Beyond Reaction: The Responsibility to Protect and the United Nations

by

Suzanne Keene, BA (Hons)

Submitted in fulfilment of the requirements for the degree of

Doctor of Philosophy

Deakin University

July, 2013
I am the author of the thesis entitled *Beyond Reaction: The Responsibility to Protect and the United Nations*

submitted for the degree of Doctor of Philosophy.

This thesis may be made available for consultation, loan and limited copying in accordance with the Copyright Act 1968.

*I certify that I am the student named below and that the information provided in the form is correct*

**Full Name:** Suzanne Keene

**Signed:** [Signature Redacted by Library]

**Date:** 9 December 2013
I certify that the thesis entitled *Beyond Reaction: The Responsibility to Protect and the United Nations*

submitted for the degree of Doctor of Philosophy

is the result of my own work and that where reference is made to the work of others, due acknowledgment is given.

I also certify that any material in the thesis which has been accepted for a degree or diploma by any university or institution is identified in the text.

I certify that I am the student named below and that the information provided in the form is correct

**Full Name:** Suzanne Keene

**Signed:** [Signature Redacted by Library]

**Date:** 14 July 2013
Acknowledgements

This thesis is the result of a lengthy and challenging, but equally rewarding, intellectual journey. During this journey I had the privilege of extensive support and encouragement both professionally and personally from a number of people. It was this support and encouragement that made this thesis both a possibility and a reality. Primary among the contributions to this thesis that must be acknowledged is the invaluable academic guidance and professional support provided by my principal supervisor, Dr Steven Slaughter, who took on the difficult task of a partially developed thesis following the death of my original supervisor, Dr Lynne Alice. To Steven I wish to express my sincere gratitude for the significant commitment you made to see this through over the last four years and the academic insights you provided in the redevelopment of this thesis. I also thank you for your patience throughout the numerous unexpected challenges that materialised and distractions that competed for my attention during this thesis. In this regard, I would also like to thank associate supervisor, Dr Costas Laoutides, for the insightful comments he provided on various chapters of this thesis and sensible editorial suggestions to improve its structure. Across Deakin University there are a number of other people that deserve recognition for their unequivocal support. This includes the staff of Research Services, especially Professor Roger Horn and Janine Trutor, for their support throughout my candidature. I am also especially grateful to fellow PhD colleagues Janet, Neena, Amy, Sally, Natalie, Piper, Emma and Edwin. Thank you for providing such a supportive and stimulating environment in which to complete this thesis.

On a personal level I am especially indebted to Meredith Le Mescam and Kris Shaw for assisting me to resolve the frustrations associated with balancing a demanding job with this thesis by providing regular inspiration. To Meredith, my sincerest gratitude for your enthusiasm to discuss the case studies, institutions and ideas central to this thesis whenever the need arose and supporting me through illness when it threatened this thesis. To Kris, thank you for taking on the onerous task of proof-reading this thesis and for your invaluable input to making it more intelligible. For that I will always be indebted to you.
To my mother, Carol Burmann, thank you for providing the motivation and confidence necessary to sustain such a project. It is your refusal to submit to the various challenges you have encountered throughout life and constant encouragement that enabled me to undertake such a project. To my husband, Mathew Keene, thank you for your unconditional support throughout the six years of this thesis. I am incredibly grateful for the various professional and personal concessions you made to sustain this thesis and for always being there when I needed your support the most. Thank you for convincing me to see this through to fruition, no matter what life threw at us.

Finally, this thesis is dedicated to the memory of a number of family members. Among them is my father Dieter Burmann, who never understood my choice of subject or desire to complete a thesis, but supported it regardless. Thank you for constantly challenging the assumptions, knowledge and values underpinning this thesis. Other family members to which this thesis is dedicated include Alan Keene, Robin Keene, Samuel Keene and Muriel Murphy. Unfortunately, they never got to see the result of our extensive deliberations over various draft chapters.
# Table of Contents

Table of cases ........................................................................................................ viii

Table of abbreviations ........................................................................................ ix

Abstract ................................................................................................................. xi

Introduction ........................................................................................................... 1
  Methodology and structure ................................................................................. 6

**PART I CONCEPTUAL FOUNDATIONS**

1. The UN Security Council and humanitarian intervention ....................... 15
   1.1 International law governing the use of force ........................................ 16
       1.1.1 Scope, nature and function .................................................... 17
       1.1.2 International conventions .................................................... 19
       1.1.3 Customary international law ................................................. 23
       1.1.4 General principles ............................................................. 25
       1.1.5 Judicial decisions .............................................................. 27
   1.2 The humanitarian critique of sovereignty ............................................. 28
       1.2.1 The influence of human rights on interpretation of the UN Charter 30
   1.3 The politics of an international rule of law ........................................... 34
       1.3.1 A constructivist interpretation—international law as a
             socially-constituted process .................................................... 38
       1.3.2 A realist interpretation—international law as an ordering
             system ................................................................................... 42
   1.4 Conclusion ......................................................................................... 45

2. R2P as a continuum of international engagement ................................. 47
   2.1 The emergence of the R2P ............................................................... 48
       2.1.1 Shifting the discourse from intervention to protection .......... 51
       2.1.2 A continuum of international engagement ......................... 53
       2.1.3 The normative influence of R2P ......................................... 56
   2.2 The 2005 World Summit as a consensual breakthrough .................... 58
       2.2.1 The challenge of making the shift from principle to practice .. 63
   2.3 The General Assembly and R2P ....................................................... 65
       2.3.1 A three pillar strategy ......................................................... 66
       2.3.2 Consolidating support through interactive dialogue ............. 68
   2.4 Conclusion ....................................................................................... 76
6. Case study two—a call to action in Libya .................................................. 174
  6.1 A case for R2P concern ............................................................................ 176
      6.1.1 Existing tensions ........................................................................ 177
      6.1.2 History of atrocities ................................................................... 181
      6.1.3 Institutional capacity ............................................................... 185
      6.1.4 Receptivity or openness ............................................................. 187
      6.1.5 Leadership ............................................................................. 188
  6.2 Security Council deliberations ................................................................. 191
      6.2.1 Timely and decisive action ......................................................... 192
      6.2.2 Democracy, freedom and rights ................................................ 198
  6.3 R2P as a policy agenda or catalyst for action ....................................... 203
      6.3.1 A catalyst for action .................................................................. 204
      6.3.2 A policy agenda for prevention ................................................. 208
  6.4 Conclusion ............................................................................................. 212

Conclusion .......................................................................................................... 215

Bibliography ....................................................................................................... 229

Appendices ......................................................................................................... 246

Appendix B: Security Council Deliberations—Libya .................................... 258
Table of cases

**International Court of Justice**

Corfu Channel Case (*United Kingdom v. Albania*) *Merits*, Judgement of 9 April 1949, ICJ Reports 4


**International Criminal Court**

**Darfur**

*The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09

*The Prosecutor v. Bahar Idriss Abu Garda*, Case No. ICC-02/05-02/09

*The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Case No. ICC-02/05-03/09

*The Prosecutor v. Abdel Raheem Muhammad Hussein*, Case No. ICC-02/05-01/12

**Libya**

*The Prosecutor v. Ahmad Muhammad Harun* (*‘Ahmad Harun’*) and *Ali Muhammad Ali Abd-Al-Rahman* (*‘Ali Kushayb’*), Case No. ICC-02/05-01/07

**Table of abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMIS</td>
<td>African Union Mission in Sudan</td>
</tr>
<tr>
<td>AU</td>
<td>African Union</td>
</tr>
<tr>
<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
</tr>
<tr>
<td>DPA</td>
<td>Darfur Peace Agreement</td>
</tr>
<tr>
<td>DPP</td>
<td>Darfur-based Political Process</td>
</tr>
<tr>
<td>DDR</td>
<td>Disarmament, Demobilisation and Reintegration</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>Economic and Social Council</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GNU</td>
<td>Government of National Unity</td>
</tr>
<tr>
<td>GOS</td>
<td>Government of Sudan</td>
</tr>
<tr>
<td>GoSS</td>
<td>Government of Southern Sudan</td>
</tr>
<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICG</td>
<td>International Crisis Group</td>
</tr>
<tr>
<td>ICID</td>
<td>International Commission of Inquiry on Darfur</td>
</tr>
<tr>
<td>ICIL</td>
<td>International Commission of Inquiry in Libya</td>
</tr>
<tr>
<td>ICISS</td>
<td>International Commission on Intervention and State Sovereignty</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICTR</td>
<td>International Criminal Tribunal in Rwanda</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
</tr>
<tr>
<td>IDP</td>
<td>Internally Displaced Person</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>IRIN</td>
<td>Integrated Regional Information Network</td>
</tr>
<tr>
<td>JEM</td>
<td>Justice and Equality Movement</td>
</tr>
<tr>
<td>LAS</td>
<td>League of Arab States</td>
</tr>
<tr>
<td>MDG</td>
<td>Millennium Development Goals</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
</tr>
<tr>
<td>NAM</td>
<td>Non-Aligned Movement</td>
</tr>
<tr>
<td>NCP</td>
<td>National Congress Party</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>NISS</td>
<td>National Security and Intelligence Service</td>
</tr>
<tr>
<td>NTC</td>
<td>National Transitional Council</td>
</tr>
<tr>
<td>OAU</td>
<td>Office for African Unity</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the UN High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OIC</td>
<td>Organisation of the Islamic Conference</td>
</tr>
<tr>
<td>P3</td>
<td>Permanent Three members of the Security Council</td>
</tr>
<tr>
<td>P5</td>
<td>Permanent Five members of the Security Council</td>
</tr>
<tr>
<td>PBC</td>
<td>Peacebuilding Commission</td>
</tr>
<tr>
<td>PBSO</td>
<td>Peacebuilding Support Office</td>
</tr>
<tr>
<td>POC</td>
<td>Protection of civilians</td>
</tr>
<tr>
<td>R2P</td>
<td>The Responsibility to Protect</td>
</tr>
<tr>
<td>RWP</td>
<td>Responsibility While Protecting</td>
</tr>
<tr>
<td>S5</td>
<td>Small Five members of the Security Council</td>
</tr>
<tr>
<td>SAF</td>
<td>Sudanese Armed Forces</td>
</tr>
<tr>
<td>SLM/A</td>
<td>Sudan Liberation Movement/Army</td>
</tr>
<tr>
<td>SRSG</td>
<td>Special Representative of the Secretary-General</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNAMID</td>
<td>United Nations-African Union Mission in Darfur</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>UNMIS</td>
<td>United Nations Mission in Sudan</td>
</tr>
<tr>
<td>UNSMIL</td>
<td>United Nations Support Mission in Libya</td>
</tr>
<tr>
<td>UNSOM</td>
<td>United Nations Mission in Somalia</td>
</tr>
<tr>
<td>UNTAET</td>
<td>United Nations Transitional Administration in East Timor</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
</tbody>
</table>
Abstract

Responding to genocide, war crimes, ethnic cleansing and crimes against humanity, is one of the most legally, politically and ethically charged issues confronting states. Born out of a desire to find consensus between proponents of military intervention and opponents concerned with potential for abuse, the articulation of the Responsibility to Protect (R2P) by the International Commission on Intervention and State Sovereignty in 2001, appeared to provide a framework for resolving the dilemma between the defence of humanity and preservation of sovereignty. Employing Alex Bellamy’s assessment that invocation of R2P by states invariably involves a choice about how they employ the principle which licenses two disparate functions, a policy agenda aimed at addressing risk factors or a normative call to action seeking to mitigate an imminent threat, this thesis seeks to develop an interpretive understanding of how R2P has influenced international engagement with mass atrocities. Employing a constructivist framework to examine two recent cases in Darfur and Libya, this thesis finds the question of human protection from mass atrocities under the umbrella of R2P is not just one of legality but to a larger extent, one of legitimacy. With R2P founded upon a dual commitment to prevention and reaction, this thesis concurs with Bellamy that invocation of R2P by states necessarily involves a preference for which elements of the principle are emphasised to rationalise their actions. However, it is the contention of this thesis that this preference and the international response it elicited in Darfur and Libya was far more fluid than suggested by Bellamy. Rather than occupy ends of a spectrum of choice, international engagement in Darfur and Libya inherently involved both prevention and reaction.
INTRODUCTION

The decision to intervene in a third party state to address human suffering is one of the most legally, politically and ethically complex issues confronting states. Drawing on the concept of responsible sovereignty, and born out of a desire to find consensus between proponents of military intervention and opponents concerned with potential for abuse, the articulation of The Responsibility to Protect (R2P) by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) (2001) appeared to provide a framework for resolving the ‘dilemma’ between the defence of humanity and sovereignty. The historical backdrop for the emergence of R2P was an inconclusive legal debate surrounding the use of force to address human suffering and the perceived failure of the international community in Somalia, Rwanda, Bosnia and Kosovo. In response, members of ICISS were hopeful R2P would provide the ‘rationale and methodology’ for the United Nations (UN) Security Council to take both systematic and targeted action to address mass atrocities of genocide, ethnic cleansing, war crimes and crimes against humanity. More importantly, they hoped R2P would instigate a paradigmatic shift in the ‘basic mindset’ underpinning Security Council action, from a ‘culture of reaction’ based on the immediate need to “do something” towards a ‘culture of protection’ focused upon the longer-term prevention of atrocities.

This thesis employs the premise that it is the sum of all three elements of the ICISS principle of R2P—encompassing a responsibility to prevent, a responsibility to react and a responsibility to rebuild—that demonstrates the significant breakthrough made by its architects. Most notable, R2P bridges the divide between legal and normative obligations associated with the use of force for human protection. From this perspective, the responsibility to react cannot be invoked in isolation; rather, it

5 Ibid., pp.42-3.
represents a starting point within a continuum of international engagement, between peace enforcement which seeks to respond and peacebuilding as preventive action. Within this assessment, the aim of peacebuilding is to foster the ‘social, economic and political institutions and attitudes’ that prevent escalations in violence through activities that target root causes of conflict and build local capacity within a conflict resolution framework.\(^6\) With R2P firmly grounded in prevention, the ‘ultimate goal’ is for states to internalise the principle into conceptions of their nature, obligations to their populations and to others during conflict.\(^7\)

At the time of writing, it is twelve years since the principle of R2P was articulated by ICISS and eight since it gained wider acceptance among states through endorsement at the 2005 World Summit. Since 2009, the Secretary-General has facilitated an interactive dialogue on the subject through annual reports on different aspects of the principle accompanied by a thematic debate in the General Assembly. Topics for each debate range from implementing the principle of R2P,\(^8\) the contribution of early warning and assessment to prevention,\(^9\) regional and sub-regional arrangements,\(^10\) to practical aspects of a timely and decisive response.\(^11\) This interactive dialogue has played an important role in broadening the basis for consensus around R2P. It has also provided ‘valuable insights’ into individual elements of R2P,\(^12\) including clarifying and deepening collective understanding around the relationship between the two most contested elements: prevention and reaction. Since 2009 the Secretary-General has concentrated on increasing the breadth and depth of understanding around prevention aspects of R2P. Driven largely by a desire to move the debate beyond a narrow focus on the reaction element of R2P, which may include the use of force, this has enhanced knowledge of the non-sequential and mutually-reinforcing nature of individual elements considerably. The problem with this approach, however, is that it fails to consider


\(^{8}\) A/63/677 (12 January 2009).

\(^{9}\) A/64/864 (14 July 2010).

\(^{10}\) A/65/877 (28 June 2011).

\(^{11}\) A/66/874 (25 July 2012).

\(^{12}\) Department of Public Information, *Responsibility to protect faces urgent test “here and now”* (5 September 2012) SG/SM/14490.
the more difficult question for R2P around the relationship between prevention and reaction; that is, the ‘utility’ of the principle in ‘spurring and shaping’ a timely and effective international response as well as encourage adoption of longer-term preventive measures. In this regard, Alex Bellamy’s analysis of the prevention and reaction elements of R2P is instructive.

According to Bellamy, the problem is that while reference to R2P is both a welcome and positive development in international politics, invocation of the discursive frame of R2P by states invariably involves a choice about the way in which the principle is employed, which in turn licenses two disparate functions. In the first instance, invocation of R2P by states is based on a ‘political commitment’ to prevent human suffering utilising existing mechanisms and procedures. Based closely on the commitment of states at the 2005 World Summit, invocation of R2P in this manner is most accurately described as a policy agenda requiring implementation because of its focus upon the ‘upstream prevention’ of atrocities. Upstream prevention involves taking action to address risk factors underlying large scale violence. In practice, it involves proactive international engagement within a state to address risk factors or sources of instability in order to prevent a crisis occurring in the first place, rather than only respond to a crisis once it occurs. While invocation of R2P in this manner is mostly associated with prevention, it can include measures typically associated with reaction, such as sanctions or the use of force. In the second instance, invocation of R2P by states is based on a normative call to action to mitigate an imminent threat of large scale violence. Emphasising the reaction element of R2P, labelling a crisis as a case for R2P concern serves as a ‘red flag’ to quickly ‘elevate’ the crisis on the international agenda as beyond normal politics and provide a ‘catalyst’ to generate sufficient political will to mobilise a timely and decisive response. In this sense, invocation of R2P is based on a moral imperative to take immediate action to halt human suffering or avert large scale violence.

13 Luck, Responsibility to protect: growing pains, pp.349-365.
15 Ibid., pp.158-60.
16 Ibid., p.159.
In summary, Bellamy argues that R2P as it has been employed by states more accurately reflects a policy agenda to address risk factors rather than ‘a “red flag” to galvanise the world into action’. Furthermore, drawing on theories of securitisation, Bellamy argues that while states can (and do) switch between the two, they cannot ‘sustain a political commitment’ to prevention and its associated policy agenda to address risk factors while employing R2P as a ‘speech act’ to mobilise a decisive response to mitigate an imminent threat of atrocities. It necessarily follows that when states invoke the distinctive language of R2P they make a choice about the way in which they employ the principle to rationalise their actions. In turn, this choice affects collective understanding of the ‘role and impact’ of R2P upon international action. Put simply, how states invoke R2P to rationalise their actions licenses disparate functions that are incompatible.

The issue highlighted here by Bellamy is not if the threat of atrocities is objective (real) or subjective (a perceived threat), but rather the way in which a crisis is socially constructed by states through discursive references to R2P. More specifically, how states may employ R2P to claim that there is an existential threat to civilian populations which requires emergency measures, and through this process of securitisation, convince others to support action outside the bounds of normatively permissible agency and action, including what may constitute rule-breaking behaviour. Drawing on this process of securitisation, Bellamy argues the use of ‘emergency language in non-emergency situations’ could ‘erode’ the capacity of R2P to galvanise an extraordinary response, if required. His conclusion regarding the incompatibility of the two functions of R2P is grounded in this tension.

Intrigued by Bellamy’s assessment, the central question of this thesis is: does the invocation of R2P by the Permanent Five (P5) within the Security Council necessarily occupy opposite ends of the spectrum of choice for states, between a

---

17 Ibid., p.166.  
18 Ibid., p.160.  
19 Ibid.  
21 Bellamy, Responsibility to protect—five years on, pp.159-160.
INTRODUCTION

Recognising R2P is founded upon both a commitment to prevention as well as taking timely and decisive action, this thesis concurs with Bellamy that invocation of R2P necessarily involves a preference in how the principle is employed, including which elements of R2P are emphasised by states to support their actions (or inaction). However, this thesis argues the preference among the P5 between a policy agenda and a normative call to action, and their perceived association to prevention and reaction respectively, is far more fluid than suggested by Bellamy. Rather than occupy opposite ends of a spectrum of choice, cases such as Darfur and Libya reflect a range of choices. Within this range, perceptions of R2P as a policy agenda versus a normative call to action are not fixed and are often subject to variations in emphasis. As such, it is the contention of this thesis that invocation of R2P involves a rich and complex process of validation based on perceptions of legitimacy. Normatively, this means R2P may validate international thinking on preventing future crises, unite a divided community to take timely and decisive action or occupy somewhere in between. By implication, R2P may represent a policy position with an aspirational target for collective implementation or a discursive tool seeking to mobilise an operational deployment. Put simply, it is the fluid and at times contested nature of the relationship between prevention and reaction that ensures R2P remains a prominent feature on the international agenda.

In formulating this response, this thesis examines how R2P has influenced Security Council decision-making towards addressing mass atrocities of genocide, ethnic cleansing, war crimes and crimes against humanity. This examination pursues two lines of enquiry. The first is concerned with how the distinctive language of R2P has been employed by states to justify their actions (or inaction). The second line of enquiry examines to what extent members of the Security Council have engaged with the three elements of R2P (prevent, react and rebuild) in deliberations following a general commitment to the principle at the World Summit. To this end, the two examples of Darfur and Libya stand out as prime cases for examination. This is because while both elicited concern as cases for R2P they appear to have taken different trajectories in terms of engagement with prevention and reaction elements of the principle.
In the case of Darfur, Security Council deliberations since 2003 have been framed around the need to halt atrocities while emphasising a longer-term policy agenda aimed at preventing further atrocities by addressing structural issues underpinning the conflict. Despite a lengthy engagement with the crisis, the inaction of the Security Council to protect Darfurians and systematic under-resourcing of peace operations remain a feature of international engagement, despite this emphasis upon prevention.\(^{22}\) In contrast, the 2011 uprising in Libya against long-time leader Colonel Muammar al-Qadhafi caught the Security Council by surprise. Subsequent invocation of R2P within Council deliberations seemingly moved the conflict up the international agenda quickly as a situation requiring the mobilisation of an immediate response to address exceptional circumstances.\(^{23}\) However, this emphasis upon reaction was quickly followed by regret and broader questioning about the preventive contribution of R2P when international action seemingly exceeded its authorised mandate.

**Methodology and structure**

Individually and collectively, these two case studies are of significant evidentiary value for charting the development of international thinking on R2P. Debates around the invocation of R2P provide a rich source of analysis polarised between opponents who see R2P as an aspirational target and argue its demise is near and those who regard the principle favourably and are more concerned with practical aspects of its implementation. Sceptics of R2P highlight inconsistency in application of the principle by the P5, difficulty in implementation and a perceived association with regime change, as cementing its demise.\(^{24}\) More persuasive however, are arguments in support of the increasing influence of R2P on international engagement. While R2P is certainly being tested in recent cases such as Syria and continues to contain a number of unresolved tensions, this thesis subscribes to the conclusion that the ongoing prominence of the principle across the

---

22 Ibid., p.165.
UN system twelve years after its emergence suggests claims of its demise are ‘exaggerated’.\(^{25}\)

Recent developments in Libya and Syria demonstrate that international politics is a dynamic space often evolving in unpredictable ways. Within this landscape, shifting trajectories between the more ambitious prevention element of R2P and the functional or practical need to secure support for a timely and decisive response provides an opportunity to strengthen collective understanding. Furthermore, shifting trajectories raise the question of the continued relevance of existing theoretical perspectives to accommodate emerging events. In response, researchers either sharpen existing thinking or develop new perspectives. This thesis contributes to the former by engaging in a constructivist examination of the relationship between the Security Council, the principle of R2P and international engagement with mass atrocities. The rationale for adopting a constructivist theoretical frame is that it is crucial to any analysis of the use of force to recognise the politically and socially constituted environment within which state action takes place.\(^{26}\)

Adopting the assertion that scientific methodologies relying purely upon quantification and verification of hypotheses are inappropriate for a subject revolving around ethically driven political action, it is imperative the methodology employed recognises the dynamic and social nature of the international political space where the decision-making process resides. This is based on the proposition advanced by Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominic Zaum, to which this thesis subscribes, that the ‘actual practice’ of the Security Council is far ‘richer, more complex, and more paradoxical’ than simply interpretation and application of the provisions of the UN Charter.\(^ {27}\) In this regard the constructivist methodology employed in this thesis can be defined as an approach to international politics concerned with explaining how shared ideas, beliefs and values condition

---


the interests of states. Through a constructivist lens this thesis is also concerned with explaining the role of normative and ideational structures in influencing what is regarded as legitimate state action. Ideational structures include public deliberation, prevailing conceptions of legitimacy and the provisions of international law.

Applied to the question of prevention versus reaction, the utility of this approach as argued persuasively by Christian Reus-Smit, is that it provides a broader theoretical framework for ‘thinking about the mutually constitutive relationship between international politics and law’. Moreover, because constructivism is necessarily concerned with understanding the intersubjective dimensions of reason and action within international politics, particularly the regulative and constitutive norms that underpin the functioning of international institutions and assign meaning to state action, it is well placed for understanding the politics of international law governing the use of force and human protection. With interpretation being a key feature of constructivist epistemology, the value of adopting such a focus is that it opens up analysis of international institutions to consideration of what Kratchowil and Ruggie conceptualise as ‘communicative dynamics’; that is, the interplay between how states interpret behaviour of other states, the practice of rationalising and justifying their action (or inaction), and the responsiveness of other states to such reasoning.

Consistent with this concern for regulative and constitutive norms, this thesis is organised into two parts. Part one, comprising chapters one to three traces the conceptual foundations (legal, political and ethical) which inform international deliberations on human protection. To this end, chapter one examines the scope, nature and function of international law through the legal paradigm of ‘jus ad bellum’ provided by the UN Charter and ‘jus in bello’ provided by international humanitarian law (IHL). Embracing the notion of the “rule of law”, chapter one draws on Thomas

---

28 C Reus-Smit. ‘Constructivism’ in S Burchill, R Devetak, A Linklater, M Paterson, C Reus-Smit, & J True (eds) Theories of international relations. 2nd end, Palgrave, Basingstoke, 2001, p.221.
Franck and Rosemary Higgins' examination of international law as a socially constituted process and Simon Chesterman’s persuasive analysis of the politics of the rule of law. This reveals that international law is most accurately described as a politically-constituted decision-making process that allocates meaning, rather than a body of rules supported by precedent to be applied impartially. It necessarily follows that the question of human protection is not just one of legality, but increasingly one of legitimacy. Consequently, it is the ‘synergy and synthesis’ between different conceptions of legitimacy that ultimately influences state action.

Continuing its concern for shifting conceptions of legitimacy, chapter two traces the intellectual journey of R2P, from its inception by ICISS to consideration at the World Summit and ongoing development. Of central importance is the role of discourse in advancing international understanding; specifically, the role the ‘distinctive language of R2P’ has played in establishing and codifying ‘normative precepts’ against which future state action may be rationalised as legitimate. Drawing upon Ramesh Thakur and Gareth Evans’ numerous examinations of the development and acceptance of the principle by states, chapter two finds despite pessimism about a disparity between words and deeds, the normative advance of R2P has been remarkable. In what is arguably the greatest contrast with its predecessor humanitarian intervention, chapter two finds R2P is about more than just reacting to mass atrocities. Founded upon a dual commitment to prevention and reaction, R2P provides a comprehensive and constructive continuum of international engagement that seeks to not only protect populations, but also prevent further conflict by rebuilding communities. Within this framework, invocation of R2P means the Security Council also has a positive obligation to assist with developing political, economic and societal capacity so as to prevent further

34 Franck, Interpretation and change, p.231.
35 Reus-Smit, Politics of international law, p.9.
suffering. With the legitimacy of peace operations and the Security Council itself increasingly linked to its role in both civilian protection and human development, post-conflict peacebuilding has become a key feature of international engagement with mass atrocities.

While an increased focus upon peacebuilding is reflective of a more nuanced understanding of R2P, it has also been problematic. One of the many problems with this development and illustrative of the future challenges associated with the application of R2P, is that international efforts to promote liberal democratic governing systems and market-oriented economic growth in post-conflict states have generally proved disappointing. This is because where peacebuilding efforts have established security relatively effectively, the complexities of multi-dimensional peace operations, mismatches between mandates and resourcing and tensions between international demands and local needs, have hindered economic, political and social development.

Seeking to better understand the contribution of peacebuilding to the preventive dimensions of R2P and practical challenges associated with contemporary UN operations, chapter three draws on the influential scholarship of Roland Paris, Beatrice Pouligny, Simon Chesterman and Albert Schnabel together with Alex Bellamy, Paul Williams and Stuart Griffin. In the context of international action under the umbrella of R2P, chapter three finds that while consensus exists among scholars that a common factor underpinning mass atrocities is the nature and capacity of the state, what remains to be resolved is how to mediate the tension between international imperatives and local needs. Recognising this tension, the question for the Security Council when confronted with mass atrocities is not whether the international community needs to act—to rebuild communities torn

apart by conflict or what institutions and characteristics need to be reconstructed—but rather how to do so in order to avoid recreating the conditions, tensions and unsustainable structures that contributed to an escalation in violence.  

Having outlined the conceptual foundations of R2P that inform international deliberations on mass atrocities, part two engages in an empirical investigation of the role shifting conceptions of legitimacy play in constituting or constraining state action. Drawing on the legal, political and ethical foundations outlined in part one, chapter four establishes the value of a constructivist framework including implications for understanding the role and importance of legitimacy in international politics. Consistent with this approach, chapter four locates the communicative role of the Security Council in influencing state action. Seeking to address the ‘explanatory poverty’ of material calculations associated with military power or wealth and recognising the centrality of communication to the ascription of legitimacy, this chapter finds it is the sociological orientation of constructivism, particularly its concern for identifying ‘social structures, influence routes and popular discourses’, which provides the impetus for the case studies that follow. Moreover, the value of a constructivist framework lies in its interdisciplinary heritage which brings to light the how, what and where questions of empirical research. While this investigative framework is not designed to confine the empirical investigation that follows to fixed lines of enquiry, it does provide a framework within which to conceive the case studies presented in chapters five and six on Darfur and Libya, respectively.

Taking the two functions of R2P identified by Bellamy, the case studies presented in this thesis draw on situations where the principle of R2P featured in Security Council deliberations surrounding the capacity and willingness of a state to protect its citizens. Representing two of the thirteen post-2005 cases where references to

---

the distinctive language of R2P were made, the rationale for selecting these case studies is their perceived disparity in terms of the international response elicited by references to the principle and suitability for tracing social processes that led to invocation of R2P. Consistent with the qualitative methodology of process tracing, the cases of Darfur and Libya presented here offer a comprehensive, yet bounded, historical narrative of P5 interactions, including unfolding dynamics that led to various turning points in the international response to each crisis.

Despite praise for the role of Africa in advancing the principle of R2P and sustained efforts of the African Union (AU) to engage in capacity-building, the case of Darfur is often cited as a failure of R2P to exert any considerable influence in post-2005 deliberations. While the most ‘significant development’, the International Criminal Court (ICC) indictment of President Omar al-Bashir, could be credited with eliciting a decisive international response, it needs to be balanced against Security Council inaction to protect Darfurians and systematic under-resourcing of peace operations. In the case of Libya, the Security Council set a precedent when it passed resolution 1973 (17 March 2011) authorising a no-fly zone and the use of ‘all necessary measures’, including the use of force, to address widespread and systematic attacks on civilians. Compared to Darfur, resolution 1973 was unique because of a ‘convergence’ between perceptions of legality and legitimacy, political will for action and operational capacity and speed. Libya was also unique in the clarity of the threat of mass atrocities, short time-frame and role of regional organisations in supporting intervention. Until Libya, prevention had dominated the debate around R2P. In contrast, invocation of R2P in the case of Libya framed the debate as a question of a timely and decisive action to protect vulnerable

---

45 At the time of writing there were thirteen cases post-2005 where the language of R2P was invoked: Darfur (2003-ongoing); Côte d’Ivoire (2004-ongoing); Kenya (2007-08); Georgia (2008); Myanmar (Cyclone Nargis 2008); Gaza (2009); Sri Lanka (2008-09); Libya (2011); Syria (ongoing); Mali (2012); Democratic Republic of Congo (ongoing); North Korea (ongoing); Myanmar (ethnic minorities). See Bellamy, Five years on, pp.149-50.


47 Ibid., p.165.

48 Ibid.

49 Bellamy, Libya and the responsibility to protect, p.266

populations. Unfortunately, while the passing of resolution 1973 should have been a ‘vindication’ of the reaction element of R2P, it was followed by ‘buyers regret’ when intentional action seemingly exceeded its human protection mandate.51

A necessary requirement for any assessment of the Security Council’s role in responding to human suffering is analysis of how members justify their actions. Sceptics of R2P argue there is nothing to suggest its emergence has altered the decision-making process by which the Security Council responds to mass atrocities, aside from ‘expanding the rhetoric employed’ by states seeking to rationalise their position.52 In contrast, the research presented here argues the distinctive language of R2P has significantly expanded the normative and ideational framework for international engagement with mass atrocities.53 Consistent with this finding, the case studies in this thesis are necessarily concerned with variations in the practice of the Security Council. Examined through a constructivist conception of communicative dynamics, it is the constant interplay between sources of international law and practice, or established rules and norms, values and ideas, which helps to ‘yield’ a multi-dimensional picture of the Security Council, including its role in advancing R2P through ‘successive adaptations’.54

While a multitude of analyses exist that examine the legality of individual instances of the use of force, the foreign policy imperatives of members of the Security Council, and the practical challenges of contemporary peace operations, few have sought to qualitatively examine the debate surrounding prevention and reaction for evidence of a procedural shift consistent with the ICISS conception of R2P (to prevent, react and rebuild). Recognising this gap, the research presented here seeks to build on the interdisciplinary focus of scholarship outlined in part one, by ‘interweaving’ the relevant legal, political and ethical perspectives.55 Through an interpretive approach this thesis also seeks to develop a more nuanced

53 Reus, Smit, Politics of international law, p.12.
understanding of how R2P has influenced state action. On the one hand, evidence of increased references to prevention in Security Council deliberations suggests a shift is taking place. On the other hand, the implications of recent action in Libya on future responses will ensure the path to full operationalisation of R2P may not only be narrow and deep as forecasted by the Secretary-General, but possibly also ‘long and steep’.  

The UN Security Council and humanitarian intervention

When the North Atlantic Treaty Organisation (NATO) circumvented Security Council authority in 1999 to intervene in Kosovo in response to mass atrocities, questioning regarding the relationship between international law and politics came to a head. Central to this questioning were shifting notions of authority. While NATO action was seen as illegal as it had not secured proper legal authority through the Security Council, the intervention itself was seen as legitimate because there was a strong ‘moral or humanitarian justification’ to take such action.1 Together with the perceived failures of the Security Council to protect populations from genocide in Rwanda (1994) and Srebrenica (1995), the NATO intervention in Kosovo provided the backdrop for ICISS to propose a fundamental rethink of existing notions of authority through its articulation of R2P.2 To understand the contribution of R2P to notions of authority, the first part of this chapter reviews the legal foundations for Security Council action to address mass atrocities by examining the scope, nature and function of public international law.3 This chapter will then turn its attention to examining the increasing influence of human rights upon international law and the procedure of the Security Council in the lead up to articulation of R2P by ICISS. Drawing on the idea of a ‘rule of international law’ as conceived by Simon Chesterman,4 the final part of this chapter departs from traditional legal scholarship, which typically narrows the field of enquiry to the extent to which instruments of international law constrain state behaviour. In contrast, and operating within the tradition of social constructivism broadly defined, this chapter concludes by identifying the mutually-constitutive structures embedded in international law which influence and give meaning to state action.

