Rome Statute of the ICC, three of the four crimes that limit the scope of RtoP, namely genocide, war crimes and crimes against humanity, are defined in detail as these crimes are considered within the jurisdiction of the Court.
[350] Hurst Hannum, interview by the author, Boston, MA, March 06, 2009.

Thus, currently there is neither an existing legal mechanism nor an attempt to establish one to assure international community's collective response at times when there is state failure to prevent or halt grave violations of human rights. Consequently, in general terms, it is not necessarily possible to talk about a well-established legal responsibility to protect at the international level. In the absence of strictly established criteria for implementing RtoP, the duty assumed by the international community stands out as a moral duty rather than a legal one.

Alex J. Bellamy notes that

> [t]here is general consensus that RtoP is a norm, but much less agreement on what sort of norm it is. There are two elements to this particular problem. First, RtoP is not a single norm but a collection of shared expectations that have different qualities. On the one hand, RtoP involves expectations about how states relate to populations under their care. [...] RtoP's first pillar is therefore best understood as a reaffirmation and codification of already existing norms.[351]
>
> The test of whether pillars two and three are properly called norms is the extent to which there is a *shared expectation* that 1) governments and international organizations will exercise this responsibility, that 2) they recognize a duty and right to do so, and that 3) failure to act will attract criticism from the society of states. There is some evidence to support the view that such positive duties exist. [...] Combined with international society's commitment to RtoP, these legal developments have given rise to claims that a positive duty to prevent genocide and mass atrocities is emerging."[352]

[351] Bellamy 2010: 160.
[352] Bellamy 2010: 161.

As the President of the General Assembly concluded in his closing statement, there is "need to ensure that all the elements[353] are in place to make [...RtoP] a viable and consistent legal norm."[354] Likewise, Bellamy refers to the "problem of indeterminacy" as a factor which weakens the compliance-pull of norms.[355]

In the current state of affairs, as Stahn puts forth, the "[r]esponsibility to protect is thus in many ways still a political catchword rather than a legal norm,"[356] but with prominent moral implications and/or underpinnings. As the ICISS 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.[357]

Parallel to this observation, despite the fact that RtoP is not yet an international legal norm, it is possible to argue that RtoP has been internalised as a moral norm in international politics given the

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[353] Although paragraphs 138 and 139 have limited the invocation of RtoP to the cases of four grave crimes, the issues of the right authority and how to determine what qualifies as an RtoP case remain unclear. As Finnemore and Sikkink note: "[t]hose stressing the form of the norm argue that norms that are clear and specific, rather than ambiguous and complex [...] are more likely to be effective" (Finnemore and Sikkink 1998: 907). This argument seems to hold in the case of RtoP, since states have asked during the 2009 General Assembly meetings for further clarification of the norm before fully implementing (and maybe legalizing) it.

[354] A/63/PV.101, p. 20.

[355] Bellamy 2010: 161.

[356] Stahn 2007: 120.

[357] Taking such a position about the role of responsibility also challenges postmodern views that deny the possibility of engaging in intelligible moral reasoning across cultures and across time (ICISS, 2001b, 129).

international and regional documents adopted by states as well as severe criticisms raised against inaction or late action by states and/or the international community in cases of humanitarian atrocities (such as those in Rwanda and Darfur).

In the 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, at the current state of affairs, hint at the first admission of RtoP as a moral norm. Recent examples where states use language that value moral constraints can be found in the proceedings of the preliminary meetings on the 2009 Report of the Secretary-General. For instance, the Netherlands notes: "Our task is to translate our moral commitment into political and operational readiness."[358] New Zealand talks about the "moral burden" of past cases, and considers it a responsibility of the international community alongside individual states.[359] In its statement, Algeria notes 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."[360]

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[358] A/63/PV. 97, p. 26.
[359] A/63/PV.97, p. 24.
[360] A/63/PV.98, p. 6.

Chile argues that this "is a political debate with moral underpinnings,"[361] and that the issue of morality should be reintroduced into the debate, since "the challenge of humanitarian protection is a global one."[362] In a similar vein, Israel talks about the moral imperative of non-indifference.[363] Moreover, Romania asserts 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."[364] Likewise, Kazakhstan believes that "protecting populations from grave human rights violations [...] is a moral imperative," and posits that the principle of non-indifference should be embraced.[365] In an affirming manner, Holy See indicates that "[t]he international community has a moral responsibility to fulfil its various commitments."[366]

Norway argues that the UN is vested with "the moral authority" to act in cases of RtoP,[367] and Jordan notes that Paragraphs 138 and 139 "form a firm political and moral foundation for" RtoP to be implemented through the UN.[368] In this vein, Hungary points that

[361] A/63/PV.98, p. 10.
[362] A/63/PV.98, p. 12.
[363] A/63/PV.98, p. 15.
[364] A/63/PV.99, p. 10.
[365] A/63/PV.100, p. 19.
[366] A/63/PV.101, p. 17.
[367] A/63/PV.99, p. 7.
[368] A/63/PV.99, p. 16.

when an individual state fails to fulfil its responsibility "the international community has the moral obligation to give a timely and decisive response."[369]

In the light of these statements, it can be argued that there is an understanding by the Member States of a moral responsibility to act in cases of RtoP. Yet, there is also the fact that the international community is not always highly efficient in or willing for taking action in such cases. This technically leaves room for the possibility of unilateral action by states that assume (or claim to assume) a moral responsibility not to remain silent.

Thus, a related question is whether unilateral interventions are acceptable or not on the basis of the international documents adopted since 2005. Alicia L. Bannon argues that

> "[t]he Summit agreement strengthens the justification for unilateral action in two main ways. First, the agreement affirms important limits on national sovereignty by recognizing a state's responsibility to protect its own citizens. Second, the agreement sets clear responsibilities for the international community when a country fails to protect its own citizens. In cases of U.N. inaction, would-be unilateral actors can point to an explicit failure to fulfil a duty.[370] However, the agreement only supports unilateral action in a narrow set of circumstances. First, the agreement is limited to a small set of extreme human rights abuses. Second, the agreement implies a hierarchy of actors and of

[369] A/63/PV.99, p. 24.

[370] In counterpoint to Bannon Bellamy notes that "[w]hile the ICISS was right to be concerned about reducing the danger that states might abuse humanitarian justifications to legitimate unjust wars, it evidently should have paid more attention to the danger that responsibility to protect language could itself be abused by states keen to avoid assuming any responsibility for saving some of the world's most vulnerable people" (Bellamy 2005, 53).

> interventions: Good faith U.N. action is privileged over unilateralism and peaceful action is privileged over violent means. Finally, the agreement limits the scope of intervention to the goal of protection."[371]

Although it is true that the Outcome Document restrains state sovereignty, it does not necessarily clearly, or for that matter strictly, define the responsibility of the international community. Paragraph 139 talks about preparedness to act as well as assuming a responsibility to protect on a case-by-case basis, which can be seen as an outcome of a general practice to achieve equity and to avoid arbitrary decisions.[372] As indicated previously, Member States of the UN had opted for a flexible understanding of RtoP regarding action by the international community while they held states individually responsible for the protection of their populations under all circumstances and at all times. The case-by-case consideration of developments/events will always give the international community a leeway in which it can avoid responsibility for inaction. In this regard, the international community's responsibility cannot be considered a legal one. As also Bannon indicates in the second half of the paragraph,[373] the UN action is more about good faith or good will, especially under the given (political) circumstances. The Summit

[371] Alicia L. Bannon. "The Responsibility To Protect: The U.N. World Summit and the Question of Unilateralism." *The Yale Law Journal* 115 (2006): 1158.

[372] In other words, just interventions are determined according to the characteristics of each specific case.

[373] Bannon first talks about the duty of the UN, and then calls it an act of good-faith. This is a contradictory way of picturing the situation since the former refers to a clear obligation whereas the latter is a moral choice.

Outcome surely invokes an understanding of moral responsibility both for states individually and the international community as a whole. Nevertheless, from a legal point of view it does not strengthen the justification for unilateral intervention. Neither Paragraph 138 nor 139 mention a possible acceptance of unilateral action in the case of a failure of the UN to act. Cooperation with regional organisations is considered as a viable option but there is no implication in the paragraph to take that unilateral action is to be condoned under any circumstance.

As Bannon talks about the case where the UN fails to fulfil its duty, this also means that a Security Council authorisation of the concerned intervention is out of question. Without such authorisation, the legitimacy of an intervention whether unilateral or multilateral, let alone the legality of the act, is always subject to challenge. In this regard, although it can be considered as a call for the international community not to remain indifferent to specific cases of mass humanitarian atrocities, the Summit Outcome Document does not contain any explicit or implicit statement to lead to a belief that the Document "strengthens the justification for unilateral action."

Likewise, states' individual interpretations of the UN documents demonstrate a picture that not only counter Bannon's argument but also indicate a concern about such interpretations of

the concept of RtoP. As can be inferred from the General Assembly debates of July 2009, the majority of states are against the idea of unilateral (humanitarian) interventions. As indicated in the previous section, there is a concern that the concept of RtoP might be abused to justify arbitrary conducts of individual states. For instance, Egypt on behalf of the NAM indicated a concern about a potential misuse of the RtoP context to legitimise unilateral action.[374] Affirmatively, India urged that RtoP should not serve as a pretext for humanitarian intervention or unilateral action.[375] China and Mexico indicated their explicit opposition against any unilateral action (no matter what the immediacy of the case is).[376] Finally, Costa Rica and Denmark underlined that RtoP is "far from authorising unilateral interventions."[377] This is also true for the UN Charter, since it does not recognise states the right to act unilaterally.[378] Such approach is necessary to avoid arbitrary actions of states.

With regard to responding to cases of RtoP past the stage of prevention, i.e. when action under the third pillar is called for, there are varying opinions where some states are more inclined towards embracing the measures of this pillar whereas others are much more

[374] A/63/PV.97, p. 5.
[375] A/63/PV.99, p. 25.
[376] A/63/PV.98, p. 23, and A/63/PV.99, p. 19.
[377] A/63/PV.97, p. 24.
[378] The exceptions are self-defence and self-determination.

cautious.[379] An example of a positive approach is that of Timor-Leste where its representative notes: "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 RtoP."[380] France considers the third pillar as the one that "gives the concept its full meaning."[381] Bosnia Herzegovina in its statement argues that

> when it is evident that diplomatic efforts have failed and that States or non-State actors are committing or are about to commit crimes related to the responsibility to protect, collective international military assistance, as proposed by the Secretary-General in his report, may be the surest way to support States in meeting their obligations relating to the responsibility to protect.[382]

Similarly, the Former Yugoslav Republic of Macedonia notes that 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."[383] Japan talks about taking collective forceful action when necessary under the framework of

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[379] Bolivarian Republic of Venezuela 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" (PV.99, p. 5). Pakistan considers pillar three as a reappearance of the right to intervene "with a much larger spectre" (A/63/PV.98, p. 4). Brazil states that "the third pillar is subsidiary to the first one and a truly exceptional course of action, a measure of last resort" (PV.97, p. 13). Likewise Switzerland argues that measures of the third pillar should be the last resort (PV.98, p. 5). Germany notes that third pillar comes to question when prevention fails, and thus is only of complementary nature (PV.99, p. 7).

[380] A/63/PV.99, p. 24.

[381] A/63/PV.97, p. 10.

[382] A/63/PV.97, p. 16.

[383] A/63/PV.100, p. 8.

Chapter VII of the UN Charter.[384] Ireland suggests to "approach, with similar imagination and openness, the third pillar,"[385] including "peace enforcement measures under Chapter VII" by the UN in accordance with its Charter.[386]

Nevertheless, in connection with the notion of humanitarian intervention, the increasing concern about grave violations of human rights and the embracement of the responsibility to protect as a moral duty do not necessarily mean that states have become more sympathetic towards the idea of humanitarian interventions in general. On the contrary, during the preliminary meetings of July 2009 numerous states indicated their negative opinion towards humanitarian intervention. For instance, Cuba reaffirmed "that international humanitarian law does not provide for the right of humanitarian intervention as an exception to the principle of non-use of force."[387] Moreover, Iran argued that international RtoP response "by no means whatsoever may imply permission to use of force against another State under any pretext, such as humanitarian intervention."[388]

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[384] A/63/PV.98, p. 22.

[385] Sierra Leone believes that concerns related to the third pillar can be overcome "by putting proper guidance and modalities in place, buttressed by the institutional reform of the United Nations advocated by our world leaders in 2005" (A/63/PV.100, p. 6). Additionally, Uruguay 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" (A/63/PV.98, p. 18).

[386] A/63/PV.99, p. 2.

[387] A/63/PV. 99, p. 22.

[388] A/63/PV. 100, p. 10.

When RtoP was first introduced by the ICISS, the Commission indicated in the Foreword that their "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."[389] This opening statement is quite misleading in terms of fully setting the scope of the Report. Unsurprisingly, it has led to concerns on the part of certain Member States of the UN, which were also spoken out in the later follow-up debates in the General Assembly. For instance, Morocco and Switzerland in their statements asked for a clear distinction between RtoP and the right to humanitarian intervention.[390] Panama noted that "[t]he concepts of the responsibility to protect and humanitarian intervention are so dissimilar that they must not be confused."[391] Similarly, Republic of Korea distinguished RtoP from unilateral humanitarian interventions.[392] China underlined 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."[393] Australia considered humanitarian intervention discredited[394] while Sudan

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[389] ICISS, 2001a, vii.
[390] A/63/PV.98, 13 and A/63/PV.98, p. 4.
[391] A/63/PV.100, p. 17.
[392] A/63/PV.100, p. 19.
[393] A/63/PV.98, p. 23.
[394] A/63/PV.97, p. 20.

sceptically considered RtoP and humanitarian intervention to be "two sides of the same coin."[395]

All the similar points that have been raised during the meetings hint at the lack of clarity about the concept and the extent to which it is connected to the act and/or notion of humanitarian intervention.[396] Therefore, clarifications are required to be able to establish RtoP as a solid norm under the auspices of the UN. At present, it may be approached suspiciously by many and not prioritised, but humanitarian intervention is still a part of the notion of RtoP under the framework of pillar three.

All in all, although the acceptance of the RtoP with the Outcome Document can be interpreted as a positive sign in the assumption of a moral duty, this does not prove that RtoP is internalised as an international norm. In this vein, it is not only the acceptance of the RtoP norm by the international community, but also its implementation that is required for the completion of a norm's life cycle.

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[395] A/63/PV.101, p. 11.
[396] Leaving aside full-fledged humanitarian interventions, there is consensus in the General Assembly that coercive measures ought to be avoided. If it is necessary or unavoidable to take such measures, this has to be only as a last resort.

CHAPTER 5

DRIVES FOR UNDERTAKING INTERVENTION

Otte notes that "it is one of the ironies of international studies that while interventions are frequently recurring phenomena and possibly even a 'built-in feature of the international system', international theorists have not succeeded to solve the 'intervention puzzle.'"[397] This failure can be due to the complex nature of the concept as well as the number of interacting factors involved in the realisation of the act of intervention. As Urs Schwarz describes, "intervention is a 'twilight area' where the four constitutive elements of the international system (i.e. power, self-interest, international law and morality –or rather the lack of it) meet."[398] Such a combination of elements leaves theorists with an intertwined structure to deal with.

Within such structure, international law and the principles of morality are to provide the organising principles for action by states and the international community, albeit in practice it seems that political factors play a much more influential role in determining the general picture of interstate and/or international relations. In an affirming manner, Stephen A. Garrett points that humanitarian intervention is innately political in essence since it takes place or is invoked due to deliberate acts of a given political authority, or as "it

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[397] Thomas G. Otte in Dorman and Otte 1995, 3.
[398] Quoted in Dorman and Otte 1995, 3.

results from the *absence* of any such authority that can provide minimal protection for a community of people and in particular ensure that basic standards of civilized treatment are afforded to them."[399] From a practitioner's point of view, as a US state official, Margaret J. McKelvey argues that humanitarian intervention is mainly about self-interest maybe dressed with ethics.[400] Legal Advisor of Italy to the UN and also a legal scholar Giuseppe Nesi notes that though may states intervene based on ethical considerations, humanitarian intervention is generally all about power politics.[401] Another legal scholar, Hurst Hannum, agrees that the key driving force is self-interest, and adds that the larger problem is focusing too much on the moral component; he says: "intervening for the sake of intervening due to moral concerns is not the answer."[402] Area specialist Lawrence Woocher refers to a combination of factors, (such as material interests, which he considers to increase the chance of humanitarian intervention; the estimation of the ability; bearable costs; and national interests other than core/vital ones).[403] Thomas Weiss comments that ethical concerns are helpful in pushing a reluctant set of decision-makers to take action, but they

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[399] Stephen A. Garrett. Doing Good and Doing Well: an examination of humanitarian intervention. (Westport: Praeger Publishers, 1999), 3.
[400] Margaret J. McKelvey, interview by author, Washington D.C., October 17, 2008.
[401] Giuseppe Nesi, interview by author, New York, NY, November 06, 2008.
[402] He also comments: "If we really care about everyone in the world equally, we should also be focusing more on health, education, etc." (Hurst Hannum, interview by author, Boston, MA, March 06, 2009).
[403] Lawrence Woocher, interview by author, Washington D.C., October 17, 2008.

are not enough on their own. It is rather the calculations of interests that play a more prominent role. He also suggests that "the moral impulse" is not imperative; what also leads to action is the visceral impulse where there is the idea that one can make a change.[404]

In general terms, although there seems to be a tendency to single out national interest as the factor leading to humanitarian interventions, there are different factors and values as well as interrelationships to take into account in order to conduct an inclusive analysis of the practice of humanitarian intervention. Within the UN Charter, Lori F. Damrosch detects two groups of values, namely system and human rights values, which "intersect with each other and [...] may sometimes work at cross-purposes."[405] In differentiating these two clusters of values, Ramsbotham and Woodhouse identify four gradations in the international society spectrum ranging from the international anarchy of realists to the international society of pluralists to the international society of solidarists, and finally to the world community of universalists. Within such categorization, the international community is located in between the final two.[406] On the basis of such spectrum, this chapter looks at the factors that lead the international community and/or states to undertake humanitarian interventions under the four main

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[404] Thomas Weiss, interview by author, New York, NY, November 07, 2008.
[405] Quoted in Oliver Ramsbotham and Tom Woodhouse. *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Oxford: Polity Press, 1996), 57.
[406] Ramsbotham and Woodhouse 1996, 223.

headings of human security, international norms, moral considerations, and national interests.

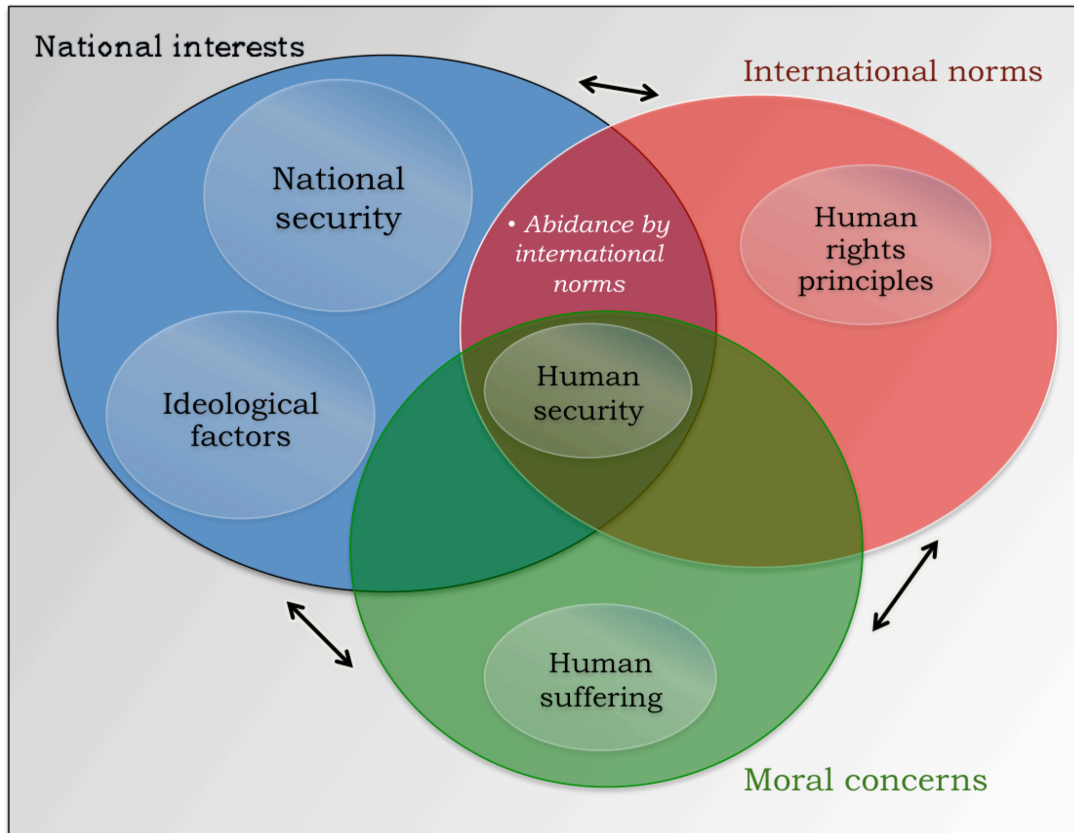

Figure 2. Factors leading to humanitarian interventions

As can be observed in Figure 2, this research approaches the key drives influential in the decision to undertake humanitarian interventions from three main aspects, which are depicted to be in interaction with each other. Human security, which is placed at the intersection of the three sets, is considered to be at the heart of the drives for humanitarian intervention and RtoP, whereas abidance to international norms is not considered to be in the common intersection because sometimes acts based on moral drives may

constitute a breach of international norms/laws just as in the case of humanitarian interventions which (as laid out in Chapter 2) most often constitute a breach of legal principles like non-use of force and non-interference in the internal affairs of states. In line with its general constructivist approach, throughout the dissertation the notion of national interest will be interpreted in an inclusive manner than a mere calculation of economic, military and/or geopolitical[407] elements (as posited in section 2.4). The acceptance of the realist argument that states pursue their national interests will not be interpreted in a way to posit that such understanding annuls the moral drives of an action. It will be taken that interests and moral concerns can co-exist in the same realm, at the same time.

5.1. Human Security

The notion of human security lies at the core of the doctrines of humanitarian intervention and RtoP, as the genuine purpose of an intervention ought to be securing human lives. Thomas and Tow 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

[407] Geopolitical approach can be seen as one that is top-down, statist, military-backed (Kaldor 2008, 14).

society.[408] In this respect, they suggest that a "human security approach to transnational security problems offers an alternative analytical framework."[409] Such approach brings human rights and human development together, and focuses on the security of individuals instead of states' security.[410] This reflects a transformation in the international community's approach to security understanding and provides a rationale for undertaking humanitarian interventions.

It is important to clarify what is meant by the term human security. The people-centred, universal concept of human security was taken up in UN Development Programme's (UNDP) 1994 Human Development Report. The Report while defining the concept generally as "freedom from fear and want"[411] enumerates seven types of security —specifically economic, food, health, environmental, personal, community and political— as central interdependent components of the concept of human security.[412] The Report posits: "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

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[408] Nicholas Thomas, and William T. Tow. "The Utility of Human Security: Sovereignty and Humanitarian Intervention" *Security Dialogue* 33(2) (2002): 189-190.
[409] Thomas and Tow 2002: 190.
[410] Mary Kaldor. Human Security: reflections on globalization and intervention. (Cambridge: Polity, 2008), 182.
[411] King and Murray 2001-02: 585.
[412] Kaldor 2008, 182.

economic well-being."[413] Parallel to this understanding, Inge Kaul identifies two prominent features for the concept of human security: 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."[414]

More recently, the Commission on Human Security 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.[415]

Human security, as defined, raises questions about the limits to national sovereignty in cases where the state itself is either incapable or unwilling to protect its people(s)/citizens.[416] Therefore, what is

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[413] King and Murray 2001-02: 587. "Another seminal document, prepared by the UN Commission on Global Governance the following year (1995), argued 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" (Thomas and Tow (2002): 178).

[414] Inge Kaul. "Peace Needs No Weapons: From Military Security To Human Security" *The Ecumenical Review* 47(3) (1995): 315.

[415] Commission on Human Security. *Human Security Now* (New York: 2003), 4.

[416] "This approach imposes constraints on state sovereignty through the mobilization of international civil society to safeguard international norms 'and the

claimed to be complementary to national security also becomes a challenge to state sovereignty in instances of massive breaches of human security where there arises the necessity for outside intervention[417] to stop the atrocities.

It is also argued that human security rather than abolishing conceptions of state-based security complements the narrow interpretation in a way to make it more comprehensive. The Commission on Human Security 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 only actors, but rather there is a multiplicity of actors; (4) "[a]chieving human security includes not just protecting people but also empowering people to fend for themselves."[418] These four aspects are fundamental to the discussion in this dissertation in terms of

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sharing of power between state and non-state actors in a globalising world'" (Thomas and Tow 2002: 178).

[417] Within the confines of human security, Mary Kaldor identifies the aim of an intervention as to prevent the reoccurrence of mass violation of human rights (as in Srebrenica and Rwanda). She takes 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." Moreover, Kaldor identifies the main objective of the military forces as not to gain a victory over an enemy but to protect the populations that are suffering from the mass violation of human rights (Kaldor 2008, 186). She first argues that the global character of the human security approach requires its practice "through multilateral action" (Kaldor 2008, 188). Secondly, such "approach would aim both to stabilize conflicts and to address the sources of insecurity" (Kaldor 2008, 191). Finally, a "human security approach implies *more* not less assistance for development, since human development is a key component of human security" (Kaldor 2008, 193).

[418] Commission on Human Security 2003, 4.

understanding the notion of RtoP and the impact of its implementation on the humanitarian intervention doctrine.

Given its idealistic as well as controversial aspects, three states, namely Canada, Norway and Japan, have been the pioneers in terms of implementing a human security approach within their foreign policies.[419] Nevertheless, their interpretations of the concept vary. For instance, on the one hand

> Canada defines human security as "safety for people from both violent and non-violent threats," a more conservative and narrower focus than the UNDP version. According to Canada's Department of Foreign Affairs and International Trade, human security does not re-place national security. Rather, state security and human security are mutually supportive. According to this limited definition, human security is freedom from fear, and human development is freedom from want.[420]

One the other hand, Japan has adopted a more comprehensive approach according to which human security comprises of all sorts of

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[419] As Mary Kaldor observes, "the concept of human security seems to have developed in two directions. One was the approach taken by the Canadian government, which adopted the concept and established a network of like-minded states who subscribe to the concept. Their version is reflected in the *Human Security Report*, published in 2005, and has some affinity to the notion of 'the responsibility to protect'. They emphasize the security of the individual as opposed to the state, but their primary emphasis is on security in the face of political violence. The other approach was the UNDP approach, also reflected in the work of the United Nations High-Level Panel on Threats, Challenges and Change and the Secretary General's response, *In Larger Freedom.* This approach emphasized the interrelatedness of different types of security and the importance of development, in particular, as a security strategy" (Kaldor 2008, 182-3).

[420] "Austria, Canada, Chile, Ireland, Jordan, the Netherlands, Slovenia, Switzerland, Thailand, and Norway have also promoted a more limited human security agenda. These countries focus on antipersonnel landmines, small arms, children in armed conflict, and international humanitarian and human rights law" (King and Murray 2001-2002: 590).

threats to "human survival, daily life and dignity[421] [...,] and strengthens efforts to confront these threats."[422]

Although with nuances or visible differences as to why some states have been more eager or active to adopt the concept, theorists put forth different explanations. Among these comes an interest-based approach towards the promotion of human security, which can be located within the neorealist tradition. According to this perspective "norms or ideas are understood as mere ideology: they mask, sustain or advance the power-oriented interests of states. The Norwegian-Canadian support for 'human security' can to some extent be explained in this perspective."[423] Astri Suhrke observes that in 1999 Canada made use of the concept of human security to assert "itself as a progressive middle power" like when it placed human security as a matter "on the agenda in the form of a general discussion about transgressions against civilians during violent conflict" using its Security Council Presidency at the time as an opportunity.[424] Suhrke likewise argues that for the isolated Norway of the 1990s the concept was likely to serve as a means of achieving a

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[421] Some examples are "environmental degradation, violations of human rights, transnational organized crime, illicit drugs, refugees, poverty, anti-personnel landmines and other infectious diseases such as AIDS" (King and Murray 2001-2002: 590).
[422] King and Murray 2001-2002: 590.
[423] Astri Suhrke. "Human Security and the Interests of States" *Security Dialogue* 30 (3) (1999): 265.
[424] Suhrke 1999: 266.

"humanitarian large power status,"[425] which could be realised through the establishment of "a global coalition of states on human security issues."[426] Therefore, it can be argued that for Canada and Norway their promotion of the human security approach seemed as a viable way for enhancing their international status and say so in the arena.[427]

Although it puts forth reasonable explications for Canada's and Norway's choices, an interest-based approach provides a limited or partial explanation for state behaviour since it underestimates the power of norms and ideas as well as failing to explain the success of certain ideas in becoming a part of the international system whereas others cease to exist or remain insignificant.[428] Moreover, it disregards the notion of mutual construction, as proposed by constructivist scholars, where interests and ideas can reciprocally affect each other in the course of time.

Alternatively, Suhrke proposes "a combined interest-and-institutional perspective" to be able analyse the power of ideas within their historical contexts. She finds that at the close of the twentieth century "humanitarian ideas have become a principal normative reference for states and organizations to clarify their international

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[425] "The term was frequently used in the early 1990s by Jan Egeland, Deputy Foreign Minister in the Labour government" (Suhrke 1999: 275).
[426] Suhrke 1999: 267.
[427] Suhrke 1999: 267.
[428] Suhrke 1999: 267.

obligations, or against which to hold others responsible."[429] Thomas and Tow argue that this trend of "embedded[430] humanitarianism" led to attempts to further clarify the concept of human security as well as necessitating states to guarantee their peoples' security as much as possible. Accordingly, it came to the point that the responsibility to guarantee "compliance with humanitarian norms" was also borne with the international actors other than individual states.[431] Such an approach is clearly reflected in the report of the ICISS on the responsibility to protect.

Finally, for the purpose of "strengthening the international humanitarian regime to protect victims of conflict" Suhrke suggests three essentials, which are "developing norms; strengthening institutions (national and international); and operationalizing and implementing strategies."[432] When evaluated within this framework, it can be argued that following the new approaches emerging in the academia, the international community has seriously been putting an effort to strengthen the humanitarian regime previously established within/by the UN. The adoption of the RtoP under the auspices of the UN with the 2005 Outcome Document, the establishment of institutions such as the International Criminal

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[429] Suhrke 1999: 268.
[430] The "term 'embedded' suggests that the norms are diffuse, often permitting non-articulated compromises, yet generally understood in a consensual way and invested with much legitimacy. The idea of 'human security' has been extracted from this embedded stock of ideas" (Suhrke 1999: 269).
[431] Thomas and Tow 2002: 180.
[432] Suhrke 1999: 273.

Court, and the continuing efforts within the General Assembly for enabling timely and decisive implementation of RtoP as well as efforts to improve the early warning capabilities are just some of the examples. All in all, it can be asserted that the human security approach has found a place in the mentality of the international community.

5.2. International Norms

> There can be no mutually comprehensible conduct of international relations, constructivists hold, without mutually recognized constitutive rules resting on collective intentionality. These rules may be more or less "thick" or "thin," depending on the issue area or the international grouping at hand. Similarly, they may be constitutive of conflict or cooperation. But in any event, these constitutive rules prestructure the domains of action within which regulative rules take effect.[433]

International norms, in this regard, serve as organising principles for the international community of states, and in general terms they can be defined "as those expectations of appropriate behaviour which are shared within international society or within a particular subsystem of international society by states, its constituent entities."[434] Thus, (principles and provisions of international law, that is to say) legal norms as well as ethical principles are considered as a part of this

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[433] John Gerard Ruggie. "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge" *International Organization* 52(4) (Autumn 1998): 879.

[434] Henning Boekle, Volker Rittberger, and Wolfgang Wagner. "Norms and Foreign Policy: Constructivist Foreign Policy Theory" *Center for International Relations/Peace and Conflict Studies*, 34A (1999): 14.

whole. In this vein, this section overviews international norms by starting from specific (that is, a general consideration of international legal norms with relevance to humanitarian intervention doctrine) and moving on to the general notion of norms from a theoretical point of view. It should be noted that humanitarian intervention itself is not analysed as a norm under this section.

International legal norms are fundamental to the discussions in this dissertation in the sense that the humanitarian intervention doctrine and the evolving norm of RtoP are not only abundantly interconnected with but also restrained by fundamental principles of international law.[435] Humanitarian intervention becomes legally problematic in the absence of authorisation of the action by the UN Security Council. Therefore, the first part of this section considers international legal norms as a drive for states to undertake unilateral or multilateral humanitarian interventions without Security Council authorisation.

In their choice to undertake humanitarian interventions decision-makers may be influenced positively or negatively by fundamental principles and understandings of international law. On the one hand, there are human rights norms[436] that urge states to

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[435] As specific fundamental principles of international law were studied in section 2.3., repetitive references will be avoided in this Chapter, and accordingly the analysis will be kept limited to theoretical divisions in international law regarding questions of legitimacy of humanitarian interventions.

[436] In the context of this dissertation, human rights are considered from a legal point of view, and thus, as a part of international legal norms rather than mere

take action, and on the other hand there is the issue of legitimacy, which may lead an individual state or a coalition of states to a reluctance to intervene.[437] Simon Duke identifies three broad approaches to the debate on the legitimacy and/or legality question within the international law literature: (1) the restrictionist tradition, (2) the natural law tradition, and (3) the international community approach, which can be grouped more generally into two as restrictionist[438] and counter-restrictionist[439] approaches. Within this classification, the restrictionists fall into the group that considers humanitarian intervention as “a violation of the territorial integrity and political independence of the state.”[440] Scholars of natural law tradition, on the other hand, leave room for the legitimacy and/or legality of a forceful humanitarian action on the basis of the basic principles laid down in the UN Charter with regard to the protection

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ethical values and/or principles since these are rights established by international conventions and/or declarations (such as the 1948 Universal Declaration of Human Rights, the 1966 Twin Covenants, and the 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms), and protected also within the UN system.

[437] The issue of the legality of humanitarian interventions is discussed in depth in Chapter 3: Legal Framework.

[438] For examples of restrictionist arguments, see Ian Brownlie. “Humanitarian Intervention” in *Law and Civil War in the Modern World*, John Norton Moore (ed.) (Baltimore: The Johns Hopkins University Press, 1974), 217-51; see Michael Akehurst. “Humanitarian Intervention” in *Intervention in World Politics*, Hedley Bull (ed.) (Oxford: Clarendon Press, 1984), 95-118; see Ulrich Beyerlin. “Humanitarian Intervention” in *Encyclopaedia of Public International Law*, Rudolf Bernhardt (ed.), vol. 3 (New York: North-Holland Publishing Company, 1982), 212.

[439] For examples of counter-restrictionist arguments, see Richard B. Lillich. “Humanitarian Intervention: A Reply to Ian Brownlie and Plea for Constructive Alternatives” in *Law and Civil War in the Modern World*. John Norton Moore (ed.). (Baltimore: The Johns Hopkins University Press, 1974), 229-251; see Edwin M. Bouchard. *The Diplomatic Protection of Citizens Abroad* (New York: The Banks Law Publishing Co., 1922); see Hersch Lauterpacht. *International Law and Human Rights* (London: Stevens and Sons Ltd., 1950).

[440] Duke 1994: 33.

of human rights. In contrast with the restrictionist considerations, “armed humanitarian intervention is not just permissible under customary international law, but part of the duty of states to promote and uphold fundamental human rights.”[441] In a similar manner, also scholars of the international community approach leave room for the legitimacy of humanitarian interventions and place an emphasis on the collective conduct of the act, which in their view “expresses the will of the international community.”[442] Lori Fisler Damrosch observes that

> [i]nstead of the view that interventions in internal conflicts must be presumptively illegitimate, the prevailing trend today is to take seriously the claim that international community ought to intercede to prevent bloodshed with whatever means are available.[443]

As can be inferred from these varying points of view and as revealed in the historical overview, legitimacy and/or legality remains a concern as well as a constraint for states in their decision to undertake a humanitarian intervention in the absence of a Security Council authorisation[444] to take action. Nevertheless, this does not

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[441] Duke 1994: 35.