From this it is clear by 1999 international law had increasingly become the subject of a significant debate. Central to this debate was the confrontation between the politics of international human rights law (the pursuit of greater justice) and

---

1 ICISS, Responsibility to protect, p.vii.
3 Hereinafter referred to as international law.
4 Chesterman, I’ll take Manhattan, p.2.
conventional notions of statehood (based on inviolable or absolute sovereignty). Traditionally regarded as an instrument of social cohesion and order, international law as understood through the UN Charter legal paradigm for *jus ad bellum* was expanding its ambit to include societal demands based on values of justice. Recognising the increased willingness of the Security Council to use force for human protection juxtaposed with a perceived failure of the international legal system to prevent mass atrocities, part two of this chapter finds it is three generations of international human rights law (civil and political rights; economic, social and cultural rights; and collective rights) that introduced a ‘human-centric’ corrective to the interpretation of international law.\(^5\) Examining the legal foundations for Security Council action and R2P, it is the contention of this chapter that international law is more accurately described as a socially-constituted decision-making process that allocates meaning, rather than a body of rules supported by precedent, to be applied impartially. It necessarily follows that the question of authority to address mass atrocities is not just one of legality, but also equally one of legitimacy. Moreover, it is the ‘synergy and synthesis’ between different understandings of legality and legitimacy within international law that influenced the development of R2P.\(^6\)

**1.1 International law governing the use of force**

Traditionally regarded as an instrument for encouraging coexistence among states, international law has increasingly become the subject of a significant debate. At the heart of this debate lies the confrontation between the politics of international human rights law (IHRL) and IHL, based on the pursuit of greater international justice through the protection and promotion of human rights, and conventional notions of statehood based on inviolable or absolute sovereignty. Philosophically, this debate raises questions about the nature, function and application of international law. Should international law be regarded as an ordering principle of predominant weight within international politics? How do differing interpretations


\(^6\) Franck, *Interpretation and change*, p.231.
of international law influence what is understood as “international” in terms of rights and obligations? Moreover, is it still conceptually correct to talk about a state-based legal system or are we moving more towards a global legal system? While these questions are in no way exhaustive of the range posed by scholars concerned with human protection, collectively they highlight key parameters of the debate underpinning the intellectual journey of R2P. Seeking to develop a response to these questions and appreciate the legal and political consequences of international engagement with mass atrocities, particularly the more controversial use of force for human protection, it is first and foremost necessary to develop a more precise understanding of the scope, nature and function of international law.

1.1.1 Scope, nature and function

In its most general form, international law provides a body of principle-based rules primarily concerned with regulating relations between sovereign states. By virtue, states are not only the principal subjects of international law, but collectively through international organisations such as the UN, occupy a ‘pivotal role’ in the interpretation, implementation and if necessary enforcement of specific provisions.\(^7\) While seemingly an accurate description of the purpose of international law, this generalisation is problematic for a number of reasons. Firstly, it neglects to account for the full potential of international law in terms of its adaptive capacity. Specifically, the ‘elasticity’ of the international legal system to ‘make allowances for’ exceptional circumstances when interpreting particular provisions,\(^8\) or to account for the manner in which international law ‘lives’ through deliberation in organs such as the Security Council.\(^9\) Secondly, such a generalisation neglects to accommodate the politics of international law which can introduce complexity to deliberations of the Security Council; for instance, the mutually reinforcing yet sometimes competing nature of the relationship between statehood, as understood through the principle of sovereignty, and the pursuit of international justice, based on international human rights standards. Thirdly, such a generalisation neglects to

---


recognise that international law is also distinct in its position and operation. Unlike national legal systems, international law cannot rely on the competence of a single legislature for creation, an executive organ for enforcement and a judiciary to make determinations in the event of a dispute.\(^{10}\) Characterised by a myriad of ‘organs, specialised agencies, working groups and programs’ with disparate interests and priorities, the international legal system can appear to be ‘eclectic, unsystematic, overlapping’ and often ‘poorly coordinated’.\(^{11}\) While it is easy to be pessimistic about the complexities this distinction embodies for the operation of international law, its contribution should not be underestimated.

As the ‘centrepiece’ of the international legal framework governing state action the UN Charter demonstrates the *sui generis* (unique) character of international law. The Charter represents a remarkable effort on the part of drafters to construct effective barriers to international aggression. It is distinctive in the comprehensiveness of its scope of duties: the maintenance of international peace and security and the promotion and preservation of public welfare through respect for human rights. Furthermore, because of its constitutional structure, the Charter represents an instrument of such predominant weight that the ‘will’ of members in a particular situation can be ‘derogated’ almost to a ‘subsidiary means of interpretation’.\(^{12}\)

While these characteristics require more rigorous examination, it is worth clarifying the sources of international law to understand its complexity, potential and contribution to international engagement with mass atrocities. Consistent with the approach adopted by authoritative sources of legal scholarship,\(^{13}\) the logical starting point are the primary sources of international law that constrain or enable Security Council action. Consensus among scholars engaged in jurisprudential, political or broader philosophical debates surrounding the use of force is somewhat rare. However, when it comes to identifying sources of international law, consensus

---

\(^{13}\) See Ian Brownlie, Thomas Franck, Louis Henkin and Rosemary Higgins.
exists that Article 38(1) of the Statute of the International Court of Justice (1945) is authoritative. It identifies the primary sources as

(a) International conventions (including international treaties such as charters, covenants, protocols, pacts and declarations);

(b) Customary international law (as evidenced by state practice and the general acceptance of such practice as law by states);

(c) General principles of law;

And as a subsidiary source

(d) Judicial decisions and teachings of publicists (such as judicial decisions of the International Court of Justice, regional human rights courts or national courts).

In order to understand the impact of these sources upon Security Council practice, a brief discussion of the nature and function of each follows.

1.1.2 International conventions

Turning to the first source, international conventions, the UN Charter is pivotal for being the principal multilateral treaty regulating relations among states and for determining more generally, the character and function of international law. The Charter is significant for the constraints it imposes on the use of force through the principles of sovereignty and non-intervention. The Charter explicitly prohibits the threat or use of force by members

against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations (Article 2(4)).

The Charter proscribes the principle of non-intervention on the basis that

nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state (Article 2(7)).

The next part of this article however, indicates the Charter also permits enforcement action to be taken under Chapter VII should it be required. Comprising the first of two exceptions to the prohibition on the use of force proscribed by Article 2(4), the specific provisions of Articles 39-42 invest in the Security Council primary
authority to define when large scale human suffering constitutes a threat to international peace and security. It also confers legal authority upon the Security Council to make decisions that are in principle binding on all members of the UN. These may include measures excluding the use of force such as the imposition of sanctions or severance of diplomatic relations (Article 41). Or they may involve more robust measures, including military action on behalf of the UN by air, sea or land (Article 42). The second exception to the prohibition on the use of force is the inherent right of states to individual or collective self-defence (Article 51).

Through these provisions the Charter is designed to be both stabilising and empowering. Stabilising in terms of placing severe limitations upon the purposes for which force could be used, and empowering in that the Security Council is not reliant upon the traditional notion of aggression between states to make a determination (Article 39) or to secure legal authority for the to use force (Article 42).\(^\text{14}\) Characterised collectively as the rules of international law governing the recourse to force, a consensus among legal scholars has emerged since the 1990s that the framework of the UN Charter for *jus ad bellum* (just recourse to war) provides a legal paradigm within which questions regarding international engagement with conflict are to be considered.\(^\text{15}\) Functionally, the general principles of sovereignty and non-intervention as proscribed in Articles 2(4) and 2(7) are significant as they are credited with providing the ‘cornerstone’ for peaceful coexistence among states.\(^\text{16}\) Within this paradigm, the significance of the Charter lies in the fact that since its entry into force in 1945, its text has not been significantly amended. What has fundamentally shifted is how specific provisions are interpreted and applied by states.

Taking account of shifts in interpretation is not only important for establishing the manner in which international law grants personality to states and other actors within the international legal system, but also for charting the development of

international law itself. In the context of R2P, the most prominent development in
the post-Cold War period has been a shift in notions of statehood and authority,
from a Westphalian conception of inviolable or absolute sovereignty towards the
idea of ‘conditional’ or responsible sovereignty. While the concept of responsible
sovereignty has secured widespread acceptance, a disparity between words and
deeds continues to fuel criticism of the effectiveness of international law. Such
criticism targets enforcement action by the Security Council for human protection
as being unduly selective or limited in exercise of its authority. While this approach
could be defended on the basis that it demonstrates the ‘constantly developing role’
of the organ in addressing mass atrocities, critics belonging to the realist tradition
are more sceptical suggesting international law remains the domain of great power
politics (see section 1.3.2). From this perspective, the execution of international law
is more about securing the relative power and national interests of the P5 than it is
about pursuing justice and peace.

The other source of international law within this category that is of primary
importance is IHL or the “laws of war”. Where the UN Charter governs *jus ad
bellum*, IHL governs *jus in bello* (how wars are fought). As such, the protection
provided by IHL is not from violence or armed conflict, but rather against ‘arbitrary
power acquired through the course of a conflict’. Ratified or acceded to by
virtually all states, the four *Geneva Conventions* (1949) and two *Additional
Protocols* (1977) represent the main treaties or instruments of IHL. With its
origins in the customary practices of armed forces, IHL was designed, for
humanitarian reasons, to limit the effects of armed conflict. In practice, IHL is

21 The *First Geneva Convention* concerns the protection of the wounded and sick on land; *Second Geneva Convention* the protection of wounded and sick at sea; *Third Geneva Convention* the treatment of prisoners of war; and *Fourth Geneva Convention* the protection of civilians in war.
22 *Additional Protocol I* covers protection of victims of international armed conflicts and *Additional Protocol II* protection of victims of non-international conflicts. These are supplemented by a third protocol concerning the adoption of an additional distinctive emblem which was adopted in 2005.
primarily concerned with balancing the competing interests of humanity with military necessity during both international conflicts (between states) and non-international conflicts (armed conflict within a state). In terms of scope, IHL is restricted in application to armed conflict and therefore has no jurisdiction over internal tensions, civil wars or isolated acts of violence. IHL applies only once a conflict has begun, and then equally without discrimination to all parties to a conflict including governments and their armed forces, armed opposition groups and any other parties to a conflict. In addition to the Geneva Conventions and Additional Protocols, IHL draws on various other treaties covering the means and methods of armed conflict, including: the Genocide Convention (1948); Convention for the Protection of Cultural Property During Armed Conflict (1954) and Protocol (1999); Biological Weapons Convention (1972); Convention on Certain Conventional Weapons (1980); Chemical Weapons Convention (1993); the Ottawa Convention on the Prohibition of Anti-Personnel Landmines (1997); Statute of the International Criminal Court (1998); and Optional Protocol on the Involvement of Children in Armed Conflict (2000).  

Based on a series of principles concerned with civilian immunity, protected objects and property, protection of military personnel, proportionality of means and military necessity, IHL contains both common and specific provisions. Through these provisions, IHL is concerned with placing restrictions on armed conflict that: fails to discriminate between combatants and civilians; causes superfluous injury or unnecessary suffering; causes severe or long-term damage to the environment. The most prominent common provision provided by IHL is Article 3 common to the Geneva Conventions and Additional Protocol II. Article 3 outlines provisions that constitute a minimum standard of humane treatment to be applied without discrimination for all participants in armed conflict. To this end, common Article 3 prohibits: violence to life and person including murder, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity through humiliating and degrading treatment; and the passing of sentences and carrying out

---

executions without previous judgement (Article 3, Convention I). Drafted for non-international conflicts, Article 3 has achieved the status of customary international law and is therefore binding all states. While it is beyond the scope of this chapter to consider the full range of specific provisions provided by IHL, Convention IV provides a number of relevant examples including: the protection of civilian hospitals from attack (Article 18); free passage of medical supplies (Article 23); and special protections for women (Article 27) and children (Article 77).

With regard to application and function of IHL, it is important to note that “respect” and “protection” as they appear in IHL are complimentary. Both confer obligations upon parties to a conflict. Respect within IHL confers a ‘passive obligation’ to do no harm, to not expose victims of conflict to suffering or kill a protected person; whereas, protection signifies an ‘active obligation’ to ‘ward off dangers and prevent harm’.\(^\text{26}\) For states, IHL confers the obligation to: ensure populations (both armed forces and general public) are aware of the provisions of IHL; prevent violations; and punish violations, including enact laws to address the most serious violations of IHL which constitute war crimes under customary international law.\(^\text{27}\) This is because violations of IHL generally do not result from the ‘inadequacy’ of provisions, but usually from a lack of willingness of parties to respect them, the means to enforce provisions, uncertainty as to their application in a specific situation or ignorance of the rules codified in IHL.\(^\text{28}\)

### 1.1.3 Customary international law

As international law is also derived from custom, a focus on the legality of international engagement with mass atrocities often translates into a desire among legal scholars towards establishing whether sufficient evidence exists within state practice to constitute the two necessary requirements for customary international law. The first being uniformity and consistency of state action with respect to

---

\(^\text{26}\) Kalshoven & Zegveld, *Constraints on the waging of war*, p.53.
\(^\text{28}\) Ibid., p.xxvii.
customary international law. The second requirement that must be satisfied supports the more ambitious proposition of *opinio juris*, where state action is regarded as lawful on the basis that failure to take such action would constitute an illegal act. In this sense, custom is significant as a source of law in that it represents a precedent with the capacity to fundamentally alter the manner in which states understand, interpret and apply specific provisions of international law. Identification of an emerging norm and its subsequent characterisation as customary international law is however, a complex exercise.

Examining whether intervention for human protection represents an emerging custom, the Security Council’s evolution into law-making has been problematic. The Council’s narrow membership raises questions as to whether state practice alone can satisfy the category of a prevailing norm. Furthermore, procedural constraints contained in the UN Charter (Article 27), such as reliance upon a three-fifths majority vote, the right to veto a resolution among the P5 and the documented willingness of members to abstain to avoid use of the veto, ‘cast a shadow’ on the decision-making process. In response, on 3 May 2012 the Small Five (S5), comprising Costa Rica, Jordan Liechtenstein, Singapore and Switzerland, presented a draft resolution (A/66/L.42 Rev 1) to the General Assembly aimed at addressing such concerns. The draft resolution proposed constraints on the use of the veto by the P5 where mass atrocities are concerned to ‘enhance the accountability, transparency and effectiveness’ of the Security Council (paragraphs 19-21). Despite support for imposing constraints on the veto from sources such as ICISS and the Secretary-General, lack of wider support forced the S5 to withdraw the resolution.

Taking into consideration the restricted membership of the Security Council and established use of the veto by the P5, this would suggest consensus towards an issue in the Council is more accurately described as the absence of opposition rather than

a truly consensual agreement on how to respond. In this sense, consistent with the theoretical frame of social constructivism, it appears it is the constitutive and regulative norms embedded in the Security Council which influence, and sometimes constrain, the voting habits of members. While the development of customary international law can be problematic and the validity of the idea that state practice alone can amend international law is often challenged by legal scholars, the practice of the Security Council is nonetheless of significant evidentiary value for charting the development of international law. As highlighted by Thomas Franck, in its judgement on the Nicaragua case, the ICJ recognised the practice of international organisations (such as the UN) is evidentiary of the role of interpretation in influencing mutual understanding of more general principles. In this regard, where practice appears to have fundamentally diverged from established norms, so too has broader understanding among states of the provisions of international law.

1.1.4 General principles

Scholarship on the third category of international law, general principles, is divided on both the nature and stature of this category within the international legal system. Central to this division is the notion that having recourse to general principles of national law does not add anything new to international law, beyond that which can already be found in treaty and customary international law. Furthermore, if principles drawn from national legal systems are to be applicable in international law, they would need to be reflected in state practice or adopted by states through treaties that are binding. Regarded as soft law because they are not binding in the traditional sense, collectively the general principles described here represent a normatively significant set of standards and rules that function like international law because they guide the behaviour of states. Moreover, they can confer legal obligations on states through their erga omnes status (rights or obligations owed

---

33 Franck, Recourse to force, p.174.
toward all).35 By their very nature, they often serve to give further meaning to the organisations within which decisions regarding their application take place.

Where legal scholars accept general principles represent an ‘independent source of international law’, Anthony Arend and Robert Beck offer ‘three plausible definitions’ of this source.36 In the first instance, Arend and Beck explain general principles refer to basic legal principles ‘present in most domestic legal systems’.37 Because states have recognised these principles widely within their own legal systems, it is assumed that they will accept them as principles in the international legal system. Examples include legal concepts widely accepted in most national systems, such as consent, prescription, reciprocity, equality of states, estoppel and res judicata (final judgements on merit are conclusive).38 Further examples can be found in criminal law. These include the presumption of innocence and right to fair trial, which have made a notable contribution in IHRL.

In the second instance, general principles refer to specific aspects of the nature of international law that states have come to accept. The obvious example is the notion of state sovereignty. According to Arend and Beck, in order

for international law to be efficacious, states must accept the notion that states are sovereign, that they can be bound by law without their consent, and that they can be bound by law with their consent.39

In this sense, because general principles relate to the nature of international law, they may be assumptions about the law-making process or notions that underpin the operation of the international legal system itself.

In the third instance, general principles refer to ‘principles of higher law’,40 which are similar to principles of natural law in that they intended to address any gaps that exist between treaties and customary international law or provide a source of

35 For evidence of the erga omnes status of individual and collective human rights see Barcelona Traction, Light and Power Company Limited (Belgium v. Spain), ICJ Reports 1970, p.32.
37 Ibid. Emphasis in original.
40 Ibid.
inspiration where a determination is being made in specific case and there is an absence of existing clearly defined rules. An example often cited by authoritative legal scholars, such as Rosalyn Higgins, is the Corfu Channel case. In its judgement the ICJ held Albania responsible under international law for failure to notify and warn Britain of mine laying. The judgement was unique because rather than apply the provisions of IHL to peacetime to determine the merits of the case, the ICJ drew on ‘general and well-recognised principles’, including ‘elementary considerations of humanity’ and ‘every state’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’.  

1.1.5 Judicial decisions

While advisory opinions of the ICJ are not binding on states unless they are party to the case and the opinions of the Court, their evidentiary value for charting the development of international law is important. They are consultative in nature but are regarded as being ‘highly authoritative’ because of their wide influence and role as a ‘subsidiary means’ for determining or clarifying the rules of law. One of the most frequently cited examples is the Nicaragua Case where the ICJ rejected the use of force by the US as an ‘appropriate method to monitor or ensure’ respect for human rights. In doing so, the ICJ reaffirmed the intent and provisions of international law prohibiting the use of force, the exception of self-defence and reflected the common position of states opposed to a more permissive interpretation. Furthermore, the decision developed a general principle distinguishing the collective use of force for human protection from the broader humanitarian enterprise of aid provision or development assistance, provided without discrimination to all victims and consistent with ‘the purposes hallowed in the practice of the Red Cross’ (paragraphs 239-245). While the latter is associated with the altruistic intent and the impartiality of the UN, it is also the case that the

---

43 Corfu Channel Case (*United Kingdom v. Albania*) Merits, Judgement of 9 April 1949, ICJ Reports 4, para 2, p.22.
increasing influence of human rights on the interpretation of international law provides the rationale for international engagement with mass atrocities.

Consistent with this assessment, the ICJ’s advisory opinion regarding the Barcelona Traction, Light and Power Company Limited (Belgium v. Spain) found the text of the UN Charter on human rights contains binding legal obligations (paragraph 33). To ignore such obligations would be ‘incompatible’ not only with the principles and purpose of the instruments of international law, but also with the purpose of the UN itself.\(^{46}\) This confirms that IHRL represents an explicitly defined human rights system, as well as unwritten but widely accepted general principles codified through treaty or custom, against which individuals and groups can expect certain behaviour from a state. In the context of international engagement with mass atrocities, the general principles contained in IHRL serve to highlight the important link between conceptions of legality and legitimacy. Most notable, is that different modes of authority may be based on different ideas of legitimacy.

1.2 The humanitarian critique of sovereignty

Anthony Arend and Robert Beck explain that the challenge in the late 1990s to the legal paradigm of order over justice ‘manifested’ itself in three different rationalisations for international action: to promote or support self-determination; to support ‘just reprisals’; and to ‘correct past injustices’.\(^ {47}\) Underpinning this challenge is the belief that the use of force is at times warranted to challenge the status quo in the pursuit of international justice. While this proposition is not desirable, the Security Council adopted the position that it was better to ‘break the peace in the name of justice, than to live with the injustice’ of doing nothing.\(^ {48}\) From this it is clear that serious, large scale or systemic violations of human rights have not only ceased to be a matter of exclusive concern to the states that commit them, but under international law the Security Council has an obligation through the authority conferred on it by the UN Charter to ‘prevent, suppress and sanction’ such

\(^{46}\) Vargas Carreño, *Humanitarian intervention*, p. 349.


\(^{48}\) Ibid.
violations. Based on a more permissive interpretation of international law, Security Council practice represents ‘unequivocal proof’ that a ‘significant evolution’ occurred during the 1990s in the interpretation and use of powers conferred under Chapter VII. Confronted with large scale human rights violations in Northern Iraq, Somalia, the former Yugoslavia, Liberia, Haiti, and Rwanda, peacekeeping operations quickly transcended traditional operational parameters as they employed “all necessary means” to re-establish respect for human rights.

Consistent with the idea of an international rule of law (examined in section 1.3), this expansion in international authority marked the beginning of the institutionalisation of the practice of collective armed intervention for human protection. In this regard, Francis M Deng and Roberta Cohen’s persuasive conceptualisation of sovereignty as responsibility is instructive for understanding the implications of this development. Deng and Cohen forecasted a fundamental shift within the ‘confrontation’ between human rights and the ‘parochialism’ of traditional sovereignty that would result in a move towards a more humanised form of sovereignty. At the same time, the need for human protection justified the expansion of international authority. It is clear from the measures adopted by the Security Council under Chapter VII during this period that the prevailing notion of authority had begun to move in this direction.

The primary purpose of operations under Chapter VII, to enforce order and stability through coercive measures, continued to evolve through Security Council practice from a more traditional policing role to enforcement and the more controversial territorial administration and peacebuilding. Moreover, the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal in Rwanda (ICTR) indicated an increased willingness on the part of the Security Council to guide domestic stability within

50 Ibid., pp. 359-60.
51 Deng et al *Sovereignty as responsibility*, p.8.
states. By implication, peace as it was interpreted through the scope of Chapter VII, fundamentally shifted from being the ‘absence of war between two or more states’ towards ‘peace in the internal sphere’.\(^{54}\) While sovereignty, independence and territorial integrity continued to remain vital elements of statehood, where these conflicted with the protection of human rights the increased willingness of the Security Council to take collective action under Chapter VII provided substantial and convincing evidence of the contribution of international human rights to shifting notions of statehood. It also provided substantial evidence of a fundamental shift in the collective understanding of international obligation and morality that underpinned prevailing perceptions of legitimacy.\(^{55}\) In the twenty-first century progress in this area was quite remarkable. Characterised as the humanitarian critique of sovereignty it is the ‘growing influence’ of human rights as defined in IHRL and how they influence international understandings of legitimate action that mounted the greatest challenge to the legal paradigm of the UN Charter.\(^{56}\)

### 1.2.1 The influence of human rights on interpretation of the UN Charter

Accompanying the adoption of a more permissive interpretation of international law was formal recognition of a new international legal subject. David Chandler explains the referent for this subject is similar to that of domestic law, the ‘individual person’.\(^{57}\) In the twenty-first century the capacity of the Security Council as promoter and enforcer of international law has received a great deal of scholarly attention. In the context of human protection, most of this attention has been directed towards critiquing its capacity to deliver greater justice to this emerging legal subject. Central to this critique is the premise that the problem with a traditional state-centric approach is that it ignores the ‘security of people’.\(^{58}\) Providing the impetus for this critique is three generations of IHRL concerned with civil and political rights; economic, social and cultural rights; and collective rights.

---

\(^{54}\) M Ruffert, ‘The administration of Kosovo and East Timor by the international community’, *International and Comparative Law Quarterly*, vol. 50, no. 3, July 2001, p.620.


\(^{56}\) Ruffert, *Administration of Kosovo and East Timor*, p.620.


\(^{58}\) Kerr, *The evolving dialectic*, pp.11-2.
Drawn together under the concept of human security, and introduced by the UN Development Programme (UNDP) in its Human Development Report 1994, this has introduced a ‘human-centric’ corrective to the international policy discourse to address the perceived failure of a state-centric approach to international order. Located at the intersection of human protection, atrocity prevention and development, human security offers an insight into possible causes of intra-state violence, provides an ‘organising umbrella’ for state action and at the same time, introduces new variables into the determination of the legality and legitimacy of international responses.

This manifestation of a ‘value based hierarchy’ within international law tilted towards human protection supports the argument that the international legal system has shifted from being a system based on ‘bilateral law-making and state voluntarism’ towards one based on ‘multilateral law-making and community values’.

Developments such as the successful negotiation of multilateral treaties that incorporate obligations on the part of states erga omnes (such as human rights or environmental) and ‘invocation’ of the language of the ‘will of the international community’ although criticised for its vagueness, illustrates that intent and normative ambition has become a feature of international law. While this human corrective to the conventional state-centric view of international order is an important development, some interesting questions have arisen regarding this idea of international justice. This includes how deep such concern actually runs within the Security Council. Regardless of such concern, widespread recognition of this human-centric corrective has translated into expectations of a moral minimum on the part of states, both towards their citizens as well as those of the broader international community. Consistent with this finding, Michael Walzer argues despite different histories most citizens ‘have moral expectations’ regarding not

---

62 Ibid., p.15.
63 Ibid.
only their ‘fellow’ citizens, but also of ‘strangers’. 64 Within this framework, the use of force for human protection represents a legitimate form of warfare on the basis that while sovereignty and the principle of non-intervention may be central to international order, non-interference is no longer an ‘absolute moral rule’ once a state is incapable or unwilling to address extreme cases of ‘cruelty or human suffering’. 65

Theoretically, the emergence of a behavioural moral minimum provides evidence of the extent to which interpretations of sovereignty have fundamentally shifted from conventional notions of inviolable or absolute sovereignty towards a more liberal conception of ‘conditional’ sovereignty. 66 Consistent with the concept of responsible sovereignty articulated by Deng and Cohen, the sovereign status and authority of states is contingent upon their capacity and willingness to guarantee individual human rights, rather than assumptions regarding ‘territorialist space, statist regulation and national identity’. 67 Of interest here is the manner in which the two aspects of internal and external sovereignty become embroiled in a relationship of dependency. Consequently, a state’s ‘legal identity’ under international law, ‘equality’ among other states and its political claim to be the legitimate authority for a particular population become contingent upon internal aspects of its sovereignty; 68 particularly, the social contract between citizens and the state that guarantee fundamental individual and collective human rights.

The decision to use force to intervene in a third party state for human protection is one of the most legally, politically and ethically complex issues confronting states. However, the use of force and violent conflict dominated by large scale human rights violations are by no means new. Examined through the lens of just war theory, antecedents can be traced as far back as medieval Catholic natural law and

---

the writings of Augustine, Aquinas, Grotius, Vattel and Vitoria among others, and later in Edmund Burke’s reflections upon the French Revolution.\(^{69}\) Despite its medieval origins, just war theory has continued to influence the development of a moral and legal framework for the use of force and the conduct of hostilities. Many of the rules developed in early modifications have since been codified into international legal instruments which seek to mitigate the consequences of conflict, such as the \textit{Geneva Conventions} (1949). Since its emergence there have been further modifications made to the medieval conception of just war, with its distinction between \textit{jus ad bellum} and \textit{jus in bello}.\(^{70}\) However, the principles that underpin the framework guiding the use of force to address human suffering remain essentially the same.

While the UN Charter continues to be the principal multilateral treaty governing relations among states, a preference for engaging in a politics of exceptionalism supported by a discourse of a humanitarian ‘imperative’,\(^{71}\) ‘impulse’,\(^{72}\) or ‘impetus’\(^{73}\) to take collective action to address large scale human suffering signalled a fundamental shift in post-Cold War interpretations of international law. In this regard, resolution 814 (26 March 1993) which extended and expanded the existing UN operation in Somalia (UNSOM) (paragraphs 5-6) is instructive for locating a fundamental ‘turning point’ in Security Council practice. What was unique about resolution 814 and the accompanying UNSOM operation is that it presented the Security Council with a clear humanitarian imperative based on the nature and scale of the humanitarian crisis and lack of functioning sovereign authority. This enabled a more ‘flexible interpretation’ of the crisis as a threat to international peace and

\(^{71}\) Annual report of the Secretary-General on the work of the organisation (22 August 1995) A/50/1, p.1.
CHAPTER ONE

security,\textsuperscript{74} which turn, provided weight to the notion that international law was developing an ethical foundation.\textsuperscript{75}

While the term ‘humanitarian intervention’ became synonymous throughout the 1990s with introducing novel humanitarian justifications for the use of force, it must be noted that no such right exists in the UN Charter. Consequently, state practice was often perceived as steeped in ambiguity, deliberate or otherwise. In an attempt to resolve some of the ambiguities that surround the term, yet at the same time give adequate recognition to the legal and political context within which it operates, this thesis adopts JL Holzgrefe’s definition. According to Holzgrefe, humanitarian intervention is the threat of use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.\textsuperscript{76}

In its broadest form, this definition is applicable to both the collective and unilateral use of force. However, as this thesis is primarily concerned with the actions of the P5, this definition is restricted in application to action taken by the Security Council to address the threat or commission of mass atrocities.

1.3 The politics of an international rule of law

Scholarship concerned with human protection is often dominated with references to an “international rule of law” or the “rule of international law”. With regard to the Security Council, this scholarship often emphasises the link between re-establishing respect for the rule of law, peaceful coexistence in international politics and the promotion of human rights. Essentially, what this discourse of rule of law is referring to is the contribution of international law to maintaining order among


\textsuperscript{75}Boyle & Chinkin \textit{Making of international law}, p.vii

states. As the concept of rule of law has become of central importance to international peace and security, most country-specific resolutions since 2003 have included references to the rule of law. However, it is not always clear what authority can be derived from the concept or the practical requirements for implementing the rule of law. Responding to the invasion of Iraq (2003) by a coalition of willing states without Security Council authorisation and premised on contested rhetoric of a humanitarian imperative, former Secretary-General Kofi Annan released a common definition of the rule of law and confirmed its centrality to the purpose and mission of the UN. He defined the rule of law as a principle of governance in which all persons, institutions and entities, public and private...are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires...measures to ensure adherence to the principles of the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

To understand the true character of the rule of law and its contribution to international order, it must be acknowledged that the rule of law as articulated here is both normative and procedural. When applied to international engagement with mass atrocities, the rule of law influences, constrains and gives meaning to state action through its normative character.

Looking at this discourse of a rule of law, Simon Chesterman identifies three conceptions of what the term necessarily means. Firstly, it can be understood as the application of the principles contained in the rule of law at the international level primarily to relations between states, but also to other subjects of international law. Typically, this definition is associated with the liberal ‘new world order thesis’ of the early 1990s which emphasised the contribution of international law to world

---

order through the idea of the ‘international rule of law’. To some extent, this definition continues to underpin legal scholarship as it is premised on a global architecture embodying liberal beliefs regarding order, security and justice: that disputes among states can be settled peacefully, aggression will be met with collective action, and ‘just treatment’ should be guaranteed for all peoples. The Security Council occupies a prominent position within this conception, because of its capacity for collective action to preserve international legal and ethical standards. The second conception offered by Chesterman is characterised as the ‘rule of international law’. Functionally, it privileges the principles of international law over that of national law where the latter fails in its obligations to the former. Given the consistencies between R2P as articulated by ICISS and endorsed by states at the World Summit and the functions of this conception, this thesis subscribes to this definition of the rule of law. The third conception is that of a ‘global rule of law’. Here the rule of law refers to the ‘emergence of a normative regime’ that recognises and protects individuals without being subject to ‘formal mediation’ through parallel institutions of international and national law. It is most often associated with cosmopolitanism and the ‘rise of governance regimes’ that reside outside traditional national and international legal structures. The proposition that the international legal system should be replaced with a global legal system based on a value hierarchy of justice, rather than peace, is consistent with this conception.

At the international level, legal scholarship has concentrated on an identified gap between rhetoric and practice or aspiration and reality, rather than the discourse of the rule of law itself. Regardless of their conclusion, there seems to be ‘little dissent’ among scholars to the ‘idea’ or substance of the rule of law. This suggests that the debate surrounding the discourse of the rule of law is not one about the

---

81 Chesterman, *I’ll take Manhattan*, p.2. Emphasis in original.
82 Ibid., p.3. Emphasis in original.
83 Ibid.
84 The promotion of the rule of law abroad as part of post-conflict peacebuilding is taken up further in chapter three.
idea, but rather the meaning that different social contexts allocate to notions of authority. Consistent with this assessment, this chapter is necessarily concerned with the extent to which members of the Security Council have internalised a rights-based understanding of the rule of law as a ‘normative standard’. Applied to the broader membership of the UN, it appears that the idea of the rule of law is now firmly implanted. In the 2005 Summit Outcome states reaffirmed a commitment to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among states (paragraph 134).

While formal endorsement for the rule of law, including its relationship to human rights is a significant development, realist assessments of the influence and effectiveness of the idea (see section 1.3.2) are more pessimistic, asserting the ‘expansive’ nature of the rule of international law as conceived by Chesterman, requires practice that goes well beyond what states are likely to implement at the national and international levels. This is not to say that inclusion of human rights language into legal discourse is a wasted exercise. Rather, what is required is a thicker, more substantive understanding of what the rule of international law necessarily entails, rather than the thin/formal one often associated with legal scholarship.

To give full merit to the rule of international law to which this thesis subscribes would involve a particular understanding of international law on two levels. At the first level, this would involve greater recognition that the rule of international law is characterised by a very specific standard of justice, based on a ‘system of non-instrumental rules’ with associated authoritative obligations governing the ‘transactions’ of members. At the second level, it contains procedural content necessary for ‘identifying, enacting, altering, and applying’ these rules. To fully understand the relationship between normative and procedural elements of the rule of international law, a review of a constructivist interpretation follows.

---

86 C Bull, No entry without strategy: building the rule of law under UN transitional administration, United Nations University Press, Tokyo, 2008, p.45.
87 Chesterman, I’ll take Manhattan, p.2.
88 Nardin, Theorising the rule of law, p.395.
89 Ibid.
1.3.1 A constructivist interpretation—international law as a socially-constituted process

The first point to be derived from a constructivist interpretation is that the international institutions and rules of the international legal system are not inert structures established by states, but in contrast are constitutive frameworks that influence states’ identity, role and by implication, their interests.90 While states continue to be the primary actors within the international legal system, the institutions of the system have somewhat acquired an identity of their own.91 The emergence of references to an ‘international community’ while problematic because of its vagueness, recognises sources of influence that guide state action beyond traditional concerns for survival and security. Within this community, the ‘decentralised’ nature of the international legal system means that the emergence of new interpretations of international law are often the result of the ‘subtle and evolving interplay’ between binding and non-binding instruments of international law, consensus among states on more general principles and the normative and ideational frameworks within which deliberation takes place.92 Drawing on the debate among scholars regarding whether international law constitutes rules to be impartially applied, or conversely, is representative of a much deeper normative process, a review of the writings of Rosalyn Higgins is instructive.