[442] Duke 1994: 33.

[443] She further posits that “arguments now focus not on condemning or justifying intervention in principle, but rather on how best to solve practical problems of mobilizing collective efforts to mitigate internal violence” (Abiew 1998, 223). As will be revealed in Chapter 4, such an attitude is valid for the debates on RtoP but as far as humanitarian intervention is concerned, a vast number of both theorists and state representatives seem to be much more sceptical.

[444] In the cases of Bosnia-Herzegovina (1992-95), Somalia (1992-93), Rwanda (1994-96), Haiti (1994-97), Kosovo (1998-99), and East Timor (1999) the UN Security Council authorized action under Chapter VII and possible use of force. For instance, concerning the case of Somalia, Resolution 794 (3 December 1992) “authorized the Secretary-General and UN member states, acting under Chapter

necessarily lead to inaction all the time. As discussed in Chapter 4, there are examples[445] of state action, whether unilateral or multilateral, where states intervened on the basis of human rights norms, but without Security Council authorisation. Nonetheless, the constraining impact of legality/legitimacy considerations of states on decision-making can be interpreted as a positive indicator of the mutually constructive relationship between the actors and the norms they have created.

Regarding the potential positive drives for undertaking humanitarian interventions, for internationalists and cosmopolitans (of international relations theorists) the function of human rights norms are of vital importance. Accordingly,

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VII 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia'." Regarding Kosovo, Resolution 1160 (31 December 1998) invoked Chapter VII, Article 39 considering the situation a threat to international peace and security in the region. Resolution 1199 (23 September 1998) indicated grave concern, and a reference to a possible use of force was made in Resolution 1203 (24 October 1998). In both resolutions the Security Council considered the situation a threat to peace and security in the region. In all resolutions it was indicated that the Security Council was acting under Chapter VII. The decisions were taken unanimously.

[445] One of the most controversial examples is the 1999 NATO intervention in Kosovo. The legitimacy of NATO's intervention, and the air strikes in particular, have been subject to fierce discussions in international political milieus as well between scholars of international law and politics. At the political level, the UN has been the key arena of debate. For instance, in March 1999 a Security Council resolution –favoured by China, Namibia and Russia– condemning NATO's forceful action was rejected by 3 votes in favour and 12 against. On the other hand, NATO allies too had varying comments on the issue. For example, the then German Foreign Minister underlined that this act ought not to become a precedent for future cases. For the US, it signalled that UN Security Council authorisation was to be sought but not necessarily an obligation to take action. "At the other end of the spectrum, some NATO states, notably Belgium and the Netherlands, seem[ed] 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" (Jane Stromseth. "Rethinking Humanitarian Intervention: The Case for Incremental Change" in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, J. L. Holzgrefe and Robert O. Keohane (eds.) (Cambridge: Cambridge University Press, 2003), 238-239).

> [h]uman rights and values are given as much weight as state system values, and individuals and peoples are recognized as subjects for whom international society as a whole has responsibility. Such responsibility also carries concomitant rights to act in appropriate ways and through appropriate channels as legitimized through international law.[446]

It is such an understanding that stands for the ethical/moral basis for humanitarian interventions, which is also assumed to prevent the exploitation of principles of non-intervention and sovereignty by states when violation of human rights on a massive scale occurs. Reflecting a similar line of thought, Francis Kofi Abiew argues that "sovereignty implies responsibility, and thus, when egregious human rights violations occur either arising from governmental acts or in situations of internal conflict, intervention is justified to protect those rights."[447]

Nevertheless, a rule consequentialist approach suggests that populations are better off in a system where humanitarian intervention is legally prohibited rather than one in which there is no consensus on the rules governing the right to forcible intervention for humanitarian purposes.[448] This is parallel to the pluralist concern that in the given lack of agreement regulating unilateral humanitarian interventions, "states will act on their own moral principles, thereby weakening an international order built on the

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[446] Ramsbotham and Woodhouse 1996, 60.
[447] Abiew 1998, 5.
[448] Wheeler 2000, 29.

rules of sovereignty, non-intervention, and non-use of force."[449] Similarly, Wheeler and Morris question the impartiality in decision-making and argue that it is more favourable for the international community to stick to the non-intervention principle under such circumstances.[450]

Given these opposing points of view, humanitarian intervention remains controversial both when it takes place and when there is inaction. The 1994 Rwandan case constitutes an example of the consequences of inaction.[451] Concerning this specific case Martha Finnemore argues that

> the episode also reveals something about the normative terrain on which these interventions are debated. [...] States understood and publicly acknowledged a set of obligations that certainly did not exist in the nineteenth century and probably not during most of the cold war. States understood that they had not just a right but a duty to intervene in this case. That the Americans apologized substantiates this.[452]

Likewise, legal scholar José Alvarez considers the then President Clinton's apology an "act out of grace," which comes closest to legal responsibility.[453]

As constructivists claim, it is such challenges that the international community has been facing, which lead or contribute to

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[449] Wheeler 2000, 29.
[450] Nicholas J. Wheeler, and Justin Morris. "Humanitarian Intervention and State Practice at the End of the Cold War" in *International Society after the Cold War*, Rick Fawn and Jeremy Larkins (eds.) (New York: St. Martin's Press, 1996), 139.
[451] ICISS 2001b, 1.
[452] Finnemore 2003, 79-80.
[453] José Alvarez, interview by author, New York, NY, November 06, 2008.

the emergence and implementation of new norms. The emergence of the RtoP norm can be explained on this basis. Due to the lack of action in the face of mass atrocities, and in the absence of a formal and/or legal embracement of the doctrine of humanitarian intervention, in order to secure lives and human rights of populations, norm entrepreneurs such as Gareth Evans and Kofi Annan opted for introducing a “new” norm, namely “the responsibility to protect” instead of adhering to the arguments in favour of a “right to intervene.”

Emergence of new norms aside, a fundamental theoretical question to ask is why do states comply with norms? According to neo-realists, dominant norms of the day achieve their status because they are favoured (and thus, supported) by the more powerful states. Correspondingly, norms are made, and abided by, since they enable states to achieve their objectives.[454] Such understanding is labelled as “logic of consequences.” The realist assumption that norms are means for states in seeking their national interests constitutes a primary break point not only between realism(s) and constructivism(s) but also between realism(s) and the English School. For instance, Hedley Bull posits: “even if a state decides to break the rules, it recognizes ‘that it owes other states an explanation of its

[454] Martha Finnemore, and Kathryn Sikkink. “International Norm Dynamics and Political Change” *International Organization* 52(4) (1998): 912.

conduct, in terms of rules that they accept'."[455] This is a reflection of the understanding that rules are there to be conformed to, and breaking them does not make them cease to exist. This assertion reveals a "core assumption of the English School that states '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'."[456]

The constructivist substitute for the "logic of consequences" is, as March and Olsen label it, the "logic of appropriateness." According to this understanding,

> actors internalize roles and rules as scripts to which they conform, not for instrumental reasons—to get what they want—but because they understand the behaviour to be good, desirable, and appropriate. Habit, duty, sense of obligation and responsibility as well as principled belief may all be powerful motivators for people and underpin significant episodes of world politics.[457]

Such logic does not only impact on "notions of duty, responsibility, identity, and obligation (all social constructions) [but also] may drive behaviour as well as self-interest and gain." Norms may also change states' perception of their certain national interests[458] over time.[459] In this regard, the mutually constructive nature of norms gains further

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[455] Wheeler 2000, 24.
[456] Wheeler 2000, 24-5.
[457] Finnemore and Sikkink 1998: 912.
[458] Also Kersbergen and Verbeek note that "actors may internalize international norms and accept them as intrinsically worth striving for, rather than considering them useful in purchasing basic, unchanging, long-term interests" (Kees Van Kersbergen and Bertjan Verbeek. "The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union." *European Journal of International Relations* 13(2) (2007): 220).
[459] Finnemore and Sikkink 1998: 913. The issue of self/national interests will be studied in Section 2.4.

importance since every new norm during its evolution has an effect on already existing (relevant) norms.[460] In other words, as Finnemore posits, norms coevolve. "In this sense, logic internal to norms themselves shapes their development, and, consequently, shapes social change."[461] In this respect, the case of RtoP is a basic example: building on the doctrine of humanitarian intervention, RtoP was formulated with certain changes to the inherent mentality such as the assumption of a responsibility rather than a right to intervene, and the reformulation of the sovereignty understanding. With the World Summit Outcome Document sovereignty as responsibility understanding was introduced to the UN framework and received recognition in an organisation which traditionally places national sovereignty as a higher value. Thus, it can be argued that as RtoP continues to evolve and becomes internalised by the international community, its impact on existing norms will be greater.

5.3. Moral Considerations

As in the case of international law, scholars seem not to be in consensus with each other in their approaches to the issue of humanitarian interventions while studying its moral aspects. Two main positions can be exemplified in the following statements: Mark

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[460] As in the case of RtoP, which attempts to modify the principle of state sovereignty by introducing "sovereignty as responsibility" understanding. For further details, see Section 4.1 in Chapter 4.
[461] Finnemore 2003, 71.

R. Wicclair argues that "independent of what international law proscribes or prescribes, intervention on behalf of human rights is morally impermissible."[462] In opposition, Bernard states that although intervention is legally prohibited, in certain cases, arising from moral reasons "it becomes a positive duty to transgress" the law.[463] The first approach totally rejects the idea of humanitarian interventions based on moral grounds without questioning the legality of the act whereas the second one admits that the act is against law but morally necessary.

Wheeler notes the moral argument that "humanitarian intervention is one of those hard cases where ethical concerns should trump legality, and that, [the] legal requirement[s] can be overridden in cases of supreme humanitarian emergency."[464] Alternatively, Thomas Franck and Nigel Rodley assert that unilateral humanitarian intervention pertains to the realm of "moral choice," not law.[465] Likewise, Hartcourt notes that "[i]ntervention is a question rather of

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[462] Mark R. Wicclair. "Human Rights and Intervention" in *Human Rights and U.S. Foreign Policy*. Peter G. Brown and Douglas MacLean (eds.) (USA: Lexington Books, 1979), 141.

[463] Quoted in Jean-Pierre L. Fonteyne. "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter" *California Western International Law Journal* (4) (1973-1974): 218.

[464] Wheeler 2000, 41.

[465] Thomas Franck and Nigel Rodley. "After Bangladesh: the law of humanitarian intervention by military force." *American Journal of International Law* 67 (1973): 275, 304. Likewise, legal scholar José Alvarez considers the duty to act an ethical but not a legal one (José Alvarez, interview by author, New York, NY, November 06, 2008).

policy than of law, and when wisely and equitably handled [...] may be the *higher policy* of justice and humanity."[466]

For some ethicists like the sceptics, states —which are the main agents of the conduct of international ethics— "are frequently blatantly immoral, both in their treatment of their own citizens and citizens of other nations."[467] On the other hand, realists take states to be amoral. Thus, a question that comes to mind is why is the conduct of ethical foreign policy a matter of concern? Frost summarises the factors as follows: The first is the impact of changing and new technologies on the conjuncture, and the necessity arising to act within these changing circumstances. The second is the unforeseen happenings.[468]

> The third new factor is that there may be a clash between the underlying ethic embedded in one of our major international practices, global civil society, on the one hand, and the ethic inherent in another of these practices, the society of democratic and democratizing states. The former —the practice within which many human beings recognise one another as first-generation rights holders— requires that we not do anything that would damage the rights of other rights holders wherever they happen to be, and that we do what we can to protect their rights. The latter requires that we protect the state within which we enjoy citizenship rights, and that we respect the autonomy of states elsewhere. Respect for states' rights and the non-intervention rule, however, sometimes seem to require that we turn a blind eye to human rights abuses in

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[466] Quoted in Fonteyne 1973-1974: 218.

[467] Gerard Elfstrom. *International Ethics: A reference handbook* (California: ABC-Clio, 1998), 6.

[468] Mervyn Frost. "The Ethics of Humanitarian Intervention: protecting civilians to make democratic citizenship possible" in *Ethics and Foreign Policy*. Karen E. Smith and Margot Light (eds.) (Cambridge: Cambridge University Press, 2001), 42-3.

> other states.[469] It is at this point that the tension between our practices emerges.[470]

Following from this, it can be deduced that "[a]ny policy decision of consequence is taken within a dense web of normative claims that often conflict with one another and create serious ethical dilemmas for decision makers."[471] A fundamental ethical dilemma of this sort that requires consideration is "human suffering."

a. Human Suffering

The relationship between intervention and human suffering[472] can be considered on two levels: (1) Humanitarian intervention aims at eliminating (or at least diminishing) human suffering; (2) humanitarian intervention may cause human suffering in the form of collateral damage. In light of this, human suffering can both be a positive and a negative drive for states in making a decision to undertake humanitarian interventions or not.

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[469] "It may be argued that when states violate the most fundamental rights of their own population in a systematic and gross way, they forfeit their sovereignty. This line of argument is rooted in social contract theory. State sovereignty, so it is said, ultimately derives its legitimacy from the rights that the individuals gained in a social contract that led to the formation of the state. And so once a state stops respecting the contract of its citizens, it can no longer be considered as a legitimate political organization" (Bruno Coppieters, and Nick Fotion (eds.). *Moral Constraints on War: Principles and Cases.* Second Edition (USA: Lexington Books, 2008), 44).

[470] Frost 2001, 43.

[471] Martha Finnemore. "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, April 14, 2000, p. 2 (revised in Sept. 2000). Retrieved from http://www.cgpacs.uci.edu/files/cgpacs/docs/2010/working_papers/martha_finnemore_humanitarian_intervention.pdf (accessed November 28, 2010).

[472] Some sub-questions relating to human suffering are whether this is suffering in quantity or quality? Suffering of whom (does it cover all human beings or just women and children)? What kind of suffering, etc.

Taking human suffering as a positive drive is to consider it as an obligation to protect the vulnerable ones. For instance, moral philosophers like Robert Goodin find 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)."[473] Karl Popper 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." In this regard, he considers that, morally, pleasure cannot compensate for pain. Therefore, he posits that "[i]nstead of the greatest happiness for the greatest number, one should demand, more modestly, the least amount of avoidable suffering for all."[474] Following a similar logic, proponents of international ethics defend the argument to undertake humanitarian interventions in order to end human suffering although the intervention may not be able to save all those who suffer. Their claim is that undertaking action can serve at least to save some of the victims while encouraging other states to assist to save a larger number of people.[475]

On the other hand, the success as well as the targets of the intervention remain as important concerns since action may lead to

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[473] Suhrke 1999: 272.
[474] Karl Popper. "Aestheticism, Perfectionism, Utopianism" *The Philosophy of Society*. Rodger Beehler and Alan R. Drengson (eds.) (London: Methuen, 1978), 223.
[475] Elfstrom 1998, 7.

collateral damage. To begin with, from a consequentialist point of view, there needs to be substantial hope for the success of the mission. In case the intervention is thought to increase human suffering, the moral argument suggests that no action is taken. There is also the question of targets as well as those who are victimised unintentionally when forceful intervention is concerned. According to international law, civilians ought not to be the target of the military action. Nevertheless, 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." Such understanding of "double effect" is rooted in the Middle Ages and was established by Catholic theologians.[476] This doctrine

> is typically put 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).[477]

In this vein, Fernando Teson suggests: "proportionate collateral harm caused by a humanitarian intervention, where the goal is to rescue

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[476] Wheeler 2000, 36.
[477] Warren S. Quinn. "Actions, Intentions, and Consequences: The Doctrine of Double Effect" *Philosophy and Public Affairs* 18 (1989), 334.

victims of tyranny or anarchy, may, depending on circumstances, be morally excusable."[478]

A controversial example is the case of Kosovo, where NATO mainly conducted its intervention through air strikes resulting with collateral damage. While the intervening states aimed at minimum risking of their soldiers' lives, the air strikes caused civilian deaths, and this has been a point of harsh criticism against the interveners.[479] Legal scholar Hurst Hannum argues that Kosovo was an example of a bad intervention. He also notes that intervention generally causes more harm than good.[480] All in all, human suffering may constitute a primary rationale for undertaking forceful action for humanitarian purposes, whereas it can also be a major point of criticism for international ethicists in case the intervention fails to halt the suffering and causes collateral damage.

b. Duty of Assistance

Among the moral considerations that can justify humanitarian interventions, it is possible to mention "the duty of assistance" and "the law of peoples" understandings of John Rawls. On the basis of

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[478] Fernando Teson. "The Liberal Case for Humanitarian Intervention" in Holzgrefe and Keohane (eds.). *Humanitarian Intervention, Ethical, Legal, and Political Dilemmas* (United Kingdom: Cambridge University Press, 2003), 115-6.
[479] For a detailed account of the collateral damage of the NATO intervention, see http://www.hrw.org/legacy/reports/2000/nato/.
[480] Hurst Hannum, interview by author, Boston, MA, March 06, 2009.

the distinction between well-ordered and burdened[481] societies, Rawls suggests that a duty of assistance exists. Financial assistance is not sufficient to correct injustices inherent within the so-called burdened societies, nevertheless, "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."[482] 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.[483]

Furthermore, Rawls 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"[484] which is followed by the understanding of "a first principle that all persons have equal rights and liberties."[485] In the Law of Peoples human rights "express a special class of urgent rights, such as freedom from

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[481] Burdened societies are those which are "burdened by unfavourable conditions, [... these,] while they are not expansive or aggressive, lack the political and cultural traditions, the human capital and know-how, and often, the material and technological resources needed to be well-ordered. The long-term goal of (relatively) well-ordered-societies should be to bring burdened societies, like outlaw states, into the Society of well-ordered Peoples" (John Rawls. *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge: Harvard University Press, 1999), 106). Rawls additionally notes: "A society with few natural resources and little wealth can be well-ordered if its political traditions, law and property and class structure with their underlying religious and moral beliefs and culture are such as to sustain a liberal or decent society" (Rawls 1999, 106).
[482] Rawls 1999, 108-9.
[483] Rawls 1999, 111.
[484] Rawls 1999, 82.
[485] Rawls 1999, 82.

slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide."[486] 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.[487]

In this regard, protection of peoples, for instance, from mass murder and genocide is a principal part of the understanding of human rights within the law of peoples. As can be inferred from the second function, the failure to provide these urgent rights constitutes a justified cause for "forceful intervention" (including a military intervention) by external actors.