Higgins argues, convincingly, that international law is more than rules. Rather, international law constitutes a ‘process for resolving problems’.93 Considered within this framework, Security Council practice supports the central point of Higgins’ argument that the ‘specialised processes to which the word “law” refers include many things besides rules’.94 Christian Reus-Smit in his examination of The Politics of International Law arrives at a similar conclusion suggesting

actors assume the existence of a set of socially sanctioned rules, but international law “lives” in the way in which they reason argumentatively about the form of these rules, what they prescribe or proscribe, what their jurisdictional reach is, what new rules should be enacted, and how these relate

90 Ibid., p.5
91 Ibid., p.41.
92 Boyle & Chinkin, Making of international law, p.vii
93 Higgins, Problems and processes, p.267.
94 Ibid., p.2.
Looking at the contribution of shifting interpretations to the development of international law, it becomes apparent that rules removed of their social context simply become accumulated past decisions. Furthermore, if international law was simply rules devoid of context and meaning, then it would be unable to respond effectively to significantly changing circumstances. In practice, this means when decisions are made by authorised persons or organs...within the framework of established practices and norms, then what occurs is legal decision-making...International law is the entire decision-making process.\(^9\)

This is not to disregard the importance of rules to the idea of the rule of law. Rather, what is being advocated here is a more nuanced understanding that while rules continue to play a part in international law, they are not the only part. Political procedures also play a key role in amending or abrogating the provisions of international law.

International law represents an ‘output of Security Council decisions’,\(^9\) where decisions advance the role of international law through prescription, interpretation, endorsement or enforcement. At the same time, international law represents an input to Security Council decisions, in terms of the institutions of international law influencing Security Council decision-making. It necessarily follows that those tasked with the process of making a legal choice could not stake claim to justice-based or humanitarian considerations if they neglected to recognise the political and social contexts within which power is constrained or authority is granted. In practice, the granting of legal authority by the Security Council is dependent upon the decision for action being made by those authorised to do so, with ‘important guiding reliance on past decisions, and with available choices made on the basis of community interests and for the promotion of common values’.\(^9\) Failure to satisfy

---

95 Reus-Smit, *Politics of international law*, p.41.
96 Ibid. Emphasis in original.
98 Ibid., p.9.
these requirements for the granting of authority challenges not only the legitimacy of international law, but also the Security Council itself.

Examining shifting interpretations of Security Council action within this framework demonstrates that the social context for international law-making is in essence a political context; one that requires sufficient political will, initiative, energy and skill, to both ‘set the process in motion’ for change and once this occurs, sustain it through to fruition.99 It also reveals that international law can shift in light of changing ideas in world politics or conversely make an important contribution to international politics by providing the ‘resources with which states interpret, justify and understand’ their behaviour and the behaviour of other states.100 This can be both enabling and constraining in the authority it conveys. As such, international law should be viewed as the interlocking of power and authority. In application, international law becomes a socially constituted decision-making process that grants meaning rather than simply a body of rules supported by precedent to be applied impartially.

Rosalyn Higgins’ authoritative examination of the process of international law reveals that it remains somewhat of a ‘fantasy’ to suggest that legal authority for state action can exist in the ‘total absence of supporting control, or power’.101 The basis for this assessment is that the ‘authority’ which increases the normative influence of an international rule of law exists ‘not in a vacuum’, but precisely where the very idea of a rule of law ‘intersects’ with the power that has the capacity to implement it.102 This is not to say that the decision-making process of international law will always privilege the constitutive norm of legal authority over that of power. However, where the decision-making process fails to do so, where the power of dominant states is privileged over that of legal authority, such action will fail to meet the test for understanding what is lawful and legitimate.

99 Boyle & Chinkin, Making of international law, p.103.
101 Higgins, Problems and processes, p.4.
102 Ibid.
What these examples demonstrate is that to understand Security Council action as the interlocking of power and authority is not to say that the function of international law is purely about securing authority for state action or that power is by definition hostile to the idea of the rule of international law. In contrast, as argued by Rosalyn Higgins, power is an ‘integral element’ of authority and should be recognised as such if we are to develop a more nuanced understanding of the relationship between international law, sovereignty and Security Council action for human protection. The foreseeable criticism however, is that while Security Council resolutions may demonstrate state practice is of significant evidentiary value, inconsistency in application remains a key feature. The result has been decisions that span the full spectrum from excessive interventionism, to collective indifference, or inaction. This suggests while humanitarian concerns may indeed play a significant part in Council decision-making, their role in the relationship between power and authority is somewhat variable.

Recognising these extremities of Security Council practice lends support to claims that collectively members show ‘no great enthusiasm’ for embracing the role of ‘authoritative interpreter of the law’. Rather, practice demonstrates pragmatic attempts to agree upon practical steps to address specific crises rather than a fundamental shift in the international legal system. While Security Council resolutions reaffirm a willingness to define situations that constitute a threat to international peace and security more broadly, they also indicate a general reluctance to embrace broader morally-based doctrinal change. Instead, members remain committed to more pragmatic ‘case-by-case determinations’ of obligation. While an ad hoc approach could be defended on the basis of the unique situation confronting the Security Council, inconsistency in the application of its declared concern for human protection fuels realist claims that the nature of the relationship
between power and authority ensures that international law continues to be a system of power politics, primarily serving the interests of the P5.

1.3.2 A realist interpretation—international law as an ordering system

As the preceding claim demonstrates, realism broadly defined is based on a number of assumptions about the importance of states as actors in international politics, the anarchic environment where states coexist in a decentralised international legal system, and the necessity of maximising their own power and security. By implication, the Security Council is seen as the domain of great power politics with the execution of international law dependent upon the relative power and national interest of states involved in a dispute. Where neither a ‘community of interest’ nor a ‘balance of power’ is attainable, then according to realists such as Hans J Morgenthau, there is ‘no international law’. While realism shares with constructivism a concern for understanding the relationship between power and authority, it is based on a systemic rather than constitutive interpretation. Power within this interpretation is based on four key assumptions: that it represents a ‘tangible resource’ that states command individually; is best understood exclusively in terms of material resources; politics represents the struggle for power; and through power there is a dichotomy between international law and politics whereby the latter is subordinated to the former.

The capacity of the Security Council to take action consistent with a humanitarian intent is ‘severely constrained’ if it encounters political opposition from its most powerful members; unless it corresponds with members’ national interest who are also those states ‘most capable of orchestrating’ collective action. Consequently, realists refute constructivist assumptions regarding the power of norms in Council decision-making. Concluding instead that principles reflect the reality of power

---

106 Lowe et al Introduction, p.2.
108 Morgenthau, Politics among nations, p.312.
109 Ibid., 1985, p.296.
interests in that they enable powerful states to ‘clothe parochial interests’ in collective morality while ensuring they are applied selectively in a manner to advance their interests.\textsuperscript{112} While realism regards law and politics as distinctly separate domains of international life, the idea of a rule of law cannot be ‘uncoupled’ from international politics because it is not enforceable independent of the collective interest and will of powerful states.\textsuperscript{113} It is for this reason that realists argue that international law cannot be regarded as being binding in nature.

Examining the scholarly contributions of the two most prominent realists in the post-Cold War period—Hans J Morgenthau’s political realism and Kenneth Waltz’s structural realism—reveals that although their theory of international politics is based on divergent intellectual perspectives, they share core assumptions in their critical assessment of the function and effectiveness of international law. Central to this assessment is the contention that the international community has not developed an ethical-legal consensus on how to address mass atrocities nor the institutional capacity to support such action.\textsuperscript{114} According to Menon, the source of this failure is not ‘lack of goodwill’ or ‘callousness’ on the part of individual states, but rather ‘persistence of an international order based on instrumental connectivity rather than the primacy of universal obligations’.\textsuperscript{115} By implication, states remain protective of their freedom to determine whether or not to take action and ‘suspicious’ of ‘supranationalism and binding commitments’ such as liberal democratic principles which seek to implant a humanitarian impulse in international law.\textsuperscript{116} The realist critique regards such claims as ‘daring’ possibly even ‘ignorant’ because of the manner in which they seek to present an ‘abstract’ principle adopted by Western states ‘to the rest of mankind not for imitation, but for mandatory acceptance’.\textsuperscript{117} Moreover, the pursuit of peace through the institutions of international law is destined to fail because of its ‘mistaken’ faith in the ‘universalisation’ of Western liberal values.\textsuperscript{118}

\textsuperscript{112} Ibid.
\textsuperscript{113} Reus-Smit, \textit{Politics of international law}, p.16.
\textsuperscript{114} Morgenthau, \textit{Politics among nations}, p.296.
\textsuperscript{115} Menon, \textit{Pious words, puny deeds}, p.244.
\textsuperscript{116} Ibid.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
When suspicion of morality is combined with an overwhelming focus on the concept of national interest, realists display great respect for preserving sovereignty and the status quo because of its perceived stabilising contribution to international order. This is especially the case where the legality and legitimacy of international action is reliant upon moral precepts of humanitarianism. According to Waltz, the humane rhetoric and obvious good intention...disguise what should worry us greatly. One cannot assume that the leaders of a nation superior in power will always define policies with wisdom, devise tactics with fine calculation, and apply force with forbearance... Since justice cannot be objectively defined, the temptation of the powerful nation is to claim that the solution it seeks to impose is a just one.119

In direct opposition to constructivism, the realist thesis concludes that powerful states create and guide institutions to maintain their power or increase it. Rarely do institutions exert any significant influence on the interests or interactions of states. This is what Jack Donnelly refers to as the ‘no-effects thesis’.120 To support this claim, realists draw attention to the apparent double-standards or high degree of selectivity of Security Council practice. As noted by Adam Roberts, while the ‘plight of Iraqi Kurds...vicious fighting and sieges in the former Yugoslavia, and the starvation in Somalia’ shocked the Security Council into action, ‘mass slaughter in Cambodia...ruthless dictatorship in Myanmar...or catastrophe in Sudan’ have not elicited a similar response.121 The problem with international law according to a realist assessment, is that while the Council may have primary responsibility for the maintenance of international peace and security, its role in upholding an international rule of law has been problematically ‘wished upon’ the organ by powerful members who wish to impose their will upon what they consider is a ‘recalcitrant state’.122

Consistent with the constructivist position advanced by Reus-Smit, there are three reasons why this realist view is both problematic and unconvincing. Firstly, it

122 Lowe et al Introduction, p.34.
neglects to adequately account for the adaptive capacity of international law, particularly the ‘existence of a growing body of law’ that is primarily concerned with societal demands around human rights.\textsuperscript{123} Secondly, it fails to account for how the institutions of international law have historically constrained the behaviour of powerful states and play a role in defining the interpretation of national interest. Finally, a realist view is problematic because it refuses to recognise the enabling capacity of international law. For instance, how weak states or other non-state actors have utilised international law to influence the outcomes of a diverse range of issues, from crimes against humanity to environmental concerns.\textsuperscript{124} Moreover, the realist claim that international law serves the ‘self-conceived interests’ of powerful states can be refuted on the basis that powerful states ‘do not invariably ignore’ international law when they choose to violate it.\textsuperscript{125} Rather, they do so with the knowledge that while they will incur political costs and that they will have to rationalise their actions legally. What this realist critique does serve however, is to provide a timely reminder of the legal and political consequences of inconsistency: diminished political will to enact specific provisions, when required.

1.4 Conclusion

Traditionally regarded as an instrument for encouraging coexistence among states, international law has increasingly been expected to serve a more complex and elaborate agenda. Within this agenda, international law as understood through the UN Charter legal paradigm for \textit{jus ad bellum} and provisions of IHL for \textit{jus in bello}, has increasingly expanded its ambit to include societal demands to promote justice in addition to peace. Driving this development has been the perceived failure of the international legal system to prevent mass atrocities. Theoretically, constructivist interpretations that conceive international law as a ‘site for negotiation of practical and purposive norms’ have proved more persuasive in explaining this development than realist assessments of international law as merely a rule-based framework for

\textsuperscript{123} Reus-Smit, \textit{Politics of international law}, p.17
\textsuperscript{124} Ibid.
\textsuperscript{125} Ibid.
Exercising the development of international law, it is clear that the increasing influence of human rights together with shifting notions of authority have emphasised the ethical foundation to international law. In light of these developments, this thesis concurs with Rosalyn Higgins that within the Security Council, the question of human protection must be viewed as the interlocking of power and authority. The utility of this approach is that unlike traditional legal interpretations concerned only with the text of authoritative sources of international law, it can accommodate non-traditional sources of influence, such as widely shared principles, values or norms. In highlighting the importance of reason and argumentation it also delivers an approach capable of explaining both the empowering and constraining characteristics of international law. In sum, viewing Security Council action in this way recognises that the process of international law is a socially constituted decision-making process that allocates meaning, rather than a body of rules supported by precedent to be applied impartially. Moreover, it is the mutually constitutive relationship between agents and structures within international law that influence collective understandings of the legality and legitimacy of state action.

Having established the parameters of legal scholarship on Security Council action and the development of international law, consideration should be given to the political consequences of the developments described here. Consistent with this aim, chapter two examines the challenge posed by the concept of responsible sovereignty to international politics. While legal scholarship has been concerned with examining Security Council action within the framework of obligation, authority and the value hierarchy that influences state action, International Relations scholars have directed their attention towards the conceptual, normative and operational challenges associated with implementing R2P.

\[126\] Ibid., p.279.  
\[127\] Higgins, *Problems and processes*, p.4.
R2P as a continuum of international engagement

Set against the backdrop of an inconclusive legal debate surrounding the use of force ‘for human protection purposes’¹ and perceived failure of the Security Council to respond effectively to crises in Northern Iraq, Somalia, Rwanda, Bosnia and Kosovo in the 1990s, the release of the Canadian-sponsored ICISS report The Responsibility to Protect (2001) appeared to provide a principled framework to resolve the ‘dilemma’ between the defence of sovereignty and the defence of humanity.² As architects of the principle, ICISS were hopeful R2P would provide the ‘rationale and methodology’ for the Security Council to engage in both systematic and targeted action to protect populations from mass atrocities.³ They were also hopeful R2P would instigate a paradigmatic shift in the ‘basic mindset’ underpinning Security Council action from a culture of reaction, based on an immediate need to “do something”, towards a culture of prevention, aimed at addressing risk factors for mass atrocities.⁴ Representative of an unprecedented milestone in developing consensus among states towards R2P, in 2005 the General Assembly formally endorsed the principle at the UN World Summit. Often misunderstood as a licence for humanitarian intervention,⁵ the three elements of R2P, a responsibility to prevent, react and rebuild, demonstrate a breakthrough on the part of ICISS. This breakthrough is most notable in terms of the contribution that R2P makes to bridging the divide between legal and normative obligations associated with authorising the use of force for human protection.⁶

Since its emergence, debates around invocation of R2P have provided a rich source of analysis polarised between opponents who see the principle as an aspirational target and argue its demise is near, and those who regard the principle favourably and are more concerned with practical aspects of its implementation. Sceptics of R2P highlight inconsistency in application of the principle by the P5, difficulty in

¹ McClean, Responsibility to protect, p.125.
³ Arbour, Responsibility to protect as a duty of care, p.447.
⁴ ICISS Responsibility to protect, para 3.42.
⁵ Slim, Military intervention.
implementation and a perceived association with regime change, as cementing its
demise. While R2P continues to contain a number of unresolved tensions and is
being tested with the current crisis in Syria, this thesis subscribes to the conclusion
that the ongoing prominence of the principle across the UN system twelve years
after its emergence suggests claims of its demise are ‘exaggerated’. To support
this assessment and understand the normative advance of R2P within international
politics, this chapter traces the intellectual journey of R2P from inception by ICISS,
wider acceptance by states at the World Summit to the most recent interactive
dialogue in the General Assembly aimed at moving the principle from words to
deeds. This approach has been adopted because it highlights how the ‘distinctive
language’ of R2P may influence state action, by establishing and codifying
‘normative precepts’ against which future action (or inaction) to address mass
atrocities may be rationalised or assessed. It is the contention of this chapter that
while there remains a long way to go before consensus is reached across the UN on
effective implementation, the normative advance of R2P has been nothing short of
remarkable. This is because in a relatively short timeframe of just twelve years R2P
has become an integral part of Security Council thinking, deliberations on, and
responses to mass atrocities.

2.1 The emergence of R2P

In September 2000 at the UN Millennium Summit, former Secretary-General Kofi
Annan characterised opposing parameters of the inconclusive legal debate
surrounding the practice of humanitarian intervention as a ‘dilemma’ between the
‘defence of sovereignty and the defence of humanity’. While he reaffirmed the
‘vital’ importance of the principles of sovereignty and non-intervention as
proscribed in Articles 2(4) and 2(7) of the UN Charter to international order, he
posed the question ‘how should we respond to a Rwanda, to a Srebrenica—to gross
and systematic violations of human rights that offend every precept of our common

---

7 Dunne, R2P, *Libya and the myth of regime change*.
10 Annan, *We, the peoples*, p.48.
In response, former Canadian Prime Minister Jean Chrétien announced the establishment of an independent international body designed to complement existing efforts of the UN to address mass atrocities. Officially launched on 14 September 2000 by Foreign Minister Lloyd Axworthy, ICISS embarked on an ambitious twelve month program of intensive research, worldwide consultations and deliberations with a mandate to reconcile the international community's responsibility to act in the face of massive violations of humanitarian norms while respecting the sovereign rights of states; and to foster a global political consensus on how to move towards more effective action within the UN system.

Co-chaired by former Foreign Minister Gareth Evans (Australia) together with Special Adviser to the Secretary-General, Mohamed Sahnoun (Algeria), ICISS comprised ten high profile commissioners from diverse regional and professional backgrounds: Giséle Côté-Harper (Canada); Lee Hamilton (US); Michael Ignatieff (Canada); Vladimir Lukin (Russia); Klaus Naumann (Germany); Cyril Ramaphosa (South Africa); Fidel Ramos (Philippines); Cornelio Sommaruga (Switzerland); Eduardo Stein (Guatemala); and Ramesh Thakur (India). An advisory panel of prominent politicians and dignitaries served ICISS as a point of reference and to assist with generating support for the work of the Commission. Fifteen months later on 18 December 2001 the Commission presented its final report.

Articulation of R2P by ICISS reframed international thinking on mass atrocities. Ramesh Thakur argues that the growth of an ‘international human conscience’ and ‘sense of international community’ that accompanied release of the report translated into what he and others (such as Amitai Etzioni) describe as a ‘new normative’ or ‘global architecture’ of world order. Consistent with shifting notions of statehood outlined in chapter one, the ‘core tenet’ or principle upon which R2P is based is that

11 Ibid.
14 ICISS, Mandate and organisation of the commission.
sovereignty necessarily entails responsibility rather than exclusive authority for decision-making within an identified territorial population; a form of ‘people’s sovereignty’ rather than absolute state sovereignty. Based on a ‘three-layered’ conceptualisation of sovereignty, responsibility for both ‘acts of commission’ as well as acts of ‘omission’ lies firstly with the host state; secondly, with a partnership between the host state and assistance from ‘representatives of the international community’; and thirdly, where these two former layers fail, with the UN. Unlike its predecessor humanitarian intervention, R2P is founded upon a ‘positive and affirmative’ concept of sovereignty rather than a negative or restrictive legal interpretation. It is also based upon a natural law interpretation of human rights as inalienable rights to be defended in the name of common humanity, with sovereignty an ‘institutional value’ derived from a state’s capacity to guarantee the protection of its citizens.

While the UN Charter continues the ‘domestic jurisdiction-international concern dichotomy’, wider acceptance of R2P renders the contention that human rights within a state can be shielded from the reach of international law redundant. In practice, this means where a state fails to guarantee inalienable rights then the international community not only has a right to react, but moreover, through organs such as the Security Council has a moral obligation to do so. While the inclusion of a language of human rights into international legal scholarship signalled an emerging consensus towards recognising this relationship between sovereignty and human rights, states and scholars alike continued to contest the legitimacy of humanitarian intervention. Tasked with revisiting ‘the Pandora’s box’ of Security Council action in the 1990s and driven by a desire to achieve some form of

---

20 KA Annan, Secretary-General defends, clarifies ‘responsibility to protect’ at berlin event on responsible sovereignty: international cooperation for a changed world (15 July 2008), SG/SM/11701.
22 Reisman, Sovereignty and human rights, p.869.
consensual breakthrough, ICISS adopted a fundamental shift in language from “humanitarian intervention” to a “responsibility to protect” so as to relocate the parameters of this debate. In doing so, members of ICISS sought to shift the ‘basic mindset’ underpinning international responses to human suffering from a ‘culture of reaction’ based on a state-centric crisis management approach, towards a ‘culture of prevention’ that adopts a victim-centred approach to conflict prevention.

2.1.1 Shifting the discourse from intervention to protection

What is interesting about a discourse of humanitarian intervention is the contradiction that motivated the search for consensus. While members of the Security Council prior to the emergence of R2P had been unable to secure consensus towards how best to address mass atrocities, they demonstrated unanimous agreement towards what they did not want: ‘Rwanda never again’ in terms of hesitancy to take action; ‘no more Kosovo’ in terms of going outside the framework of Security Council authority; but also to avoid being bogged down in a perceived bottomless pit of post-conflict peacebuilding. Advocacy by ICISS to embrace a shift in language from humanitarian intervention towards a R2P can be located in a concern for developing an ‘effective, consensual response’ to extreme and exceptional, conscience-shocking events in a way that the language of a right to intervene would find difficult to achieve. In contrast to the concept of humanitarian intervention and its corresponding notion of an implied right to intervene, advocates of R2P argue the ‘core idea’ of the principle is ‘not about the “right” of big states to do anything’, but in contrast is based on the notion of ‘the responsibility of all states to protect their own people from mass atrocities and to help others to do so’.

---

24 ICISS *Responsibility to protect*, para 3.42.
25 Global Centre for the Responsibility to Protect (GCR2P), *Meeting Summary, uniting to support the responsibility to protect: preserving the spirit of the 2005 agreement* (25 September 2008), New York, p.2.
is often critiqued for being associated with moral imperialism or Western exceptionalism, the language of a R2P suggests international solidarity. In terms of legitimacy, adopting the language of protection rather than intervention is less confrontational and through its enabling preventive tone, more likely to secure consensus towards what is regarded as legitimate state action.

From this it is clear, unlike the ‘atavistic terminology’ of humanitarian intervention R2P is primarily concerned with an enabling continuum of engagement based on a victim-centred approach of protection. Within this framework the element of responsibility on the part of states individually and collectively, is above all else a ‘responsibility to prevent’ with the question of reaction only ‘arising’ should the full range of preventive measures fail. Should reaction become necessary however, the question is not whether to take action, but rather when, through whom and how. On this basis, this research finds that while development of R2P may have been initially driven by a desire to find international consensus on a ‘right’ to intervene, attention quickly shifted towards examining the relationship between individual elements of R2P, within a broader peacebuilding mandate. Consequently, R2P as articulated by ICISS quickly became a continuum of international engagement where the responsibility to protect implies not just a responsibility on the part of states to react, but also to follow through and rebuild. While the relationship between R2P and peacebuilding is explored further in chapter three, it is the contention of this chapter that although a shift in language may be indicative of acceptance among ICISS architects of the consequential dimensions of R2P, there remains a ‘long way to go’ before the continuum of engagement that characterises R2P is ‘universally understood, internalised and properly and effectively applied’ by all states.

33 ICISS, Responsibility to protect, p.vii.
2.1.2 A continuum of international engagement

Central to R2P as articulated by ICISS are the three core ‘elements’ that constitute the full continuum of international engagement with mass atrocities: the responsibility to prevent; the responsibility to react; and the responsibility to rebuild.\(^{35}\) Taken individually the first element, the responsibility to prevent, requires initial action on the part of states to prevent atrocities from occurring in the first place. Moreover, it encompasses the provision of international support and assistance associated with increasing the capacity of individual states so as to avoid future humanitarian crisis. As such, it aims to address both the ‘root causes and more direct causes of internal conflict and other man-made crises putting populations at risk’.\(^{36}\) Addressing root causes may involve action targeting structural deficiencies in political, economic and societal institutions, such as democratic or economic reform, promotion of freedom of speech, strengthening the rule of law and promotion of civil society. At the same time, root cause prevention may also involve a more traditional security aspect in terms of activities associated with disarmament, demobilisation and reintegration (DDR). This may include education and training of local police forces, disarming and reintegrating ex-combatants and promoting compliance with arms control agreements.\(^{37}\)

The second element of R2P, the responsibility to react, invariably obliges a state to respond to ‘situations of compelling need for human protection’ in a timely manner.\(^{38}\) Where preventive measures have failed to ‘resolve or contain the situation’ or the host state is ‘unable or unwilling to redress the situation’, then this responsibility transfers to the international community.\(^{39}\) Such action may include diplomacy, economic sanctions, international criminal prosecution or as a last resort, the use of force.\(^{40}\) Linked to a liberal notion of international order, it is this aspect of the ICISS principle of R2P that receives the most criticism from scholars and states alike in terms of rationalising the decision to use force. Central to such

\(^{35}\) ICISS, *Responsibility to protect*, p.xi.
\(^{36}\) Ibid.
\(^{37}\) Ibid, p.23.
\(^{38}\) Ibid, para 4.1.
\(^{39}\) Ibid.
\(^{40}\) Ibid, p.xi.
criticism are concerns regarding inconsistency in application by the P5, difficulty in implementation and the perceived association between reaction under the banner of R2P and forced regime change. Questioning the legality and legitimacy of international action, critics such as Noam Chomsky often focus upon this more controversial element of R2P to argue that the principle is at the very least, the ‘cousin’ of humanitarian intervention, and at its worst, Western imperialism in disguise. While this research acknowledges R2P continues to contain a number of unresolved tensions, particularly around the reaction element of the principle, it finds such criticism unconvincing because it fails to recognise the full continuum of engagement embodied in R2P (to prevent, react and rebuild). Moreover, when examined in more detail (see section 2.3.2) this thesis finds such criticism is not persuasive because it neglects to account for the significant normative influence of R2P, evidenced by its increasing prominence across the UN system twelve years after its articulation by ICISS.

The third element of R2P, the responsibility to rebuild, draws attention to the peacebuilding dimension of the principle in that it obliges a state(s) to provide ‘full assistance with recovery, reconstruction and reconciliation’. It also reinforces the first element of R2P, a responsibility to prevent, in that it requires states to again address root or direct causes of harm that intervention under the previous element (a responsibility to react) was ‘designed to halt or avert’. Alex Bellamy suggests that the creation of the Peacebuilding Commission (PBC) in 2005 to coordinate post-conflict reconstruction efforts ‘goes some way towards formalising’ the third element of R2P. Its very existence reaffirms that states do have a collective responsibility to rebuild following intervention. Moreover, they have a positive obligation to assist with developing political, economic and societal capacity so as to avoid future violence. One of the many problems highlighted by Bellamy with this interpretation, is that the ICISS conception wrongly assumes a ‘general

---

42 N Chomsky, Statement by Professor Noam Chomsky to the United Nations General Assembly thematic dialogue on the responsibility to protect (23 July 2009), New York, p.7.
43 Ibid., p.xi; paras 5.1-5.6.
44 Ibid., p.xi.
consensus’ exists among states regarding the ‘most appropriate’ form of post-conflict institutions and structures.\textsuperscript{46} This conception also wrongly assumes that interveners have the necessary material capability and political will to discharge such responsibility.

Regardless of these concerns, collectively the three elements of R2P represent a multifaceted, comprehensive and systematic approach to the challenge of mass atrocities within a broader conflict prevention framework. Moreover, they provide a framework for constructive engagement within a continuum of international engagement that seeks to not only protect citizens, but also to prevent further conflict by rebuilding communities; or in the words of former ICISS Commissioner Michael Ignatieff, to ‘follow through’ and stay the necessary course.\textsuperscript{47} Since its inception R2P has undergone several conceptual shifts. The most significant shift is that post-conflict engagement constitutes an ‘integral part’ of international engagement with mass atrocities, rather than an ‘afterthought’.\textsuperscript{48} This characteristic is significant because it demonstrates consistency with a normative turn among theorists advocating the importance of an ‘end state’ as opposed to an ‘end date’,\textsuperscript{49} when contemplating the use of force for human protection.

Reaction to R2P among scholars has spanned the full spectrum from characterisation of the ICISS report as a watershed in the debate surrounding human protection, through claims of indifference, criticism for being too radical, yet another form of moral imperialism or a ‘conceptual straightjacket’ preventing those willing to take action.\textsuperscript{50} One of the key criticisms of the report is that it fails to define the ‘parameters of acceptable pre-crisis intervention’ in similar detail to the threshold criteria allocated to reactionary activities.\textsuperscript{51} The ‘vision of sovereignty’ upon which preventive responsibility is based is also criticised for wrongly assuming host states possess sufficient capacity ‘for shaping the life circumstances

\textsuperscript{46}Ibid., pp.621-5.
\textsuperscript{48}Arbour, \textit{Responsibility to protect as a duty of care}, p.448.
\textsuperscript{50}Arbour, \textit{Responsibility to protect as a duty of care}, p.448.
of their inhabitants’. Furthermore, adopting the language of preventive responsibility does not necessarily guarantee that it will not serve a morally imperialistic purpose such as providing a ‘licence for economic and political engineering’ in states lacking the desired liberal democratic structures.

2.1.3 The normative influence of R2P

While proponents of R2P acknowledge that central to the debate surrounding the principle is the continuing question of when it is legal and legitimate to use force, they are concerned with the preoccupation that exists towards isolating the second element (the responsibility to react) to rationalise or question the validity of the use of force for human protection; particularly the non-consensual use of force. This concern is based primarily on the assessment that allowing this second reactionary element to dominate consideration of a broader understanding of R2P neglects to adequately consider its relationship within a continuum of international engagement; that is, the two other elements of R2P which emphasise the importance of preventive measures. As recognised by proponents of R2P, it is perhaps somewhat inevitable that rationalising the use of force would dominate consideration of the principle for three reasons. Firstly, there is the exceptional and desperate nature of the humanitarian situation confronting the international community and its concomitant “do something” quickly or “do nothing” dichotomy. Secondly, because of the hard choices and moral dilemmas associated with the decision to use force, there is the practical challenge of multiple and often contradictory criteria that need to be reconciled before action can be deemed to be both legal and legitimate. Finally, in recognising the political nature of the organ within which such decisions are made and ‘in-depth’ questioning that has taken place regarding the Security Council, particularly the actions of the P5, it is not surprising the use of force dominated the debate on international engagement with mass atrocities.

---

52 Ibid.
53 Ibid.
54 M’Clean, Responsibility to protect, p.130.
This appears to be a valid concern in that it illustrates a failure on the part of the international community, in concentrating on reaction, to understand the preventive tone of R2P. This is based on a commitment to assist individual states in meeting their obligations under the principle and moreover, to ‘help states succeed not just to react, once they have failed to meet their prevention and protection obligations’. Explained by proponents as the single most important dimension of R2P, the ICISS conception diverges from earlier arguments for humanitarian intervention in the association it implies between the role of the state and the responsibility to prevent. The basis for this approach can be found in the UN Charter, which provides the foundation for a ‘comprehensive and long-term approach to conflict prevention’ (Article 55). Recognition of the relationship between a preventive mandate and broader Council concern for protecting those vulnerable to mass atrocities acknowledges the interconnectedness and mutually reinforcing nature of peace and security, development and human rights as the pillars of the UN system. This is significant because it illustrates the contribution made by R2P to advancing complementary normative frameworks related to the Protection of Civilians (POC).

The moral foundations for POC are similar to R2P. POC is founded on protecting individuals (to limit human suffering through respect for human rights); legal underpinnings (the requirement for states to ‘uphold’ existing legal obligations under international law); and measures for application (in that it identifies a specific role for the Security Council to ‘adopt measures to protect human beings from suffering’). In practice, advancements in R2P have assisted in advancing the POC agenda by bringing greater precision to earlier commitments made by members in Security Council resolutions. References to R2P at the 2005 World Summit provided greater precision to resolution 1265 (17 September 1999) which expressed a ‘willingness to respond’ to protect civilians in armed conflict (paragraph 10) and 1296 (19 April 2000) which noted that deliberate civilian targeting may constitute a threat to international peace and security (paragraph 5). By incorporating a preparedness to take timely and decisive action where a host state fails to protect

55 Secretary-General defends, clarifies ‘responsibility to protect’, p.1.
56 Oman, Case for a “responsibility to protect, p.4.
their population, R2P has contributed to the advancement of complementary normative frameworks, such as a POC agenda. In this regard, the 2005 World Summit represented an unprecedented milestone in developing consensus among states towards R2P and significant source of assistance in advancing complementary normative frameworks underpinning IHL and a POC agenda.

2.2 The 2005 World Summit as a consensual breakthrough

Convened as a high level plenary meeting with the participation of Heads of State and Government at the commencement of the sixtieth session of the General Assembly (14-16 September 2005), the purpose of the World Summit was to ‘undertake a comprehensive review of progress made in the fulfilment of all commitments contained in the Millennium Development Declaration’ (18 September 2000).\(^{58}\) The review focused on activities related to implementation at the national, regional and international levels of internationally agreed Millennium Development Goals (MDG), as well as any related outcomes and commitments of major UN conferences and summits concerned with economic and social issues. Providing the context for this review was the Secretary-General’s report *In Larger Freedom* A/Res/59/2005 (21 March 2005), which sought to bring together the various reform proposals being advanced into a single coherent agenda, organised under four broad headings: freedom from want; freedom from fear; freedom to live in dignity; and strengthening the UN. Comprising sixty plus recommendations in total, the Secretary-General’s report provided an opportunity for a major overhaul of the UN system. The use of force featured in the second section of the report (freedom from fear) whereas R2P appeared in the third section (freedom to live in dignity). As suggested by Gareth Evans, separating principles for the use of force from R2P resulted in them ‘being seen as quite separate’ rather than ‘inherently linked’ as they are in the ICISS conception.\(^{59}\) In the case of R2P, the report urged a recommitment from states to ‘move towards embracing and acting on R2P where there are potential or actual victims of mass atrocities (paragraph 132). More specifically, the report recommended that states decide on

---


\(^{59}\) Evans, G. *The responsibility to protect: ending mass atrocities once and for all*, Brookings, Washington, DC, 2008, p.46.
R2P as the ‘basis for collective action’ against genocide, ethnic cleansing and crimes against humanity (Annex I, paragraph 7).

While the World Summit proved to be a ‘major disappointment’ in terms of securing substantial commitment from states for major reform of the UN system, it did make a remarkable contribution by providing a mandate for a broad range of institutional reforms and activities aimed at promoting human security and addressing and preventing mass atrocities. Most notable, through the Summit Outcome members of the General Assembly formally endorsed two primary responsibilities consistent with the principle of R2P (and Secretary-General’s recommendation) that necessarily entail two corresponding actions. In particular, paragraphs 138 and 139 of the Summit Outcome A/RES/60/1 (24 October 2005) declared that:

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 (paragraph 138).

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 VII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely 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 organisations 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity

---

60 Ibid.
and to assisting those which are under stress before crises and conflicts break out (paragraph 139).

In the context of advancing R2P, paragraphs 138 and 139 represent a significant milestone in developing consensus among states towards the principle.

Beyond securing wider support for R2P, the focus in paragraph 139 upon the four IHL crimes of genocide, war crimes, ethnic cleansing and crimes against humanity, made a critical contribution to clarifying the scope of R2P and overall advancement of the principle. By focussing on these four crimes, rather than a defined threshold for international engagement such as the number of civilian deaths, Security Council action can be directed towards the risk of mass atrocities in a particular crisis. This is an encouraging development for the normative advancement and contribution of R2P and IHL, because it means the principle is applicable to both the threat and not just the commission of mass atrocities. Enabling earlier engagement in a crisis, R2P has the dual effect of maximising the deterrence value of appearance on the Security Council’s agenda and in doing so, provides a greater opportunity to prevent mass atrocities before they occur.

Despite this overwhelmingly positive development, there are four notable differences between the ICISS conception of R2P and the Summit Outcome that deserve attention. Firstly, in the Summit Outcome the non-consensual use of force is linked exclusively to the Security Council in paragraph 139, rather than primarily as proposed by ICISS.61 Concerned with the question of right authority, the ICISS report explains that the Security Council has primary, but not exclusive or sole responsibility, for international peace and security under the Charter. The basis for this assertion can be found in Article 10 which grants general authority to the General Assembly for matters that fall within the scope of UN authority; Article 11 which provides a ‘fallback responsibility’ for making recommendations on matters of international peace and security; and the Uniting for Peace Resolution (1950) which establishes authority in the absence of Security Council consensus to make recommendations for collective measures.62 While ICISS agreed that the Security Council has primary responsibility, it did not accept that this was exclusive, or that it was the only body that could take action. The Security Council’s role was seen as one of leadership, rather than being the sole decision-maker.

---

61 Bellamy, *Global effort to end mass atrocities*, p.73. Emphasis in original.
Council should be the ‘first port of call’ for legitimising the use of force for human protection, the possibility that the General Assembly may take action is acknowledged.63

The second and more controversial feature is the caveat on taking timely and decisive action contained in paragraph 139. Proscribing a case-by-case determination for international action, this caveat not only maintains the highly criticised ad hoc discretionary basis for international engagement with mass atrocities, but appears to be a deliberate attempt by states to water down the Security Council’s responsibility, including implied obligations under R2P. Thirdly, one of the main ways in which text of the Summit Outcome weakens earlier formulations of R2P, is that while the ICISS threshold for transferring responsibility to the international community is if a host state proves ‘unable or unwilling’, the Summit Outcome requires a much higher threshold of ‘manifest failure’ (paragraph 139). This gives host states a significant amount of scope to argue that the appropriate threshold for shifting responsibility for protection to the international realm has not been crossed. An examination of Security Council deliberations in 2004 on the imposition of sanctions against Sudan for crimes in Darfur reveals the question of whether it could be ‘definitely concluded’ that the Government of Sudan (GOS) ‘failed’ to meet its responsibility was a key feature.64

Finally, contrasted with the ICISS conception of R2P, the Summit Outcome represents somewhat of a ‘step back’ on the basis that a number of fundamental components were absent.65 Specifically, the Summit Outcome contains no reference to criteria for intervention. In contrast, the ICISS report establishes six criteria for the use of force for human protection. The first is right authority (for legitimising the use of force). The second is just cause (large scale loss of life and ethnic cleansing) which if satisfied, provides the threshold for such action.66 The next four precautionary criteria, right intention, last resort, proportional means and reasonable prospects, all add an ‘element of prudence or precaution’ to the decision to take

63 Ibid., paras 6.28-6.30.
64 Welsh, Security Council and humanitarian intervention, p.558.
65 Bellamy, Global effort to end mass atrocities, p.92.
66 ICISS, Responsibility to protect, paras 4.17-4.19.
military action. The Summit Outcome is also silent on any reform mechanism, such as a proposed ‘code of conduct’ which calls on the P5 to refrain from the use of the veto in cases identified as falling within the scope of R2P. Moreover, the most significant absence is any ‘explicit recognition’ of the continuum of engagement proposed by ICISS, which covers the full spectrum from prevention, through reaction to rebuilding.

These omissions lend support to the assessment that in seeking a consensus through a shift in language from intervention to protection, states have abandoned some of the central tenets of R2P, as articulated by ICISS. Incorporation of R2P in the Summit Outcome, despite being symbolic of an emerging normative framework, seemed to do little to resolve the challenge of a future Rwanda or Kosovo as it weakened the notion of responsibility among states. While paragraphs 138 and 139 recognised a R2P, they did not recognise a responsibility to act beyond the use of peaceful means. In contrast, the Summit Outcome reaffirms a preparedness to use other measures to protect populations from mass atrocities. The result is a significant dilution in the text of the Summit Outcome from an ‘obligation to act’ to a ‘commitment’ among states to be prepared. As noted by Bellamy, this provides scope for states to adopt a significantly lower standard than envisaged in the ICISS conception of R2P.

While formal endorsement of the principle of state responsibility in the Summit Outcome may fall short of the expectations of proponents, it was nonetheless a significant development and evidence of a breakthrough in international politics. As noted by Bellamy, it was significant in that it did provide a ‘mandate for a ‘wide range of institutional reforms and international activities’ aimed at not only protecting vulnerable populations from mass atrocities, but also preventing future atrocities. At the same time, evidence of contestation among states in the lead up to the Summit, such as that within the US and among members of the Non-Aligned

67 Ibid., para 4.15-4.43.
68 Ibid., para 6.21.
69 Bellamy, Global effort to end mass atrocities, p.92.
70 Ibid., p.90. Emphasis in original
72 Bellamy, Global effort to end mass atrocities, p.67.
Movement (NAM),\textsuperscript{73} and in the post-Summit period (discussed further in section 2.3), indicates that securing wider acceptance for all three elements, or the full continuum of engagement associated with R2P, is an ongoing challenge. As argued by Gareth Evans, international understanding (or lack thereof) towards the consequential dimensions of a responsibility to \textit{prevent}, \textit{react} and \textit{rebuild}, highlights not only the disparity that exists between the ICISS conception of R2P and that endorsed by states in the Summit Outcome, but also the challenges associated with turning in-principle support for R2P into effective practice.

\subsection*{2.2.1 The challenge of making the shift from principle to practice}

Evans concedes that failure by the World Summit to incorporate guidelines on the use of force (as developed by ICISS) into the Summit Outcome represents a disappointment in terms of shifting R2P from principle to practice.\textsuperscript{74} Moreover, despite in-principle support for the normative architecture of R2P, the text of paragraphs 138 and 139 provide evidence of a lack of collective understanding that in applying R2P, the ‘extreme’ and exceptional nature of mass atrocities and failure of preventive efforts constitutes the ‘beginning’ of the debate surrounding the use of force for human protection, and ‘not the end of it’.\textsuperscript{75} Drawing on the situation in Darfur from 2003 as the clearest example of this failing, Evans cautions that the debate surrounding how best to respond to the crisis manifested early in the conflict into a polarisation between “doing something” or “doing nothing”. Consequently, participants within this debate fundamentally failed to acknowledge and consider the many important ‘way-stations’ that occur in between reaction and inaction.\textsuperscript{76} These may include other measures that fall short of the use of force such as the ‘application of sustained diplomatic, economic and legal pressure’.\textsuperscript{77} From this perspective, it seems that the absence of any reference to the remaining responsibilities to \textit{prevent} and \textit{rebuild} in the Summit Outcome represents a serious omission with grave consequences.

\footnotesize
\begin{itemize}
  \item \textsuperscript{73} Ibid., p.68.
  \item \textsuperscript{74} Evans, \textit{Responsibility to protect: an idea whose time has come}, p.292.
  \item \textsuperscript{75} Ibid.
  \item \textsuperscript{76} Ibid.
  \item \textsuperscript{77} Ibid., p.293.
\end{itemize}
While scholars may be critical of the ICISS attempt to utilise a shift in language to encourage the development of a normative consensus, Nicholas Wheeler reminds us of the importance of taking into consideration the socially constructed world of international politics and the role of language in that process. According to Wheeler, ‘it is a categorical error to posit a separation between words and deeds’ as ‘the former constitute the latter by establishing the boundaries of what is possible’, to both ‘enable and constrain action’.\textsuperscript{78} Consistent with this constructivist interpretation, proponents of R2P argue that the use of discursive signifiers consistent with R2P provides a ‘strong basis’ for developing a consensus to bridge the traditional divide between legal and normative issues associated with human protection. Drawing on the example of the manner in which the normative landscape surrounding sustainable development fundamentally shifted through the advocacy of the Brundtland Commission, Evans argues that in-principle support for R2P evidences the emergence of a powerful ‘new international norm’;\textsuperscript{79} one which demonstrates the potential to bridge traditional ideational divides. More recent developments which invoke the principle of state responsibility appear to support this assessment.

To this end, Article 4(h) of the AU’s \textit{Constitutive Act} (2002) makes reference to members engaging in collective action to address ‘grave circumstances’, such as war crimes, genocide and crimes against humanity. Similarly, resolutions 1674 (28 April 2006) and 1894 (11 November 2009) regarding the protection of civilians in armed conflict reaffirms the principle of R2P, as endorsed in paragraphs 138 and 139 of the Summit Outcome. Furthermore, Security Council resolutions 1706 (31 August 2006) and 1769 (31 July 2007) on the situation in Sudan also contain explicit references to the responsibility of states for the protection of civilians in armed conflict. The problem is, despite these significant early developments in the intellectual journey of R2P the challenge remained: how to shift principle to practice, or rather, bridge the divide between legal and normative obligations associated with the use of force for human protection consistent with the ICISS

\textsuperscript{79} Evans, \textit{Responsibility to protect: an idea whose time has come}, p.286.
conception of R2P? With no apparent consensus on how best to shift international understanding towards formal acceptance of the full continuum of engagement associated mass atrocities, the difficulties of operationalising the full preventive tone of R2P were apparent.80

In essence, there are three challenges that would need to be addressed if the culture of protection envisaged by ICISS was to be realised. The first is ‘conceptual’ in terms of developing a fuller understanding of the ‘scope and limits’ of R2P.81 This includes addressing fundamental misunderstandings which interpret R2P narrowly through the lens of humanitarian intervention, as a ‘Trojan horse for bad old imperial, colonial, and militarist habits’ to develop a greater awareness of the relationship between the parallel and mutually reinforcing responsibilities to react and rebuild in order to prevent future atrocities.82 The second challenge relates to ensuring sufficient ‘institutional’ capacity exists within international, regional and national institutions to support a R2P mandate in terms of operational resourcing.83 The third challenge is ‘political’ in terms of generating sufficient will among states to develop the ‘mechanisms and strategies necessary to generate an effective political response as new R2P situations arise’.84 Collectively, these challenges highlight the problem central to successfully operationalising R2P: the need to consolidate political support by addressing misconceptions that plague the principle, and at the same time build institutional will and operational capacity to ensure that the Security Council can resolve what has been characterised as ‘one of the cardinal challenges of our time’.85

2.3 The General Assembly and R2P

Taken collectively the three challenges outlined above support criticism among scholars such as Roberta Cohen that conceptual understandings of R2P remain ‘far ahead of international willingness and capacity’ to enforce individual elements of

80 Evans, Ending mass atrocities, p.55.
81 Ibid., p.54.
82 ICISS, responsibility to protect, p.17.
83 Evans, Ending mass atrocities, p.54.
84 Ibid. Emphasis in original.
Likewise, Rebecca Hamilton highlights the challenge of developing sufficient political will to support a culture of protection utilising the example of Darfur. She argues that while the current situation may be illustrative of a government ‘unable or unwilling’ to protect its citizens, at the same time it is illustrative of an international community ‘unable or unwilling’ to take appropriate action to protect the citizens of Darfur. In seeking to identify an explanation for why this challenge prevails, Evans offers two plausible assessments. Firstly, resistance towards a culture of protection can be explained with reference to the more traditional challenge that it necessarily poses to conceptions of sovereignty. While the shift in language adopted by ICISS sought to resolve this dilemma, some states have continued to voice their resistance. Among others, Sudan has cited concern for the challenge posed to state sovereignty and selective implementation of the principle by P5 members as the basis for continued resistance towards R2P.

The second assessment is more unique, in that Evans claims it is not only opponents but also supporters that impede advancement of R2P. He claims that both proponents and opponents have fundamentally misunderstood the continuum of international engagement arising from invocation of R2P by failing to realise the ‘multifaceted character’ or preventive tone of R2P. It is the contention of this chapter that the significance of adopting such an interpretation is that it places greater emphasis upon the notion that R2P implies not just a responsibility to react, but also a responsibility to prevent and rebuild. Moreover, shifting emphasis from establishing a right to intervene towards a R2P invariably directs greater attention towards the consequential dimensions of the doctrine, such as the ‘conceptual, normative and operational linkages’ that exist between ‘assistance, intervention and reconstruction’.

---

87 Hamilton, Responsibility to protect: from document to doctrine, p.293.
88 Department of Public Information, Delegates weigh legal merits of responsibility to protect concept as General Assembly concludes debate, Media release (28 July 2009), GA/10850, pp.1,5,11.
89 Evans, Ending mass atrocities, p.58.
90 Ibid.
91 ICISS, Responsibility to protect, p.17.
92 Ibid.
In July 2008, Secretary-General Ban Ki-moon conceded that by virtue of its contested nature, the culture of protection upon which R2P is premised remained a conceptual ‘aspiration’ rather than an operational ‘reality’. This assessment confirmed not only the importance of addressing the conceptual, institutional and political challenges associated with internalising a culture of protection, but suggested doing so would be the only way to shift in-principle support into practice. Consistent with this assessment and broader advocacy among proponents of R2P, this chapter argues that in the post-World Summit period a resounding international consensus exists for the need to stop selling the principle and start working out a comprehensive strategy for practical implementation; that is, a strategy for operationalising the principle and its corresponding responsibilities within the UN system. In January 2009 the Secretary-General presented a report based on the work of the special adviser on the responsibility to protect, Edward C Luck. Entitled Implementing the Responsibility to Protect A/63/677 (12 January 2009), the report articulated a three pillar strategy for operationalising R2P.

2.3.1 A three pillar strategy

Together, the January 2009 report of the Secretary-General on implementing R2P and the General Assembly debate that followed in July 2009 (see section 2.3.2) represent two pivotal moments in advancing international acceptance of the principle of R2P. According to Ramesh Thakur, the fact that the debate surrounding R2P in the post-World Summit period moved towards ‘practical questions of implementation’ represented a ‘maturing’ of the principle. In his report the Secretary-General outlined a conception of R2P that was ‘narrow but deep’. It was narrow in terms of its scope being restricted to the four mass atrocities of war crimes, ethnic cleansing and crimes against humanity reflected in the Summit Outcome. However, the strategy also needed to be deep in terms of encouraging a

93 Secretary-General defends, clarifies ‘responsibility to protect’, p.3.
94 Asia-Pacific Centre for the Responsibility to Protect, Implementing the responsibility to protect: Asia-Pacific and the General Assembly dialogue, St Lucia, October 2009, p.29.
95 EC Luck, Implementing the responsibility to protect at the United Nations, Presentation to Asia-Pacific Centre for the Responsibility to Protect (3 August 2009), University of Queensland, retrieved 2 October 2009 <http://www.r2pasiapacific.org/index.php?option=com_content&task=view&id=1138&Itemid=81>, p.10.
response that utilises the ‘whole prevention and protection tool kit’ available to states, and moreover, be incorporated ‘as a perspective’ into existing efforts to address mass atrocities, rather than adding a ‘new layer of bureaucracy’. In terms of the potential implications of R2P, it was argued if member states can summon requisite political will to act collectively in accordance with paragraph 138 the effects of R2P could be ‘profound’ in terms of the deterrence value exerted by the principle for incitement of future atrocities. Furthermore, if UN rules, procedures and decision-making processes were developed in line with paragraphs 138 and 139, then the potential for abuse or likelihood of R2P ‘being used to justify extra-legal interventions’ would be significantly reduced.

Driven by a desire for consolidation of the principle and seeking to operationalise the commitment of states contained in the Summit Outcome, the January report of the Secretary-General outlined three equally important and non-sequential pillars upon which implementation of R2P rests:

**Pillar one:** the protection responsibilities of the state...the enduring responsibility of the state to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement...

**Pillar two:** international assistance and capacity building...the commitment of the international community to assist states in meeting those obligations. It seeks to draw on the cooperation of member states, regional and subregional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the United Nations system.

**Pillar three:** timely and decisive response...the responsibility of member states to respond collectively in a timely and decisive manner when a state is manifestly failing to provide such protection...A reasoned, calibrated and timely response could involve any of a broad range of tools...[including] pacific measures under Chapter VI of the Charter, coercive measures under Chapter VII and/or collaboration with regional and sub-regional arrangements under Chapter VII.

The report also made a number of crucial qualifications. Firstly, individually all pillars are equal in both importance and strength to ensure the ‘edifice’ of R2P does

---

96 Secretary-General defends, clarifies ‘responsibility to protect’, p.2.
97 Ibid.
98 Implementing the responsibility to protect (12 January 2009) A/63/677, para 11.
not lean heavily in one direction or another, or worse still ‘implode or collapse’. 99 Secondly, each must be ‘ready to be utilised at any point’ and are therefore non-sequential in application. 100 One further clarification was made that is often overlooked in analysis of its content. Under the heading of ‘pillar two’ and consistent with the ICISS conception of R2P, the role of prevention as the single most important element of the principle was emphasised noting that ‘prevention, building on pillars one and two, is a key ingredient’ to the success of R2P. 101 To support this assessment the report stressed that insufficient investment and attention has been given to developing preventive capacities, which ‘absorb only a fraction of the costs of the vital post-conflict peace operations’ conducted by the UN. 102 In July 2009 the General Assembly met to consider this report. While the debate that ensued was initially sought by sceptics (such as Cuba, Nicaragua, Sudan and Venezuela) to roll-back the commitment made at the World Summit, 103 the robust consensus and more nuanced understanding of R2P that emerged illustrates the importance of consolidating support among states.

2.3.2 Consolidating support through interactive dialogue

Since 2009, the Secretary-General has facilitated an interactive dialogue on R2P through annual reports on different aspects of the principle accompanied by a thematic debate in the General Assembly. These debates are designed to consolidate support for R2P. Topics for each debate range from: implementing the principle of R2P A/63/677 (12 January 2009); the contribution of early warning and assessment to prevention A/64/864 (14 July 2010); regional and sub-regional arrangements A/65/877 (28 June 2011); and practical aspects of a timely and decisive response A/66/874 (25 July 2012). This interactive dialogue has played an important role in broadening consensus around R2P. It has also provided ‘valuable insights’ into individual elements of R2P, 104 including clarifying and deepening collective understanding around the relationship between the two most contested elements:

---

99 Ibid., para 12.
100 Ibid.
101 Ibid., para 11.
102 Ibid., para 38.
103 GCR2P, Implementing the responsibility to protect, p.4.
104 Department of Public Information, Responsibility to protect faces urgent test.
As argued persuasively by Thakur, the problem with commitments of a ‘grand nature’ made in international forums is that they can ‘suffer many a slip’ on the part of states by the time action is required. Characterised as a ‘form of buyer’s remorse’ this ‘edging back’ by states from the commitment articulated in paragraphs 138 and 139 of the Summit Outcome, threatened the normative capacity of R2P to influence international engagement with mass atrocities.\textsuperscript{105} Indeed, it was a form of buyer’s remorse that motivated sceptics, such as General Assembly President, Father Miguel d’Escoto Brockmann (Nicaragua), to seek a roll-back in state endorsement of R2P by calling a General Assembly debate in 2009. In a concept note circulated by the President prior to the debate, it was argued that R2P has no binding status in sources of international law as defined by Article 38 of the Statute of the ICJ.\textsuperscript{106} The note also made other controversial claims based on concern for protecting the sovereignty of states and claims that R2P provides nothing more than a ‘cover to legitimise armed interference by rich Western powers in the affairs of poor countries’.\textsuperscript{107} Furthermore, the note argued the failure of the Security Council to respond to previous mass atrocities stemmed more from self-interest and a corresponding lack of political will, than an ‘absence of agreed-upon doctrine’.\textsuperscript{108} In a deliberate attempt to garner opposition, an interactive dialogue with members on operationalising R2P was convened by the President in the Trusteeship Council prior to the commencement of the first General Assembly debate on 23 July 2009. Three of the four invited expert speakers were sceptics of R2P: Noam Chomsky, Jean Bricmont and Ngugi wa Thiong’o. The fourth invited expert was former ICISS co-chair and proponent of R2P, Gareth Evans.\textsuperscript{109} Characterised as a deliberate attempt to ‘paint R2P as a largely Western preoccupation’ inevitably opposing

\textsuperscript{106} President of the General Assembly, \textit{Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity} (20 July 2009), p.1.
\textsuperscript{107} Evans, \textit{Responsibility to protect: an idea whose time has come}.
\textsuperscript{108} President of the General Assembly, \textit{Concept note}, p.2. This sentiment was echoed in a statement delivered by Noam Chomsky and Sudan’s delegate citing Security Council inaction to the 1994 Rwandan genocide as evidence. See Chomsky, \textit{Statement to the thematic dialogue}, p.7; Statement by delegate for Sudan, no date, p.5.
\textsuperscript{109} GCRP, \textit{Implementing the responsibility to protect}, p.3.
North against South, peace and security against development, the outcome of the debate that ensued, which was an overwhelming acknowledgement of the need to move towards implementation of R2P, suggests sceptics manifestly failed to roll-back support for the principle.¹¹⁰

Speaking at the interactive dialogue, Edward Luck summarised the debate as being part of an ongoing conversation which sought to ‘enhance the rule of law and expand multilateral options’ for international engagement with mass atrocities.¹¹¹ Furthermore, he was hopeful the debate would dispel myths including the perception among critics that R2P is simply the ‘cousin’ of humanitarian intervention;¹¹² presents a new legal norm with the power to ‘alter the Charter basis for Security Council decisions’; that sovereignty and responsibility are ‘somehow incompatible’; and finally, that R2P ‘favours big states over smaller ones’.¹¹³ Ninety-four states participated in the debate representing 180 member states plus two observer missions (Holy See and Palestine). An examination of statements reveals a clear majority, representing both north and south, reaffirmed their support for R2P as endorsed in the Summit Outcome and the Secretary-General’s three pillar strategy. However, positive sentiment was not unanimous. There were four dissenting states who sought to roll-back endorsement: Venezuela, Cuba, Sudan and Nicaragua.¹¹⁴ Whereas India, Japan, Brazil and South Africa who had expressed concern towards the idea that coercive action is warranted or necessary, were more supportive of the central element of R2P: the notion of responsible sovereignty. More importantly, Indonesia, who voiced opposition towards R2P at the debate not only expressed support for all three pillars, but presented what has been characterised as the ‘landmark speech’ of the meeting by focusing upon practical measures for implementing R2P at the regional level.¹¹⁵

¹¹¹ EC Luck, Remarks to the General Assembly on the responsibility to protect (23 July 2009), New York.
¹¹² Chomsky, Statement to the thematic dialogue, p.1.
¹¹³ Luck, Remarks to the General Assembly, 2009.
¹¹⁴ GCR2P, Implementing the responsibility to protect, p.4.
¹¹⁵ Ibid.
Examinining individual statements, two broad areas of agreement are identifiable. Firstly, there was consensus that the General Assembly dialogue should not renegotiate R2P as endorsed in the Summit Outcome, but rather move forward as advocated by the Secretary-General with a practical resolution of how to make the shift from principle to practice. A number of African states along with Myanmar emphasised that the ‘task before the Assembly’ was to consider implementation of what had already been agreed by heads of state. Secondly, there was widespread agreement on the importance of pillars one and two (the preventive dimensions of R2P) of the Secretary-General’s strategy. In contrast, pillar three (timely and decisive response) was the subject of ongoing contestation. Sudan along with Ecuador and Pakistan claimed a lack of consensus among states towards coercive action under pillar three precludes efforts to move forward with implementation. A number of states also expressed concern with the Security Council as arbitrator of pillar three. Again, Sudan argued investing ‘privilege’ for execution of R2P would be tantamount to ‘given (sic) the wolf the responsibility to adopt a lam (sic)’. Despite this contention, there was agreement among states that the international community has a responsibility to take action where a state manifestly fails to protect populations at risk. Moreover, implementation of R2P must occur in a manner consistent with existing provisions of international law, particularly the UN Charter, and not authorise unilateral coercive action. While the Secretary-General had sought a ‘narrow but deep’ consensus, widespread agreement on the fundamentals of R2P suggested consensus arising from the debate could exceed expectations, to be both ‘broad and deep’.

In support of this consensus a series of assessments about the nature and scope of R2P subsequently emerged among states. Firstly, that a consensus understanding of R2P lies first and foremost with the state as an ‘ally of sovereignty’ rather than a...
Secondly, participants agreed on the preservation of the narrow scope of R2P to the four identified mass atrocities. In contrast, France was the only state to express intention to ‘remain attentive’ towards situations that broaden the scope of R2P, such as that following Cyclone Nargis in Myanmar, where deliberate action by a government to refuse aid placed citizens at risk. Thirdly, consistent with the desire among architects of R2P to shift the basis of international engagement from a culture of reaction to a culture of protection, participants agreed that collective understanding must be expanded to recognise that R2P is more than the use of force. This implies recognition that application of pillar three ‘demands’ a broad range of measures that are not only military in nature, but also diplomatic, political and judicial as proscribed in Chapters VI, VII and VIII of the UN Charter.

In the fourth assessment, R2P represents a universal principle to be applied equally without ‘selectivity or double standards’. Failure to apply the principle in this way would have the effect of dissolving broader support among states for R2P. The basis for this assessment can be found in developing states concern with past instances of selective intervention by the Security Council, different interpretations of conflict that challenge government authority, and more general scepticism about the West’s commitment to the full continuum of engagement embodied in R2P, which is premised on a dual commitment to prevention and reaction. Cloaked in the enormous promise of the ICISS report and recognising the monopoly that power politics among the P5 claims towards the legitimate use of force, in the eyes of developing states R2P could not possibly operate in a sufficiently impartial way to engage in human protection because implementation is reliant upon discretion of powerful states to take action. The problem is that this discretionary power grants authority to states to intervene, but does not impose a legal obligation to do so.

The fifth assessment was that R2P must contribute to, rather than draw resources away from, broader human development activities and natural disaster responses; a

---

122 GCR2P, Implementing the responsibility to protect, p.5.
123 Ibid., p.6.
124 GCRP, Uniting to Support the responsibility to protect, p.3.
125 GCRP, Implementing the responsibility to protect, pp.2; 6.
126 Bellamy, Global effort to end mass atrocities, p.95.
127 Ibid.
point emphasised by the Philippines, while Ecuador and Malaysia expressed concern that R2P ‘should not engender new conditionalities’ to existing international development assistance. In other words, R2P capacity-building should not create new conditionalities by drawing resources from traditional poverty reduction through economic development. At the same time, it should not undermine the authority of the host state. Finally, states agreed that the General Assembly is the venue for an ongoing dialogue on R2P. However they disagreed on the organ’s role. In particular, whether the Assembly should fulfil a more robust role to ‘guide the Security Council on when to act under Chapter VII’ or even become the mechanism for collective action as suggested by Venezuela. In contrast, Indonesia and South Korea reiterated an idea advanced earlier by the Secretary-General that the Assembly could provide a periodic review mechanism to record what measures, such as those under pillar one, individual states had taken to implement R2P. In summary, what emerged was a robust and remarkably positive recognition of R2P as endorsed in the Summit Outcome. However, what was lacking was agreement on how to effectively implement R2P.

Symbolic of the next development in the intellectual journey of R2P, during a general debate in September 2011 Brazilian President Dilma Rousseff introduced the concept of Responsibility While Protecting (RWP). Supported by China and Russia, RWP is designed to build consensus among states towards implementation of the more controversial prevention and reaction elements of R2P, by providing an innovative and legitimate link between developing R2P and POC agendas. In response, RWP called for a renewed focus on: strengthening prevention (mainstreaming prevention into the work of the UN; early warning; capacity building and enhanced information sharing; accountability for interpretation and application of Security Council resolutions; and stronger analysis and assessment to improve decision-making within the organ. Building on this proposal, in July 2012

128 GCR2P, Implementing the responsibility to protect, p.8; Asia-Pacific Centre for Responsibility to Protect, Implementing the responsibility to protect, pp.11;15.
129 GCR2P, Implementing the responsibility to protect, pp.2;8; International Coalition for the Responsibility to Protect (ICRP), Report on the General Assembly plenary debate on the responsibility to protect, 15 September 2009, New York, p.7.
130 Ibid.
the Secretary-General released his fourth report on R2P: *Timely and Decisive Response S/2012/578* (25 July 2012). This report and the interactive dialogue that followed (A/66/874) focused on pillar three, including measures available to the Security Council under Chapters VI-VIII of the UN Charter. A concept note was circulated by President of the General Assembly, Nassir Abdulaziz Al-Nasser (Qatar), prior to the dialogue. This note outlined the purpose of the 5th September interactive dialogue was to provide a forum for states to hear from expert panellists on progress to date in implementing R2P; consider the range of tools available for a timely and decisive response; and to ‘clarify and deepen’ collective understanding around the third pillar, particularly the relationship between prevention and reaction.\(^{132}\)

During the dialogue states endorsed the sentiment within the Secretary-General’s report that the question in 2012 was not whether R2P applies to a crisis, but how best to implement the principle. Member statements also reaffirmed the non-sequential and mutually reinforcing nature of the three elements of R2P. The role of the Security Council in operationalising R2P received particular emphasis. In this regard, specific concerns were raised towards the Security Council’s response in Libya under resolutions 1970 (2011) and 1973(2011) authorising the use of force for human protection, enforcing a no-fly zone and imposing an arms embargo. Concerns pointed towards selectivity and timing of the response, ineffective monitoring of Security Council resolutions and other matters related to implementation. In particular, Singapore recalled a May 2012 proposal tabled but later withdrawn by the S5 for the P5 to refrain from exercising their right to veto in cases for R2P concern.\(^{133}\) Calls for increased monitoring, assessment and accountability for Security Council resolutions also featured, particularly where the use of force was authorised. In this regard, the Brazilian RWP proposal was highlighted by Singapore as important for bringing the more controversial elements


\(^{133}\) Statement by Permanent Representative of Singapore, *Informal interactive dialogue on the responsibility to protect* (5 September 2012), p.3.
of R2P ‘into focus’ and ‘contributing to a more honest discussion’ on advancing the principle.\footnote{Ibid., p.2.}

In terms of the normative advance of R2P, the 2012 debate was significant in that it provided a timely opportunity for states to undertake a stocktake of progress to date with operationalising R2P in light of the NATO-led intervention in Libya and failure to react in Syria. More importantly, the dialogue reaffirmed the centrality of R2P to Security Council thinking and deliberations on mass atrocities and challenged claims by sceptics the R2P is simply ‘empty rhetoric’ and has done little to advance operationalisation of the principle.\footnote{J Pattison, ‘The RtoP and responsibility while protecting: the Secretary-General’s timely and decisive report on timely and decisive responses’, \textit{Human Rights and Human Welfare} retrieved 13 November 2012 <www.du.edu/korbel/hrhw/roundtable/2012/panel-b-10-2012/pattison-2012a.html>.} While the case of Libya was largely employed by sceptics to support the forecasted demise of R2P, it is worth noting that criticism of the Security Council response is usually not directed at the principle of R2P \textit{per se}, but rather the way in which R2P was invoked to rationalise state action.\footnote{AJ Bellamy, ‘R2P – dead or alive?’ in \textit{The Responsibility to protect: from evasive to reluctant action? The role of global middle powers}, Hanns Seidel Foundation, Institute for Security Studies, Konrad-Adenauer-Stiftung and South African Institute of International Affairs, Johannesburg, 2012, p.21. Emphasis in original.} It is worth noting too that the UK and Tanzania raised similar concerns around the scope and mode of delivery for preventive capacity-building measures under pillar two.\footnote{AJ Bellamy, \textit{Global politics and the responsibility to protect: from words to deeds}, Routledge, Oxon, 2011, p.47.} What these concerns confirm, is that the challenge for proponents of R2P is no longer one of convincing states of the need to accept the principle, but rather broadening collective understanding around consequential dimensions of the three elements of R2P and alignment between existing working methods of the Council and an R2P agenda.

\subsection*{2.4 Conclusion}

Despite a disparity between words and deeds, this chapter argues the normative advance of R2P has been remarkable. The principle has become an integral component of Security Council thinking and deliberations on mass atrocities, particularly what the P5 understand is possible and regarded as legitimate state
action. Examining the intellectual journey of R2P, this thesis concurs with Bellamy’s assessment that it is no longer a question of whether to accept and implement R2P, but rather ‘how to realise its goals’.138 In what is arguably the greatest contrast with its predecessor humanitarian intervention, R2P as articulated by ICISS and endorsed by states at the World Summit is about more than just reacting to mass atrocities. Founded upon a dual commitment to prevention and reaction, R2P provides a comprehensive and constructive continuum of international engagement that seeks to not only protect populations, but also prevent further conflict by rebuilding communities. With R2P founded on a commitment to both prevention and reaction, the future legitimacy of the Security Council is to a large extent dependent upon its capacity to operationalise R2P by engaging in the full continuum of measures and activities that characterise prevention and reaction.

From this analysis of the intellectual journey of R2P, it is clear that invocation of the principle means the Security Council is not only compelled to take timely and decisive action to address mass atrocities, but also has a positive obligation to assist with developing the political, economic and societal capacity of states so as to prevent further human suffering. With the legitimacy of peace operations and the Security Council itself increasingly linked to its role in both civilian protection and human development, post-conflict peacebuilding has become a key feature of international engagement with mass atrocities. Within this framework, post-conflict peacebuilding should not be seen as the end of the process of conflict management, but rather the beginning of a new preventive process focused upon improving security, governance, justice and reconciliation, economic and social development through capacity building and accountability.139 Recognising that R2P inherently involves both prevention and reaction and seeking to develop a more nuanced understanding of the challenges associated with contemporary peace operations, chapter three will proceed to unpack the concept of post-conflict peacebuilding to examine its role in addressing the complex and often multi-dimensional nature of human suffering associated with mass atrocities.

CHAPTER THREE

From peacekeeping to peacebuilding

In the post-Cold War period, both the demands and expectations of UN peace operations have shifted dramatically. Based on the premise that violent conflict seriously undermines economic and social development, peacekeeping has evolved from being narrowly conceived around a political imperative of implementing negotiated peace towards a more ambitious agenda aimed at addressing the causes and consequences of conflict through multi-dimensional peace operations. Founded upon a positive interpretation of peace, which perceives a linkage between liberal values and sustainable peace, contemporary peace operations seek to not only establish physical security but also ‘transplant’ prevailing understandings of social, political and economic organisation into post-conflict states in the hope of preventing further violence. Conceptualised as post-conflict peacebuilding, this positive interpretation of peace embeds the use of force for human protection within a broader conflict prevention framework. Recognising the link between state capacity to discharge sovereign responsibilities and a human development agenda, multi-dimensional peace operations that focus on institution building and good governance have become a key feature of international engagement with mass atrocities.

Examining the intellectual origins of multi-dimensional peace operations, the first part of this chapter considers how the challenge posed by fragile or weak states has influenced international efforts at peacebuilding. Terminology of state-building and nation-building are key features of peacebuilding rhetoric. While their precise meaning is contested, they have made an important contribution to exploring meanings imbued in liberal peacebuilding, its prospects and the limitations of current approaches. Looking at their use by states, this chapter subscribes to Francis Fukuyama’s assessment that what most Western states commonly refer to as the process of nation-building is actually state-building supplemented with some form

---

1 Paris, Peacebuilding and the limits of liberal internationalism, p.56.
of economic development or liberalisation. Consequently, UN efforts in post-conflict ‘statebuilding’ have come to be conceived as a ‘particular form of peacebuilding’ founded upon three objectives: consolidating internal and external security; strengthening political institutions for good governance; and promoting economic and social transformation. The problem with this approach is that international efforts to promote liberal democratic governing systems and market-oriented economic growth in post-conflict states have proved disappointing. Where peacebuilding efforts have re-established security, most have ‘stalled’ in broader measures related to economic, political and social development as they become caught in ‘inextricable dilemmas’ inherent in multi-dimensional peace operations; namely, the tensions between an ambitious mandate and limited resourcing or international demands versus local needs.