All in all, in terms of the relevance of Rawls's assumptions with the contemporary understandings of human rights and humanitarian interventions, one can talk about an existent duty of assistance of the members of the international society to provide the necessary conditions for enabling the enjoyment of basic rights and freedoms by all peoples, through every mean possible, including use of military force in severe cases.

[486] Rawls 1999, 79.
[487] Rawls 1999, 80.

c. Interests and Morality

Coppieters and Fotion posit that "[t]he belief in the existence of a universal moral order that unifies all of humanity establishes the right for states to intervene in the affairs of another state for the protection of innocent citizens belonging to that state."[488] For those who accept a moral responsibility, a related question is the extent of this responsibility and the right to intervene. Elfstrom identifies two main approaches to the issue. On the one hand, some international ethicists argue that the moral responsibility to help others is not restrained with the distance (to the location) or the nationality of those to be protected.[489] On the other hand, some others

> "believe that our responsibilities to our neighbours or fellow countrymen greatly overweigh any obligations we have to human beings in general. In fact, many hold the position that we have nearly no obligation to humanity as a whole, and they would argue that the basic assumptions of the practice of international ethics are mistaken."[490]

Whether towards whole humanity or not, the assumption of a moral responsibility to undertake humanitarian interventions also requires risking the lives of the intervening states' soldiers. In this regard, solidarists argue that in extraordinary cases of humanitarian catastrophe, it is a moral necessity that "state leaders should accept

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[488] Coppieters and Fotion 2008, 44.
[489] "Some international ethicists believe that we should accept [the assumption that] our moral responsibilities to assist other human beings and avoid harming them are not erased if they live far away, reside in a different nation, or have no personal ties to us." (Elfstrom 1998, 4).
[490] Elfstrom 1998, 4.

the risk of casualties to end human rights abuses."[491] Thus, "solidarists' conception of responsibility in statecraft [...] demands that state leaders override their *primary* responsibility not to place citizens in danger and make the agonizing decision that saving the lives of civilians beyond their own borders requires risking the lives of those who serve in the armed forces."[492] Extreme statists argue the contrary. For instance, on the US intervention in Somalia Samuel P. Huntington posits that "it is morally unjustifiable and politically indefensible that members of the [US] armed forces should be killed to prevent Somalis from killing one another."[493]

From these opposing points of view it can be inferred that ethicists also do have different understandings of moral obligations where they prioritise one obligation over the other. Such difference is also reflected in the interaction between interests and morality in policy-making.[494] For example,

> [t]he essence of realist ethics[495] is that political leaders have an overriding moral obligation to advance the

[491] Wheeler 2000, 50.
[492] Wheeler 2000, 51.
[493] Samuel P. Huntington quoted in Wheeler 2000, 31.
[494] A similar dillema was prevalent in the case of Rwanda. "At the time of Habyarimana's death, there were 2,500 UN peacekeepers stationed in Rwanda as part of the UN Assistance Mission in Rwanda (UNAMIR), a lightly armed peacekeeping mission designed to monitor the Arusha Accords, which had been signed the previous August. After 10 Belgian troops assigned to guard the prime minister were killed and mutilated on April 7, Belgium stated its intention to withdraw its 440 troops from UNAMIR" (ICISS 2001b, 97-8).
[495] Wesley summarises the three key principles of realist ethics as follows: "A realist system of ethics determines that just actions in international relations must align these three principles: motivation according to states' interests, justification in terms of principles of legitimate action, and validity by reference to the principles of international order" (Michael Wesley. "Towards a Realist Ethics of Intervention" *Ethics and International Affairs* 19(2) (2005): 58).

> interests of their own, bounded moral communities against the interests of other moral communities. And, of course, this moral obligation is reinforced by the logic of political representation within states. So the basic components of any realist ethics must be the consideration of the motivation for political action, based on a government's obligations to protect and advance the interests of its own constituents.[496]

According to Walzer, the right to use force in defence of others, whose sovereignty and/or territorial integrity are being violated, is not so much an act of charity as it is simply an act of necessity. Because the rights of the members of international society cannot be enforced by a police force (as in a domestic society), police powers are distributed among its members. If the rights of states, Walzer says, cannot be upheld by those states, "international society collapses into a state of war or is transformed into a universal tyranny."[497] In this regard, as the main agents in the conduct of international ethics remain to be the states, national interests continue to be a criterion in ethical foreign policy making.

Chris Brown notes that an ethical dimension to foreign policy distinguishes "between 'interest' which is associated with prosperity, and 'ethics' which is associated with 'mutual respect' and thus causing a potential conflict between an interest-based foreign policy and an ethically driven foreign policy to emerge."[498] He, however, also

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[496] Wesley 2005: 57.
[497] Coppieters and Fotion 2008, 44.
[498] Chris Brown. "Ethics, Interests and Foreign Policy" in *Ethics and Foreign Policy.* Karen E. Smith and Margot Light (eds.). (Cambridge: Cambridge University Press, 2001), 19.

argues that ethical behaviour does not mean "self-negation," but it rather is having awareness and sensitivity towards others' interests. He refuses "naked egoism,"[499] and adds:

> If being partly motivated by self-interest is sufficient to undermine any claim that a state might be behaving ethically, then states never do behave ethically, because there is always some element of self-interest involved in state action. If being partly motivated by self-interest becomes morally equivalent to being wholly motivated by self-interest, states then do indeed come to be seen as the kind of nakedly egoistic beings that virtually all ethical theories condemn.[500]

In light of such understanding, this dissertation accepts the assertion of Brown that in order to consider an act as moral, it is not required that the motives "are absolutely pure and untainted by self-interest."[501]

5.4. National Interests

Michael Wesley argues that "[c]onsiderations of interest, viability, and partiality continue to drive the pattern of

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[499] "Theories which *do* envisage a potential contradiction between the moral point of view and one's personal self-interest do not, as a rule, suggest that individuals should entirely submerge their interests in the interests of humanity; some very strict utilitarians suggest that we have no reason to treat our own interests as more compelling that those of any other human being, but they generally concede that the general good/happiness will usually be advanced if we assume that we do have such reasons. In the same way, even strict 'impartialists' and utilitarians will agree that we have at least some obligations towards our fellow citizens which are different from, go deeper than, those we have towards humanity taken as a whole – and most ethical theorists would have no difficulty in accepting that this is so" (Brown 2001, 21).

[500] Brown 2001, 23.

[501] Brown 2001, 23.

intervention."[502] From a realist point of view —according to which the international system is anarchic and composed of sovereign nation states that seek power and their national interests— humanitarian intervention is considered to be an action that may or may not be taken depending on the relative interests of the state.

The suspicion[503] towards the doctrines of humanitarian intervention and RtoP stem from such interest-based perceptions which question whether it is possible to talk about pure intentions in any act of the state or not. The answer, especially from a constructivist point of view, is "no". How one defines self-interest varies depending on the context, and in this regard anything can be defined as in the interest of the state or the international community. This is why identities matter.[504]

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[502] Wesley 2005: 55.

[503] As Stephen A. Garrett notes, "the vast majority of developing countries were once colonial appendages of the European powers, and there are understandable fears that a new writ for intervention in world affairs would simply be a disguise for these powers' manipulation of their affairs as in the past" (Stephen A. Garrett. Doing Good and Doing Well: an examination of humanitarian intervention. (Westport: Praeger Publishers, 1999), 51). Mashood Issaka posits that there is apprehension in Africa that RtoP can be used as a cover to justify acts due to the colonial history of the continent (Mashood Issaka, interview by author, New York, NY, November 06, 2008). For instance, Wafula Okumu gives the example of French interest in Chad stemming from Chad's oil resources as well as its colonial attachments (Wafula Okumu, phone interview by author, November 03, 2008).

[504] For instance, in relation to the self-interested motives, David Chandler gives the example of the "liberal peace thesis, in which he traces the ideological roots of the "responsibility to protect". He maintains that the attempt for the institutionalization of "a new international security framework which emphasizes the development of international norms and the promotion of democracy and human rights, by interventionist means if necessary, is often promoted under" this line of thought. Chandler notes that the "liberal peace thesis challenges both the Realist view that war is an inevitable result of shifting balances of power in an anarchic world, and the so-called English School approach, which emphasizes the consensual status quo framework of the UN Charter, which accords equal rights of protection to states regardless of their domestic political framework. Liberal peace

The main question in this regard is whether or not there is truly a necessity to have solely pure humanitarian motives to consider a humanitarian military intervention righteous or legitimate or moral... Such assessment should rather depend on an evaluation of the means adopted during intervention and the conduct of the act, receptivity/response of those who are suffering from the atrocities, and finally, the (positive or negative) outcomes of the intervention. Thus, it is the conduct and the outcome of the military intervention that makes the difference between a humanitarian intervention and interference in the affairs of a state.

Wheeler notes that "humanitarian considerations can play a part in motivating a government to intervene, but states will not use force unless they judge vital interests to be at stake. [...] The strength of this position is that it recognizes the reality of state interests and power; its weakness is that it makes humanitarianism dependent upon shifting geopolitical and strategic considerations."[505] In accordance with such understanding, it can be deduced that a state's decision whether to take action or not is not necessarily based on moral considerations and/or obligations.

An argument that follows from such perspective, which is also a point of consensus for the realist and pluralist schools is that, the

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theorists stress that international peace and individual rights are best advanced through cosmopolitan frameworks whereby democratic and peaceful states take a leading responsibility for ensuring the interests of common humanity" (Chandler 2004: 60).

[505] Wheeler 2000, 30.

international system lacks the universal principles for the conduct of humanitarian intervention.[506] This gap leaves room for the abuse of the doctrine by states, and thus, leads to suspicion on the part of the states that are relatively weaker compared to the others.[507] In this regard, a pluralist approach towards humanitarian intervention is even more straightforward: there is adherence to the principle of non-intervention, and therefore, in principle, humanitarian intervention is an unacceptable act.

In its classical sense realism(s) define national interest in terms of power as well as the preservation of political authority and territorial integrity of the state (access to natural resources as well as economic, military and geopolitical gains may also be included within the scope of this definition). In this regard, national security concerns constitute an important part of the understanding of national interest. E.H. Carr observes that states are "continually

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[506] Ramsbotham and Woodhouse 1996, 59.

[507] Chris Brown notes that "many weaker states cling to a strict definition of the principle of non-intervention because they are aware that any kind of intervention, humanitarian or not, reflects power as well as moral principle" (Brown 2001, 26). For instance, "D'Escoto, a former priest who served as foreign minister under the leftist Sandinista regime from 1979 to 1990, immediately echoed the suspicions of some developing countries about humanitarian intervention[:] 'Recent and painful memories related to the legacy of colonialism, give developing countries strong reasons to fear that laudable motives can end-up being misused, once more, to justify arbitrary and selective interventions against the weakest states [...] We must take into account the prevailing lack of trust from most of the developing countries when it comes to the use of force for humanitarian reasons'" (Gerard Aziakou (AFP). UN debates responsibility to protect threatened populations. July 23, 2009 (Retrieved from: http://www.google.com/hostednews/afp/article/ALeqM5jU BFUN A723tsQokBAIMj-KcEYYug (accessed May 8, 2010)).

preoccupied with the problem of their own security."[508] In line with such concern, a state may opt for undertaking a humanitarian intervention in case this serves for its security interests. For instance, an influx of excess number of refugees and internally displaced persons (IDPs) resulting from mass atrocities being conducted within a country creates security concerns for the neighbouring states, and thus may be considered as a reason to conduct an intervention.[509] Wesley notes that "every humanitarian intervention that has occurred since India's invasion of East Pakistan in 1971 has been justified primarily not by humanitarian concern, but by reference to the international destabilization caused by the conflict or its humanitarian impact."[510]

As Malik and Dorman assess, coercive action continues to be a means of statecraft serving for states pursuit of their national interests.[511] Likewise, Martha Finnemore notes:

> Traditional security scholars have struggled to understand the nature of "humanitarianism" as an interest, often with the result that they simply discount it and emphasize other possible motivations for

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[508] Edward Hallett Carr. The Twenty Years' Crisis, 1919-1939: an introduction to the study of International Relations. (London: Macmillan and Company, 2001), 159.

[509] For example, in the Security Council session that convened upon India's intervention in East Pakistan, India presented its main justification as an act of self-defence due to threats to its national security. The Indian claim was that "the influx of 10 million refugees amounted to 'refugee aggression' and represented such an intolerable burden that it constituted a kind of 'constructive' attack" (ICISS 2001b, 54-55).

[510] Wesley 2005: 65.

[511] Shahin P. Malik, and Andrew M. Dorman. "United Nations and Military Intervention" in *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention.* Dorman and Otte (eds.) (Great Britain: Dartmouth, 1995), 163.

> intervention. In these analyses, the intervention in Somalia is explained as an effort to export US values, intervention in Haiti was about refugees, interventions in Bosnia and Kosovo are explained by the need to protect NATO's credibility and maintain stability in Europe. Humanitarianism was only window-dressing in every case.[512]

Finnemore finds such assertions of neorealist and neoliberal scholars goals parsimonious. In these, all states "are assumed to want some combination of power, security, and wealth."[513] Nevertheless, from a constructivist point of view, interests are not simply pre-given and unchanging, but rather they are socially constructed through interaction. Therefore, they are affected/shaped also by international norms as well as under effect of logic of appropriateness.[514]

"The normative context changes over time, and as internationally held norms and values change, they create coordinated shifts in state interests and behaviour across the system."[515] Finnemore claims "that states are socialised to accept new norms, values, and perceptions of interest by international organizations."[516] From a realist point of view, also abiding by international law can be considered to be in the interest of the state. Hedley Bull, in response to this, finds it more unexpected "that states 'so often judge it in their interests to conform to it'," since

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[512] Michael Mandelbaum and Richard Haas quoted in Finnemore 2000, 1.
[513] Finnemore 1996, 1.
[514] That is to say: "normative context influences the behaviour of decisionmakers and of mass publics who may choose and constrain those decisionmakers" (Finnemore 1996, 5).
[515] Finnemore 1996, 2.
[516] Finnemore 1996, 5.

international law fundamentally has a restraining and/or constraining impact on state behaviour.[517] Wheeler posits that

> realists would conceive of international society in that they would argue that governments pursue their interests while paying lip service to the rules. State leaders recognize that they have to justify their actions in terms of the rules, but this owes nothing to a normative commitment to the rules and everything being seen to play the game so as to avoid moral censure and sanctions.[518]

Furthermore, conformance may come to serve the national interests of states not only because it provides a more secure international environment[519] but also the imposition of rules and norms may enable control over the acts of other states or the ability to punish/respond to unwanted behaviour on a legitimate/legal basis.

In view of this, a constructivist approach enables several factors influential in decision-making (and consequently in state action) to be explained as a part of national interest. The spreading of certain ideologies and principles (such as imperialism,[520] liberalism,[521] democracy,[522] and human rights[523]), or the

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517 Wheeler 2000, 24.
518 Wheeler 2000, 23.
519 "Careful realists have always recognized that the "id" of state self-interest must conform to a "superego" of general normative principles of state behaviour in order for the state to function effectively and avoid destruction" (Wesley 2005: 57).
520 Some humanitarian organizations and peace groups belong to the "humanitarian peace" strand in terms of their approach towards humanitarian interventions. As Kaldor observes, "[t]hey distrust US-led interventions because they fear a new form of Western imperialism; defending human rights becomes a new 'colonizing enterprise'. They do not believe that governments, whose job is to protect the 'national interest', can act for 'noble purposes'" (Kaldor 2008, 58).
521 Concerning the interventions of the 19th century, Finnemore notes that "Liberals of a more classical and Kantian type might argue that these interventions were

improvement of the reputation and representation of a state can be included in this list of probable factors.

As ideologies, reputation and representation, which are parts of the identity of the state, interests too can be considered as a by-product of identity. An example of this can be seen in the Jon Western's observation where he notes:

> Conventional arguments suggest that the CNN effect compelled the president to act in Somalia—that vivid images of starving children provoked a sense of moral outrage within the American populace. Among the three major U.S. television networks, however, Somalia was mentioned in only fifteen news stories in 1992 until Bush's August decision to begin the airlift, and nearly half of those 'showed only fleeting glimpses of Somalia's plight' within the context of other stories. [...] The evidence suggests that Bush's policy shift on Somalia came in response to the increasing pressure to take action and to the political backlash on Bosnia that occurred on the eve of the Republican National Convention. Scowcroft recalls, "It [the Bosnian camp issue] probably did have a significant influence on us. We did not want to portray the administration as wholly flint-hearted real-politik, and an

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motivated by an interest in promoting democracy and liberal values" (Finnemore 2003, 56).

[522] Taking the idea of democratisation as a pro-interventionist drive, Wesley analyses that: "Democratization was seen not only as being in the interests of those who lived in autocracies, but also as a positive development for global stability, because it promised to reduce the number of dictators, who were seen as less trustworthy international partners and less inclined to respect international norms" (Wesley 2005: 62). In this regard, he concludes: "The appeal to the political liberties of subject peoples provided ample justification" (Wesley 2005: 62). Arguing against the w[Nevertheless, h]ow many democracies there are to be in a given area is for the civilians themselves to decide, not the intervening actors. Facilitating the emergence of a democracy is quite different to imposing a democratic form on an unwilling people" (Frost in *Ethics and Foreign Policy*, 2001, 53).

[523] Margot Light identifies that "respect for human rights is the hallmark of a democratic society. [...] A major objective of a foreign policy that is informed by ethics is, therefore, the institution or renewal of democracy. Promoting human rights is a relatively recent foreign policy goal. Using force for humanitarian purposes is older. Exporting democracy predates both" (Margot Light. "Exporting Democracy" in *Ethics and Foreign Policy*. Karen E. Smith and Margot Light (eds.), (Cambridge: Cambridge University Press, 2001), 75).