Recognising this dilemma, part two of this chapter examines critical scholarship of current approaches to peacebuilding. From this it is clear that while a consensus exists among scholars that a common factor underpinning mass atrocities is the nature and capacity of the state, what remains to be resolved is how to mediate the tension between international demands and local expectations. This chapter argues what lies at the heart of the tensions identified here, as well as those around preventive and reactive elements of R2P, are the ‘features and functions’ of legitimacy within organs such as the Security Council. In this regard, the third element of R2P, the responsibility to rebuild, considered in the final section of this chapter offers enormous, but as yet unrealised potential for addressing the challenge of peacebuilding.

---

5 Paris, Saving liberal peacebuilding, p.337.
6 Goetze & Guzina, Peacebuilding, statebuilding, nationbuilding, p.320.
7 Paris, Saving liberal peacebuilding, p.346.
3.1 The challenge of multi-dimensional peace operations

The quest for peace has always been the defining feature of UN peacekeeping. While this is still the case, fateful events in Bosnia and Somalia in 1993 raised questions regarding the capability of the Security Council to deal with an escalation in complex intrastate conflicts. Signalling a fundamental shift in both the demands and expectations of peacekeeping, Alex Bellamy, Paul Williams and Stuart Griffin characterise opposing parameters of this questioning as a ‘struggle’ between those who conceptualise modern peacekeeping in ‘Westphalian terms’ and those who employ a more ambitious ‘post-Westphalian’ conception. While both approaches identify a ‘positive relationship’ between liberal ideals and peace, it is the manner in which they define ‘exactly what’ a liberal notion of peace entails that divides them.8 A Westphalian conception restricts peacekeeping to a narrower role of ‘ensuring the peaceful settlement of disputes and orderly relations between states’.9 Whereas a post-Westphalian or ‘second generation’ interpretation is premised upon ‘ensuring peace and security within states’ through democratic reform and economic liberalisation.10

Since the 1990s, the UN has been engaged in a variety of peace operations based on multi-dimensional activities aimed at consolidating civil order by establishing the political, economic and social conditions to sustain a liberal idea of peace. As such, peacekeeping has evolved dramatically from a narrow conception concerned with the impartial maintenance of negotiated peace to embrace a more ambitious reform agenda. Institutionally, perceptions regarding the role of the UN have also evolved, from an international organisation devised to remove the scourge of war between states into the primary instrument for conflict prevention by building peace within states. Theoretically, this struggle between Westphalian and post-Westphalian conceptions of peacekeeping reflects tensions surrounding the practice of the use of force for human protection. It also illustrates how the debate surrounding the use of force for human protection has evolved from being purely concerned with

8 Bellamy, Williams & Griffin, *Understanding peacekeeping*, pp.1-2.
9 Ibid., p.2. Emphasis in original.
rationalising the legality of international action, through the need for reform of the UN in order to meet the complexities of intrastate conflict, towards questioning the philosophical underpinnings of a liberal notion of peace in terms of whether it is desirable or even possible. The result, as highlighted previously in chapter two, is that analysis of the use of force for human protection has shifted towards emphasis upon the question of how rather than why, with an ‘end state’ as opposed to an ‘end date’ becoming the measure for assessment.  

The problem with this end state and a post-Westphalian conception of peacekeeping is that it requires a considerable shift in the degree to which the UN assumes responsibility for administration of post-conflict territory. This raises serious questions regarding the role and capability, particularly around the ‘long-term viability’ of sole reliance upon the UN to bear the burden for activities such as post-conflict administration and governance. Given the breadth and depth of contemporary peace operations it also raises questions about resourcing and the availability of ‘feasible’ organisational alternatives in the absence of Security Council consensus. In this regard, the NATO-led intervention in Kosovo (1999) and US-led intervention in Iraq (2003) conducted without Security Council authorisation serve as pertinent examples. These examples could be defended with reference to the law of belligerent occupation as codified in the *Hague Regulations Respecting the Laws and Customs of War on Land* (1907), the *Fourth Geneva Convention* (1949) and the *First Additional Protocol* (1977), which entitle states exercising control over foreign territory during an international conflict to interfere in the sovereignty of the state without Security Council authorisation. However, while this may rationalise early post-conflict activities it was not designed to provide a ‘suitable legal basis’ for broader longer-term transformational activities.

A similar theme was adopted by the General Assembly at its 2011 interactive dialogue on R2P, which considered the role of regional and sub-regional arrangements in strengthening international engagement with mass atrocities.

Examples of regional arrangements include the AU’s *Constitutive Act* (2002) for authorising the use of force for human protection, the AU Post-Conflict Reconstruction and Development Policy Framework for complementing activities of the PBC,\(^{14}\) or the contribution of the AU-UN ten year capacity-building program to broader conflict prevention in the Horn of Africa.\(^ {15}\) What these examples demonstrate, is that self-sustaining and lasting peace following mass atrocities is one of the most pressing issues facing the UN. Central to this issue is the question of whether current approaches actually improve the human rights situation in states that have a history of violent conflict. While extensive attention has been devoted within the UN to understanding conditions conducive to promoting respect for human rights in post-conflict situations, there has been comparatively less attention within the organisation devoted to examining the extent to which current approaches undermine respect for individual and collective human rights.

Drawing on the mixed results of contemporary peace operations and an identified gap in collective knowledge, a vast body of critical scholarship examining the ‘workings, dynamics and pitfalls’ of international peacebuilding has emerged.\(^ {16}\) Generally, this scholarship is polarised between those who demonstrate in principle support and are more concerned with the efficiency of relevant policies and institutions within a post-conflict transition paradigm (such as Roland Paris,\(^ {17}\) David Kennedy\(^ {18}\) and Beatrice Pouligny\(^ {19}\) ) and those who challenge the moral foundations of liberal peacebuilding because of its relationship to global power structures (such as David Chandler,\(^ {20}\) Mark Duffield,\(^ {21}\) Tim Jacoby\(^ {22}\) and Michael

---


\(^ {16}\) Goetze & Guzina, *Turtles all the way down*, p.320.

\(^ {17}\) Paris, *Saving liberal peacebuilding*.


Collectively, this scholarship confirms that the problem is that not all responses to mass atrocities, no matter how well intentioned, necessarily contribute towards human protection. This is because while conditions associated with ‘underdevelopment’ may increase the likelihood of violent conflict, international efforts also ‘exacerbate’ vulnerability if they undermine state capacity, fuel exclusionary practices, generate further societal inequality or sustain resource ‘over-dependence’.24

Representative of the unintended consequences or ‘dark side’ of the use of force for human protection, this chapter subscribes to David Kennedy’s conclusion that states responding to the humanitarian imperative of mass atrocities often ‘mute’ awareness that their efforts can have ‘bad consequences’ if not properly implemented.25 Having studied more than two dozen peacekeeping missions since 1945, respected non-government organisation (NGO) International Crisis Group (ICG), identifies six ‘interlocking challenges’ that international efforts must address if they are to have any chance of long-term success. According to Deputy President Donald Steinberg, international efforts must restore both state and human security, build a responsive political framework, kick-start the economy, balance national reconciliation with the need for international accountability, promote civil society and address the regional context so as to dampen the potential for violence at the regional and sub-regional level.26

Consistent with a post-Westphalian peacekeeping agenda, the significance of these six challenges lies both in the practical demands they place on peace operations and in the manner in which they emphasise the relationship between state capacity and violent conflict. In the context of practical demands, this means the depth and breadth of political will, donor resourcing and institutional capacity required to

---

25 Kennedy, Dark sides of virtue, p.327.
coordinate and sustain a broad range of activities. In terms of the relationship between state capacity and conflict, Steinberg’s list illustrates the problem central to most multi-dimensional peace operations: fragile states.

3.1.1 The problem of fragile states

In the period 1998 to 2007 the UN found 90 percent of peace operations involving the use of force for human protection had taken place within states demonstrating ‘weak’ governance capacity.\(^\text{27}\) This finding supports the view of Robert Picciotto that a common risk factor underpinning mass atrocities is the ‘nature and capacity’ of the state,\(^\text{28}\) which is often weak or repressive in nature. Some of the most prominent features of fragile states which increase the propensity for violent conflict include economic mismanagement, a lack of social service delivery and inability or unwillingness to guarantee human rights. An inability to monopolise violence and poverty are also often key features of the fragile state narrative. While this thesis concurs with Picciotto’s qualification that any link between weak governance and violent conflict is more ‘probabilistic’ than ‘linear’ in that not all fragile states necessarily disintegrate into conflict, it finds that once a ‘triggering event’ occurs to combine a weak ‘immune system’ with failing domestic leadership, then the propensity for violent conflict involving mass atrocities is far more likely.\(^\text{29}\)

This finding has profound implications for international engagement with mass atrocities. Firstly, as a positive interpretation of peace is premised on a linkage between a liberal ideal of political, economic and social development and sustainable peace, it requires meeting a much deeper and more demanding agenda than simply the cessation of violent conflict. This generally involves significant reform of the host state through activities such as ‘development and consolidation of democratic governance, the rule of law, robust institutions, and a healthy civil

---

\(^{27}\) Peacekeeping operations principles and guidelines (Capstone doctrine draft 3), Consultation draft 29 June 2007, retrieved 25 September 2007 <http://pbpu.unlb.org/phps/Pages/Public/viewprimarydoc.aspx?docid=481>.


\(^{29}\) Ibid.
society’. Secondly by implication, this positive interpretation of peace embeds the use of force for human protection within a broader conflict prevention framework in effect marrying the concept of international security to human development. Through its *Human Development Report 1994*, the UNDP introduced a new paradigm for human welfare equating security with people rather than states. Replacing the traditional ‘defensive’ concept of state security, the concept of human security articulated by UNDP employs an ‘integrative’ understanding of the relationship between state security and international development. Broadly defined through two distinguishing aspects of ‘freedom from fear and freedom from want’, the basic characteristics and key components articulated in the report embedded the concept of security in a notion of human solidarity.

In support of the argument that human development is a matter of concern for all states as members of an international community, the report combines four basic characteristics (that human security is universal in scope; people-centred in focus; individual components are interdependent in nature; and is easier to realise through early prevention) with seven key components to guide international thinking (economic; food; health; environmental; personal; community and political security). Recognising that challenges may be man-made through poor policy choices or ‘stem from the forces of nature’, the report inadvertently suggested the distinctive language of human security could be employed as either an indicative call for action or a normative framework for rationalising the scope and activities that comprise an international response.

Evidence of the normative contribution of the concept of human security to international thinking on the relationship between state security, individual freedom and international development, is found in the 2005 Summit Outcome where states agreed that

---

32 Ibid., p.24.
33 Ibid., p.24.
34 Ibid., pp.22-5.
the purpose of human security is to enable all individuals to be free from fear and want, and to enjoy all their rights and fully develop their human potential (paragraph 143).

More recently, the Secretary-General reaffirmed that the focus of human security is on fostering government and local capacities and strengthening the resilience of both to emerging challenges in ways that are mutually reinforcing, preventive and comprehensive.36

Employing the concept of responsible sovereignty central to R2P, the Secretary-General explained that while states ‘retain the primary role’ for providing a ‘rules-based system where societal relations are mutually supportive, harmonious and accountable’, in cases where state institutions are weak or under threat, human security requires an integrated approach that addresses ‘the root causes of these weaknesses’ through ‘timely, targeted and effective responses that improve the resilience of governments and people alike’.37 With a mandate to address security, development and human rights, the UN system is ‘instrumental’ in addressing these issues.38

While problems of security and international development have traditionally informed separate discourses and policy agendas, increased recognition of the relationship between state security, development and violent conflict has resulted in what scholars such as Björn Hettne describe as a ‘security-development nexus’.39 The emergence of a security-development nexus can be attributed to increasing recognition within the UN that the previously distinct policy areas of security and development while increasingly complex are interdependent in terms of the institutions engaged and policy prescriptions advocated.40 To this end, a security-development nexus provides a framework for cohering national and international policy to ensure future instances of the use of force for human protection adopt a

---

37 Ibid., para 20.
38 Ibid., para 70.
more holistic or comprehensive approach. This problem-solving approach is premised on the notion that merging security and development concerns provides the most effective means for international actors to address the risk factors associated with mass atrocities and respond in a timely, targeted and effective manner. From this perspective, the significance and utility of a security-development nexus lies in the support it lends to developing a more nuanced understanding of R2P. Most importantly, how the continuum of international engagement that characterises R2P bridges the traditional divide between security and development.

3.1.2 Bridging the divide between security and development

As highlighted in the preceding discussion of a security-development nexus, there is a consensus among scholars, states and practitioners that reference must be made to ‘root causes’ of conflict and risk factors underpinning mass atrocities if international responses are to succeed. In its report, ICISS noted that development or structural issues such as ‘poverty, political repression and uneven distribution of resources’ require greater attention if the international community is to resolve the causes of conflict, and not just respond to the symptoms.41 The basis for this assertion can be found in the UN Charter which provides the foundation for a ‘comprehensive and long-term approach to conflict prevention’ (Article 55). Evidence of increased recognition of the relevance of root causes is similarly reaffirmed in resolution 1674 (28 April 2006) on the protection of civilians in armed conflict, which acknowledges the interconnectedness and mutually reinforcing nature of ‘peace and security, development and human rights’ as the ‘pillars of the UN system’ (paragraph 2). Underpinning these provisions in both the sources and practice of international law is recognition that the traditional divide between ‘hard issues’ of state security and ‘soft issues’ of human development should be ‘blurred’.42 This development in collective thinking has significant implications for international engagement with mass atrocities.

---

41 ICISS, Responsibility to protect, pp.21-2.
42 Steinberg, Tackling state fragility.
Greater recognition of the relationship or dynamic that exists between security and development ultimately means strengthening state capacity by increasing sovereign competency. Because of the multi-dimensional nature of contemporary peace operations, it also means transcending the traditional notion of impartially-based peacekeeping. It naturally follows, that peace operations increasingly include in addition to a military component, civilian expertise related to human rights monitoring, policing, judicial reform, elections, institutional development, reconciliation and reintegration of combatants. From a normative perspective, it is the mutually-constitutive relationship between perceptions of state competency and legitimacy that provides the framework for international engagement. A key feature of the ICISS conception of R2P is the liberal notion that the ‘best guarantee’ for protecting and promoting individual and collective human rights is to encourage the development of a ‘world of competent, responsible and legitimate sovereign states’. From an operational perspective, this means the most important task for the international community is to commit to rebuilding, reforming or strengthening state institutions from the outset so as to prevent future conflict.

This assessment is significant for a number of reasons. Firstly, it provides evidence of a more nuanced understanding of the relationship between the nature and capacity of a state, development and violent conflict. By implication, this approach requires international responses that not only ‘connect the dots’ between strategic priorities and humanitarian concerns, but also place a premium on international action that is consistent with the prescription advocated by the Secretary-General for a narrow but deep approach to R2P. In practice, this means adopting a ‘holistic and comprehensive approach’ to rebuilding state capacity through organisations such as the PBC, so as to prevent mass atrocities, rather than focus simply on resolving ‘proximate causes’. Secondly, this more nuanced understanding places a ‘premium’ on anticipation of where violence is likely to emerge. Consequently, peacebuilding has become a key component of international engagement with mass atrocities.

---

43 Thakur, United Nations, peace and security, p. 257.
44 Steinberg, Tackling state fragility.
45 Luck, Implementing the responsibility to protect, p.10.
46 Steinberg, Tackling state fragility.
3.2 Current approaches to peacebuilding

Despite being a relatively new addition to the international conflict management toolbox, the intellectual origins of peacebuilding actually began much earlier. Writing in the 1970s Johan Galtung made a clear distinction between peacemaking, peacekeeping and peacebuilding, defining the latter in a practical sense as the implementation of peaceful social change through socio-economic reconstruction and development. The liberal or democratic peace thesis advanced by Michael Doyle, which argued that democracies were less likely to wage war against each other, provided a further contribution to the development of peacebuilding and the associated concept of statebuilding in the 1980s. It was not however, until the release of *An Agenda for Peace* (1992) by former Secretary-General Boutros Boutros-Ghali that the first systematic treatment of peacebuilding occurred within the UN. Defined as international efforts that ‘identify and support structures which…strengthen and solidify peace in order to avoid a relapse into conflict’, it was the follow-up report, *A Supplement to An Agenda for Peace* (1995) that ensured peacebuilding gained prominence in international thinking on human protection. By 2000, peacebuilding had been integrated into the workings of the UN in terms of framing deliberations on peace operations and broader recognition of the complex but indisputable link between security and development, democracy and perceptions of legitimacy.

The reform-driven *Report of the Panel on UN Peace Operations* (Brahimi Report) S/2000-809 (21 August 2000), which recommended a fundamental shift in how UN peace operations were conceived, took one step further noting both a need and a desire for the organisation to become the primary instrument for promotion, development and implementation of peacebuilding. Underpinning this recommendation were the ‘struggles’ of the UN to successfully establish and

---

manage its two most elaborate peacebuilding operations to date in establishment of a transitional civilian administration in Kosovo under resolution 1244 (10 June 1999) followed shortly thereafter with assumption of temporary sovereign administration in East Timor under resolution 1272 (25 October 1999) (paragraph 76). According to the report, the dilemma for the UN was whether to ‘assume that transitional administration is a transitory responsibility’ and therefore ‘not prepare for additional missions and do badly if...once again flung into the breach’, or in contrast ‘prepare well and be asked to undertake them more often because it is well prepared’ (paragraph 78).

In February 2001 the Security Council continued this trend refining its definition of peacebuilding as encompassing a ‘wide range of political, developmental, humanitarian and human rights programs and mechanisms’ aimed at preventing ‘the outbreak, the recurrence or continuation’ of violent conflict. To realise this preventive dimension, UN peacebuilding would engage in a multi-dimensional approach combining short-term targeted activities together with long-term systematic responses individually tailored to meet the needs of societies vulnerable or emerging from conflict. Programs or activities aimed at fostering sustainable institutions and responsive processes would be undertaken in a variety of areas related to sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence.

In April 2001 a report of the Secretary-General entitled No Exit Without Strategy S/2001/394 (20 April 2001), added a further dimension when it examined factors the Security Council should assess when deciding to authorise, conclude or significantly alter the mandate of peacekeeping operations. The report identified key objectives of peacebuilding as: consolidating internal and external security; strengthening political institutions and good governance; and promoting economic and social rehabilitation and transformation (paragraph 20). Symbolic of a

51 Ibid, p.2.
fundamental shift in international thinking towards conflict management, this clarification by the Security Council demonstrates a maturing in collective international understanding. While it is contestable that liberal democratic and economic reform guarantees peace, Roland Paris notes on the whole liberal states do demonstrate a ‘considerable probability’ through ‘mechanisms, ideas, people and institutions’ to ensure conflict levels remain ‘below the threshold’ of violent conflict.\(^{52}\) Terminology of state-building and nation-building are a key feature of liberal peacebuilding within the UN, often employed as a signifier of international commitment to building a positive interpretation of peace. They are also a key feature of the broader debate surrounding R2P.

In both cases the use of discursive signifiers linked to capacity-building increases the perceived legitimacy of international efforts to address mass atrocities. However, their use is problematic for two reasons. Firstly, they are problematic because the terms state-building and nation-building are the subject of much contestation over their precise nature, scope and application. Drawing on failed Security Council missions during the 1990s in Northern Iraq, Somalia, Rwanda, Bosnia and Kosovo and looking at more recent operations in Darfur (2003) and Libya (2011), both terms have featured prominently in debates surrounding Western foreign, security and development policies. Despite this continued presence however, their exact meaning and scope remain vague with parameters for each only being clarified on an ad hoc basis in response to an immediate humanitarian need or a particular political stance. As such, the term nation-building has been linked to legitimising an array of disparate activities ranging from ‘regional stabilisation’, conflict management, conflict prevention or conventional development assistance on the one hand, to ‘imperial control’ on the other.\(^{53}\)

Secondly, in response to the disappointing record of previous international attempts, scholars such as David Chandler,\(^{54}\) Mark Duffield,\(^{55}\) Tim Jacoby\(^ {56}\) and Michael

\(^{54}\) Chandler, *Empire in denial*.
\(^{56}\) Jacoby, *Hegemony, modernisation and post-war reconstruction*, pp.521-537.
Barnett have employed critical methods of enquiry to challenge the liberal peacebuilding model. Further investigation of this scholarship reveals it is primarily concerned with *how* peacebuilding is pursued rather than the enterprise itself; despite periodic challenges to the moral foundations of liberal peacebuilding which claim it is best characterised as ‘international occupation’. These concerns are largely structural in that they centre on the perverse outcomes of peacebuilding and its effect on global power structures in terms of inclusion and exclusion. In his analysis of peacebuilding efforts in Bosnia it is the ‘illiberal behaviour’ of international administrators that is of concern to David Chandler, rather than the ‘liberal orientation’ of the mission itself. Most notable, the relatively unconstrained and unaccountable exercise of power by international administrators and methods employed for democratic reform, which appeared to discourage local political activity and participation.

The problematic use of signifiers not only restricts the utility of state-building or nation-building conceptually and practically as part of a broader conflict prevention framework, but calls into question the legitimacy of such claims. Acknowledging such criticism, Roland Paris argues convincingly that the challenge for the international community today is not the question of whether to ‘replace or move beyond’ a liberal peacebuilding model, but ‘how to reform existing approaches within a broadly defined liberal framework’. Furthermore, to undertake such reform successfully is to recognise that it has both ‘conceptual’ and ‘policy elements’ requiring attention. Paris explains that throughout the 1990s peacebuilding literature was dominated by a preoccupation with practical policy issues, with little attention given to the normative relationship between peacebuilding and the larger phenomena of international politics. Furthermore, in a more problematic development, critical scholarship overwhelmingly concerned with dismissing liberal peacebuilding as ‘fundamentally destructive or illegitimate’, has

58 Duffield, *Development, security and unending war*, p.27.
59 Goetze & Guzina, *Turtles all the way down*, p.321.
62 Ibid., p.362.
63 Ibid., p.338.
served to cloud rather than clarify collective international thinking on the scope and contribution of peacebuilding to security and development.64 This chapter shares such concern. It also subscribes to the conclusion reached by Paris that the question is not whether this criticism is warranted or not, but what contribution it makes to developing a collective understanding of the ‘underlying tensions and contradictions’ of a liberal peacebuilding model.65 Critical research that Paris suggests should be pursued, mostly relates to identifying sources of legitimacy in international peacebuilding.66 In this regard further examination of the discourse of state-building and nation-building is instructive for understanding the central role of legitimacy in peacebuilding and the principle of R2P.

3.2.1 State-building versus nation-building

Examining the record of contemporary peace operations suggests that where a distinction is made between state-building and nation-building, the former in its most general form represents efforts by third party states to reshape the polity of a host state by re-establishing an ‘effective indigenous government’ through a restricted scope of activities concerned primarily with democratic governance, such as transitional civil administration and election monitoring.67 This restricted interpretation of post-conflict statehood is most accurately represented in sociological characterisations as an ‘institutionalist approach’,68 and within peacebuilding literature as a ‘problem-solving response’.69 Situated within a democratic ‘transition paradigm’,70 this approach assumes that top-down, externally driven efforts in institutional reconstruction are both the ‘primary goal’ of

64 Ibid., p.362.
65 Ibid., p.338.
66 Ibid., pp.363-4.
70 Goetze & Guzina Turtles all the way down, p.320.
and provide the principal mechanism for realising international human rights standards. This approach is also sequentially-based in that it assumes that development, economic growth and stability will necessarily follow the creation or reform of institutional structures. While it is problematic to define “success” given the record of failures, international efforts at peacebuilding are generally regarded as more likely to encounter some notion of success and therefore increased perceptions of legitimacy, if they facilitate realisation of liberal values such as democratic self-governance and limitations on governmental power.72

Consistent with this approach the UN Transitional Administration in East Timor (UNTAET) established under resolution 1272 (25 October 1999) to ‘support capacity-building for self-government’ (paragraph two), is often cited as an example of a more successful attempt at peacebuilding. However many, including former Secretary-General Kofi Annan, acknowledged in a later report S/2006/628 (8 August 2006), that in light of a more recent escalation in violence, it was premature to end the mission in 2002 upon completion of traditional liberal indicators such as an electoral process (paragraphs 142-144). What this example demonstrates, is that defining the success (or failure) of international engagement with mass atrocities against a restricted scope of activities concerned primarily with securing democratic governance sets the course for disappointment, particularly within the host state. Moreover, in adopting such a narrow and pre-defined course for peacebuilding and by equating peace and security with the state, the Security Council risks undermining the positive conception of peace it seeks to establish.

While the term nation-building shares with state-building the need for institutional reconstruction, it diverges in its emphasis upon the importance of international actors engaging in a broader scope of activities aimed at securing socio-political cohesion. This broader range of activities is characterised as a ‘legitimacy approach’73 or ‘emancipatory peacebuilding’74 because of its increased emphasis

---

71 Futamura, Newman & Tadjbakhsh, Towards a human security approach, p.4.
72 Paris, Saving liberal peacebuilding, p.355.
74 Paris, Saving liberal peacebuilding, p.357.
upon the relationship between local perceptions of legitimacy, stability, development and the protection of human rights. Similar to the previous institutional approach, it also subscribes to liberal values of self-government and limitations on governmental power, but supplements this focus with increased emphasis upon international facilitation of greater political participation and representation. Representing a significant challenge to an institutionalist approach, its basis can be found in an increasing belief that greater local agency, through a sense of ‘local ownership’ or local buy-in to peacebuilding processes, will avoid a return to large-scale violence. Of central importance to perceptions of legitimacy within this approach is the international commitment towards generating a wider ‘shared consciousness’ of national identity. Within the host state, re-establishment of judicial and administrative structures and DDR of ex-combatants are combined with activities aimed at promotion of civil society (such as human rights groups, NGOs and political organisations).

As argued persuasively by Paris, it is the sheer magnitude, importance and difficult record of international peacebuilding that necessitates continuous reflective and critical enquiry of the ‘principles and methods’ that frame these missions. In this sense, critical scholarship, such as that related to the discursive frames of state-building and nation-building outlined here, has made an important contribution to exploring meanings imbued in liberal peacebuilding, its prospects and the shortcomings of current approaches. The problem however, is that while the logic of state-building and nation-building seems sensible, international efforts to promote core elements of this peacebuilding model, such as liberal democratic governance and market-oriented economic growth, have proved ‘more difficult and unpredictable’ than expected, and in some cases delivered ‘destabilising side effects’. For this reason, what Paris characterises as the ‘global experiment’ of

---

75 Ibid., p.355.
76 Simon Chesterman argues rebuilding national faith in post-conflict institutional structures is as much about transforming mentality (hearts and minds of the local population) as it is about transformative politics. See S Chesterman, ‘Ownership in theory and practice: transfer of authority in UN statebuilding operations’, Journal of Intervention and Statebuilding, vol. 1, no 1, 2007, p.3.
79 Ibid., p.337.
peacebuilding by the UN, despite reaffirmation among states, scholars and practitioners of their support for the concept, has arrived at a ‘crossroad’. 80

3.3 Peacebuilding and R2P

By authorising peacekeeping missions to engage in an expanded post-Westphalian mandate of post-conflict political, economic and social reform, the Security Council has de facto extended international authority into the realm of peacebuilding. This has significant political, financial and institutional implications, which ‘are yet to be addressed’ according to a 2009 study of the implications of multi-dimensional peace operations on UN mandates. 81 More importantly, this extension of international authority has developed the notion upon which contemporary peace operations are based, that democratic ‘statebuilding’ is representative of a ‘particular form of peacebuilding’. 82 This is a significant development for three reasons. Firstly, as noted in section 3.1, it demonstrates the extent to which the practice of peacekeeping has dramatically evolved. Secondly, it demonstrates a developing parallel with the third element of R2P, the responsibility to rebuild, in relation to its concern for developing the political, economic and societal capacity of a host state and its contribution to a broader conflict prevention framework. Thirdly, it highlights the dynamic, but at times problematic relationship, between multi-dimensional peace operations and the liberal project of democratic state-building.

Critical scholarship has tended to examine the philosophical basis of this relationship and the record of UN operations within a narrow framework of collective efforts by states to discharge their responsibility under the first element of R2P, the responsibility to react. Not least because it is this dimension of R2P where states, through the Security Council, are directly engaged in developing an international response to mass atrocities. As articulated in chapter two however,

80 Ibid.
ICISS prescribed a systematic approach based on priorities and activities that define a continuum of international engagement which includes prevention, reaction and rebuilding. In response, this chapter argues the question for members of the Security Council is not whether the international community needs to rebuild communities torn apart by violent conflict or what institutions and characteristics need to be reconstructed, but rather how to do so in order to avoid recreating the conditions, tensions and unsustainable structures that contributed to an escalation in violence in the first place. Moreover, it is the contention of this chapter that the third element of R2P, the responsibility to rebuild, requires greater attention if the value of this framework for conflict prevention is to be realised.

3.3.1 The responsibility to rebuild

Responsibility on the part of the international community deriving from the third element of R2P, the responsibility to rebuild, can be located in a combination of existing ‘general considerations’ on peacebuilding within the UN system and Security Council practice in different peacekeeping missions which informs a ‘lessons learned’ category of institutional knowledge within the organisation. It can also be found in resolution 1674 (28 April 2006) on the protection of civilians where a link is made between promoting economic growth, poverty eradication, sustainable development…good governance, democracy…respect for…human rights, and preventing the recurrence of violent conflict (paragraph 2).

Just as state responsibility transfers to the international community, and by implication the Security Council, if an individual state is incapable or unwilling to discharge its sovereign responsibilities under R2P, where individual states lack material capacity or political will to engage in rebuilding, a collective responsibility for this also accrues to the Security Council. However, as noted in chapter two (see section 2.2.1), while the 2005 Summit Outcome declares a commitment to assist states with building capacity, there is no obligation upon states to take such action. The result is a further dilution of responsibility and a caveat on international

---

84 Bellamy, *Global effort to end mass atrocities*, p.90. Emphasis in original.
commitment from an ‘obligation to act’ to an intention to ‘commit as necessary and appropriate’.  

As argued persuasively by Bellamy, this employs a significantly lower standard than envisaged by ICISS. In the ICISS conception of R2P giving practical substance to the notion of obligation means that under the first element (prevent) states would need to address root and direct causes of conflict; under the second element (react) states would need to respond to ‘situations of compelling human need’ through the full range of coercive measures; and finally, under the third element (rebuild), states would need to engage in a maximalist provision of international assistance encompassing the full range of recovery, reconstruction and reconciliation activities. The most positive example of substance being given to the third element of R2P (rebuild) is the establishment in 2006 of the PBC with its own distinct financial fund and supporting offices. While Secretary-General Boutros-Ghali defined peacebuilding and the Brahimi Report analysed peacebuilding, it was not until former Secretary-General Kofi-Annan proposed to member states the creation of a single inter-governmental commission in his report In Larger Freedom (paragraphs 2 and 16), that the relationship between peacebuilding and conflict prevention was solidified.

### 3.3.2 The Peacebuilding Commission

Advocacy by the Secretary-General in his report In Larger Freedom for a greater focus upon peacebuilding and the subsequent establishment of the PBC can be seen as a direct response to the recommendations of the sixteen-member High-Level Panel on Threats, Challenges, and Change. The High-Level Panel was tasked by the Secretary-General to evaluate the impact of existing UN policies upon: threats to international peace and security in the wake of the 2001 terrorist attacks on the US; and the increasing complexity and scope of multi-dimensional peace operations in intrastate conflicts. In its final report, A More Secure World A/59/565 (1 December 2004), the panel recommended the establishment of a PBC as an intergovernmental advisory body to address an identified institutional gap within

---

85 Bellamy, Whither the responsibility to protect, p.146;167.
86 Thakur, United Nations, peace and security, p. 257.
the UN system to assist states develop their capacity to ‘perform their sovereign functions effectively and responsibly’ (paragraph 261). This recommendation was subsequently endorsed and reaffirmed by states in the 2005 Summit Outcome, clarifying that the main purpose of the PBC once established, would be to bring together all relevant actors from within and outside the UN to provide advice on integrated strategies for peacebuilding and to focus attention on post-conflict reconstruction and institution-building (paragraph 98). In addition, it was envisaged that the PBC would provide advice on how to improve coordination of all relevant actors, develop best practices, ensure predictable financing of recovery activities and extend the period of international attention towards post-conflict recovery.

Operationalised by resolutions 60/180 and 1645 (20 December 2005), the significance of the PBC lies in the fact that it is the first intergovernmental advisory body of the UN that brings together actors from both within the organisation as well as those outside, such as the World Bank and International Monetary Fund (IMF), to support international efforts in states emerging from violent conflict.

In a report to the Security Council in 2009, PBC Chair, Heraldo Muñoz, noted that together with the Peacebuilding Fund and the Peacebuilding Support Office (PBSO), the Commission continued to promote the nexus between security and development. Moreover, since establishment of the PBC, the UN peacebuilding agenda had expanded in both ‘scope and depth’. In terms of scope, this included the impact and relevance of the full spectrum of activities associated with human protection from: ‘structural prevention strategies’ such as promoting good governance, strengthening the rule of law, assisting with economic growth and fighting corruption; to ‘direct prevention strategies’ such as preventive diplomacy, targeted sanctions and arms embargoes; and ‘late-stage direct prevention strategies’ such as coercive measures including as a last resort, the use of force.

---

87 Department of Public Information, Taking up annual report of Peacebuilding Commission, Security Council Members call for enhanced cooperation between the two bodies (25 November 2009) SC/9797, p.1.
88 Ibid.
89 D Mayersen, The responsibility to prevent: opportunities, challenges and strategies for operationalisation, Asia-Pacific Centre for the Responsibility to Protect, University of Queensland, St Lucia, May 2010, pp.9;18.
90 Ibid., pp.9-10;30.
91 Ibid., p.9.
In terms of depth, the contribution of the PBC and R2P to UN peacebuilding is threefold. Firstly, just as R2P is designed to unite organisations, agendas and actors at all levels, the PBC provides an umbrella to unite disparate agendas, interests and values among actors. In doing so, the PBC can assist in marshalling resources to address the sheer magnitude, complexity and confronting nature of the task at hand, which demands a comprehensive, targeted and multi-dimensional response. Through the PBC, its supporting offices and dedicated fund, the UN has successfully marshalled support for a range of ‘immediate response’ and ‘recovery’ initiatives in Burundi, Haiti, Sierra Leone, Guinea-Bissau and Liberia. This includes the full range of reactionary-based activities, such as targeted initiatives that respond to imminent threats, and prevention-based or longer-term systematic initiatives to support peace agreements, political dialogue, stimulate economic revitalisation, or strengthen the administrative capacity of the host state.

Secondly, the establishment of the PBC provides an institutional home in which to develop best practice benchmarks and at the same time makes a significant normative contribution to addressing obstacles that challenge the legitimacy of peacebuilding, which are primarily concerned with the methods employed for international peacebuilding. Finally, representative of its greatest contribution to increasing the depth of UN peacebuilding and clearest example of an attempt to give substance to the third element of R2P, the responsibility to rebuild, it is the role of the PBC established under resolutions 60/180 (20 December 2005) and 1645 (20 December 2005) in helping to ‘extend the period of attention given by the international community to post-conflict recovery’ that demonstrates its significance (paragraph 2). Specifically, as forecasted by the Secretary-General in his report, *A More Secure World A/59/565* (1 December 2004), establishing a PBC facilitates strengthening of UN capacity to act in a ‘coherent and effective way’ while providing a forum for all relevant actors to remain engaged in the whole continuum of international activities from early warning to identify states at risk, through preventive action to post-conflict peacebuilding (paragraph 263).

---

While this chapter regards this as an overwhelmingly positive development, it recognises limitations exist that could potentially impede both the function and normative influence of the PBC. The establishment of the PBC makes a significant contribution towards international capacity to meet its responsibility under R2P to rebuild. However, the UN still needs to address the role and contribution of peacebuilding to preventing mass atrocities. The basis for this assertion is that the activities of the PBC are much broader than those envisaged by ICISS for R2P. Furthermore, restricting the focus of peacebuilding to the post-conflict dimension places serious constraints on the role that the PBC could play in the development and implementation of the full continuum of international engagement that characterises R2P. Finally, representative of the greatest source of concern among critics is the relationship between the PBC and the Security Council. While *A More Secure World* (2004) articulates that the PBC may provide ‘advice’ when requested by the General Assembly, Security Council, Economic and Social Council (ECOSOC), the Secretary-General or states (paragraph 12), where a situation is firmly on the Security Council agenda or a UN-mandated peacekeeping mission is under way, the role of the PBC is restricted to providing general advice when requested by the Council (paragraph 16). Furthermore, the fact that the P5 constitute the majority of the seven Security Council members who serve on the PBC’s Organisational Committee also raises concerns.

In the context of R2P, these characteristics ensure that the PBC does not compromise the Security Council’s primary responsibility for international peace and security. However, they potentially limit the influence of the PBC in the development, extension or renewal of operational mandates to give substance to the responsibility to rebuild. During their consideration of the PBC’s 2009 annual report this impediment was noted by the UK who highlighted the need to develop ‘better ways for the Commission to affect the [Security] Council’s work’. While these organisational characteristics receive a great deal of attention for their potential to impede the normative contribution of the PBC, this chapter finds to the contrary that the PBC, its supporting offices and fund represent an important ally to

---

93 Department of Public Information, *Taking up annual report of Peacebuilding Commission, 2009*, p.5.
the principle of R2P. Given that normative demands or expectations are a central feature of international politics and understanding how they shift over time is a key feature of IR theory, the emergence of R2P and the establishment of the PBC are of fundamental significance. On a practical level, similar to R2P, the PBC provides a framework to mitigate tensions between longer-term preventive activities seeking to address risk factors with shorter-term activities to mitigate an imminent threat; unite disparate institutional agendas, interests and actors at all levels; and assist in marshalling resources to address the complex and multidimensional challenge of contemporary peace operations.

3.4 Conclusion

The question of whether a self-sustaining and lasting peace can be constructed following mass atrocities is one of the most pressing issues facing the UN. In response, a myriad of international organisations including the UN, European Union (EU) and World Bank have reoriented around a new liberal imperative of state-building and peacebuilding. Just as peacekeeping has evolved dramatically in the post-Cold War period, so too have international perceptions of peacebuilding in terms of demands, expectations and what is regarded as legitimate state action. Consequently, peacebuilding and democracy have become key features of the discourse surrounding international engagement with mass atrocities. Primarily concerned with developing a more nuanced understanding of the relationship between state capacity for discharging its sovereign responsibilities, human development and conflict prevention, identifiable shifts in how peacebuilding is conceived by the Security Council confirm increasing acceptance of the proposition that robust and capable states are the best guarantee for peace. While the implied relationship between democracy, institutional capacity and peace is subject to contestation, it is the willingness of the Security Council to include post-conflict political, economic and social development in its deliberations on mass atrocities that is unprecedented. In light of this trend, it is the conclusion of this chapter that R2P and peacebuilding represent two developing parallels within the normative and ideational framework surrounding the use of force for human protection, which exert considerable influence on what is regarded as a legitimate state action. Closely aligned to the third element of R2P (the responsibility to rebuild) in relation to its
concern for developing the political, economic and societal capacity of a host state
and its contribution to a broader conflict prevention framework, peacebuilding
provides a vehicle to give effect to the preventive dimensions of R2P. Looking at
the disparate functions of R2P posited by Bellamy, an increasing focus upon
peacebuilding and democracy within Security Council deliberations provides both
evidence and a practical example of a prevention-based policy agenda to address
risk factors.

Individually and collectively, the three chapters that comprise part one of this thesis
are of significant evidentiary value for charting the development of international
thinking on human protection, the intellectual journey of R2P and the evolution of
Security Council practice in contemporary peace operations. A recurring theme
underpinning the three chapters that comprise part one of this thesis, is that a
distinctive language of protection, incorporating both prevention and reaction,
exists to provide both the foundations for, and sources of contestation around,
international engagement with mass atrocities. Central to this discourse are the
features and functions of legitimacy. Consequently, the question of human
protection under the umbrella of R2P is not just one of legality, but to a larger
extent, a question of legitimacy. With the legitimacy of Security Council action and
contemporary peace operations increasingly linked to human protection, it
necessarily follows that R2P inherently involves both prevention and reaction.

Representing three distinct literatures on human protection, chapters one to three
share a common concern for establishing how shifting conceptions of legitimacy
around human protection construct and reconstruct the bounds of normatively
permissible agency and action. To this end, chapters one to three demonstrate R2P
has had a significant impact upon the values, rules and meanings that underpin
perceptions of legitimacy with regard to state identity and interests. Examining the
nature, scope and functions of international law, legal scholarship examined in
chapter one confirms that R2P has played a pivotal role in advancing wider
acceptance of minimum standards of humane treatment and enhancing the
opportunity for convergence between power and authority within the Security
Council to enforce the provisions of international law. Building on this
development, chapter two demonstrates that wider acceptance of R2P at the 2005
CHAPTER THREE

World Summit not only increased recognition that protection is dependent upon both longer-term preventive measures seeking to address risk factors for conflict and the shorter-term need for a timely and decisive response to halt human suffering, but also sharpened the focus of human protection under R2P towards the four atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. As the final chapter in part one, the examination of the relationship between peacebuilding, democracy and R2P presented here illustrates that the nature and capacity of a state is of primary importance to human protection. Recognising that protection embodies both prevention and reaction, it is clear from chapters one to three that the legitimacy of Security Council action and the organ itself is dependent upon its capacity and willingness to engage in measures consistent with both preventive and reactive elements of R2P, in order to achieve international security within a context influenced by complex cases of human suffering.
The UN Security Council and R2P

Reflecting upon the legal, political and ethical foundations for international engagement with mass atrocities serves to illustrate how the key arguments advanced in part one of this thesis have informed international thinking on human protection. In this regard, there are a number of identifiable developments throughout the chapters that comprise part one. These developments are significant because they demonstrate the conceptual foundations for international engagement with mass atrocities under the umbrella of R2P. With regard to the legal basis for international engagement with mass atrocities, chapter one argued that the question of human protection must be viewed as the interlocking of power and authority.\(^1\)

Viewing Security Council action in this way recognises that the process of international law is a socially constituted decision-making process that allocates meaning, rather than simply a body of rules supported by precedent to be applied impartially. Within this process, it is the mutually constitutive relationship between agents and structures or sources of international law and practice that influences collective understandings of the legality and legitimacy of a particular course of action and in turn, state action. The idea of the rule of international law is instructive in this regard.

In what is arguably the greatest contrast with its predecessor humanitarian intervention, chapter two argued R2P is about more than just the Security Council reacting to mass atrocities. The notion of protection imbued in R2P is characterised by a continuum of international engagement that spans the full range of responsibilities from protecting populations to preventing further conflict to rebuilding communities. Within this framework, invocation of R2P means in addition to responding to situations where a state has failed to meet its sovereign responsibilities, the Security Council has a positive obligation to assist with developing political, economic and societal capacity so as to prevent further suffering. Consequently, R2P inherently involves both prevention and reaction.

\(^1\) Higgins, *Problems and processes*, p.4.
With the legitimacy of peace operations and the Security Council itself increasingly linked to its role in both civilian protection and human development, peacebuilding has become a key feature of international engagement with mass atrocities. Of primary importance to peacebuilding within the remit of R2P, is the nature and capacity of the state. Employing the premise that robust and capable states provide the best guarantee of peace, Security Council deliberations are increasingly incorporating political, economic and social development into development of operational mandates. Where action consistent with reactive elements of R2P is often criticised for its perceived link to forced regime change, peacebuilding as a preventive measure is dominated by concerns about its tendency to be authoritarian and its Western approach in terms of privileging ‘certain kinds of action and certain kinds of institutions over others’. In light of a disappointing track record, chapter three argued that the question for the Security Council is not whether peacebuilding should be incorporated into international engagement with mass atrocities, but rather how to do so in order to give full effect to the preventive dimensions of R2P and avoid recreating the conditions, tensions and unsustainable structures that contributed to large scale violence.

As the introduction to the second part of this thesis this chapter clarifies the investigative framework for the two case studies on Darfur and Libya that follow. Drawing on the conceptual foundations for international engagement with mass atrocities outlined above, the first part of this chapter establishes the value of adopting a constructivist framework including implications for developing a more nuanced understanding of the role and importance of legitimacy in international politics. Consistent with this approach, part two of this chapter engages in a constructivist analysis of the communicative role of the Security Council in influencing state action. Because constructivism is necessarily concerned with understanding the intersubjective dimensions of reason and action, particularly the regulative and constitutive norms that underpin the functioning of organs such as the Security Council, it is well placed for understanding the politics of international engagement with mass atrocities. The third and final part of this chapter introduces the case studies on Darfur and Libya in chapters five and six respectively and

---

clarifies criteria for selection and structure of each. While both elicited concern as cases for R2P they appear to have taken different trajectories in terms of state engagement with prevention and reaction elements of the principle. Examining how the discursive frame of R2P has been employed by states to fulfil disparate functions either as a policy agenda to address risk factors or as ‘a “red flag” to galvanise the world into action’ against an imminent threat, the cases of Darfur and Libya demonstrate disparity in terms of which actors invoked the language of R2P, levels of resistance or accommodation and the international response elicited by references to the principle. The investigative framework formulated for this thesis was heavily influenced by its ability to interpret this disparity and capacity to trace social processes that led to turning points in the international response.

4.1 Investigative framework

Theoretically, constructivism is distinct in its approach to international relations because of its emphasis upon the social or intersubjective dimensions of international politics. As such, constructivism broadly defined is concerned with emphasising the connection between normative change, the role of state identity and interests in influencing action and the mutually constitutive relationship between agents and structures in international politics. Unlike ‘systemic constructivism’ concerned with examining the relationship between unitary state actors, ‘unit-level constructivism’ is concerned with the relationship between domestic legal and social norms, this research utilises ‘holistic constructivism’ to accommodate the multi-dimensional nature of international engagement with mass atrocities. This research finds holistic constructivism the most persuasive because of the manner in which it transcends the traditional divide between macro (international) and micro (domestic) levels of analysis. More importantly, because holistic constructivism is necessarily concerned with the ‘dynamics of global change’ and emphasises the mutually constitutive relationship between international order (as provided by

---

3 Bellamy, Responsibility to protect—five years on, p.166.
4 Reus-Smit, Constructivism, p.212.
5 Ibid., p.221.
international law) and states, this research finds it the most relevant constructivist interpretation for examining the development of contemporary normative and ideational structures that condition international thinking on legitimacy. Moreover, it is the contention of this research that the value of adopting this form of a constructivist framework lies in its interdisciplinary heritage which brings to light the how, what and where questions of empirical research.

Adopting a constructivist framework to investigate the role of discourse in international politics raises four important methodological issues. The first issue relates to ontology, or how the research is conceptualised through the three components of intersubjectivity, context and the exercise of power. While the role and importance of legitimacy in international politics is considered further in section 4.1.1, a review of shifts in international thinking, such as shifting notions of sovereignty, reveal it is ‘social phenomena’ such as values, rules, distinctive languages, culture and ideology that creates identities and in turn influences state action. From this it can be surmised that intersubjectivity is derived from the fact that these social values represent more than ‘aggregated beliefs’. In contrast, they represent particular meanings which achieve stability over time to the extent that they create a social order. Normative and ideational frameworks associated with this order set expectations about how it will operate, what type of behaviour is to be regarded as legitimate, and possibilities with regard to identity and interests. This necessarily brings us to the next component: context. As intersubjective understanding may vary spatially and temporally, constructivists situate their research within ‘spatial, historical, and social contexts’ so as to understand how shifts in meaning affect people in ‘different regions and eras’ and to ‘gauge’ the transformative potential of established rules or practices. Since the third component within this framework, the exercise of power, is through social relations rather than possession of material capability, constructivists are necessarily

\[ \text{\footnotesize 6 Ibid.} \]
\[ \text{\footnotesize 7 Ibid., p.221.} \]
\[ \text{\footnotesize 8 A Klotz. & C Lynch, Strategies for research in constructivist international relations, ME Sharpe, Armonk, 2007, p.7.} \]
\[ \text{\footnotesize 9 Ibid., p.8.} \]
\[ \text{\footnotesize 10 Ibid.} \]
\[ \text{\footnotesize 11 Ibid., p.9. Emphasis added.} \]
CHAPTER FOUR

concerned with analysing processes and interactions to establish how different meanings condition identities and actions, including why some values or norms prevail over others.\(^{12}\) From this perspective, the utility of constructivism lies with its capacity to accommodate the dynamic and socially constituted nature of international politics, particularly its ability to explain why change occurs in response to specific activities in one situation, but not in others.

This leads to the second issue raised by adopting a constructivist frame: epistemology. From this perspective, the theoretical frame of constructivism has been particularly influential in the design of this project. Interpretation is a key feature of constructivist epistemology. The value of adopting an interpretive approach is that it opens up analysis of international institutions to ‘communicative dynamics’, rather than rely only on ‘referential functions’ of normative frameworks.\(^{13}\) As defined by Friedrich Kratochwil and John Ruggie, communicative dynamics refers to the interplay between how states interpret behaviour of other states, the practice of rationalising and justifying their action (or inaction), and the responsiveness of other states to such reasoning.\(^{14}\) Consistent with this definition, the two case studies that follow are necessarily concerned with variations in the practice of the Security Council. Examined through Kratochwil and Ruggie’s communicative dynamics, it is the constant interplay between sources of international law and practice, or established rules and norms, values and ideas within the Council, that helps to ‘yield’ a multi-dimensional picture of the organ, particularly its role in advancing the principle of R2P through ‘successive adaptations’.\(^{15}\)

As most debates on R2P are concerned primarily with the applicability of the principle rather than how to realise individual elements, adopting an interpretive approach provides an opportunity to examine the role shifting conceptions of legitimacy play in constituting or constraining state action under the umbrella of R2P. At the same time, adopting an interpretive approach facilitates greater

\(^{12}\) Ibid., p.11.
\(^{13}\) Kratchowil & Ruggie A state of art, p.774.
\(^{14}\) Ibid., p.769.
\(^{15}\) Lowe et al The United Nations Security Council and war, p.18.
consideration of the contribution of international organisations to the ‘effectiveness of informal ordering mechanisms’ through their capacity to ‘enhance’ or challenge intersubjective expectations. Given the social nature of international politics and the subjectivity of the decision to use force for human protection, the problem with causality is that it is difficult to verify whether an important development can be attributed solely to a normative or ideational framework, such as R2P. A case in point is Kenya (2007) where disputed elections led to ethnic-related violence, and invocation of R2P was credited with preventing mass atrocities. While it did provide a discursive framework to facilitate international pressure on the Kenyan government for a diplomatic resolution, the problem in this case, is that it is not obvious whether success or otherwise could be attributed in a causal manner solely to invocation of R2P.

Having established the importance of interpretation, the third issue raised by adopting a constructivist frame relates to which ‘concepts’ and ‘tools’ are the most appropriate for the conduct of the research. Recognising the centrality of the four concepts of agency, structure, identity and interest to constructivism, it is self-evident that ideas and discourses are a key feature of such an approach. Moreover, it is the capacity of a conceptual framework to capture and explain ‘alternative interpretations’ to a similar situation that renders it the most appropriate for accommodating and explaining differences in how states conceive legitimacy. This necessarily brings this examination of approach to the final issue raised by adopting a constructivist framework, which relates to validity, or rather, generalisations versus standards as method for verification.

Constructivists are sceptical of generalisations, favouring instead context-specific analysis where theory and evidence inform each other to facilitate comparative assessment of the coherence of alternative interpretations. While this aspect of a

---

19 Ibid.
21 Ibid., pp.20-1.
constructivist approach may be critiqued on the grounds of subjectivism, Kratochwil and Ruggie are convincing in their assessment that interpretive epistemologies which stress the intimate relationship between validation and the uncovering of intersubjective meanings, are simply too well developed to be easily dismissed by charges of subjectivism.\(^{22}\)

Consistent with Hedley Bull’s call for classic approaches that rely upon exercise of judgement rather than scientific methods of ‘verification and proof’,\(^{23}\) this research adopts an interpretive method of analysis. More specifically, the empirical examination that follows in chapters five and six engages in an interpretive textual analysis. The motivation for selecting textual analysis is that it provides an effective mechanism to engage in the systemic study of communication content of specific sources and associated discourses across a number of settings.\(^{24}\) In summary, what this examination of the implications of the investigative framework reveals, is that it is the manner in which constructivists such as Alexander Wendt, Friedrich Kratochwil, John Ruggie and Christian Reus-Smit emphasise the importance of established normative considerations, the role of identity, and the relationship between actors and systemic or organisational structures, which demonstrates consistency with the objectives of this research. To this end, the value of engaging in a constructivist examination, is that it provides a framework capable of locating the ‘subtleties’ of texts, developing a greater understanding of the relationships that exist between them (their intertextuality),\(^{25}\) and appreciation for the manner in which documentary sources such as Security Council resolutions, meetings records and reports guide how states perceive and understand specific situations, the actors contained therein and possible sources of influence. In this regard, legitimacy plays a central role in this process.

\(^{22}\) Kratchowil & Ruggie *A state of art*, 1986, p.765.
\(^{24}\) Druckman *Doing research*, pp.167-72; 257.
4.1.1 The importance and role of legitimacy

This chapter continues the tradition of legal and political scholarship examined in part one concerned with the structures and processes of international governance. More specifically, this thesis shares with this scholarship a concern for the decision-making process that sets the parameters for international engagement with mass atrocities, particularly sources of normative influence in that process. A recurring theme throughout the three chapters that comprise part one is the importance and role of legitimacy. Legitimacy as it is employed throughout this thesis represents a ‘normative belief’ among states that ‘a rule of an institution ought to be obeyed’.26 Unpacking this definition further, this thesis subscribes to Ian Hurd’s assessment that legitimacy represents

a subjective quality, relational between actor and institution…defined by the actor’s perception of the institution…[which] may come from the substance of the rule from the procedure or source by which it was constituted.27

To understand the centrality of legitimacy to international engagement with mass atrocities this thesis employs a two-dimensional interpretation. Firstly, legitimacy is understood in the substantive sense to locate shifts in the way ideas and beliefs towards what is regarded as legitimate action are conceived and employed by states within international politics to contest, rationalise or reinforce established rules and practices. Secondly, by implication, legitimacy is understood to contain a procedural element in that shifts in collective understanding may influence institutional processes and organisational outcomes, such as resolutions, member voting or even the ‘general orientation’ of an organisation.28 As demonstrated in chapter one, international human rights standards have proved a source of significant influence in how states conceive legitimate statehood and the establishment of rules that differentiate ‘permissible’ from ‘impermissible behaviour’.29 Likewise, shifts in values, norms and beliefs that underpin

27 Ibid. Emphasis in original.
28 Kratochwil & Ruggie, A state of art, p.756.
international engagement with mass atrocities have resulted in liberal governance becoming the prevailing model for post-conflict political, economic and social organisation.30

Looking at the contribution of organs, such as the Security Council, to international governance is instructive for understanding the multi-dimensional nature of legitimacy. The Security Council provides an important forum in international governance for dialogue, agenda formation, policy coordination, and as a means through which to endorse or contest prevailing norms, values or ideas.31 By implication, the Security Council also plays the role of ‘dispenser of collective legitimacy’ when it endorses a particular course of action.32 On the other hand, the legitimacy of the Council is itself dependent upon perceptions that its decision-making processes are ‘proper and correct’ in that they reflect established rules and practice as set out in the UN Charter and other sources of international law. The legitimacy of the Security Council is also contingent upon being ‘reasonably successful’ at pursuing goals consistent with prevailing values.33 Securing legitimacy among Council members is important because it implies that a ‘measure of social consensus’ has been reached.34 While this assessment may reflect the historical role played by legitimacy in shaping international engagement with mass atrocities, the complex relationship between legitimacy and consensus within the Security Council requires further clarification to fully understand the interplay between these two important characteristics of international politics; particularly, their role in influencing international engagement with mass atrocities.

Ian Clark captures the essence of this complex and dynamic relationship in his assessment that while legitimacy and social consensus are ‘intimately connected’, they are independent.35 While securing legitimacy to a degree ‘subsumes a measure of social consensus’ securing consensus is not in itself ‘sufficient’ to ensure

---

32 Ibid.
34 Clark, *Legitimacy in international society*, p.191.
35 Ibid.
conceptions of legitimacy will follow.\textsuperscript{36} What this assessment serves to illustrate is that consensus reinforces the multi-dimensional nature of legitimacy in that it ‘touches’ both substantive and procedural elements.\textsuperscript{37} It touches substantive legitimacy in its requirement for widespread agreement on the substance of normative precepts that underpin prevailing models for international engagement with mass atrocities, such as the notion of responsible sovereignty. At the same time, it touches procedural elements of legitimacy in its requirement for legal authority through the provisions of the UN Charter and widespread agreement on action authorised by the Security Council in the name of human protection.\textsuperscript{38}

Further examination of the interplay between consensus and legitimacy reveals while each remain more of an aspiration of international responses to human suffering than a feature, it is variations in how legitimacy is conceived and employed in different circumstances by states that raises questions regarding the process of validation afforded by consensus.\textsuperscript{39} These questions relate to whether the agreement associated with securing consensus is more important as a social value, because it demonstrates ‘concurrence’ with deeply held societal beliefs,\textsuperscript{40} the process of reasoning that accompanies securing consensus is more important because of its role in validating knowledge or truth claims, or whether it is the ‘procedural benefit’ agreement delivers to a divided international community that is of greater value.\textsuperscript{41} Just as human rights has been particularly influential in linking individual and collective rights to perceived obligations of states to protect those most vulnerable, through its humanitarian focus IHL has made remarkable inroads into ending impunity for the most serious breaches of international law. In the case of IHL, the relationship between legitimacy and consensus has been constitutive and constraining. Representative of a widely accepted body of rules codified into law, IHL gives practical effect to protection through both prevention and reaction. In terms of prevention, IHL constrains state action by placing practical restrictions on both the means and methods of warfare. This has not only exerted significant influence on the

\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid. Emphasis in original.
\textsuperscript{40} Ibid., p.193.
\textsuperscript{41} Ibid., pp.193-4.
conduct of hostilities by states, but also the development of weapons for contemporary warfare as they have adapted to address prohibitions on means that cause unnecessary, prolonged or serious harm (such as expanding bullets or anti-personnel landmines). With respect to reaction, IHL provides a comprehensive framework for prosecuting harm, particularly for serious violations involving systematic and large scale violence such as genocide. The progression of common Article 3 establishing a minimum standard of humane treatment into customary international law, through general acceptance as law by states as articulated in the Statute of the International Court of Justice (Article 33(1)(b)), provides a further example of the relative importance of IHL and mutually constitutive relationship between legitimacy and consensus.

It is apparent from this brief examination of consensus that legitimacy is both constitutive and constraining. In the case of the former it empowers states taking action regarded as legitimate in three important ways. Firstly, states who command legitimacy have the benefit of being able to ‘draw on’ the active support of other states through guaranteed investment of ‘resources and energies’. Secondly, states who command legitimacy can compel ‘compliance’ from other states. Thirdly, states who command legitimacy derive benefit from ‘low levels of opposition’. From an institutional perspective, legitimacy increases when decisions and actions, identity and declared interests, are ‘socially sanctioned’ by members and broader communities of interest. On the other hand, legitimacy constrains international action because in making a claim for legitimacy states seek to rationalise their identity, interests and practices by appealing to prevailing normative and ideational frameworks.

Employing Kratochwil and Ruggie’s concept of communicative dynamics confirms while legitimacy licences state action through ideational frameworks (the realm of possibility with reference to institutionalised values and ideas) and communication (the practice of justification), it also constrains state action through its structuring

---

43 Ibid., p.164.
44 Ibid., p.158.
effect. It is through this practice of legitimation that the ‘architecture’ of social norms, values and ideas that underpins conceptions of legitimacy is constituted and re-constituted by states, and thus creates structures in international politics as it constructs and reconstructs the ‘bounds of normatively permissible agency and action’. It is also through communicative dynamics that ‘discrepancies’ or disagreement among members towards a perceived disparity between the ‘constitutional design’ and actual ‘practice’ of an organisation may be challenged.

Indeed, the willingness of the Security Council to engage in the use of force for human protection was challenged throughout the 1990s in this manner. Drawing on an inconclusive legal debate surrounding the use of force and the perceived failure of the international community in Northern Iraq, Somalia, Rwanda, Bosnia and Kosovo, opponents challenged the emerging practice of humanitarian intervention on the basis that it was incompatible with the provisions of the UN Charter for sovereignty and non-intervention, and therefore the intended purpose and role of the Security Council. Central to this opposition was the belief that a more permissive interpretation of international law licensing the use of military force contradicted the perceived impartiality of UN peace operations.

While it is the contention of this chapter that communicative dynamics is integral to understanding the intersubjectivity of legitimacy, it is important to note however, this understanding of legitimacy is not entirely value free. As a principle of justification, the definition of communicative dynamics advanced here implies ‘equal dialogical participation and other-perspective taking’ are ‘indispensable ingredients’ of the practice of legitimation. Contrasted against the narrow membership, privileged institutional status of the Security Council and inconsistency in application of specific provisions of the UN Charter by the P5, this suggests the practice of legitimation taking place in the Council rarely satisfies these characteristics. Recognising this limitation to an ideal process of legitimation,

---

48 Kratochwil & Ruggie *A state of art*, p.756.
it must be noted that communicative dynamics is also premised on the belief that ‘truth, inclusiveness, and sincerity’ represent a ‘realistic common denominator’ for establishing the ‘value-orientations’ of states making a claim for legitimacy.\(^{50}\) Put simply, this illustrates that context is important for states making claims for legitimacy or challenging established normative and ideational frameworks.

There is one further clarification on how legitimacy is conceived that must be made before this chapter proceeds to clarify the context of the Security Council. As noted by Christian Reus-Smit, because of its ‘inherently social nature’, many scholars frequently conflate the concept of legitimacy as described here with other social values associated with securing consensus, such as ‘rationality, justice, legality and morality’.\(^{51}\) This is problematic because it fails to recognise that it is often the interplay between notions of rationality, justice, legal and moral authority that constitutes the philosophical framework within which claims to legitimacy are made or challenged. As clarified by Reus-Smit, legitimacy draws on such values and exists in a complex relationship with them (just as it does with consensus), but is distinct in that it requires ‘social recognition’ to exist.\(^{52}\) Consequently, while legitimacy may be ‘grounded’ in intersubjective meanings and values related to agency and structure,\(^{53}\) it is ‘dependent’ upon social endorsement through a process of ‘interaction, communication and accommodation’.\(^{54}\) Representing a social concept in ‘the deepest sense’,\(^{55}\) the discursive practice of legitimation is heavily dependent upon

the prevailing architecture of social norms, upon the cultural mores that govern appropriate forms of rhetoric, argument, and justification, and upon available technologies of communication.\(^{56}\)

Recognising the centrality of communication to the ascription of legitimacy, it is the sociological orientation of constructivism, particularly its concern for identifying

\(^{50}\) Ibid.
\(^{51}\) Reus-Smit, *International crises of legitimacy*, p.160; see also Hurd, *After anarchy*, p.44.
\(^{52}\) Ibid.
\(^{53}\) Ibid., p.161.
\(^{54}\) Ibid., p.172.
\(^{55}\) Ibid., p.159.
\(^{56}\) Ibid., p.163.
'social structures, influence routes and popular discourses',\textsuperscript{57} which provides both the impetus for this research and theoretical frame for the case studies that follow. As noted in part one, the use of force for human protection exists at the intersection of international law and international politics. Theoretically, the value of a constructivist framework lies in its emphasis upon the mutually constituted nature of communication between them. Specifically, how politics conditions international law as an institution and how international law structures international politics within organs such as the Security Council.\textsuperscript{58}

4.2 Security Council procedure and practice

As the principal organ responsible for maintaining international peace and security, the Security Council is unique in its privileged position, procedure and practice. As outlined above, constructivist concern for developing a fuller understanding of the mutually constitutive relationship between agents and structures is well placed for understanding the manner in which international law functions through deliberations of this organ.\textsuperscript{59} However, to fully appreciate the significant communicative role of the Security Council in providing a contemporary forum for international dialogue, argumentation and legitimation of state action for human protection, it is necessary to briefly consider the Council’s historical development through the UN Charter, before considering procedure and practice of the organ. Representative of a concerted effort on the part of drafters to construct effective barriers to international aggression, the UN Charter also represents a deliberate attempt to address identified weaknesses of its predecessor, the League of Nations, established by the Treaty of Versailles (1919).\textsuperscript{60} Contrasting the UN with its predecessor a number of similarities are apparent. Firstly, as an international organisation comprising member states, under the Covenant of the League of Nations (including amendments to December 1924), the League of Nations was premised on preventing war through a similar notion of collective security to that

\textsuperscript{57} Navari, Introduction: methods and methodology, p.3.
\textsuperscript{58} Reus, Smit, Politics of international law, pp.11-2.
\textsuperscript{59} Ibid., p.41.
adopted by founders of the UN: to ‘promote international cooperation and to achieve peace and security’ (Article 4). Secondly, disarmament and settling international disputes through negotiation and arbitration were primary goals of the League (Article 5), just as they are for the UN. Thirdly, similar to UN, the League relied upon three principal organs to give effect to specific provisions of the Covenant: an Assembly, Council and Secretariat led by a Secretary-General (Article 10).

However, as a precursor to the UN, the League Covenant also contains a number of key differences with the UN Charter and by implication, the Security Council. As an executive organ the League Council was ‘functionally ineffectual’ because of specific provisions in the Covenant related to representation, voting procedure and authority (Article 2). On the first point of difference, membership was problematic as it did not contain all major powers of the time. The US was not a member whereas Germany (1926-33), Japan (until 1933) and Italy (until 1937) were members for only a limited period, while the UK and France as colonial powers, were members throughout the League’s existence. Membership of major powers was problematic as they either withdrew to pursue expansionist claims which was the case with Germany, Japan and Italy, or in the case of France and the UK, challenged the legitimacy of the organ because of their association with colonialism. In contrast, drafters of the UN Charter sought to ensure major powers were ‘willing to become’ and ‘remain members’ of the organisation. Voting procedure also constrained the effectiveness of the League Council because each member, regardless of status (permanent or non-permanent), could effectively veto decisions (Article 5). The basis for this constraint can be found in a tension between Article 4 which granted one vote to each member of the League Council and Article 5 which proscribed ‘decisions at any meeting... require the agreement of all the Members...represented at the meeting’ (Articles 4-5). This shortcoming served as a lesson for drafters of the UN Charter, where the inclusion of procedural constraints, which proscribe a requirement for a three-fifths majority vote within the Security Council and the right to veto a resolution among the P5 (Article 27), can be

---

62 Ibid.
explained as an attempt to include mechanisms to address the tension in voting procedure which constrained the effectiveness of the League Council.

The final constraint on the League Council which drafters of the UN Charter also sought to address, relates to an omission within Article 10 of the League Covenant clarifying the procedure for determining a threat to international peace or security and specific provisions for taking enforcement action.63 Confronted with a threat to international peace and security, the authority of the League Council was confined in scope to crimes of ‘aggression’ and territorial disputes between states (Article 10), to provide advice, and where it was determined a threat existed, exhausting economic sanctions first (Article 16). As discussed in chapter one, in contrast the UN Charter empowers the Security Council with a broader mandate to consider challenges to international peace and security beyond sources of aggression (Articles 39-42). Furthermore, the Charter vests authority in the Security Council to take all necessary means, including military measures, rather than simply recommend actions or provide advice to other states on how to respond.

Procedurally, the Security Council is also distinct in that provides a number of avenues for bringing matters to the Council’s attention, contains more flexible arrangements for drafting of resolutions and proceedings are published openly for public access. Each of these is addressed in turn in the following section as they relate to the case studies in chapters five and six.

4.2.1 Security Council procedure

Aside from periodic meetings, there are two avenues for bringing matters of concern to the Council’s attention. Firstly, under the Provisional Rules of Procedure of the Security Council S/96/Rev.7 (1983), the President may call a meeting at the request of any member of the Security Council (Rule 1). Secondly, a dispute or situation may be brought to the attention of the Council through existing provisions of the UN Charter: by any member of the UN or state which is not a member if it accepts provisions of the Charter relating to pacific settlement of disputes; if referred by the General Assembly (Article 11); and by the Secretary-

---

63 Ibid., p.11.
General (Rules 1-5). Once a matter is placed on the Council’s agenda, proposed resolutions or any relevant substantive motions are normally presented to the Council in writing (Rule 31). If a draft resolution is proposed by a member of the Security Council, it is not necessary for it to be seconded before going to a vote (Rule 34), and a draft resolution can be withdrawn at any time as long as no vote on content of that resolution has taken place (Rule 35).

UN members who are not a member of the Security Council may be invited to participate in meetings at the Council’s discretion, but they do so without the right to vote on any resolution before the Council when it is considered that their interests are directly affected or when a member brings a matter to the attention of the Council under Article 35(1) of the UN Charter (Rule 37). In these circumstances the member may submit a draft resolution to the Council for vote, but only if accompanied by a request by a member of the Council (Rule 38). The Council may also invite members of the Secretariat or others persons to provide information or assistance in its deliberations (Rule 40). Finally, unless it is decided to convene a private meeting, Security Council deliberations are generally public in nature with official records of meetings and any relevant supporting documents published ‘as soon as practicable’ (Rules 48 and 54). Where a private meeting is held, a communiqué is issued instead (Rule 55).

Looking at the practice of the Security Council, this thesis subscribes to Ian Hurd’s assessment that the ‘scope’ of the Security Council’s authority under the Charter while an important source of influence in perceptions of legitimacy, is somewhat ‘less relevant’ than ‘its practical capacity to persuade’. Drawing on Kratochwil and Ruggie’s concept of communicative dynamics, what Hurd is alluding to is the normative force of the Security Council to ascribe legitimacy through its unique position as the international organ responsible for international peace and security, and role as the primary forum within the UN for contestation of prevailing values, rules, expectations and norms that underpin international engagement with mass atrocities. According to Hurd, there are three ‘symbols’ of Security Council legitimacy: the politics of setting the Council’s agenda, membership (particularly, 

---

election of non-permanent members) and the role of the Council in authorising the use of force by states.\textsuperscript{65} Consistent with Hurd’s analysis this thesis is primarily concerned with the latter, however, recognises the effect the former two may have upon Security Council practice, including the process of legitimisation associated with the use of force for human protection.