> airlift in Somalia was a lot cheaper [than intervention in Bosnia] to demonstrate that we had a heart."[524]

In view of this, humanitarian interventions while serving their ideal purpose of stopping atrocities against humanity, in the meantime may be (fundamentally) serving to states' national interests in different ways.

Nevertheless, states' understandings of interests are not unchanging either. In her account of nineteenth century cases, Finnemore reveals that only Christians of white ancestry were considered in the interest of Western states, and thus only they were the subjects of the humanitarian action. In this regard, religion and race were the main determinants in defining who was "human". Contemporarily, non-Christian and non-white people are also included within the scope of humanitarian interventions.[525] Moreover, humanitarian interventions are no longer undertaken for the purpose of the protection of the nationals of the intervening states who are residing in the territory of the state that is committing the atrocities against humanity or inhuman treatments on a massive scale. A forcible action directed towards such populations is rather evaluated as an act of self-defence. Following from this, it can be argued that the interventions have become humanitarian for all without exception.

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[524] Jon Western. "Sources of Humanitarian Intervention: beliefs, information, and advocacy in the U.S. decisions on Somalia and Bosnia" *International Security* 26(4) (2002): 130.

[525] Finnemore 2003, 83.

Secondly, the multilateral character[526] of intervention and the involvement of mass publics[527] were among the features that were becoming a part of the pattern. Although unilateral interventions were not exempt from the scene, there was at least "multilateral consultation". At that period, interventions took place not necessarily out of purely humanitarian considerations, which actually provided justification for use of force, but also strong geostrategic reasons came forth.[528] For the nineteenth century states, humanitarian concerns did not necessitate action when their specific interests were at stake or when these were not concerned. States' individual interests or *realpolitik* seemed to be above all humanitarian issues and moral considerations unless the humanitarian action would provide the justification for an act of a state. Accordingly, Finnemore concludes: "The role of humanitarian claims in these cases thus seems to be constitutive and permissive rather than determinative."[529] She also "argues that contemporary intervention norms contain powerful contradictions that make 'success' difficult to achieve, not for material or logistical reasons but for normative

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[526] "The multilateral character of the intervention was different, however, in that there was multilateral consultation and agreement on the intervention plan but execution was essentially unilateral" (Finnemore 2003, 61-2).
[527] "Not only did public opinion influence policy making in a diffuse way, but publics were organized transnationally in ways that strongly foreshadow humanitarian activity by nongovernmental organizations (NGOs) in the late twentieth century" (Finnemore 2003, 60).
[528] Finnemore 2003, 58.
[529] Finnemore 2003, 65.

ones."[530] In this respect, contemporary multilateralism[531] in humanitarian interventions is not only strategic as in the nineteenth century but also highly political and normative.[532]

Based on these observations,[533] Finnemore posits that states' interests and incentives have been going through a social construction process as a result of "state practice and evolution of shared norms through which states act."[534] A major criticism against mainstream theories that follows from this is that realist and neoliberal accounts do not question the sources and/or reasons of incentives and interests. In this vein, although national interest alongside security concerns should never be discarded as factors leading states to undertake interventions, basing the nature of humanitarian intervention purely on this assumption is prone to be oversimplistic and misleading. This sort of thinking also takes state behaviour as unchanging, and disregards the role of the international community as well as international norms in influencing state behaviour. Such an account (based on geostrategic and economic

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[530] Finnemore 2003, 54.
[531] More recent cases of humanitarian intervention, especially since 1989, have occurred under the auspices of international organizations, and in most cases the UN Charter constituted the normative basis for action (Finnemore 2003, 78).
[532] Finnemore 2003, 81.
[533] In sum, following from Finnemore's conclusions in *The Purpose of Intervention*, the three factors that have changed since the nineteenth century can be identified as follows: the understanding of who is human and who can claim humanitarian intervention; the manner of intervention (e.g. unilateral and multilateral); and finally, military objectives and what "success" comprises of (Finnemore 2003, 53).
[534] Finnemore 2003, 83.

importance) falls short in providing a full-scale rationale for forcible humanitarian action.

5.5. The Question of Inaction

Lessons from history reveal that in general it is a combination of motivations which affect the behaviour of the international community. In this vein, while arguing that the international community is influenced by moral motivations, this dissertation draws attention to two issues in order to explain cases of inaction where there is an obvious moral necessity to react.

Three main factors and their subsets were identified in Figure 2. In this general picture, two elements that were not represented are capacity and capability.[535] The reason is that, these two are not considered to be positive drives for the conduct of humanitarian interventions but rather can be labelled as "enabling factors" and/or "elements of success". As they are not considered as motives for undertaking action, they are not included in the main set of factors. Furthermore, the lack of one or both of these elements does not necessitate that an intervention will not, or cannot be undertaken. Nevertheless, such absence is likely to affect the outcome, i.e. the success of the action, and also can be problematic in moral terms. In this regard, capacity and capability become the two key elements

[535] Within the international relations literature, capacity and capability are generally neglected to be mentioned in the analysis of humanitarian interventions.

either leading to the success[536] of humanitarian interventions or enabling their realization.[537] An example in this regard can be seen as the Rwandan case. 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.[538]

In the light of this, in counter point to the theoretical approaches arguing for action or inaction on the basis of self-interested motives, this dissertation argues that capacity and capability issues matter, and need to be taken into consideration among other considerations.

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[536] Success can be defined as stopping the mass atrocities without causing collateral damage as well as the improvement of the conditions in comparison to the pre-intervention case.

[537] That is to say, it is only if the intervening states have the capability and capacity to undertake a humanitarian intervention so that the action can take place successfully. Otherwise, it is highly likely for an intervention to fail. For instance, the failure in Somalia led to reconsideration within the UN of the criteria for conducting peacekeeping operation. The concern to avert a failure was a determining factor in the reluctance to intervene in the case of Rwanda (Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (USA: Cornell University Press, 2003), 23). Later on, certain criteria were adopted to regulate the establishment of peacekeeping forces, (for further details, see Appendix A). Such concern also signals that states are aware of a moral responsibility to undertake successful humanitarian interventions.

[538] UN Document S/1999/1257 (December 15, 1999), 3.

CHAPTER 6

UPHOLDING THE RESPONSIBILITY: RTOP IN ACTION?

> As the sociologist Max Weber suggested, violence is a part of what defines the state. A state is an organization that claims rights to exercise particular kinds of violence to prevent others from doing so. States claim to control the legitimate use of force. As a matter of historical record, 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*.[539]

As underlined by Shaw, states (or governments) are prone to be perpetrators of mass atrocities against their populations. The RtoP doctrine aims to address and/or halt such conscious acts of violence. As argued in the previous chapter, the unanimous adoption of paragraphs 138 and 139 of the 2005 World Summit Outcome Document setting the scope of RtoP norm, and later, the debates in the General Assembly following the 2009 Report of the Secretary-General on the implementation of RtoP signal that states assume a moral responsibility to react in cases of severe violations of human rights.

In this vein, the main question that this chapter seeks to answer through a brief study of recent cases is, to what extent has RtoP been embraced and taken effect since 2005? As two leading institutions focusing on the RtoP norm, the Global Centre for the

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[539] Martin Shaw. War and Genocide: organized killing in modern society (Great Britain: Polity, 2003), 58.

Responsibility to Protect and the International Coalition for the Responsibility to Protect draw attention to certain situations to be considered within the framework of the norm as established by paragraphs 138 and 139. As shown in Table 1, in total, twelve cases are mentioned and/or under focus.

Table 1. Cases since 2006 considered for evaluation within the RtoP framework.

		Global Centre for the Responsibility to Protect			International Coalition for the Responsibility to Protect		
		Looks at?	Refers to ... as an **RtoP** case	Invokes/ invoked **RtoP**?	Looks at?	Refers to ... as an **RtoP** case	Invokes/ invoked RtoP?
Populations in focus	DRC	✓	✓	✓	✓	✓	✓
	Guinea	✓	✓	✓	✓	✓	✓
	Kenya	✓	✓	✓	✓	✓	✓
	Kyrgyzstan	✓	✓	✓	✓	✓	✓
	Myanmar	✓	✓	✓	✓	✓	?
	Nigeria	✓	✓	✓	✓	✓	✓
	Sri Lanka	✓	✓	✓	✓	✓	✓
	Sudan	✓	✓	✓	✓	✓	✓
	Zimbabwe	✗	✗	✗	✓	✓	tbm
	Gaza	✗	✗	✗	✓	?	?
	Georgia	✗	✗	✗	✓	✗	✗
	Somalia	✗	✗	✗	✓	?	tbm

Legend of symbols:
✓ yes **?:** unclear/not stated
✗ no **tbm:** the case is to be monitored

Despite the fact that the two institutions are partners, there are differences in their consideration of the cases, (which are to be revealed in the case analyses). Based on such general overview of

practice, some related questions to be addressed will be as follows: As raised during the debates in the General Assembly in 2009, have the fears of states regarding a potential misuse/abuse of the RtoP norm been realised since 2005? Have there been examples of timely implementation of the RtoP norm? Have the members of the UN been fulfilling their assumed responsibility to protect?

6.1. RtoP in Action: Prevention and timely response

Concerning the practice of the RtoP norm, two main cases come to the fore as successful examples of the norm's implementation in a timely manner. In this vein, Kenya and Guinea constitute the focuses of this section.

a. Kenya

In 2005, along with other Member States of the General Assembly, the Kenyan State committed itself to uphold its "responsibility to protect," but failed to do so in December 2007 when violence erupted in the aftermath of the elections. This crisis attracted international community's attention, first and foremost of the AU, and led to the invocation as well as successful implementation of the RtoP norm[540] through the preventive measures adopted under Pillar Two. The AU initiative to solve the crisis

[540] Margaret J. McKelvey notes that success was achieved through the high-level visits, invocation of the RtoP norm, mediation, and by conveying "the world is watching you" message (interview by author, Washington D.C., October 17, 2008).

comprised of mediation efforts by a group of African mediators led by Kofi Annan.[541]

The EU and individual states as well as the UN supported the mediation process.[542] For instance, the Security Council made clear its attitude regarding the matter with the February 6, 2008 Presidential Statement in which it emphasised that

> the only solution to the crisis lies through dialogue, negotiation and compromise and strongly urges Kenya's political leaders to foster reconciliation and to elaborate and implement the actions agreed to on 1 February without delay, including by meeting their responsibility to engage fully in finding a sustainable political solution and taking action to end immediately violence, including ethnically motivated attacks, dismantle armed gangs, improve the humanitarian situation and restore human rights.[543]

Wafula Okumu highlights that Kenya became the example of how RtoP can work, since peace was restored in the country before the situation went out of hand.[544] Ban Ki-Moon considers the 2008 response as "the first time both regional actors and the United Nations viewed the crisis in part from the perspective of the

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[541] Kofi Annan stated: "I saw the crisis in the RtoP prism with a Kenyan government unable to contain the situation or protect its people. []... I knew that if the international community did not intervene, things would go hopelessly wrong. The problem is when we say 'intervention,' people think military, when in fact that's a last resort. Kenya is a successful example of RtoP at work." (Roger Cohen, "How Annan rescued Kenya from genocide." *The Observer*, Published on 27 August 2008,
http://www.observer.ug/index.php?option=com_content&view=article&catid=34:news&id=918:how-annan-rescued-kenya-from-genocide&Itemid=59 (accessed June 19, 2010).
[542] ICRtoP, "Crisis in Kenya," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya (accessed September 24, 2010).
[543] UN Security Council, "Statement by the President of the Security Council," S/PRST/2008/4, February 6, 2008.
[544] Wafula Okumu, phone interview by author, November 03, 2008.

responsibility to protect."[545] Similarly, Desmond Tutu highlights that the international community acted very promptly compared to the past cases in any part of the world. The engagement of state leaders from Africa through their services as mediators proved vital. In addition, 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."[546]

All in all, the case of Kenya became an example of a successful application of the RtoP norm at the level of Pillar Two. In general terms, the international community's rapid response is acknowledged as "a model of diplomatic action under the Responsibility to Protect."[547] Concerning the current state of affairs, the Global Centre underlines that the "international community, in keeping with the responsibility to protect, must work with the government of Kenya to take the necessary measures today to avert crimes tomorrow."[548]

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[545] UN General Assembly, 63rd Session, Follow-up to the Outcome of the Millennium Summit: Implementing the responsibility to protect, Report of the Secretary-General, 12 January 2009, para. 51, p. 23.

[546] Desmond Tutu, "Taking the Responsibility to Protect," *The New York Times,* Published 9 November 2008, http://www.nytimes.com/2008/02/19/opinion/19iht-edtutu.1.10186157.html (accessed August 20, 2010).

[547] ICRtoP, "Crisis in Kenya," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya (accessed September 24, 2010).

[548] The Global Centre for the Responsibility to Protect, "Kenya," http://globalr2p.org/countrywork/country.php?country=157 (accessed September 24, 2010).

b. Guinea

The international response to the situation in Guinea is considered a rapid and successful one conducted in line with the RtoP norm. The Global Centre, regarding the conflict that escalated with the events on 28 September 2009 notes: "at the time, the potential for a rapid deterioration in Guinea that could result in mass atrocities and conflict was real."[549] "Camara and his cabinet, the National Council for Democracy and Development (CNDD), failed to uphold this responsibility. […] Whether the junta was unable (as Camara asserts) or unwilling (as the evidence suggests) to act, the junta failed to uphold its responsibility to protect the protestors."[550] Different from other cases, the international community quickly responded to the case in an organised and decisive manner.[551]

> Much of this response has focused on placing pressure on the junta to adhere to its prior commitment—initially welcomed by the Guinean public—to serve as a temporary caretaker of the Guinean state before handing over power to a civilian government following democratic elections. The impact of the response has benefited from strong regional leadership, harmonization between regional and international efforts, attention from the Security Council, and the use

549 The Global Centre for the Responsibility to Protect, "Guinea," http://globalr2p.org/countrywork/country.php?country=368 (accessed September 23, 2010).

550 The Global Centre for the Responsibility to Protect, "Policy Brief," 1.

551 The Global Centre for the Responsibility to Protect, "Policy Brief: The International Response to 28 September 2009 Massacre in Guinea and the Responsibility to Protect," 1, http://globalr2p.org/countrywork/country.php?country=368 (accessed September 20, 2010).

> of targeted sanctions, embargos, and threats of more coercive measures.[552]

The most active regional actor was the Economic Community of West African States (ECOWAS). It immediately reacted to the situation and urged for the establishment of an international committee of inquiry while "enacting an arms embargo against Conakry, and appointing a regionally recognized arbitrator to mediate disputes between the junta and its opposition."[553] The AU played a less prominent role, and mainly imposed sanctions as a reaction.[554]

Responses from different international bodies have been similar in character.[555]

> On the day of the massacre, United Nation's Secretary-General Ban Ki-moon issued a statement of condemnation, and urged Guinean security forces to apply maximum restraint in upholding the rule of law. Shortly thereafter, the Secretary-General exercised his Charter powers to create an International Commission

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[552] The Global Centre for the Responsibility to Protect, "Policy Brief," 2.
[553] The Global Centre for the Responsibility to Protect, "Policy Brief," 2-3.
[554] "Nearly a month after the violence of 28 September, the AU's Peace and Security Council implemented targeted sanctions against individual members of the regime, freezing assets, denying travel visas, and restricting freedom of movement within the union" (The Global Centre for the Responsibility to Protect, "Policy Brief," 3).
[555] "French Foreign Minister Bernard Kouchner called for the junta to relinquish power, the establishment of a commission of inquiry and the deployment of international peacekeepers. United States Secretary of State Hillary Clinton echoed the position of her French counterpart. [...] The United States also implemented targeted travel sanctions, suspended assistance with the exception of humanitarian aid, endorsed the ECOWAS arms embargo and announced plans to collaborate with the AU in developing a targeted sanctions regime against the junta. For its part, the European Union (EU) has rejected an economic investment proposal for Guinea, adopted an arms embargo against the country [on 27 October 2009], and targeted its own economic and travel sanctions against individual junta members" (The Global Centre for the Responsibility to Protect, "Policy Brief," 3).

> of Inquiry, [to which the] junta agreed to participate […] while also carrying out their own investigation.[556]

It should be noted that Libya (which was the then AU President) issued a statement declaring its opposition to a UN investigation of the mass atrocities in Guinea considering this a breach of state sovereignty.[557] Following the 20 December report to the Secretary-General about the referral of the case to ICC[558] and her visit to Conakry in February 2010, the Deputy Chief Prosecutor of the ICC Fatou Bensouda "reported that crimes against humanity had taken place and that either the ICC or the Guinean government must try those bearing the responsibility."[559]

In general terms, the swift response of the international community proved successful in halting the atrocities through the implementation of the RtoP norm at the level of Pillar Two. Nevertheless, the Global Centre notes that risk of future atrocities continues in case of the deterioration[560] of the current situation.[561] Thus, monitoring and assessment of the root causes seems as a necessity to avoid future problems.

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556 The Global Centre for the Responsibility to Protect, "Policy Brief," 3.
557 The Global Centre for the Responsibility to Protect, "Policy Brief," 3.
558 The Global Centre for the Responsibility to Protect, "Policy Brief," 3.
559 ICRtoP, "Crisis in Guinea," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea (accessed September 23, 2010). For the full text of the report, see http://www.icc-cpi.int/NR/rdonlyres/C200208B-5375-41B2-8967-FFFC05528E34/281566/ FatousstatementGuinesENG.pdf.
560 Currently, "the junta—which seized power in a 23 December 2008 coup following the death of President Lansa Conte—bears the responsibility to protect" (The Global Centre for the Responsibility to Protect, "Policy Brief," 1).
561 The Global Centre for the Responsibility to Protect, "Policy Brief," 2.