4.2.2 Security Council practice

The practice of the Security Council in the post-Cold War period is full of examples of states seeking to secure collective legitimisation for the use of force for human protection. In many instances ‘great energy’ has been expended by states to associate their actions with the legitimacy embodied in the Security Council itself.\textsuperscript{66} Interestingly, underpinning these efforts is an expectation that a shift in values, norms or ideational frameworks that grant legitimacy would ‘alter’ the actions of other states.\textsuperscript{67} Once such a shift is internalised to become a widely shared belief, it fundamentally alters the decision-making environment for all states, even those who have not been ‘socialised’ to the perceptions and its accompanying rules of behaviour.\textsuperscript{68} This is because it affects every state’s expectations about the likely behaviour of all states. This process of internalisation within Security Council practice can be further defined as the social process by which an individual actor ‘apprehends an “objective” reality and endows it with meaning shared by others’.\textsuperscript{69} One example is UN peacekeeping, which demonstrates the importance of symbols to international politics, particularly the ‘power’ of the Security Council to ‘transfer legitimacy to the acts of others’ through a process of internalisation.\textsuperscript{70} According to Hurd, the label of peacekeeping is treated in a similar manner to a ‘commercial trademark’ in that the Security Council as the institutional forum where the process of legitimisation occurs ‘guards it jealously’, while the international community as consumer regards its presence as a ‘signal’ that the nature and scope of the mission

\textsuperscript{65}Ibid., p.111.
\textsuperscript{66} Ibid., p.14.
\textsuperscript{67} Ibid., p.177.
\textsuperscript{68} Ibid., p.7.
\textsuperscript{69} Ibid., p.41.
\textsuperscript{70} Ibid., p.127.
is endowed with the appropriate legal and moral authority.\textsuperscript{71} It necessarily follows that states not involved in the Council’s decision to authorise peacekeeping, will respond differently towards a conflict once it is legitimised as such by the Security Council.

However, just as perceptions of legitimacy are not fixed, precise characteristics and content of the peacekeeping label is not fixed. This is problematic for two reasons. Firstly, because shifting perceptions expose future applications of the label of peacekeeping and its accompanying process of legitimisation, to competing interpretations by states which may be ‘self-serving for those involved’.\textsuperscript{72} Secondly, shifting perceptions fuel existing criticism towards the ad hoc approach of the Security Council and inconsistency in application of specific provisions of the UN Charter, particularly by the P5, which critics argue challenges the legitimacy of the Council and its role in the process of legitimisation. Empirically, this confirms opening up the study of Security Council deliberations surrounding human protection to interpretive analysis highlights the importance of perceptions of legitimacy and the social process of legitimation to both the history and practice of the organ. Moreover, viewed through a constructivist lens, what this brief discussion of shifting perceptions of legitimacy serves to reaffirm is the mutually constitutive nature of the relationship between international law and politics in the two case studies that follow.

\section*{4.3 Introduction to case studies}

This research is primarily concerned with establishing the influence of R2P in Security Council decision-making towards addressing human suffering associated with mass atrocities. More specifically, this thesis is concerned with establishing the extent to which R2P has influenced international engagement with mass atrocities to mobilise state action consistent with an ICISS culture of protection (to prevent, react \textit{and} rebuild). As noted in chapter two, shifts in how states conceive legitimacy have been central to securing consensus and formal recognition of the concept of responsible sovereignty. Chapter three demonstrated linking international

\textsuperscript{71} Ibid., p.128.
\textsuperscript{72} Ibid.
legitimacy for contemporary peace operations to the protection of civilians has had a twofold structuring effect on international thinking concerned with mass atrocities. Firstly, increasing linkages between legitimacy of peace operations and protection of civilians has resulted in widespread recognition among scholars and practitioners that international responses cannot ignore the burdens of protection set out under the principle of R2P if they are to avert further atrocities. Secondly, shifting conceptions of legitimacy have significantly expanded the ‘ideational matrix’ around human protection. Examined through the concept of communicative dynamics this chapter finds the discursive frame of R2P has been employed in two ways within international politics that fulfil two disparate functions.

According to Alex Bellamy, the problem is that while references to R2P is both a welcome and positive development in international politics, invocation of the discursive frame of R2P by states invariably involves a choice between two different approaches. In the first instance, invocation of R2P by states is used to describe a ‘political commitment’ to halt mass atrocities and prevent further suffering. Based closely on the commitment of states at the World Summit, invocation of R2P in this manner emphasises prevention to license a ‘broad based policy agenda’ focused upon ‘upstream prevention’ of atrocities. Upstream prevention as it appears here involves proactive international engagement in a state to address risk factors for mass atrocities through systematic measures aimed at preventing a crisis occurring, rather than only responding to a crisis once it occurs. In practice, upstream prevention includes encouraging the internalisation of the principle of discrimination within armed forces...helping states and societies to build the capacities they need to resolve differences without recourse to violence...and persuading political leaders that they are likely to pay costs for the commission of mass atrocities.

In the second instance, references to R2P license a normative call to action. Emphasising reaction, states invoke the distinctive language of R2P to ‘elevate’

---

73 Reus, Smit, Politics of international law, p.12.
74 Bellamy, Responsibility to protect—five years on, p.158.
75 Ibid.
specific issues ‘above normal politics’ and in doing so, provide a ‘catalyst for international action’ to address an imminent threat of atrocities.\footnote{Ibid., p.160.} Consequently, the act of labelling a particular crisis as a case for R2P serves as a ‘red flag’ for generating necessary political will among states to ‘mobilise’ a timely and decisive response.\footnote{Ibid.} In this sense, invocation of R2P by states is based on a moral imperative to take emergency action to halt human suffering.

While Bellamy argues that the principle of R2P as it has been employed by states represents a ‘policy agenda requiring implementation’ rather than a ‘red flag to galvanise the world into action’,\footnote{Ibid., p.166.} it is his conclusion regarding the incompatibility of the two functions which is of primary interest to this research. According to Bellamy, while states can (and do) switch between the two functions of R2P, they cannot ‘sustain’ a political commitment to prevention and its associated policy agenda while employing R2P as a ‘speech act’ to mobilise an international response.\footnote{Ibid., p.160.} It necessarily follows that when states invoke the distinctive language of R2P they make a choice regarding how they will employ the principle to rationalise their actions.\footnote{Ibid.} Consequently, the choice they make between R2P as a policy agenda or normative call to action, affects collective understanding of the ‘role and impact’ of the principle upon international action.\footnote{Ibid.} It is on this premise that the case studies that follow in chapters five and six were selected.

**4.3.1 Selection of case studies**

Beyond general concern for large scale human rights violations, R2P situations are most accurately defined as those where mass atrocities involving genocide, ethnic cleansing, war crimes or crimes against humanity, are actually occurring or imminently about to occur, or where the situation could deteriorate to this extent in the medium or longer term unless appropriate preventive measures are taken. They are situations, actual or reasonably foreseeable, that should engage the attention of the international community simply because of the

\footnotesize{\textsuperscript{76} Ibid., p.160. \textsuperscript{77} Ibid. \textsuperscript{78} Ibid., p.166. \textsuperscript{79} Ibid., p.160. \textsuperscript{80} Ibid. \textsuperscript{81} Ibid.}
particularly conscience-shocking character of the conduct actually or potentially involved.\textsuperscript{82}

However, identifying cases for R2P is problematic. Firstly, because evidence of ‘requisite quality’ to confirm mass atrocities are occurring is not always available.\textsuperscript{83} Secondly, where such evidence does exist, subjective assessments by the international community can arrive at disparate conclusions. In the case of Darfur the question arose in 2008 as to whether violence was a continuation of mass atrocities that occurred in 2003-04, or in contrast represented a new conflict ‘much less distinguishable from many others’.\textsuperscript{84} Thirdly, as explained by Gareth Evans, it is even more difficult to identify cases with confidence where the risk of mass atrocities can be characterised as being in the medium to longer-term.\textsuperscript{85} While developing early warning capacity has received attention through the General Assembly (2010), the ‘enterprise’ of developing credible and reliable criteria for inclusion of a state on any R2P watchlist remains ‘an art rather than a science’.\textsuperscript{86} Despite the absence of any firm criteria, there are five factors identified by Evans that should be considered in identifying a situation or case for R2P concern.

The first factor identified by Evans relates to whether there is a past history of mass atrocities within the state perpetrated either by a group or a repressive government against each other or both. The second is whether any tensions exist that have given rise to past conflict regarding issues such as ‘constitutional or legal status, political representation, group or individual discrimination, economic wealth and opportunity, repressed cultural identity’.\textsuperscript{87} The third factor relates to the capacity or ‘strength’ of a state’s institutional structures for resolving tensions peacefully.\textsuperscript{88} The fourth factor relates to the ‘receptivity’ or perceived openness of the state in question to external assistance or sources of political and social influence, as ‘closed’ states or those who seem to be ‘indifferent’ to what the international community thinks of them, are more likely to demonstrate indifference to their own

\textsuperscript{82} Evans, \textit{Responsibility to protect: ending mass atrocities}, p.72.
\textsuperscript{83} Ibid.
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid., p.73.
\textsuperscript{86} Ibid., p.74.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid., pp.74-5.
populations. The final factor to be considered is the quality of leadership of the state in question, as states with ‘good leadership’ tend to be more resilient in resolving problems, including a past history of atrocities, continuing tensions, and even weak institutions of governance’. 

While this list is by no means exhaustive, it relies on subjective judgements and is dependent upon a case-by-case analysis of the risk of situations deteriorating over time, it does narrow the focus of international attention towards cases for preventive action. As argued by Evans, employing these considerations does not mean states identified are candidates for the use of force, rather they demonstrate a case for ‘R2P concern’, because of a perceived risk or vulnerability that the current situation could deteriorate putting a state’s population at risk of becoming victims of new mass atrocities if preventive measures are not put in place. Taking these considerations into account together with the two functions of R2P identified by Bellamy, the case studies presented in this thesis on Darfur and Libya represent two post-2005 situations where the principle of R2P featured in Security Council deliberations on the capacity and willingness of a state to protect its citizens.

Demonstrating consistency with the five considerations identified by Evans as cases for R2P concern, the primary rationale for selecting these two case studies is their disparity. That is, disparity in which actors invoked the language of R2P, levels of resistance or accommodation, the international response elicited by references to the principle, and finally, how states conceived legitimacy. Providing extensive documentation of Security Council deliberations over the course of the crises, the case studies presented here were also selected on their suitability for tracing social processes that led to invocation of R2P. Consistent with the qualitative methodology of process tracing, the cases of Darfur and Libya presented here offer a comprehensive yet bounded historical narrative of P5 interactions. As such, they provide an invaluable source for locating other factors, unfolding dynamics and events that led to various turning points in the international response to each

89 Ibid., p.75.
90 Ibid.
91 Ibid., pp.75-6.
92 Druckman, Doing research, pp.202-205.
crisis. The value of locating these social processes is that it offers a practical mechanism for understanding the effect of R2P on international engagement. More specifically, whether R2P could be credited with driving international action (state action could be attributed to the use of R2P language) or alternatively, states only invoked R2P because they had agreed on the seriousness of the problem and were willing to permit action.

Despite praise for the role of Africa in advancing R2P and the sustained efforts of the AU to engage in capacity-building so as to prevent atrocities, many scholars argue Darfur serves as an example of the perceived failure of R2P to exert any considerable influence on responses to the crisis. For instance, Bellamy argues international engagement with the crisis in Darfur didn’t perceptibly change as a result of labelling the crisis as a case for R2P. Moreover, looking at the most ‘significant development’, the ICC indictment of President al-Bashir, while seemingly catalytic in eliciting a decisive international response needs to be balanced against the criticism of Security Council inaction to protect Darfurians and the systematic under-resourcing of peace operations.93 In the case of Libya, the Security Council set a precedent when it passed Resolution 1973 (17 March 2011) authorising a no-fly zone and the use of all necessary measures, including the coercive use of force, to address widespread and systematic attacks on civilians. Compared to Darfur, resolution 1973 was distinct because of a ‘convergence’ between perceptions of legality and legitimacy, political will and operational capacity and speed. Libya was also unusual in the clarity of the threat of mass atrocities, short time-frame and role of regional organisations in supporting intervention.94 With prevention dominating the debate around R2P until Libya,95 invocation of R2P reframed the debate as a question of a timely and decisive international action to protect vulnerable populations. Unfortunately, while the passing of resolution 1973 should have been a ‘vindication’ of R2P, it was quickly followed by ‘buyers regret’ when NATO-led action seemingly exceeded its human protection mandate.96

93 Bellamy, Responsibility to protect—five years on, p.165.
94 Bellamy, Libya and the responsibility to protect, p.266
95 Weiss, RtoP alive and well, p.290.
96 Paris, R2P v ICC.
4.4 Conclusion

While there are a multitude of analyses examining the legality of individual instances of the use of force, foreign policy imperatives of individual members of the Security Council and practical challenges of contemporary peace operations, few have sought to qualitatively examine the debate surrounding prevention and reaction for evidence of a procedural shift consistent with the ICISS conception of R2P (to prevent, react and rebuild). Recognising this gap, the research presented in chapters five and six seeks to build on the interdisciplinary focus of the scholars examined in part one, ‘interweaving’ various legal, political and ethical perspectives. By adopting an interpretive approach to analysis of the documentary record of Security Council deliberations on human protection, this research seeks to develop a more nuanced understanding of how R2P has influenced international engagement with mass atrocities. It is the contention of this chapter that the distinctive language of R2P has significantly expanded the normative and ideational framework surrounding human protection. Examined through a constructivist conception of communicative dynamics, it is the constant interplay between sources of international law and practice, established rules and norms, values and ideas, which helps to yield a multi-dimensional picture of the role of the Security Council in advancing R2P through successive adaptations.

97 Pouligny, Doray & Martin, Methodological and ethical problems, p.19.
Case study one—A policy agenda for Darfur

In April 2003, rebel forces attacked El Fasher the capital of North Darfur in response to marginalisation of mostly African communities by the Islamist-Arabic Government of Sudan (GOS), led by President Omar Hassan Ahmad al-Bashir. Grievances among marginalised communities revolved around the ‘divide-and-rule tactics’ of the GOS and denial of their share in political power and national wealth.1 Fearing rebel mobilisation among Darfur tribes, the GOS launched a brutal counter-insurgency on Fur, Massalit and Zaghawa populations detaining, intimidating, torturing and killing those connected by kinship or settlement.2 The impact of the conflict that followed was profound. Between 2003 and 2006 violent clashes between rebel movements and Sudanese armed forces, including the government sponsored militia the Janjaweed, resulted in excess of two million people becoming displaced.3 By 2007, over four million of Darfur’s estimated seven million population were dependent upon humanitarian aid for basic necessities such as food, water, shelter and health care.4 While rebel groups committed serious human rights violations, it was the primary responsibility of the GOS for systematic violations of human rights, including commissioning of mass atrocities, which drew international condemnation. Once on the Security Council’s agenda, it was the constitutive relationship between R2P, ethnic identity and state institutions that set the parameters for international engagement with the crisis.

For the Security Council, Darfur represents one of the most complex peacekeeping operations, testing both the authority and solidarity of the organ. With 20,888 personnel deployed,5 the joint United Nations-African Union Mission in Darfur (UNAMID) represents the largest mission authorised by the Council and arguably the most ambitious attempt at civilian protection. Within the Security Council,

1 Briefing by Joint AU-UN Chief Mediator for Darfur (30 November 2009), S/PV.6227.
4 F Stewart & G Brown, Fragile states, Centre for Research on Inequality, Human security and ethnicity (CRISE), Working paper No. 51, Oxford University, January 2009, p.84.
5 AU-UN Hybrid Operation in Darfur deployment as at 31 January 2013.
references to R2P have been employed to encourage compliance by the GOS with peace processes and to debate the merits of international intervention, including the use of force for human protection. As a result of the perceived reluctance of the Council to assume responsibility for human protection and systematic under-resourcing of peace operations, the case of Darfur is often cited as an example of the failure of R2P to exert any considerable influence on international engagement with mass atrocities. Setting the effectiveness of the international response aside, this raises questions regarding the contribution of Darfur to international thinking on R2P, particularly, state commitment at the World Summit and subsequent interactive dialogues within the General Assembly.

Seeking to understand the complexities of the conflict and the contribution of R2P to international thinking on human protection, part one of this chapter examines the factors in Darfur eliciting concern as a case for R2P. Central to these concerns is the position and role of the GOS. Having established that the GOS denied civilian protection, this chapter turns its attention to the practice of the P5. Through an interpretive examination of Council meeting records part two traces how the distinctive language of R2P was employed to justify action (or inaction) and secondly, how the P5 engaged with the full continuum of R2P (to prevent, react and rebuild). Employing Bellamy’s assessment that invocation of R2P involves a choice by states between a policy agenda to address risk factors and a normative call to action seeking to mitigate an imminent threat, the final part of this chapter reviews discursive signifiers identified in part two to establish the choice made by the P5. From this it is clear that while deliberations were framed around the need to address the “root causes” of conflict and recognise the link between “security, development and sustainable peace”, formulation of an international response was also guided by the more immediate need for a “rapid response” to halt human suffering.

5.1 A case for R2P concern

Underlying the conflict in Darfur are decades of tensions over land, water and grazing rights predominantly between nomadic Arab herdsmen migrating from the north and settled African farmers in the south. Exacerbating these tensions are a range of factors around: chronic underdevelopment; environmental issues related to
competition over oil, gas and gold reserves, Nile waters, timber and agricultural land; and the relative position and role of the state in divergent ethnic identities. In Darfur, the interplay between land degradation, desertification and conflict is ‘particularly strong’.

In response to these tensions, national and international debates have been infused with a discourse whose meaning shifts to accommodate different values and interests. This includes the terms “government”, “rebel”, “Arab” and “African” which have all had different meanings temporally and spatially and are often oversimplifications of a much more complex and fluctuating situation. This discourse has influenced the political and ideological landscape within which conflict in Darfur is located. Within this landscape, the problem is that what binds Darfurians together in terms identity, is often as great as what divides them. Despite the absence of firm criteria, chapter four identified five factors that elicit R2P concern: existing tensions; history of atrocities; strength of a state’s institutional structures for governance; the perceived receptivity or openness of the state; and the quality of political leadership. A multidimensional and complicated conflict, because of ‘deep and overlapping political, economic, environmental dimensions’, Darfur elicits concern against each factor, as follows.

5.1.1 Existing tensions

Sudan is heterogeneous in terms of ethnicity, language and religion. Broadly, the population of Sudan can be divided into four main groups: African (52 percent), Arab (39 percent), Beja (6 percent), plus foreigners or other groups (3 percent). Geographically, Sudan’s northern regions are characterised as largely Arab (Sunni Muslim) and the southern primarily African (Christian/Animist). While this dichotomy captures the location of dominant groups, it fails to account for the ethnic and religious diversity that exists. Within this dichotomy African groups

---


7 Statement by the Permanent Representative of the UK and Northern Ireland (14 June 2006), S/PV.5462.


9 Evans, Responsibility to protect: ending mass atrocities, pp.74-5.

10 Briefing by Special Representative of the Secretary-General (SRSG) on Sudan (8 February 2005), S/PV.5120.

11 Stewart & Brown, Fragile States, p.83.
include the Dinka with the largest population of around two million, the Nuer located mostly in the south and in Ethiopia, the Fur primarily in Darfur, the Zaghawa who include leaders of rebel groups in Darfur and are dominant in neighbouring Chad, and Beja located in the east of Sudan and in Ethiopia and Eritrea. Arab groups include the Danagla, Gaalien and Shaigia located primarily in the north and Baggara located in Darfur and the southern region of Kordofan. Arab groups include the Danagla, Gaalien and Shaigia located primarily in the north and Baggara located in Darfur and the southern region of Kordofan. Arab groups include the Danagla, Gaalien and Shaigia located primarily in the north and Baggara located in Darfur and the southern region of Kordofan. While the Fur have a historical connection to the region they represent a minority of Darfur’s population which comprises many different ethnicities and tribal identities, including African Tunjur, Masalit, Daju and Zaghawa, plus Arab Baggara, Rizeigat and Abbala.

Situated along the western border of Sudan, Darfur means the ‘land of the Fur’. While the Fur have a historical connection to the region they represent a minority of Darfur’s population which comprises many different ethnicities and tribal identities, including African Tunjur, Masalit, Daju and Zaghawa, plus Arab Baggara, Rizeigat and Abbala.


---

12 Ibid.
13 de Waal, Who are the Darfurians, p.181.
Seeking to understand the mutually constitutive relationship between ethnicity, the Sudanese state and violence, this thesis finds Alex de Waal’s 2005 examination of Darfurian identity and its implications for international engagement instructive. According to de Waal, there are four ‘overlapping processes’ of identity formation that are of primary importance. Individually, these four processes highlight the main currents of political, economic and social organisation complicating conflict in Darfur. Collectively, they provide an insight into the normative and ideational frameworks influencing conceptions of legitimate statehood to differentiate permissible from impermissible behaviour. Analysis of Sudanese state formation tends to favour north and south without recognising the contribution of the Dar Fur sultanate. In an attempt to redress this ‘Nilocentric historiography of Sudan’ de Waal explains polarised Arab and African identities central to conflict in Darfur originated during the first process of indigenous state formation, associated with independence of the Dar Fur sultanate (1600-1916).

Formation of the Sudanese state was centred on the Keira sultanate, located in Jebel Marra, south Darfur. Non-Arab identity was founded upon a ‘core Fur-Keira identity’ brought together with a combination of identities characterised as Fur-Kunjara (the largest clan) and other southern groups, to form a Fur polity. In the north, dominant groups included: nomadic Bedouins (Arab desert nomads), camel owners with the capacity for long-distance trade, who were important to sultan wealth; and settled non-Arab Zaghawa who married into the ruling Keira family and were administrators and soldiers. Claims to Arab genealogy played an important role in state institutions as it introduced a ‘literate tradition’, the possibility of increased trade with the Arab world and Islam as the state religion. With Arab identity grounded in northern populations, emphasis upon African ethnicity by southern groups led to the emergence of a concurrent identity.

Building on this early model of state formation, the second process of identity formation involved greater integration with Islamic ‘currents’ from West Africa and

---

14 Ibid.
15 Ibid., pp.183-4.
17 de Waal, Who are the Darfurians, 2005, pp.185-7.
the Nile Valley between 1883-1898 and later again in 1980-1999.\textsuperscript{18} The genealogy of Arab tribes migrating into Darfur between the fourteenth and eighteenth centuries can mostly be traced to Juhayna groupings and the Prophet Mohammed, which introduced a distinctive moral geography. Within this geography all land was regarded as belonging to Allah, with entitlement to settle belonging to ‘those who happen upon it’.\textsuperscript{19} This led to Darfur becoming a contested ‘chequerboard’ of land use between farmers and nomadic herders.\textsuperscript{20} From the eighteenth to twentieth centuries tribal groups consolidated to create new identities such as the Rizeigat in the south-east. When Rezeigat were awarded territorial jurisdiction (\textit{hakura}) by the Fur sultan, tensions escalated with nomadic Abbala (camel men) in the north. This was because Abbala who settled were subject to the ‘administrative authority of the sultan’s provincial governor’, rather than recognised as ‘quasi-autonomous tribal units’.\textsuperscript{21} During the second phase (1980-1999) Darfur gained prominence as a Muslim constituency to be mobilised, with Islam providing the ‘path to enfranchisement’.\textsuperscript{22}

In the third process of identity formation, the conquest of Dar Fur in 1916 and incorporation of an independent Dar Masalit sultanate in 1922-23 signalled a new direction. Through British annexation native administration was introduced creating a hierarchy of tribal administrators with executive and judicial powers to normalise the ‘status of different tribal authorities’, establish coherence between competing ethnic identities and provide a mechanism to police subjects, particularly immigrants from the west.\textsuperscript{23} Geographically, native administration formalised the division of the Dar Fur sultanate into provinces and the allocation of territorial jurisdiction (\textit{hakura}), now “\textit{dars}”, to Baggara in the south. Closely linked to identity formation, \textit{dars} created a legacy through the introduction of legal jurisdiction and tribal ownership of native land. The availability of free land, a tradition of hospitality towards settlers and customary practice of adopting the

\textsuperscript{18} Flint, & de Waal, \textit{Darfur: a new history of a long war}, p.9.
\textsuperscript{19} de Waal, \textit{Who are the Darfurians}, p.190.
\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid., p.188.
\textsuperscript{22} Ibid., p.191.
\textsuperscript{23} Ibid., p.192.
‘legal code of host populations’, supported allocation of dars. By the 1970s dars had become ethnically diverse, with substantial populations relocating from the north. With an obligation for settlers to adopt the customary law of host populations, dar ownership became equally concerned with power hierarchies as much as land use. While native administration ceased in 1971, centralised administrative authority and an obligation to adopt custom and practice of the dominant ethnic group became entrenched.

In the fourth and final process, ideological development of Arab and African identities occurred simultaneously with militarisation in Darfur, ranging from the spread of small arms, through organisation of militia in 1987-89, including a coup in 1989, to full-scale conflict in 2003. During this period ‘fear and violence’ became a powerful driver in forging polarised identities. Set against the backdrop of Sudanese political processes (north versus south) and wider African and Middle Eastern processes, complex identities were simplified into an Arab and African dichotomy. While the Islamist-Arabism of the GOS provided initial support for polarisation, Arab lineage and a strong connection with Libyan leader Colonel Muammar Qadhafi’s supremacist ideology (founded upon Arab annexation across the Sahara and Sahel) instigated a renewed Arab and African dichotomy. Government attacks upon the ‘Fur heartland’ of Gulu in 1987, 2002 and 2004, delivered a ‘symbolic strike’ at Fur legitimacy as well as a ‘tactical assault’ on a primary source of opposition. Consequently, polarisation evolved into an agenda of domination by Khartoum over marginalised peripheries, with violence the primary means to dissolve opposition.

5.1.2 History of atrocities

Marginalised Fur, Masalit and Zaghawa communities share a basic pattern of grievances that revolve around denial of their share of political power and national wealth. In the case of the latter, issues include the provision of assistance to Internally Displaced Persons (IDPs) and refugees, compensation to victims of

---

24 Ibid., p.193.
25 Ibid., p.197.
27 de Waal, *Who are the Darfurians*, p.198.
conflict, seed money for reconstruction and development and arrangements to ensure transfers from the GOS in Khartoum to regions. Since February 2003 the GOS has responded to insurgency by the Sudan Liberation Movement/Army (SLM/A) and Justice and Equality Movement (JEM) on behalf of marginalised communities through its proxy militia the Janjaweed. Recruited largely from migrant Rizeigat and Abbala communities without customary land rights, the Janjaweed conducted a ‘drain and swamp’ campaign on behalf of the GOS aimed at driving civilians from villages, disbanding opposition and denying rebel forces a support base. Central to this campaign was encouragement by the GOS to systematically ignore IHL and IHRL. In April 2004 a fact-finding mission despatched by the Office of the United Nations High Commissioner for Human Rights to investigate allegations of serious human rights violations, found a ‘disturbing pattern of disregard for basic principles of human rights and humanitarian law’ for which Sudanese armed forces and Janjaweed were responsible. Furthermore, the mission found consistency in allegations that government forces and the Janjaweed had carried out ‘indiscriminate attacks against civilians, rape and other serious forms of sexual violence, destruction of property and pillage, forced displacements, disappearances, and persecution and discrimination’. While the report indicated rebel forces also committed violations, it was the failure of the GOS to discharge its sovereign responsibilities to protect civilian populations that was of primary concern.

Evidence encountered during the mission to support this finding included reports from refugees in Chad and IDPs in Darfur of well-coordinated air strikes by Antonov aircraft and helicopter gunships targeting markets and wells in villages. Occurring weekly and lasting up to ten days, a ground attack by Janjaweed, Sudanese Armed Forces (SAF) or a combination of both usually followed.

28 Briefing by Special Envoy for AU Inter-Sudanese Talks on the Conflict in Darfur, (18 April 2006), S/PV.5413.
29 ICG, Sudan: justice, peace, p.3.
31 Ibid.
32 Briefing by Luis Moreno-Ocampo, Prosecutor, ICC S/PV.5687 (7 June 2007); Edmond Mulet, Assistant-Secretary-General Peacekeeping Operations, S/PV.5849 (11 March 2008).
Destruction of property, livestock and essential supplies (such as flour, millet and crops), poisoning of wells with corpses and burning homes, markets and mosques, became a familiar feature of these attacks.\textsuperscript{33} Other violations reported to the mission included killing and enforced disappearance, particularly among men and boys; forced abduction, widespread rape and other sexual violence against women and girls; torture, such as severe whipping; or cruel and degrading treatment, such as stripping victims of their clothes to publicly humiliate them.\textsuperscript{34} In terms of sovereign responsibility, the mission found a ‘prevailing climate of impunity’ where the GOS had done little or nothing to prevent attacks on civilians, failed to take any ‘meaningful action’ to bring perpetrators to justice and was continuing to ‘permit the Janjaweed to exercise a reign of terror’ in Darfur. The report concluded that despite claims by the GOS that it was engaged in a ‘concerted effort to re-establish law and order’ and ‘effective accountability’, there was ‘widespread denial’ of civilian protection.\textsuperscript{35}

Providing further evidence of the failure of the GOS, a commission of inquiry established under resolution 1564 (18 September 2004) arrived at a similar conclusion. Comprising five international legal and human rights experts, a team of forensic, military and violence against women specialists, the International Commission of Inquiry on Darfur (ICID) spent eight weeks in Darfur and in neighbouring Chad, Ethiopia and Eritrea collecting evidence from both governmental and non-governmental sources. The Commission’s final report S/2005/60 (25 January 2005) concluded that Sudanese officials, Janjaweed and some rebel groups were responsible for indiscriminate acts of violence, including the killing of civilians, torture, enforced disappearances, destruction of villages, pillaging and forced displacement, throughout Darfur (paragraphs 233-236 and 241-244). Evidence in the report gave serious weight to the call for international action and was a key factor in the Security Council decision that followed in March 2005 referring the situation in Darfur to the ICC. While the GOS consistently denied responsibility for the Janjaweed and attacks on civilians by government

\textsuperscript{33} E Reeves, ‘Darfur and international justice’, Dissent, Summer, 2009, p.17.
\textsuperscript{35} Ibid., para 36.
forces, evidence discovered suggested otherwise. In the case of SAF, Khartoum accepts that violations of IHRL and IHL had occurred but argued these represent ‘individual excesses rather than state policy’ and were ‘natural, or inevitable, consequences of an armed conflict’. Not surprisingly, ICC investigations arrived at a contrary conclusion finding mass atrocities committed in Darfur were a ‘consequence of a strategic decision by Sudanese officials’ and not a ‘by-product of conflict, inter-tribal clashes or climate change’ as defended by the GOS.

5.1.3 Institutional capacity

Earlier in chapter three this thesis argued a common risk factor underpinning mass atrocities is the ‘nature and capacity’ of the state, which is often weak or repressive in nature. Some of the features of weak states which increase the propensity for violent conflict include economic mismanagement, lack of social service delivery and lack of capacity or willingness to guarantee human rights. While there is no universally accepted definition of weak states and in the absence of any ‘concrete metrics’ to evaluate capacity in each area of sovereign responsibility, discursive signifiers such as “weak”, “fragile” or “failed” are often employed by scholars and policymakers to identify states demonstrating reduced capacity for governance in what are commonly considered to be core responsibilities and functions of statehood: economic, political, security and social welfare. This explanation is based on a 2008 study conducted by US Permanent Representative to the UN and former Brookings Senior Fellow, Susan Rice, together with former Centre for Global Development Research Fellow, Stewart Patrick, which examined the drivers of state performance. In the study, Rice and Patrick defined weak states as lacking the capacity and/or will to

foster an environment conducive to sustainable and equitable economic growth; to establish and maintain legitimate, transparent, and accountable

---

38 Briefing by Luis Moreno-Ocampo, Prosecutor, ICC (8 June 2011), S/PV.6548.
39 Picciotto & Fukuda-Parr, Conflict prevention and development cooperation , p.10.
political institutions; to secure populations from violent conflict and to control their territory; and to meet the basic human needs of their population.  

Since independence in 1956, Sudan has been characterised by fragility, poverty, inequality and violence. As the largest state on the African continent, covering 2.5 million kilometres with a population of 43.2 million and an average life expectancy of 58.9 years, Sudan is ranked the highest of the eight African states that appear in Rice and Patrick’s index of state weakness. However, to fully appreciate the institutional weakness of Sudan, it is necessary to engage in a more ‘fine-grained’ assessment. Looking at 141 developing states as classified by the World Bank, and drawing on a variety of internationally recognised reports and development indices, Rice and Patrick’s 2008 study identified twenty indicators that individually represent proxies for core state functions and collectively provide a ‘snapshot in time’ of the relative institutional effectiveness of states.

With ten representing strongest performance and one weakest performance, aggregated these indicators score Sudan’s overall performance at 3.29 out of a possible ten. In terms of performance across individual indicators, Sudan scores worst in the three areas of security (fourth behind Afghanistan, the Democratic Republic of Congo and Somalia), conflict intensity (ranked the worst) and human rights violations (equal worst with Iraq). When scores are collated into functional or ‘basket’ categories with a highest possible score of ten, critical weaknesses appear in two areas of state responsibility: security (scoring 1.46) and political (scoring 2.06). Sudan scores only marginally better in the areas of social welfare (scoring 4.59) and economic (scoring 5.05). With marginalisation of Fur, Masalit and

41 Rice & Patrick, Index of state weakness, p.8.
43 Rice & Patrick, Index of state weakness, p.8.
44 Ibid, p.3.
46 Ibid.
47 Scoring of security is based on conflict intensity, political stability, absence of violence, incidence of coups, human rights violations and territory affected by conflict, while political scoring is based on government effectiveness, rule of law, voice and accountability, control of corruption and freedom.
48 Scoring of social welfare is based on child mortality, primary school completion, undernourishment, population with access to improved water sources and sanitation facilities and life
Zaghawa communities a central feature of conflict in Darfur, it is not surprising that Sudan also performs poorly in indicators related to individual rights and freedoms. Looking at political rights and civil liberties, the Freedom in the World Survey (2010) rates states on a seven point scale derived largely from the Universal Declaration of Human Rights (UDHR), where a rating of one represents the most free and seven the least free. In states rated as “not free” there is generally an absence of political rights, accompanied by widespread and systematic denial of basic civil liberties. Of the forty-seven states deemed “not free”, Sudan appears in fourth position (behind North Korea, Turkmenistan and Uzbekistan and Libya) and is allocated the lowest possible rating of seven (least free).