6.2. Decidedness vs. Hesitation

Timely response or action within the framework of the RtoP norm to humanitarian catastrophes has not always been the case in the aftermath of the World Summit Outcome Document. Aside from successful examples of invocation and implementation of the norm, there have also been situations where the international community has been hesitant to display decisive RtoP response.

a. Democratic Republic of Congo

Among the examples of a failure to timely implement the RtoP norm comes the situation in DRC. Drawing attention to the ongoing conflict since 1996, the Global Centre for the Responsibility to Protect argues that the Government of the DRC as the sovereign of the state has been failing to uphold its responsibility to protect towards its citizens, and that the responsibility now lies with the international community.[562] Furthermore, it is posited that "[h]uman rights violations currently committed by the parties in conflict in North Kivu have clearly crossed the thresholds laid out by the responsibility to protect norm," and the ongoing situation bears the risk of becoming a threat to peace and security in the region.[563]

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562 The Global Centre for the Responsibility to Protect, "DRC," http://globalr2p.org/countrywork/country.php?country=7 (accessed October 01, 2010).

563 The Global Centre for the Responsibility to Protect, "Open Letter to the UN Security Council Concerning the Situation in DRC," http://globalr2p.org/media/pdf/SCOpenLetDRC.pdf (accessed October 01, 2010).

There has been UN presence through the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) mainly in eastern Congo under a Chapter VII mandate between 30 November 1999 and 30 June 2010.[564] MONUC has in general proved inefficient in achieving its goals due to its small size, and thus, by the end of 2008 the Special Representative of the Secretary-General had already asked for reinforcements.[565]

The Global Centre underlines:

> It is essential that the Council use the full range of applicable measures at its disposal. The current crisis stems from the Security Council's past political failures to tackle genocide in Rwanda and the ensuing conflicts in the eastern DRC and wider Great Lakes region. This includes a failure to ensure the implementation of the November 2007 Nairobi declaration between the governments of DRC and Rwanda, and the January 2008 Goma agreement between the parties to the conflicts in North Kivu.[566]

The 23 July 2007 Presidential Statement of the Security Council (S/PRST/2007/28)[567] while indicating grave concern about the "deteriorating security situation in the east of the DRC" also called

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[564] As of 30 April 2010, the strength of the force has grown up to 20,819 uniformed personnel, (18,884 troops; 712 military observers; 1,223 police). (United Nations Peacekeeping, "MONUC Facts and Figures," http://157.150.195.10/en/peacekeeping/missions/monuc/facts.shtml (accessed October 05, 2010)).

[565] The Global Centre for the Responsibility to Protect, "Open Letter to the UN Security Council Concerning the Situation in DRC," http://globalr2p.org/media/pdf/SCOpenLetDRC.pdf (accessed October 01, 2010).

[566] The Global Centre for the Responsibility to Protect, "Open Letter to the UN Security Council Concerning the Situation in DRC," http://globalr2p.org/media/pdf/SCOpenLetDRC.pdf (accessed October 01, 2010).

[567] Security Council Report Organisation, "Statement by the President of the Security Council," http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC SPRST2007 28.pdf (accessed October 03, 2010).

for a resolution of the dispute through diplomatic and political measures.[568]

In its resolutions 1756 (2007) and 1771 (2007), the Security Council invoked RtoP neither in a direct nor in an indirect manner. There was no reference to the RtoP norm by name or through mentioning paragraphs 138 and 139 of the World Summit Outcome Document. Nevertheless, in both documents the Council considered the situation a continuing "threat to international peace and security in the region." By December 2008, the Security Council enlarged the 2004 sanctions on the DRC. Furthermore, the UN Human Rights Council in its resolution urged the Government to take all the necessary steps to ensure the security of its population towards which it had the primary responsibility, and to halt the breaches of human rights.[569]

The ongoing violence attracted regional attention too. Nevertheless, RtoP was not explicitly invoked as a part of the international and/or regional response to the case.[570] Moreover, civil

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[568] Security Council Report, "Democratic Republic of the Congo Historical Chronology," http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/ b.2880409/ (accessed September 29, 2010).

[569] "Amnesty International, concerned by the lack of action following the resolution passed by the Human Rights Council in December 2008, urged the UN to do more to protect the civilians and end impunity in the DRC." (ICRtoP, "Crisis in DRC," http://www.responsibility toprotect.org/index.php/crises/crisis-in-drc (accessed October 05, 2010)).

[570] "On 7 November 2008, in response to the surge in violence at that time, Great Lakes Regional leaders, the AU and UN met in Nairobi. They called for a ceasefire in North Kivu and the establishment of a humanitarian corridor to address the humanitarian crisis, called on the UN Secretary-General to strengthen the mandate of MONUC and provide adequate resources for the force. They also considered the

society groups have called for “a political solution to the conflict” and acknowledged that MONUC has been failing to secure the lives of civilians.[571] Nevertheless, the Global Centre evaluates that the “international community has stepped up to fulfil their responsibility to react and rebuild; however, attempts at alleviating the humanitarian crisis and to implement a peace process in the DRC have been progressing slowly.”[572]

b. Kyrgyzstan

After the Government was overthrown in April, the south of the country faced the challenge of destabilisation as a conflict between the Kyrgyz and Uzbeks ignited in the region. In this vein, Kyrgyzstan has been a case, for which the Global Centre urges the UN Member States to take immediate action in response to the ongoing

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possibility of sending peacekeepers to North Kivu, and established a mediation process and mechanism that involves all the regional leaders and a team of facilitators. While the UN did strengthen and reinforce the mandate of the MONUC by UN resolution 1856 on 22 December 2008 to emphasize the focus on the protection of civilians, the calls for a ceasefire, humanitarian corridor and mediation process were unheeded.
On 20 December 2008, the African Union Peace and Security Council condemned the atrocities and urged the UN Security Council to strengthen the mandate of MONUC. However, the AU, SADC or the leaders of the Great Lake regions have made little progress; humanitarian efforts decided upon are rarely translated into actual action; ceasefires had no lasting hold.” (Coalition for the Responsibility to Protect, “Crisis in DRC,” http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc (accessed October 05, 2010).

[571] “Specifically addressing accountability issues within the DRC, 11 organizations including the International Rescue Committee, CARE and the Enough Project urged the Congolese government to fulfil its obligation to protect civilians from human rights abuses, particularly by holding its own commanders and troops accountable for human rights abuses, especially with regards to sexual attacks in eastern DRC” (ICRtoP, “Crisis in DRC,” http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc (accessed October 05, 2010)).

[572] ICRtoP, “Crisis in DRC,” http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc (accessed October 05, 2010).

violence[573] since 10 June 2010. As the current official authority of the Kyrgyz State, the Interim Government has recognised its failure to fulfil its responsibility to protect towards its population. Furthermore, it has asked for assistance from Russia and requested for deployment of troops to be able to take the violence under control. Nevertheless, Russia has not seemed inclined to take any decisive action.[574] It simply

> has deployed just over 100 troops to protect a Russian airbase and its personnel, but has ruled out quelling the violence by leading a regional peacekeeping mission through the Collective Security Treaty Organization (CSTO) of former Soviet states. Instead, Russia has agreed to send helicopters and other transport vehicles to increase the capacity of the interim government in Kyrgyzstan to deal with the violence."[575]

Soon after the Interim Government withdrew its request for help from Russia claiming that the situation was normalising, on June 24 it

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[573] "The attacks, carried out by groups of armed men, appear, as the UN High Commissioner for Human Rights Navi Pillay noted, premeditated and targeted against ethnic Uzbeks. These armed groups continue to terrorize ethnic Uzbek communities unimpeded as there is no robust military or police presence to deter them" (The Global Centre for the Responsibility to Protect, "Kyrgyzstan," http://globalr2p.org/countrywork/country.php?country=398 (accessed September 26, 2010)).

[574] "Nor has the regional security organization, the Collective Security Treaty Organization (CSTO), offered military assistance. The United States, the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), the North Atlantic Treaty Organization (NATO), and the UN have similarly failed to offer the military or police assistance desperately needed to provide immediate protection to the people at risk" (The Global Centre for the Responsibility to Protect, "Kyrgyzstan," http://globalr2p.org/countrywork/country.php?country=398 (accessed September, 26 2010).

[575] ICRtoP, "Crisis in Kyrgyzstan," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kyrgyzstan (accessed September 26, 2010).

turned to the OSCE for the deployment of "an international policing force to help restore law and order in the south."[576]

Francis Deng as the Special Adviser on the Prevention of Genocide and Edward Luck as the Special Adviser on the Responsibility to Protect of the UN Secretary-General in mid-June stated that the ongoing violence in Kyrgyzstan which so far has led to "mass displacement of Uzbeks from South Kyrgyzstan, could amount to ethnic cleansing." In this regard, on the basis of Paragraph 138 of the Summit Outcome Document as well as the Interim Government's call for assistance, Deng and Luck urged for the implementation of the RtoP norm for timely response to the situation before the crisis escalates further and also becomes a threat to the peace and security in the region.[577]

During the conflict, Kyrgyzstan received international[578] and humanitarian assistance to help control the situation. Moreover, two commissions, one by the Interim Government itself and the other by an international cooperation of the EU, OSCE and the UN, were

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[576] ICRtoP, "Crisis in Kyrgyzstan," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kyrgyzstan (accessed September 26, 2010).
[577] Retrieved from http://www.un.org/preventgenocide/adviser/pdf/Statement of Special Advisers Deng and Luck on the situation in Kyrgyzstan 15 June 2010.pdf (accessed October 22, 2010).
[578] The UN had put in action the "Flash Appeal" in order to assist Kyrgyzstan. Additionally, the state has received help from friendly countries on a bilateral basis (Statement by His Excellency Mr. Ruslan Kazakbatev Minister of Foreign Affairs of the Kyrgyz Republic at the 65th Session of the United Nations General Assembly, September 27, 2010 New York, http://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/634211913991250000KG_en.pdf (accessed October 01, 2010), p. 3).

established for purposes of investigation.[579] Nevertheless, neither RtoP has been officially implemented, nor there has been international action falling within the confines of humanitarian intervention. In this regard, no decisive action was undertaken by the international community even after the Interim Government declared itself unable to fulfil its responsibility to protect.

Kyrgyz Minister of Foreign Affairs on September 27 stated that the current concern of the Interim Government is "post-conflict reconstruction," and that they are in need of the assistance promised in the donor conference in July.[580] Thus, Kyrgyzstan is still in need of the international community to step up to uphold its responsibility, this time at the level of stage three: the responsibility to rebuild.

c. Sudan

The situation in Darfur has been in the forefront as a concern for the international community since 2003. On 7 November, "the UN Office for the Coordination of Humanitarian Affairs (OCHA) warn[ed] that Darfur is facing its worst humanitarian crisis since 1988."[581] In

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[579] Statement by His Excellency Mr. Ruslan Kazakbatev Minister of Foreign Affairs of the Kyrgyz Republic at the 65th Session of the United Nations General Assembly, September 27, 2010 New York, http://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/634211913991250000KG_en.pdf (accessed October 01, 2010).

[580] Statement by His Excellency Mr. Ruslan Kazakbatev Minister of Foreign Affairs of the Kyrgyz Republic at the 65th Session of the United Nations General Assembly, September 27, 2010 New York, http://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/634211913991250000KG_en.pdf (accessed October 01, 2010), p. 3.

[581] United Nations website, UN News Centre, http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm (accessed January 10, 2011).

this regard, some have considered this a major "test case"[582] for the implementation of the so-called RtoP norm. Accordingly, first as introduced by the ICISS and then, as established by the World Summit Outcome Document of 2005, the case in general has come to be accepted as an example of a failure of the international community to put RtoP in action.[583]

The AU has been the leading regional actor active in seeking an end to the ongoing violence, most prominently through the deployment in 2004 of a peacekeeping force, namely the African Union Mission in Sudan (AMIS). In the aftermath of the establishment of RtoP within the UN framework, the Security Council in its Resolution 1706 (2006) regarding the situation in Darfur made direct references to paragraphs 138 and 139 by reaffirming their provisions. In the meanwhile, the Council considered the situation an ongoing "threat to peace and security" and repeated its condemnation of the ongoing breaches of human rights and international humanitarian law in Darfur. The Resolution also

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[582] See, for example, Cristina Badescu and Linnea Bergholm, "Responsibility to Protect and the Conflict in Darfur: The Big Let-Down," *Security Dialogue* 40(3) (2009): 287–309.

[583] "4.2 million Darfurians have been categorized as 'war affected' and entirely dependent on international assistance, 2.5 million civilians have been torn from their homes, hundreds of habitats and livelihoods have been destroyed, 240,000 refugees have been hosted by Chad and the Central African Republic, and the United Nations Office for the Coordination of Humanitarian Affairs estimates that over 400,000 people have been killed. While the government of Sudan has orchestrated a campaign of ethnic cleansing through proxy militias, world leaders with the power to stop the atrocities have failed to react to protect Darfuris due to conflicting geopolitical interests and a lack of political will." (ICRtoP, "Crisis in Darfur," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur (accessed September 20, 2010)).

attempted at the deployment of a peacekeeping force, the UN Mission in Sudan (UNMIS) in order to assist AMIS, but the Government of Sudan declined to give its consent[584] to the mission.

It was only by July 2007 that the Security Council authorised the UNMIS with Resolution 1769.[585] Prior to this, on 30 April 2007, the Council in Resolution 1755 (2007) recalled "the relevant provisions of the World Summit Outcome Document" without making an explicit reference to the RtoP norm.[586] The UN's attempts to deploy forces were also supported by the decisions of the European Union (EU) Parliament on several occasions. For instance, in its resolution on 28 September 2006, the Parliament made a direct reference to the norm of the RtoP by using the phrase "the UN 'Responsibility to Protect,'" and asserted that due to Sudan's failure to protect its population, it is "obliged to accept a UN force in line with UN Security Council Resolution 1706." Furthermore, it urged

> the UN Security Council to bring pressure to bear on the Sudanese authorities to accept the deployment of the already authorised UN Mission to Darfur, with a clear

[584] As Mashood Issaka notes, legitimate interventions can take place upon the initiation or consent of the local state. In cases where there is state collapse or failure, consent is not sought (Mashood Issaka, interview by author, New York, NY, November 06, 2008). In line with this, Wafula Okumu notes that in the case of Darfur, the Sudanese state is still functional and not failed. Nevertheless, due to its failure to protect, it needed to ask for assistance. He further argues that AU's "right to intervene" could not be invoked, since the very qualification of state failure was absent. In other words, the principle can be invoked when the state has failed and is no longer able to protect its civilian population, so that the AU steps in to protect the civilians from the catastrophic results of state failure (Wafula Okumu, phone interview by author, November 03, 2008).
[585] ICRtoP, "Crisis in Darfur," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur (accessed September 20, 2010).
[586] Available at http://www.responsibilitytoprotect.org/files/SC1755.pdf (accessed November 01, 2010)

> Chapter VII mandate and enhanced capacities given to such a mission through UN Security Council Resolution 1706.[587]

Similar points, alongside its call for the implementation of sanctions on the Government of Sudan by international actors, were raised[588] in the Resolution of 15 February 2007, in which the Parliament asked the UN to take action within the framework of RtoP due to the failure of the local government to uphold its "responsibility to protect."[589] The EU not only strongly encouraged the deployment of UNAMID throughout the processes but also physically assisted the mission at the border by the EUFOR Chad/Central African Republic (CAR) from the Chadian/CAR side.[590] Okumu notes that peripheral factors have been effective in the involvement of external partners such as China and the EU.[591]

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[587] European Parliament, *The situation in Darfur,* "European Parliament Resolution on the Situation in Darfur," (P6_TA(2006)0387), 28 September 2006, Strasbourg, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0387+0+DOC+XML+V0//EN&language=EN (accessed November 01, 2010).

[588] On the basis of the RtoP norm, the European Parliament reiterated its concerns regarding the situation in Darfur in its resolutions P6_TA(2008)0238 on 22 May 2008 and P6_TA(2009)0145 on 12 March 2009. The resolutions are available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0238+0+DOC+XML+V0//EN&language=EN, and http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0145&format=XML&language=EN (accessed November 01, 2010).

[589] European Parliament, *The situation in Darfur,* "European Parliament Resolution on the Situation in Darfur," (P6_TA(2007)0052), 15 February 2007, Strasbourg, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0052+0+DOC+XML+V0//EN (accessed November 01, 2010).

[590] Permanent Mission of France to the United Nations in New York, "Chad/Central African Republic," http://www.franceonu.org/spip.php?article3835 (accessed November 01, 2010).

[591] Wafula Okumu, phone interview by author, November 03, 2008.

Since 2003, there has been no forceful intervention in Darfur, and the Sudanese Government's consent has been prioritised over intervention despite the ongoing discussions about whether genocide has been taking place or not.[592] On 21 March 2005, the matter of Darfur was brought to the attention of the ICC, and currently four cases are being heard before the Court.[593] Hurst Hannum considers the example of Darfur a one-sided war, and argues that limited intervention was justifiable since the early days of the conflict. Nonetheless, he adds, Darfur is very hard to intervene due to its size.[594]

Additionally, Okumu argues: "not many countries in Africa are willing to take action on the grounds of genocide taking place, and the main reasons are incapability (e.g. financial burden as well as lack of right equipment and trained personnel), lack of political will, and the high risk factor."[595] In this regard, concerning the implementation of RtoP as adopted by the UN, the issue has not necessarily been lack of interest per se, but there was still the given concern about the situation due to the political dynamics, and the

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[592] Wafula Okumu notes that the AU at the time had not had the information to prove that genocide, or war crimes, or crimes against humanity have been taking place. This requires fact-finding, and the AU does not have the means for that (Wafula Okumu, phone interview by author, November 03, 2008).
[593] These are: (1) The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"); (2) *The Prosecutor v. Omar Hassan Ahmad Al Bashir; (3) The Prosecutor v. Bahar Idriss Abu Garda;* and (4) *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/).
[594] Hurst Hannum, interview by the author, March 06, 2009.
[595] Wafula Okumu, phone interview by author, November 03, 2008.

implementation of the tools of RtoP has been (too) slow to have an effective solution to the prolonged crisis.

d. Zimbabwe

The ongoing violence in Zimbabwe since 2000 by the hand of state's security forces has attracted international attention, especially in the form of condemnation from civil society groups.[596] The EU has not been silent about the crisis either. In April 2008, through the declaration of the President of the Union, it 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."[597] The EU did not invoke the RtoP norm as it did in the case of Darfur.

The International Coalition observes that the "AU has condemned the post-election violence, albeit not in a timely way, and deferred the situation to the South African Development Community (SADC)," which opted for quiet diplomacy (including mediation) as its measures of involvement, and failed to achieve a positive/effective

596 "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, "Crisis in Zimbabwe," http://www.responsibilitytoprotect. org/index.php/crises/ crisis-in-zimbabwe (accessed September, 30, 2010).
597 ICRtoP, "Crisis in Zimbabwe," http://www.responsibilitytoprotect.org/index.php /crises/crisis-in-zimbabwe, (accessed September, 30, 2010).

result.[598] The Coalition also criticises the UN for not implementing decisive measures to stop the serious breaches of human rights in the country. Nevertheless, the status of the situation as an RtoP crisis is disputed, and there does not seem to be a consensus on whether the crimes committed qualify for the implementation of measures within the RtoP framework. In this vein, while the Global Centre does not mention the situation in Zimbabwe as a focus, the International Coalition argues that it "requires further monitoring."[599]

e. Sri Lanka

Sri Lanka has been the stage of a civil war between the Government and the Liberation Tigers of Tamil Eelam (LTTE) since 1984, which has intensified by the beginning of 2009 creating a humanitarian catastrophe and came to an end by mid-2009. According to the proponents of RtoP, the mass number of deaths signalled at the failure of the Government of Sri Lanka to protect its population, and led to a call for the international community to step in.

> On 22 April 2009, [...] a joint letter by NGOs including Global Action to Prevent War, Global Centre for the Responsibility to Protect, International Crisis Group, MEDACT, Minority Rights Group, Operation USA, Tearfund and World Federalist Movement - Institute for

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598 ICRtoP, "Crisis in Zimbabwe," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-zimbabwe (accessed September, 30, 2010).

599 ICRtoP, "Crisis in Zimbabwe," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-zimbabwe (accessed September, 30, 2010).

> Global Policy, urged UN action to "protect civilians and prevent mass atrocities."[600]

Nevertheless, throughout the course of the clashes, there has been no forceful intervention on the territory of Sri Lanka. May 19, 2009 marked the end of the civil war, and three days later Ban Ki-Moon paid a visit to the country. His focus has been on three key areas: "immediate humanitarian relief, reintegration and reconstruction, and an equitable political solution."[601] During the post-conflict period, also with the support of the Non-Aligned Movement (NAM), the government of Sri Lanka rejected an international inquiry by a UN-led commission on the basis that this would constitute interference in the internal affairs of the State.[602]

All in all, in the case of Sri Lanka, forceful action within the framework of Pillar 3 of the RtoP norm would have been possible in order to halt the mass violations of human rights and humanitarian law. Nevertheless, no action was undertaken, and as the Global Centre notes, "key states —including members of the Security Council— argued that the situation was an internal matter."[603] At the

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[600] www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka (accessed September, 29, 2010).

[601] UN News Centre, "Durable political solution key to development in post-conflict Sri Lanka – Ban," http://www.un.org/apps/news/story.asp?NewsID=30904&Cr=sri+lanka&Cr1= (accessed November 23, 2010).

[602] ICRtoP, "Crisis in Sri Lanka," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka (accessed September, 29, 2010).

[603] The Global Centre for the Responsibility to Protect, "Sri Lanka," http://globalr2p.org/countrywork/country.php?country=107 (accessed September 29, 2010).

current state of affairs, the case is eligible for consideration within the confines of the "responsibility to rebuild."

f. Nigeria

Nigeria has been a scene of humanitarian atrocities since 1999 due to the clashes between its communities. The ongoing violence is accepted to reach its peak with the 7 March 2010 events, which are seen to be indications of the potential for the perpetration of crimes against humanity.[604] Nigerian NGOs

> endorsed a communiqué, which denounced the crimes and the failure of the government to protect its population, and called for an investigation of the crimes and for humanitarian assistance. The NGO signatories denounced the government for failing to prevent and punish those responsible for hate communication after it was reported that much of January 2010 violence was directed and encouraged via text messages.[605]

Thus, although legitimate authorities of the State responded to the situation, they are considered to have failed to prevent the atrocities despite the early signs.

Regarding the regional/international response, the AU and ECOWAS were criticised for not reacting to the crisis in a decisive manner. The Economist, in an article, considers Nigeria as ECOWAS's "Achilles heel." "Africa's most populous country['s …]

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[604] The Global Centre for the Responsibility to Protect, "Nigeria," http://globalr2p.org/countrywork/country.php?country=378 (accessed September 28, 2010).

[605] ICRtoP, "Crisis in Nigeria," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-nigeria (accessed September, 29, 2010).

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."[606] In this regard, it becomes problematic for the members of the Organisation to disapprove of what is going on within the territory of the Nigerian State.[607] The International Coalition argues that "[w]ithout preventive action and rapid response from the regional community, the national government is less likely to be held accountable for failing to uphold its responsibility to protect and the ongoing violence will continue."[608]

6.3. Cases of RtoP? Misapplication vs. inaction

Myanmar is a case that both the ICRtoP and the Global Centre focus on. The International Coalition additionally focuses on three situations noting that the events in Gaza, Georgia and Somalia have attracted attention from different milieus regarding whether or not these are cases requiring international response on the basis of the RtoP norm. Gaza, a crisis that resulted from a "breakdown of the

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[606] The Economist, "West Africa's Regional Club: Quietly Impressive," http://www.economist.com/node/15772983?story_id=15772983, March 25, 2010, Lagos (accessed: 23 November 2010).
[607] The Economist, "West Africa's Regional Club: Quietly Impressive," http://www.economist.com/node/15772983?story_id=15772983, March 25, 2010, Lagos (accessed: 23 November 2010).
[608] ICRtoP, "Crisis in Nigeria," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-nigeria (accessed September 28, 2010).

cease-fire and a military offensive between Israel and Hamas,"[609] mainly relates to violations of International Humanitarian Law.[610] The International Coalition while focusing on the events from 27 December 2008 on, identifies Israel as an "occupying power with the responsibility on the population of the territory." Nevertheless, the disputed status of the territory makes this case a complicated one in terms of considering it a case of RtoP concern. For this reason, the case of Gaza is not included within the scope of this dissertation.

a. Myanmar

The Global Centre argues that the "Burmese military government and armed forces, the Tatmadaw, are perpetrating gross human rights violations against ethnic and religious minorities across Burma." The crimes targeting ethnic groups of the Karen, Shan, Karenni, Rohingya and Chin are elevating to the threshold of

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[609] ICRtoP, "The Crisis in Gaza: An RtoP situation? (December 2008-January 2009)," http://www.responsibilityto protect.org/index.php/crises/178-other-rtop-concerns/2750-the-crisis-in-gaza (accessed September, 27, 2010).

[610] Human Rights Watch reporting on the case of Gaza in "Deprived and Endangered: Humanitarian Crisis in the Gaza Strip" notes: "The Israeli government has repeatedly denied that a humanitarian crisis exists. Information from international humanitarian organizations, United Nations agencies and Gaza's residents themselves starkly refute that claim. Hundreds of civilians have been killed in the fighting, a large percentage of them children. Many wounded and sick have been trapped in their homes, unable to get medical care. Corpses have been left among rubble and in destroyed homes because Israeli forces have at times denied access to medical crews. Increasing numbers are displaced or are trapped in their homes. They have nowhere to flee, caught in a warzone where no place is truly safe" (http://www.hrw.org/en/news/2009/01/12/deprived-and-endangered-humanitarian-crisis-gaza-strip (accessed September 27, 2010).

"crimes against humanity, war crimes and ethnic cleansing."[611] Therefore, the Global Centre evaluates this as an RtoP case and urges for action. Likewise, the International Coalition for the Responsibility to Protect notes that the acts by the hand of the military junta has reached a level requiring a response on the basis of the RtoP norm.[612]

In the course of the ongoing events, China has been an actor behind the curtain attempting "to mediate conversations between the Burmese government and major ceasefire groups operating along the Chinese border."[613] In the meantime, the international community within the framework of the General Assembly clearly indicated its serious concern about the "ongoing systematic violations of human rights and fundamental freedoms of the people of Myanmar."[614] In line with this, the Secretary-General has been providing good offices, and his efforts have found continued support from the Association of Southeast Asian Nations (ASEAN). Although the Security Council has not taken direct measures regarding the situation in Burma, its

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[611] The Global Centre for the Responsibility to Protect, "Myanmar," http://globalr2p.org/countrywork/country.php?country=17 (accessed September 27, 2010).

[612] "Human rights abuses by the military junta include: the pervasive use of forced labor, forced recruitment of tens of thousands of child soldiers, rampant sexual violence, extrajudicial killings, torture and the displacement of over a million Burmese people" (ICRtoP, "Crisis in Burma," http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma (accessed September 25, 2010)).

[613] The Global Centre for the Responsibility to Protect, "Policy Brief: Upholding the Responsibility to Protect in Burma/Myanmar," 16 August 2010, http://globalr2p.org/media/pdf/Upholding_the_Responsibility_to_Protect_in_Burma-Myanmar.pdf (accessed September, 25, 2010).

[614] General Assembly resolution 61/232.

serious concern was reflected in two of the statements[615] by the President of the Council. Nevertheless, in none of its resolutions and/or statements, the UN has evaluated the issue from the lens of the RtoP norm.

The International Coalition points that proponents of RtoP argue for UN action on the grounds of the following argument:

> If it can be shown that the government of Burma's actions are or will lead to crimes against humanity, the international community therefore will bear the responsibility to prevent these crimes against humanity from occurring, first through peaceful means (diplomatic, economic, political) and through the use of force only a as a last resort.[616]

Nevertheless, an action motivated under such spirit has not yet taken place. Diverging from this line of reasoning, Bernard Kouchner has invoked RtoP and urged for action on the grounds that the Burmese Government has been blocking humanitarian aid that was sent in the immediate aftermath of Cyclone Nargis which primarily affected Irrawady delta region.[617] He stated: "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 U.N. resolution which authorizes the delivery (of aid) and imposes this on

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[615] These are S/PRST/2007/37 and S/PRST/2008/13.
[616] ICRtoP, "Responsibility to Protect Engaging Civil Society," http://www. responsibilitytoprotect.org/index.php/component/content/article/1689 (accessed September 27, 2010).
[617] Claudia Parsons, "France urges U.N. council to act on Myanmar cyclone," *Reuters*, May 07, 2008, http://www.reuters.com/article/idUSL07810481 (accessed October 22, 2010).

the Burmese government."[618] Kouchner's claims have created controversy and not gained much support. At the level of states, Russia and China were among those who strongly objected to the idea of forceful action against the Burmese Government.[619] Kouchner's argument received criticisms from prominent RtoP figures too. For instance, Special Adviser to the Secretary-General Edward Luck clearly stated that "linking the 'responsibility to protect' to the situation in Burma is a misapplication of the doctrine."[620]

In this regard, the case of Burma constitutes a focus in terms of RtoP implementation from two different aspects. Although prevention of aid cannot be considered as a justification for employing forceful measures within the confines of the RtoP framework, since the breaches of human rights are perpetrated by the government forces, it is possible to talk about a state failure to protect its population. Thus, the responsibility can be accepted to be borne with the international community. At this stage, the scale of the atrocities is of importance concerning the undertaking of action grounded on the RtoP framework, and the situation requires monitoring. Hence, the case of Myanmar can be seen as an example

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[618] Claudia Parsons, "France urges U.N. council to act on Myanmar cyclone," *Reuters*, May 07, 2008, http://www.reuters.com/article/idUSL07810481 (accessed October 22, 2010).
[619] Jonathan Marcus, "World Wrestles with the Burma Aid Issue," BBC News, May 09, 2008, http://news.bbc.co.uk/2/hi/asia-pacific/7392662.stm (accessed October 22, 2010).
[620] Jonathan Marcus, "World Wrestles with the Burma Aid Issue," BBC News, May 09, 2008, http://news.bbc.co.uk/2/hi/asia-pacific/7392662.stm (accessed October 22, 2010).

first of a misapplication of the RtoP norm, and second, of an RtoP case where the international community is failing to act timely and has been hesitant to implement the necessary measures in a decisive manner.

b. Georgia

In the August 2008 crisis between Georgia and Russia, Sergey Lavrov, the Minister of Foreign Affairs of Russia, listed RtoP among Russia's justifications for forceful action in South Ossetia. As asserted by Prime Minister Vladimir Putin and the Permanent Representative of the Russian Federation to the UN Vitaly Churkin, the norm was invoked based on the argument of the protection of Russian citizens residing in South Ossetia, who were claimed to be subjected to genocidal acts conducted by Georgia.[621]

The Russian invocation of RtoP constitutes a misapplication of the norm due to a number of reasons. First, protection of a state's own citizens residing outside the motherland is more likely to be considered within the confines of the right to self-defence rather than a responsibility to protect. Second, in terms of the state sovereignty as responsibility understanding, the RtoP doctrine is applicable within the borders of the state itself where it has a responsibility to protect the population within its own territory. As reiterated in Para.

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[621] ICRtoP, "Georgia-Russia Crisis and RtoP (August 2008)," http://www.responsibilitytoprotect.org/index.php/crises/178-other-rtop-concerns/2749-the-crisis-in-georgia-russia (accessed September 27, 2010).

139 of the World Summit Outcome Document, when and if the state fails to uphold its responsibility either due to inability or unwillingness, then the responsibility turns into the responsibility of the international community to act collectively. In this regard, the RtoP understanding established by the UN, concerning the realisation of RtoP outside the borders of a state's own territory, does not lead to an assumption that unilateral action without the consent of the UN organs is to be condoned. Finally, "[i]t is unclear whether the degree of threat to Russians in Georgia represented actual or imminent mass atrocities to the scale pertinent to the RtoP norm and also whether military force was the appropriate response."[622] In this vein, Russia's invocation of the RtoP norm stands out as an example of an abusive state application for justification purposes.

c. Somalia

The International Coalition highlights that the case of Somalia has potential to qualify as an RtoP concern and thus, it calls for continued monitoring of the situation by the international community. The conflict between the Ethiopian/Transitional Federal Government (TFG) forces and anti-government elements has escalated to the level of severe humanitarian law breaches, "in some

[622] ICRtoP, "Georgia-Russia Crisis and RtoP (August 2008)," http://www.responsibilitytoprotect.org/index.php/crises/178-other-rtop-concerns/2749-the-crisis-in-georgia-russia (accessed September 27, 2010).

cases, amounting to war crimes."[623] The threats to human security have escalated in 2007 and as of 2008 resulted in deaths and internally displaced persons (IDPs). Nevertheless, "Gareth Evans suggested that Somalia was not a 'classic [RtoP] situation' but that the imminent threat of mass atrocities warranted its placing on a watch list of countries of RtoP concern."[624]

Alex J. Bellamy notes: "In relation to Somalia, there has been little RtoP talk, the UN and AU have proven reluctant to act decisively, and the West tends to focus more on the situation's external symptoms (piracy and links to Islamist terrorism) than its civilian protection dimension."[625] Such attitude is observable in the resolutions[626] of the UN Security Council too. Despite the fact that violations of human rights and humanitarian law in Somalia have been condemned in a number of resolutions, and concerns about the humanitarian situation were mentioned (in terms of raising the issue of the continuation of the humanitarian assistance and the necessity

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[623] ICRtoP, "Crisis in Somalia," http://www.responsibilitytoprotect.org/index.php/ crises/178-other-rtop-concerns/ 2751-crisis-in-somalia (accessed September 18, 2010).

[624] Matthew Russell Lee, "Re-Branding Responsibility to Protect, Gareth Evans Says Somalia's Not Covered," *Inner City Press*, September 17, 2009; available at www.innercitypress.com/r2p1evans091708.html (accessed February 19, 2010); and Evans, "The Responsibility to Protect," p. 76.

[625] Alex J. Bellamy. "The Responsibility to Protect—Five Years On," *Ethics and International Affairs* 24(2) (2010): 165.

[626] UN Security Council resolutions on Somalia after the adoption of the World Summit Outcome Document are as follows: S/RES/1724 (2006), S/RES/1725 (2006), S/RES/1744 (2007), S/RES/1766 (2007), S/RES/1772 (2007), S/RES/1811 (2008), S/RES/1814 (2008), S/RES/1816 (2008), S/RES/1831 (2008), S/RES/1838 (2008), S/RES/1844 (2008), S/RES/1846 (2008), S/RES/1851 (2008), S/RES/1853 (2008), S/RES/1863 (2009), S/RES/1872 (2009), S/RES/1897 (2009), S/RES/1910 (2010), S/RES/1916 (2010), S/RES/1918 (2010).

for protecting the civilians), no reference, direct or indirect, was made either to paragraphs 138 and 139, or the RtoP norm itself.

Although the AU Mission in Somalia (AMISOM), which is a "peace support operation," in its mission statement talks about transition to a UN peace-keeping force,[627] this has not yet taken place. There has been reluctance in the UN as also backed by the view of

> the United Kingdom, France, and Russia [...] that the conditions were not right for the deployment of peacekeepers, that peacekeepers would face significant threats, that the UN would not be able to generate a sufficiently robust force, and that in the absence of a viable political process there was no clear end state.[628]

Furthermore, the Security Council in the wording of its related resolutions stresses the importance of the integrity and sovereignty of the Somali State, while describing the situation in Somalia as a threat to international peace and security. In the resolutions after 2006, the emphasis has generally been on the concerns arising from piracy issues rather than the humanitarian impact.[629] In sum, RtoP has not been implemented as a part of the international response. As

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[627] African Union Mission in Somalia, "AMISOM Mission Statement" http://www.africa-union.org/root/au/auc/departments/psc/amisom/amisom.htm (accessed November 22, 2010).

[628] Alex J. Bellamy. "The Responsibility to Protect—Five Years On," *Ethics and International Affairs* 24(2) (2010): 157.

[629] For instance, Resolution 1744 (2007) "*Expresses its deep concern* over the humanitarian situation in Somalia." The issue of piracy is openly stated in Resolution 1772 (2007). Moreover, the Security Council in this document "*stresses* the responsibility of all parties and armed groups in Somalia to take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law, in particular by avoiding any indiscriminate attacks on populated areas."

Matthew Russell Lee observes, the "international community has responded to events as they have unfolded and has tended to prioritize the interests of external actors over those of Somali civilians."[630]

6.4. Evaluation

Of the cases mentioned in this chapter,[631] two out of eleven are examples of invocation and subsequent successful implementation of the RtoP norm at an early stage. Two of them constitute examples of misapplication whereas the remaining cases hint at hesitance to take action within the framework of RtoP. In one genuine case of RtoP, namely Myanmar, RtoP was invoked on false grounds since the reasoning for forceful intervention was based on the necessity to deliver humanitarian aid.

As revealed by the overview, with the exception of the misapplication of the norm on Georgia, RtoP was implemented at the level of Pillar 3 in none of the instances since late 2005. The means adopted in the "responsibility to react"s application were limited to the imposition of sanctions. RtoP was not invoked while undertaking forceful action.

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[630] Matthew Russell Lee, "Re-Branding Responsibility to Protect, Gareth Evans Says Somalia's Not Covered," *Inner City Press*, September 17, 2009; available at www.innercitypress.com/r2p1evans091708.html (accessed February 19, 2010); and Evans, "The Responsibility to Protect," p. 76.

[631] For an evaluative summary of the cases, see Table 2.

Table 2. Evaluative summary of RtoP implementations

	Pillar 1	RtoP invoked by the UN?	Pillar 2	Pillar 3	International Action amounting to HI	Adopted RtoP stage
DRC *Cold Case*	Failed	No	—	—	No	None
Guinea *Cold Case*	Failed	No	Yes	—	No: just P2 level peaceful measures	S2 – success
Kenya *Cold Case*	Failed	Yes	Yes	—	No: just P2 level peaceful measures	S2 – success
Kyrgyzstan *Ongoing Case*	Failed +AA	Not officially	Yes	Failed	No: just policing activity	S1 - failure
Myanmar	Failed	No	No	—	No	None
Nigeria *Ongoing Case*	Failed	No	Failed	Failed	No	None
Sri Lanka *Ongoing Case*	Failed	No	Failed	Failed	No	S3 ?
Sudan	Failed +RA	No	Yes	Failed	No	None
Zimbabwe *Requires monitoring*	Failed	No	Failed	—	No: adopted peaceful measures proved *ineffective*	None

P1: Pillar 1 - state responsibility
P2: Pillar 2 - international assistance and capacity building
P3: Pillar 3 - timely and decisive response
AA: The Government itself asked for assistance.
Not officially: invocation of the concept was by the Secretary-General's Special Adviser on the Responsibility to Protect.

S1: Responsibility to Prevent
S2: Responsibility to React
S3: Responsibility to Rebuild
RA: The Government rejected outside involvement despite the calls.

In certain situations (as in Darfur), the UN has acknowledged severe violations of human rights and/or international humanitarian law, and urged the responsible states/bodies to end these violations while reminding them of their responsibility to protect their populations. Nevertheless, also troubled with capacity/capability issues, the Security Council did not take measures to forcefully intervene or to interfere in the domestic affairs of these states in the absence of state consent. Thus, implementation of RtoP at the level humanitarian intervention is not observed in any of the genuine RtoP cases.

In general terms, it can be observed that the international community has not been eager to take forceful action even in cases that necessitated so. Thus, the classical understanding of state sovereignty still seems to prevail in the practices of the international community (although states have been frequently reminded of their individual responsibility as a part of their sovereignty). Darfur has been the example of prevalence of state sovereignty since the UN sought for Sudan's consent for deploying a peace-keeping force despite the severity of the atrocities being committed.

On the other hand, Russia's intervention in Georgia through the invocation of RtoP on wrongful grounds is a demonstration of national interests in play as well as an example approving the concerns regarding the misuse of the norm as raised during the 2009 debates in the General Assembly.

Last but not least, most recently, the international community's ability and/or willingness to uphold its responsibility has been put to test with the cases of Libya and Syria. While the latter constitutes a test regarding the willingness of the international community to undertake the necessary forceful measures, the former became an example of action. Nevertheless, it is yet too early to make assertions about the final implications of these cases regarding the implementation of RtoP, especially in the case of Libya where a change of regime and the toppling of a dictator is in question. In this vein, as the efforts to implement RtoP in an effective and decisive manner continue within the UN, challenging cases continue to break out.

CHAPTER 7

CONCLUSION

Shaw observes that "[i]n the twentieth century, war was not just a fact of life. It became a huge problem. Mass killing as a key means of resolving political issues became ever more widespread and, simultaneously, increasingly unacceptable."[632] So far, the twenty-first century has not been exempt from similar scenes in various parts of the world. Nevertheless, parallel to the increasing concerns about human security, the international political arena has been subject to a transformation where the community of states under the auspices of the UN has been evolving into an international community which places human rights as a higher value.

Taking such evolution as an inspiration, this dissertation has attempted to understand what the general approach of states and the international community (specifically within the framework of the UN) towards humanitarian interventions are within the context of the current developments taking place regarding RtoP. As humanitarian intervention is a moral question in essence (although its political aspects seem to outweigh any other aspect when it comes to practice), this study has queried whether or not ethical motives play a role in the behaviour of the international community. In line with

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[632] Shaw 2003, 52.

these considerations, this final chapter concludes with a recap of the discussions and presents its overall evaluation.

Under the framework of RtoP, to the classical understanding of state sovereignty, which inherently prioritised non-interference in the domestic affairs of the state, a new component was added. Accordingly, sovereignty has started to be considered also as a responsibility, where the State is to protect the population living within its borders from mass violations of human rights. In the embracement of the RtoP norm, the complementary role of the UN as an organisational platform turned into a crucial one with the reports and resolutions adopted. The watershed has been the 2005 World Summit Outcome Document, which within the confines of paragraphs 138 and 139 revised and delimited the conceptualisation of the ICISS. The Report of the ICISS presented the concept of the responsibility to protect in detail, including the just cause criteria for undertaking action. Such detailed consideration of RtoP continued with the High-Level Panel in 2004. However, starting with the “Report on the UN Reform,” several documents by the UN that followed narrowed down the concept of RtoP. The World Summit Outcome Document introduced a very limited conceptualisation. The conditions qualifying for an invocation of RtoP was kept limited to the four grave crimes against humanity, and the just cause criteria were dismissed. Thus, State Members of the General Assembly accepted

their intersubjective understanding of the RtoP norm, and took the first preparatory step towards implementation. Since then, the institutionalisation of RtoP has been taking place under the roof of the General Assembly. With the intersubjective meaning of RtoP embraced in the UN General Assembly, states also established an international document of consensus on the responsibility of the international community to respond collectively in case of states' failure to fulfil their responsibility to protect. Taking this intersubjective meaning as the starting point, regarding its implementation, the necessity of the validation of RtoP as an unambiguous norm has been emphasised by states in the General Assembly debates, since RtoP is considered to be, above all, of moral importance. In contrast to the realist proposition that states are amoral units, the discourse prevalent in the debates of 2009 follow-up meetings to the Report of the Secretary-General reveal that moral concerns are not absent in states' decision-making processes. Nonetheless, this discourse by itself does not suggest how influential moral considerations are in determining state behaviour.

The analysis of the cases studied in the previous chapter support this finding. Two successful examples of prevention, in which political will and moral considerations were in play, are not sufficient to talk about a well-established (and practiced) norm. It can be observed that there has been hesitation to take a coercive

and/or decisive action in severe cases where the international community would be expected to respond by assuming the responsibility to react (stage two of RtoP), including military means. In these cases moral concerns regarding human life were prominent, yet the severest response of the international community, if there was any, had been limited to implementation of sanctions, which proved ineffective.

An issue that requires further exploration in this regard, which has potential as a separate topic of study, is the reasons for inaction. As a starting argument for future research, based on its analysis, this dissertation posits that the capacity and capability to intervene are the qualifiers as the most influential determining elements in making the decision to undertake (humanitarian) military interventions. Bearing in mind the moral argument that intervention should be avoided unless there are reasonable prospects to improve the situation, the cases of inaction that were mentioned in Chapter 6 as genuine examples of RtoP situations can be analysed further from this perspective. Although inaction may imply lack of state interest or political will, it may also be a result of insufficient capacity and/or incapability to bear the costs of intervention. This from an ethical point of view requires non-intervention in military terms since it is

more likely to produce more harm than benefit on the part of the suffering people.[633]

Area specialist Lawrence Woocher argues that the criteria of RtoP have gone nowhere, and there are institutional and political problems.[634] In institutional terms, as the debates have pointed out, the UN Security Council is the first reference point for the implementation of the RtoP norm. Nevertheless, the political structure of this main body of the UN which empowers the five permanent members with a right to veto, as in any issue, is likely to produce political decisions/results rather than moral and/or legal ones.[635] In the plenary meetings regarding the implementation of RtoP several states raised such concern and argued for the UN reform, especially for the urgent reform of the Security Council for effective and objective implementation of the norm.[636]

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[633] For instance, as argued in Chapter 5, in one of the most controversial cases of the decade, namely Darfur, issues of capacity and capability have been influential in the decision to take coercive action against the will of the Sudanese government. Despite the acknowledgement of the gravity of the situation and the failed attempts to achieve a political solution, the international community has not been able display a timely and decisive response regarding the case.

[634] Lawrence Woocher, interview by author, Washington D.C., October 17, 2008.

[635] This also means that a potential veto by one or more permanent members of the Security Council whose national interests are at stake may prevent the authorisation of an RtoP action. Regarding the Security Council, the ICISS in its Report while noting that it "is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes", also raises several questions such as the Security 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. There are many reasons for being dissatisfied with the role that the Security Council has played so far" (ICISS, 2001a, 49).

[636] For instance, in his speech on behalf of the Caribbean Community, Mr. Wolfe asked: "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

Furthermore, taking the UN as the prevalent representation of the international community, an example of an institutional problem concerning response through military means is UN's military capacity/capability. Since it does not have a standing independent army, the UN is likely to remain incapable of responding to RtoP cases in a timely and effective manner in general. Aside from the political complications inherent in its system, the institutional capacities of the UN impact RtoP's implementation also in evaluating the international community's fulfilment of its responsibility to protect through an analysis of state practice.

As indicated previously, many states have indicated that RtoP has moral value as it aims at the protection of populations, and thus its proper implementation is of vital importance but the practice has not revealed strong evidence to support such discourse. Nevertheless, in order to be able to claim that moral values are ineffectual alongside other considerations, one has to assure that the material conditions that would enable action were present, yet the society of states had opted for indifference. In this regard, not only in the implementation of the RtoP norm, but also in the assessment of the weight of moral considerations in influencing state behaviour, capacity and/or capability plays a prominent role.

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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" (A/63/PV.100, p. 6).

Even though Member States of the General Assembly unanimously accepted the responsibility to protect first of states individually and then of the international community, also affirming a possibility of collective action under Chapter VII, a considerable number of them indicated their strong opposition against the doctrine of humanitarian intervention too.[637] As can be observed from the case studies, whatever the prevailing reasons were, in the implementation of RtoP the international community has refrained from adopting military measures whereas it has been much eager to respond within the framework of Pillar Two through the assumption of the responsibility to prevent.

In the light of these observations, this dissertation reiterates its argument that moral elements/considerations are influential in the behaviour of the international community. Furthermore, it observes that in the aftermath of the Cold War reaffirmed by the experiences of the 1990s, the international community has considerably evolved in terms of the assumption of a moral responsibility to react to cases of grave violations of human rights. In this vein, as can be inferred from the current efforts in the UN, the international community continues its progress on the improvement of the mechanisms for timely and decisive action.

[637] It should be reminded that RtoP doctrine does not encourage unilateral acts/interventions of states.

ANNEX

List of Interviewees

Name	Institution
Prof. Jose Alvarez	NYU Law School (Visiting Scholar)
Assoc. Prof. Paolo Carozza	Harvard Law School (Visiting Scholar)
Prof. Lori F. Damrosch	Harvard Law School (Visiting Scholar)
Prof. Hurst Hannum	Tufts University The Fletcher School of Law and Diplomacy
Aiyaz Husain	U.S. Department of State Policy and Analysis Bureau of Political-Military Affairs
Mashood Issaka	International Peace Institute Africa Program
Dr. Wafula Okumu	Institute for Security Studies African Security Analysis Program
Margaret McKelvey	U.S. Department of State Office of Refugee Assistance for Africa Bureau of Population, Refugees, and Migration
n/a	U.S. Department of State Office of Refugee Assistance for Africa Bureau of Population, Refugees, and Migration
Prof. Guiseppe Nesi	Permanent Mission of Italy to the UN
Prof. Thomas G. Weiss	The City University of New York The Graduate Center
Lawrence Woocher	United States Institute of Peace Center for Conflict Analysis and Prevention
Prof. Salvatore Zappala	Permanent Mission of Italy to the UN

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APPENDICES

APPENDIX A

Establishment of Peace-keeping Operations

Statement by the President of the Security Council, (S/Prst/1994/22)

3 May 1994

The Security Council recalls that the statement made by its President on 28 May 1993 (S/25859) stated, inter alia, that United Nations peace- keeping operations should be conducted in accordance with a number of operational principles, consistent with the provisions of the Charter of the United Nations. In that context, the Security Council is conscious of the need for the political goals, mandate, costs, and, where possible, the estimated time-frame of United Nations peace-keeping operations to be clear and precise, and of the requirement for the mandates of peace-keeping operations to be subject to periodic review. The Council will respond to situations on a case-by-case basis. Without prejudice to its ability to do so and to respond rapidly and flexibly as circumstances require, the Council considers that the following factors, among others, should be taken into account when the establishment of new peace-keeping operations is under consideration:

- whether a situation exists the continuation of which is likely to endanger or constitute a threat to international peace and security;
- whether regional or subregional organizations and arrangements exist and are ready and able to assist in resolving the situation;
- whether a cease-fire exists and whether the parties have committed themselves to a peace process intended to reach a political settlement;
- whether a clear political goal exists and whether it can be reflected in the mandate;
- whether a precise mandate for a United Nations operation can be formulated;
- whether the safety and security of United Nations personnel can be reasonably ensured, including in particular whether reasonable guarantees can be obtained from the principal parties or factions regarding the safety and security of United Nations personnel; in this regard it reaffirms its statement of 31 March 1993 (S/25493) and its resolution 868 (1993) of 29 September 1993.

The Security Council should also be provided with an estimate of projected costs for the start-up phase (initial 90 days) of the operation and the first six months, as well as for the resulting increase in total projected annualized United Nations peace-keeping expenditures, and should be informed of the likely availability of resources for the new operation.

APPENDIX B

Resolution/ Meeting no.; Date	Session/ Meeting No.; Agenda Item No. (AI#)	On RtoP
A/64/864 14 July 2010	64th session; AI#: 48 and 114	Report of the Secretary-General regarding "early warning, assessment and the responsibility to protect"
S/RES/1894 11 November 2009	6216th meeting	"*Reaffirming* the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict, including paragraphs 138 and 139 thereof regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."
A/RES/63/308 7 October 2009	63rd session; AI#: 44 and 107	"Decides to continue its consideration of the responsibility to protect."
A/63/PV.101 28 July 2009	Plenary meeting; AI#: 44 and 107 continued	States' official statements in the General Assembly regarding the Report of the Secretary General, and the implementation of the Responsibility to Protect as adopted in the World Summit Outcome Document.
A/63/PV.100 28 July 2009	Plenary meeting; AI#: 44 and 107 continued (also 7 continued)	States' official statements in the General Assembly regarding the Report of the Secretary General, and the implementation of the Responsibility to Protect as adopted in the World Summit Outcome Document.
A/63/PV.99 24 July 2009	Plenary meeting; AI#: 44 and 107 continued	States' official statements in the General Assembly regarding the Report of the Secretary General, and the implementation of the Responsibility to Protect as adopted in the World Summit Outcome Document.
A/63/PV.98 24 July 2009	Plenary meeting; AI#: 44 and 107 continued	States' official statements in the General Assembly regarding the Report of the Secretary General, and the implementation of the Responsibility to Protect as adopted in the World Summit Outcome Document.
A/RES/63/304 23 July 2009	Plenary meeting; AI#: 44 and 107 continued (also 57 continued)	Implementation of the recommendations contained in the report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa
A/63/PV.96 21 July 2009	Plenary meeting; AI#: 44 and 107 continued	Secretary General's introduction of his report (A/63/677) on the Implementation of the Responsibility to Protect

Resolution/ Meeting no.; Date	Session/ Meeting No.; Agenda Item No. (AI#)	On RtoP
A/63/677 12 January 2009	63rd session; AI#: 44 and 107	Implementation of the responsibility to protect (report of the secretary general)
S/RES/1755 30 April 2007	5670th meeting	Concerning the situation in Sudan recalls Security Council Resolutions 1706 (2006) and 1674 (2006)
S/RES/1706 31 August 2006	5519th meeting	"Reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document."
S/RES/1674 28 April 2006	5430th meeting	Paragraph 4 reaffirms "the provisions of paragraphs 138 and 139 of the 2005 *World Summit Outcome Document.*"
A/RES/60/1 24 October 2005 *World Summit Outcome Document*	60th session; AI#: 46 and 120	Paragraphs 138 and 139
A/59/2005 21 March 2005 *In Larger Freedom: towards development, security and human rights for all*	59th session; AI#: 45 and 55	In this Report of the Secretary-General, the responsibility to protect is considered under the chapter on "Freedom to Live in Dignity.'
Ext/EX.CL/2 (VII) 7-8 March 2005 *The Common African Position on the Proposed Reform of the United Nations: Ezulwini Consensus*	7th extra-ordinary session of the African Union	Under Part B entitled "collective security and the use of force", the Union dealt with the concept of the Responsibility to Protect.
A/59/565 2 December 2004 *High-level Panel on Threats, Challenges and Change*	59th session; AI#: 55	In the Report of the Secretary-General, the responsibility to protect is covered under the heading of "Collective Security and Use of Force."

APPENDIX C

A/63/PV.97

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.
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.

A/63/PV.98

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.

A/63/PV.99

	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."

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.

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)

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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

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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)

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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.