In the context of concerns about sharing of national wealth and underdevelopment among marginalised communities, the extent to which conflict is undermining the ability of Khartoum to raise revenue is another indicator that warrants attention. The question that arises is whether the state is acting towards its limit in terms of ability to raise tax revenue, natural resource royalties and aid, or whether the failure to raise revenue is due to irresponsible government. Despite significant growth in the exploration of natural resources across Sudan, tax revenue as a share of gross domestic product (GDP) has not increased comparatively. Typically, tax revenue is an average of 16 percent for sub-Saharan Africa. In contrast, Sudan has averaged: 6.2 percent (1991-93); 6.5 percent (1994-96); 6.1 percent (1997-99); and 5.4 percent (2000). The conclusion to be drawn is that while conflict may undermine the ability of Khartoum to raise revenue, since coming to power in 1989 the Sudanese government has not been able or willing to pursue taxation at a level that would enable improvement in the provision of services to Darfur’s wider population.

expectancy, while economic scoring is based on gross national income per capita, GDP growth, income inequality, inflation and quality of regulation. Ibid., p.9.


50 Rice & Patrick, Index of state weakness., p.3.

51 Ibid., pp.4-5.

52 Stewart & Brown, Fragile states, p.91.
5.1.4 Receptivity or openness

Despite continued assurances of their commitment to securing a political settlement and willingness to cooperate with the international community to facilitate humanitarian assistance and address security and development issues polarising the population, the GOS adopted a policy of non-cooperation. In practice, this translated into a variety of counter-productive activities characterised by an ongoing commitment to be party to various peace agreements without any implementation mechanisms or action in support of a political settlement; violations of ceasefire agreements; continuation of impunity for perpetrators of mass atrocities; repressive censorship of potential sources of criticism or opposition; restricted access to vulnerable populations and movement of peacekeeping and humanitarian personnel; seizure of humanitarian assets; and a refusal to recognise the jurisdiction of the ICC. Examples supporting this assessment include evidence of the GOS and militia engaging in indiscriminate attacks on villages and inciting local government authorities to block fuel deliveries for bores and water pumps,\(^53\) despite pledging to disarm and demobilise militias through an inclusive political process to share wealth and generate development.\(^54\) Other actions of the GOS counter-productive to human protection include delayed processing of equipment at Khartoum airport for up to eight months despite assurances it would facilitate immediate clearance for humanitarian assistance;\(^55\) restricted or no access to IDP camps in south Darfur; seizure of humanitarian assets through high-jacking or ambush of aid convoys; and moreover, kidnapping of humanitarian personnel.\(^56\) By March 2009 it was estimated that non-cooperation by the Sudanese government had impeded approximately forty to fifty percent of humanitarian capacity in Darfur.\(^57\)

Despite commitments to justice in various declarations, there has been a lack of ‘any real progress’ in prosecuting war crimes and human rights abuses or repealing

---

\(^{53}\) Briefing by Under Secretary-General Humanitarian Affairs, (19 May 2006), S/PV.5441.
\(^{54}\) Statement by the Permanent Representative of the US (9 May 2006), S/PV.5434.
\(^{55}\) Briefing by SRSG (Sudan) (18 September 2006), S/PV.5528; Statement by President of the Security Council (25 May 2004), S/PV.4978.
\(^{56}\) Briefing by Under Secretary-General for Humanitarian Affairs (6 December 2007), S/PV.5792
\(^{57}\) Briefing by Director, Office for the Coordination of Humanitarian Affairs (OCHA) (20 March 2009), S/PV.6096.
legal immunities that safeguard security and armed forces from prosecution.58 While courts and investigative mechanisms have been created, evidence of proceedings is either non-existent or confirms the GOS has failed to connect those responsible to alleged crimes. A significant source of evidence elicitng concern in this regard is the National Security and Intelligence Service (NISS) which exploits its broad powers to harass, intimidate, arrest and detain human rights activists (including those located in IDP camps), journalists, those openly critical of the ruling National Congress Party (NCP) or civilians suspected of supporting rebel forces. Of primary concern is the failure of Khartoum to repeal NISS immunity from prosecution for human rights violations. Among its activities, the NISS has engaged in censorship of Sudanese press, resulting in the closure of the Rai Al Shaab newspaper (affiliated with the opposing Popular Congress Party) and sentencing of the deputy editor-in-chief and head of the political news desk to five and two years prison respectively.59 Despite censorship being lifted in 2005 both were reported to have been tortured or suffered ‘ill-treatment’ while in detention.60

Responding to indictment by the ICC, President Bashir has continued to move freely visiting Chad and Kenya as late as July-August 2010,61 and Malawi in October 2011 for a regional trade summit.62 As a further act of defiance and contradictory to the permanent promise of compliance and justice, Khartoum’s reaction to the Harun case is ‘indicative’.63 Despite a April 2007 judgement by the ICC finding ‘reasonable grounds’ that Ahmad Muhammad Harun (former Minister of State for the Interior and Minister of State for Humanitarian Affairs) and Janjaweed leader, Ali Abd-Al Rahman (aka Ali Kushayb), had joined to persecute attacks on civilians; systematically organise recruitment, funding and arming of Janjaweed to support SAF; and incited mass atrocities including crimes against humanity and war crimes, investigations by the GOS failed to connect Harun or

60 Ibid.
63 ICG, Sudan: justice, peace, p.6; ICC, Prosecutor v. Ahmad Harun and Ali Kushayb.
Kushayb to mass atrocities. Challenging the authority and legitimacy of the ICC, the GOS subsequently appointed Harun as chair of a committee responsible for investigating human rights violations in Darfur and the UNAMID monitoring group responsible for oversight of peacekeeping forces. Together the examples cited here confirm that the GOS has systematically engaged the international community in a never-ending process of peace negotiations, supported by the permanent promise of compliance and justice. Gerard Prunier makes the point convincingly that this is a clever strategy since a preference by the Security Council for engagement has enabled the GOS to avoid international demands so long as its response appears ‘progressive’ and commitments are made in good faith. This has had significant implications for peace processes as rebel forces approach negotiations on the basis of mitigating ‘worst fears’, rather than pursuing ‘best hopes’.

5.1.5 Leadership

The primary narrative of political and economic marginalisation associated with polarisation of Arab and African identities in Darfur is outlined in the *Black Book of Sudan: Imbalance of Wealth and Power*. Published in 2000 anonymously, the authors were later revealed to be intellectuals associated with the leadership of rebel JEM forces in Darfur. Seeking to demonstrate the effect an Arab and African dichotomy has had on access to power, the authors contrasted the origins of ministers appointed since independence in 1956 against population distribution between north and south. The book concludes that successive Sudanese governments have disproportionately appointed northern elites to 60-80 percent of ministerial positions. This northern dominance of state institutions is based on an Arab political discourse, which supports claims to dominance and exclusion. Interestingly, rather than a united group, northern elites comprise individuals with

---

64 Briefing by Luis Moreno-Ocampo, Prosecutor, ICC (7 June 2007), S/PV.5687.
65 Ibid. (5 December 2007), S/PV.5789.
66 Ibid., (5 June 2012), S/PV.6778.
68 Briefing by Special Envoy for AU Inter-Sudanese Peace Talks (13 January 2006), S/PV.5344.
69 With the exception of 1986-89 when it was 47 percent. Stewart & Brown, *Fragile states*, 2009, p.87.
disparate interests who regularly compete for power among themselves. This has resulted in a ‘series of unstable’ governments or military regimes.\textsuperscript{70}

Darfur is of central importance because it represents ‘one of the most populous regions’ and a stronghold for government opposition.\textsuperscript{71} At the time of the 2008 Census, Darfur accounted for 19 percent (7,515,445 persons) of Sudan’s population, slightly less than south Sudan at 21 percent (8,260,490 persons). Through processes such as the Census, the NCP was able to systematically create the conditions to support domination of state institutions through delineation of electoral districts; limiting voter registration; co-opting traditional leaders and buying tribal loyalties in areas of opposition; and inflating Arab support for the NCP.\textsuperscript{72} Consequently, the Census became a flawed process with implications for any subsequent electoral processes or attempts at democratisation. This was largely because of the constraints imposed by restricted registration upon political representation among opponents of the NCP, such as populations in areas under rebel control; IDPs in Darfur who boycotted the Census because of perceptions that registration would lead to reprisals (including loss of right to return to tribal homeland or reallocation to Arabs who settled in the area during conflict); and residents of three major cities in Darfur (Nyala, El Fasher and Geneina) where only nineteen to thirty percent of households were counted.\textsuperscript{73}

As a result, presidential and parliamentary elections in April 2011 re-electing President Bashir took place among allegations of fraud and vote-rigging. For the GOS this had the dual effect of guaranteeing dominance of state institutions while dissolving opposition by encouraging withdrawal from the electoral process through disenfranchisement. With concerns regarding power sharing and political representation common among marginalised communities, it is not surprising that the quality, practices and mechanisms for ensuring accountability of Sudan’s leadership feature consistently in Security Council deliberations. Combined with the

\textsuperscript{70} Uppsala Conflict Data Program (UCDP), ‘Sudan’, Conflict Database, retrieved 3 October 2011 <http://www.ucdp.uu.se/gpdatabase>.
\textsuperscript{71} ICG, Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan, Africa policy briefing No. 72, Nairobi/Brussels, 30 March 2010, p.5.
\textsuperscript{72} Ibid., p.6.
\textsuperscript{73} Ibid., pp.6-7.
other factors examined here, this provides compelling evidence for invocation of R2P.

5.2 Security Council deliberations

The Security Council is briefed on instances of human suffering in specific countries or as a thematic issue through reports of the Secretary-General or key personnel, such as Special Representatives of the Secretary-General (SRSGs) and Under Secretary-Generals for humanitarian affairs, political affairs and peacekeeping. As set out in the rules and procedure of the Security Council, verbal or written reports are generally only made in relation to issues already on the Council’s agenda. Somewhat breaking with this tradition, Darfur first appeared in deliberations in December 2003 when Jan Egeland, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, brought the displacement of six hundred thousand Darfurians to the attention of the Council during an open debate on the protection of civilians in armed conflict.74 This was the first report of Egeland to the Council in the role and on Darfur. The next time Darfur was discussed was in May 2004 when several humanitarian and human rights organisations briefed members on the situation in Darfur during a three hour arria formula meeting. Noting ‘grave concern’ towards reports of large scale human rights violations but remaining optimistic about the possibilities for cooperation provided by the N’Djamena Humanitarian Ceasefire Agreement signed some four weeks earlier, presidential statement S/PRST/2004/18 (25 May 2004) was issued emphasising the need for the international community to ‘respond rapidly and effectively to the consolidated appeal for Darfur’. This ensured Darfur was now firmly on the Council’s agenda.

From December 2003 to January 2013 there were 172 substantive references to Darfur in Security Council deliberations resulting in a total of thirty-four resolutions and thirty-four presidential statements (a summary of meeting records reviewed appears at Appendix A). The nature and scope of these references reflect a variety of deliberations, ranging from situational reports on the crisis in Darfur, to fact-

74 Briefing by Under Secretary-General for Humanitarian Affairs (9 December 2003), S/PV.4877.
finding or mission updates, progress reports on ICC investigations, the use of Darfur as an example during thematic debates or indirect references during deliberations on north-south tensions and broader regional security arrangements. As the official account of Security Council deliberations, verbatim meeting records offer a valuable source for understanding how states engaged with mass atrocities in Darfur. Of primary interest, is which states among the P5 invoked the discursive frame of R2P. Employing Bellamy’s assessment that invocation of R2P invariably involves a choice between prevention and reaction, this review is looking for the use of discursive signifiers by the P5 relevant to the disparate functions licensed by references to prevention or reaction. In the case of prevention, this is likely to take the form of references to a longer-term focus and addressing “root causes” of conflict, an emphasis upon “security and development”, “conflict prevention”, “capacity building” or links between peacekeeping and peacebuilding. In the case of reaction, discursive signifiers are likely to take the form of references to a short-term focus upon addressing the immediate need for a “rapid response”, calls for a sense of “urgency” or greater emphasis upon the narrow task of “security” and peacekeeping. Examining meeting records and associated documents, including resolutions, presidential statements and secretariat reports, it is the contention of this thesis that international engagement with Darfur can be categorised into two distinct periods.

5.2.1 Establishing responsibility for protection

Acting under Chapter VII, the Security Council adopted its first resolution 1556 (30 July 2004) on Darfur, referencing the notion of responsible sovereignty upon which R2P is premised. Proposed by the US,75 resolution 1556 called upon Khartoum to fulfil earlier commitments to facilitate international humanitarian relief including access to affected populations (paragraph 1); advance an ‘independent investigation’ in cooperation with the UN into violations of IHRL and IHL (paragraph 14); and impose limited sanctions, with the possibility of targeted sanctions against individuals at a later date (paragraph 6). During deliberations, the

75 Draft resolution submitted by Chile, France, Germany, Romania, Spain, UK and US (29 July 2004), S/2004/611.
UK characterised adoption of resolution 1556 as a ‘vital step forward’ in the Council’s consideration of Darfur. Moreover, adoption of resolution 1556 underlined the commitment of the Security Council to ‘ensure that all Governments fulfil that most basic of obligations – the duty to protect their own citizens’. During voting two states abstained. Among the P5, China abstained on the basis that the inclusion of mandatory measures granting the GOS thirty days to disarm the Janjaweed and punish human rights abusers or face economic sanctions, would complicate any peace processes. The other state to abstain was Pakistan.

Over the next six weeks Council deliberations focussed on progress of the GOS towards meeting the requirements of resolution 1556. Meeting for the third time on 2 September 2004, members were briefed by SRSG (Sudan), Jan Pronk. Reviewing action taken by the GOS to improve security, investigate alleged abuses and lift restrictions on humanitarian assistance, Pronk noted Khartoum had failed to disarm and neutralise the Janjaweed or address the culture of impunity that existed. Where the GOS is unable to protect populations, the responsibility of the GOS to ‘seek, request and accept’ international assistance was noted. The only state to reference the possible transfer of responsibility for civilian protection to the Security Council was the Philippines, who rationalised support for resolution 1556 with reference to the responsibility of the international community to help states achieve the capacity and will to protect populations, and in ‘extreme necessity’ assume such responsibility itself.

The fourth meeting of the Council on Darfur resulted in its second resolution 1564 (18 September 2004) supporting the expansion of AU monitoring activities into Darfur (paragraph 2) and calling for the Sudanese government to end the prevailing climate of impunity and submit to the AU the names of Janjaweed disarmed or arrested for alleged abuses (paragraph 7). At the same time, resolution 1564 requested the Secretary-General ‘rapidly establish’ an international commission of inquiry to investigate reports of IHRL and IHL violations by all parties with a view

76 Statement by the Permanent Representative for the UK and Northern Ireland, (30 July 2004), S/PV.5015
77 Ibid., Statement by the Permanent Representative of the People’s Republic of China.
78 Briefing by SRSG (Sudan) (2 September 2004), S/PV.5027.
79 Ibid.
to determining whether acts of genocide had occurred (paragraph 12); called on all
member states to urgently fulfil pledges to support humanitarian efforts (paragraph
13); and declared a willingness to consider measures under Article 41 if the
Sudanese government failed to comply (paragraph 14). Four states abstained from
voting on resolution 1564, including China and Russia (the other abstentions were
Pakistan and Algeria). In statements immediately following the vote, China and
Russia referenced the need to find a diplomatic solution to the conflict.
Rationalising abstention, Russia characterised the threat of sanctions as ‘far from
the best method’ to induce compliance, whereas China rationalised their response
with reference to a general opposition towards sanctions.80

For the remainder of 2004, briefings by the AU Chairman, Secretary-General and
SRSG (Sudan) attempted to shift the focus and framing of discussions within the
Council towards greater recognition of the relationship between peace, security and
development.81 In response to increasing instability and the failure of the GOS to
meet its obligations under resolutions 1556 and 1564, the need for the Security
Council to adopt a ‘tripartite approach’ focused on the mutually reinforcing
priorities of ‘humanitarian assistance, security and protection’, gained increasing
prominence.82 In practice, this meant adopting a ‘three pronged approach’ aimed at
facilitating deployment of a third party AU force, speeding up negotiations between
the GOS and rebel forces and ending impunity to ensure accountability of political
leaders.83 Meeting in Narobi, Kenya, and preceding a closed meeting with the AU
Chairman, Special Envoy for IGAD and representatives of SLM/A, the Secretary-
General reminded participants of their responsibility for civilian protection,
recalling that this responsibility transfers to the international community, and by
implication the Security Council, once a sovereign state is unable or unwilling.84

The following day the Council unanimously adopted resolution 1574 (19 November
2004) welcoming: a commitment among parties to reach a Comprehensive Peace

---

80 Statements by the Permanent Representative for the Russian Federation and People’s Republic of
China (18 September 2004), S/PV.5040.
81 Briefing by AU Chairman (24 September 2004), S/PV.5043.
82 Briefing by SRSG (Sudan) (5 October 2004), S/PV.5050.
83 Ibid., S/PV.5071 (4 November 2004).
84 Opening remarks by the Secretary-General (18 November 2004) S/PV.5080.
Agreement (CPA) for Sudan by 31 December 2004 (paragraph 1); the efforts of donor states to convene a conference on ‘reconstruction and economic development’ following the signing of a CPA (paragraph 4); the signing of Humanitarian and Security Protocols for Darfur and ongoing Abuja peace talks between the Sudanese government, SLM/A and JEM, aimed at ‘resolving the crisis’ (paragraph 10). In a statement following the vote, China emphasised the need for ‘economic rehabilitation and development’ once there was a CPA for Sudan and moreover, recognised that ‘reconciliation, stability and development in Africa’ were part of a broader international responsibility.85 Seeking to capitalise on momentum surrounding signing of a CPA, a briefing by the SRSG (Sudan) in early February 2005 emphasised that ‘peace and development are indivisible’ in Darfur. Moreover, following the signing of a CPA the Security Council need to support an operation that was ‘catalytic’ and not ‘turn-key’ in order to replace reliance upon ad hoc external relief with sustainable development. This meant adopting a comprehensive approach to addressing all causes of conflict in a ‘holistic’, but ‘balanced way’, through a light footprint for operations.86

The next phase of deliberations in February 2005 commenced with a review of the ICID report, with the Secretary-General calling for ‘urgent action’ by the Security Council to find a way to ‘halt the killing’ and protect vulnerable populations.87 In an attempt to pressure members to act on ICID recommendations the Secretary-General called an emergency session of the Security Council on 8 March 2005. Resolution 1590 (24 March 2005) was subsequently adopted unanimously, authorising a Chapter VII operation to: support implementation of the CPA and protect civilians by force if necessary (paragraph 4) and encourage the Sudanese government, SLM/A and JEM to ‘rapidly’ resume the Abuja peace process (paragraph 7). In the deliberations that followed, Under Secretary-General Peacekeeping Operations, Jean-Marie Guehenno, emphasised the immediacy of problems in Darfur and cautioned members must not ‘accept the status quo’ with

86 Briefing by SRSG (Sudan) (4 February 2005), S/PV.5119.
87 Briefing by UN High-Commissioner for Human Rights (16 February 2005), S/PV.5125.

150
regard to the ending of impunity and improving security in Darfur.\footnote{Briefing by Under Secretary-General Peacekeeping Operations (24 March 2005) S/PV.5151.} In response, resolution 1591 (29 March 2005) submitted by the US, was adopted. Outlining in-principle agreement for a no-fly zone over Darfur and establishing a sanctions committee to monitor implementation of measures to freeze assets and economic resources of suspected war criminals (paragraph 3), resolution 1591 encountered three abstentions. Among the P5, Russia and China abstained (as did Algeria) citing concerns over targeting of individuals through sanctions and the ‘practical ability’ of the Council to implement such sanctions,\footnote{D Mepham, & A Ramsbotham, \textit{Safeguarding civilians: delivering on the responsibility to protect in Africa}, Institute for Public Policy and Research (IPPR), London, 2007, p.60.} given it lacked mechanisms such as a surveillance systems or even airport monitoring.

Up until this point US opposition towards the ICC, together with the reluctance of China and Russia to criticise Khartoum, prevented adoption of more robust measures. In March a compromise was reached with the US and China agreeing to abstain on a draft resolution S/2005/218 (31 March 2005) sponsored by the UK referring the situation in Darfur since 1 July 2002 to the ICC (paragraph 1). Together, continued pressure exerted by the Secretary-General, international NGOs, media and the ICID report (25 January 2005) galvanised the Council into action. ICID’s recommendation for a referral to the ICC was premised on a range of factors, including: the alleged offences represented a threat to international peace and security; as state officials were suspected of mass atrocities it would be difficult to investigate them in Sudan; the authority of the ICC and Security Council might persuade high-level offenders to submit to trial; and the ICC was the best organ to ensure a fair trial, could be activated without delay and its proceedings would not impose a significant financial burden on the international community (paragraph 572).\footnote{See also Cryer, \textit{Sudan, resolution 1593 and international criminal justice}, pp.200-1.}

Following a five month deadlock over how to respond, the Security Council adopted resolution 1593 (31 March 2005), representing the first time the Council had invoked Article 13(b) of the Rome Statute. As a result, the ICC subsequently initiated proceedings against seven individuals, three of which eventually
surrendered to ICC jurisdiction. For the remaining four, arrest warrants were issued including the indictment of President Bashir. The vote on resolution 1593 resulted in two abstentions among the P5 in China and the US (Algeria and Brazil also abstained). China cited respect for Sudanese sovereignty and concerns the absence of Sudanese consent would compromise a political settlement in Darfur and potentially the north-south peace process too. Not surprisingly, the US rationalised abstention with reference to broader concerns towards the ICC exercising jurisdiction over nationals of a state not party to the Rome Statute. In contrast, Russia argued efforts to address impunity through the ICC made an important contribution to securing a ‘long-term political settlement’ in Darfur.\footnote{Predictably, Sudan responded by condemning efforts to accommodate a US threat to veto if the resolution contained provisions to defer the matter under Article 16 of the Rome Statute as ‘double standards’ and confirmation that the ICC was a ‘tool’ for major powers.\footnote{92 Statements by the Permanent Representative of the People’s Republic of China, US and Russian Federation (31 March 2005) S/PV.5158.}}

Towards the end of 2005, Security Council deliberations shifted their focus towards how to deliver civilian protection, including the possibility of a UN peace operation. Adoption of resolution 1651 (21 December 2005) signalled the commencement of the seventh round of AU-led peace talks in Abuja. Securing unanimous support, resolution 1651 extended the mandate of the Panel of Experts until March 2006 (paragraph 1). Two days prior to the vote, Under Secretary-General Jan Egeland provided a brief on the situation in Africa, calling upon member states to show a ‘sense of urgency’ towards the need to rebalance security and humanitarian efforts in Darfur through increased resourcing (personnel).\footnote{Consistent with Egeland’s recommendation, France identified a critical role for the Security Council as humanitarian aid alone could not substitute addressing root causes of conflict and suggested that human security as articulated in the Summit Outcome, provided a ‘potential vehicle for cooperation’ in Darfur. Adopting a more pragmatic approach, China maintained its position that the international community should place greater emphasis upon eliminating ‘root causes’, while Russia cited the need for a}
‘comprehensive view that accommodates the linkages between humanitarian and security considerations’. 94

By January 2006, following the expiration of the December 2005 deadline for a peace agreement, the SRSG (Sudan) and Special Envoy for AU Inter-Sudanese Talks, Salim Ahmed Salim, recommended that international support should have a broad mandate and be part of a ‘unified approach’ comprising humanitarian, political, police, legal, human rights, reconstruction and economic development instruments’. 95 Consistent with this recommendation, Salim reported that the AU was actively seeking a negotiated settlement in Darfur that included peacebuilding, security, unity, cohesion and good governance. Building on these developments the Security Council adopted resolution 1663 (24 March 2006) which set in motion a revision of operational paragraph four to expedite planning for transition from the existing AU Mission in Sudan (AMIS) to a UN operation and paragraph six regarding support for AMIS during transition. This was followed five days later by resolution 1665 (29 March 2006) extending the mandate of the panel of Experts assisting the 1591 sanctions committee by submitting names of individuals seen as obstacles to securing a political settlement in Darfur. However, the sanctions committee was not able to agree on a final list. Acting on a US initiative, the Security Council ‘circumvented the impasse’ provided by the need for consensus in the sanctions committee by adopting resolution 1672 (25 April 2006) identifying four individuals.

Among the P5, China and Russia abstained citing concerns the resolution would undermine the Abuja peace process plus failure by the sanctions committee to clarify criteria for inclusion in the list resulted in less than ‘convincing’ evidence to support the vote. In contrast, the US supported targeted sanctions as the ‘first step’ in the Security Council fulfilling its responsibilities under previous resolutions and to persuade parties to the conflict that the international community is ‘serious about

---

94 Statement by the Permanent Representative for France, the People’s Republic of China and Russian Federation (19 December 2005), S/PV.5331.
95 Briefing by Special Envoy for AU Inter-Sudanese Talks (13 January 2006) S/PV. 5344.
restoring peace and security’. In a subsequent meeting a couple of weeks later, the US took this point further arguing

If the idea of an international community is to mean anything, if the founding principles of the United Nations are to be more than just dreams and if the notion of our responsibility to protect the weakest and the most powerless among us is ever to be more than just an empty promise, then the Security Council must act. We must ...seize this momentous opportunity to restore hope to the people of Darfur.

Resolution 1679 (16 May 2006) was the next to be unanimously adopted, calling upon parties to the Darfur Peace Agreement (DPA) to implement it without delay and expressing an intention to consider taking ‘strong and effective measures’, including targeted sanctions against individuals or groups, attempting to block or violate the DPA (paragraph 1); and seeking to accelerate planning for transition from AMIS to a UN operation (paragraph 3).

Despite support for resolution 1679 Russia cautioned against not securing consent from the GOS for a UN operation. Similarly, China voiced concerns over invocation of Chapter VII, indicating that while they supported the resolution, a lack of objection ‘should not be construed as a precedent for future action’. Following a Security Council mission to Sudan and Chad in June 2006, France also cited concerns with the seemingly ‘premature reference’ to Chapter VII forecasting the establishment of a UN operation, suggesting that it had compromised the transition from AMIS as it enabled the GOS to ‘take a harder line’. Capitalising upon confusion surrounding international action in IDP camps, the GOS incited demonstrations, signalling the start of a larger challenge to international authority and the legitimacy of Security Council action.

5.2.2 Challenging international authority and legitimacy

In what can be characterised as a test of Security Council authority, resolution 1706 (31 August 2006) was adopted despite P5 abstentions by China and Russia (Qatar

---

also abstained). In subsequent statements China and Russia repeated earlier concerns about the absence of Sudanese consent for a UN operation together with what seemed to be an ‘unnecessary’ rush to a vote given dialogue among parties was planned for a forthcoming meeting of the Council. Resolution 1706 envisaged extension of the UN mission in Sudan (UNMIS) into Darfur through deployment of 17,300 soldiers and a 3,300 strong police force (paragraph three), but was never implemented. Coming twelve months after the 2005 Summit Outcome, resolution 1706 represented the first explicit reference to primary responsibility of a state for civilian protection and manifest failure of the GOS to discharge its responsibility. Adhering to a policy of non-cooperation, Khartoum initially refused the deployment. However, six months later President Bashir agreed to a hybrid UN-AU force provided it compromised one hundred percent African personnel; leaving it hybrid in name and funding only. The Security Council countered by seeking agreement for what would be an AMIS force “rehatted”. African forces volunteering troops for the hybrid force comprised personnel with no transport or communications, administrative capacity, combat helicopters, armour and often only minimal bedding, cooking and clothing. This seriously compromised their capacity to engage in civilian protection or pressure the GOS to do so.

In response to renewed fighting in September 2006, US actor George Clooney addressed the Security Council cautioning if the GOS refused to comply with resolution 1706 the international community would ‘need men with shovels and bleached white linen and headstones’ rather than peacekeepers. In response, Russia and the UK called for ‘immediate action and urgency’ to address the ‘dire humanitarian and security situation’. In what is the most direct reference to R2P, France reiterated the responsibility of the GOS to accept the deployment, including if necessary, assistance from the international community as set out in the Summit

100 Statement by the Permanent Representative of the People’s Republic of China and the Russian Federation (31 August 2006) S/PV.5519.
101 Prunier, Darfur: a 21st century genocide, p.177.
Outcome and earlier resolutions. One week later during a briefing by the SRSG (Sudan) reporting that Khartoum was continuing to block access to humanitarian assistance, the UK cited a ‘moral imperative’ to act, focussing upon the primary responsibility of Sudan then the international community, if required. However, it was not until ten months later that resolution 1769 (31 July 2007) was adopted with unanimous support to establish an AU-UN Hybrid Operation in Darfur (UNAMID).

In the deliberations accompanying resolution 1769, cooperation of the GOS was a key feature as were multiple references to the need for a longer-term ‘multifaceted’ approach giving ‘equal footing’ to humanitarian support, political settlement and social and economic development. During an open debate on peace and security in Africa four weeks later, the Secretary-General noted that Darfur provided a reminder of how much needs to be done before transformation from the traditional ‘culture of reaction’ underpinning international engagement with mass atrocities, towards a culture of ‘effective prevention’ is complete. As such, UNAMID represented a new era in cooperation between regional organisations which sought to ‘harness the advantages’ of the UN’s universal character and the AU’s regional character, to both respond to the immediate crisis and prevent future conflict. Representing an ‘experimental marriage of universalism and regionalism’, UNAMID became a metaphor for an integrated approach to address economic and social causes of conflict, at least in theory.

Drawing on the Secretary-General’s reference to a cultural shift, China agreed addressing root causes was central to transcending a ‘reactive role as fire fighters’ and to ‘gain more leverage’ in preventing conflict. While France recommended that the Security Council consider what ‘specific feature’ in conflict prevention

104 Statement by the Permanent Representative of the UK and Northern Ireland (18 September 2006) S/PV.5528.
105 Statement by the Permanent Representative of the UK and Northern Ireland, France and People’s Republic of China (31 July 2007) S/PV.5727.
106 Opening remarks by the Secretary-General (28 August 2007) S/PV.5735.
108 Statements by the Permanent Representative of the People’s Republic of China (28 August 2007) S/PV.5735.
would trigger intervention in the absence of an ‘open crisis to justify action’. In his concluding statement, President of the Security Council Pascal Gayama (Republic of the Congo), recommended a comprehensive approach with an appropriate balance between short-term and long-term objectives based on three elements: structural prevention (to address root causes), operational prevention (early-warning, protection of civilians and response to the immediate crisis) and systematic prevention (preventing spill-over). In contrast, US President George W Bush labelled the conflict in Darfur as genocide, calling upon the Security Council to ‘do something’.

By November 2007, five weeks ahead of transition from AMIS, UNAMID had reached a crossroads because of under-resourcing in critical areas such as transport. Despite these challenges the Security Council remained optimistic, with France suggesting the deployment of UNAMID was a reflection of the effectiveness and legitimacy of the Security Council in its primary role of maintenance of international peace and security'. On 31 December 2007 AMIS soldiers “re-hatted”. Despite this development, deployed forces remained inefficient and under-equipped. The situation on the ground had also become more complex. In 2003 when conflict broke out there were only two major rebel groups, namely JEM and SLM/A. By 2007 insurgents had splintered into a confusing array of competing factions comprising up to two dozen groups, making it incredibly difficult to keep the peace. By February 2008 emphasis had shifted towards managing a growing gap in expectations among Darfurians towards international action. The Security Council was reminded that it needed to accept that steps towards peace would be incremental and take longer than expected. More importantly, to be effective the Council would need to start planning for recovery and be more active in post-

---

110 Statement by President of the Security Council (28 August 2007) S/PV.5735.
112 Statement by the Permanent Representative of France (6 November 2007) S/PV.5776.
conflict recovery. In response, the UK advocated the need for the Security Council to progress four tracks of political, security, humanitarian and justice equally.115

Throughout 2008 frustration in the Council towards the ineffectiveness of UNAMID to encourage GOS compliance or secure a negotiated settlement to the conflict continued to build. During a thematic debate on peace and security in Africa in April, where a concept paper on conflict prevention was presented, China reiterated its recommendation for a multifaceted approach based on the cooperative efforts of the UN and AU to address three pillars: security, development and human rights.116 One week later, a briefing by the Under Secretary-General for Humanitarian Affairs noted that after five years of conflict and four years of Security Council engagement, there was still ‘no lasting solution’.117 By mid-year the situation had deteriorated with the credibility of the Security Council at stake. Looking at the number of resolutions adopted that were contingent upon follow-up action, the meeting recommended the mobilisation of a short-term response as a priority to demonstrate solidarity, denounce insecurity, and to create an environment to support long-term activities.118 China cautioned towards focussing solely on immediate needs, arguing that ‘hasty action disregarding objective conditions’ would be ‘dangerous’.119 In July the Security Council adopted resolution 1828 (31 July 2008) extending the mandate of UNAMID. The only state to abstain was the US, citing concerns with language added to the draft resolution which undermined efforts to bring President Bashir and others to justice. The US went further in its criticism, noting that while the Security Council sought to end suffering in Darfur it had ‘fallen far short’ in its responsibility to protect civilian populations.120 In support of the resolution, China recommended a dual-track
strategy with equal emphasis upon peacekeeping and political settlement to establish mutual trust among all parties to the conflict.121

Seeking to rebuild international confidence, a briefing by António Guterres, UN High Commissioner for Refugees (UNHCR) in January 2009 examined implementation of R2P, including the importance of prevention, the specific role of the Security Council, together with the notion of a shared or common responsibility.122 Deliberations suggested that peacekeeping in Darfur was not just a test of the mission, but also the political will of the Security Council. As such, a unified voice and unequivocal political message was critical.123 Consistent with this finding a July 2009 briefing by the Under Secretary-General Peacekeeping Operations, reiterated while responsibility for peace and stability in Darfur rested ultimately with the GOS, the international community had an important role to play in creating the conditions to support peace, including providing concrete incentives to reach an agreement and guarantee it will be implemented. However, Russia was not convinced arguing that because the indictment of President Bashir had not contributed to a peaceful settlement in Darfur progressing the peace process should take priority over justice.124

In response, the UN and the AU announced support for ushering in a new ‘domestic process’ in April 2011 through a Darfur-based Political Process (DPP). Designed specifically to provide a mechanism for ordinary Darfurians to promote and implement the peace agreement negotiated between the government and rebel leaders at Doha, the DPP was also intended to overcome lack of support among rebel groups and their constituencies for the DPA. In the absence of an effective peace agreement, however, the goals of this process were not clear.125 A report later in the month by the President of the Security Council on implementation of the DPP noted that President Bashir had failed to repeal emergency laws as the first step in implementation or taken action consistent with any of the other reforms.

122 Briefing by UNHCR (8 January 2009) S/PV.6062.
123 Briefing by Under Secretary-General Peacekeeping Operations (23 January 2009) S/PV.6075.
recommended by the UN. With the status of Darfur being a key issue in the Doha negotiations, in May 2011 Khartoum undertook the controversial move of creating two additional states (central and southeast) within Darfur despite a pledge to undertake a referendum in July 2011. Rebel forces were quick to criticise Khartoum’s actions as a deliberate attempt to weaken regional power bases through divide and rule politics.

In an effort to build confidence in, and enhance the efforts of UNAMID, the Security Council adopted resolution 2003 (29 July 2011) with unanimous support. The resolution extended UNAMID for a further twelve months (paragraph 1) and emphasised the need for the mission to ‘make full use’ of its Chapter VII mandate (paragraph 3). More importantly, resolution 2003 introduced new measures, through the Secretary-General, to monitor the mission’s rules of engagement and provide periodical reports to the Security Council to ensure close alignment with relevant resolutions (paragraph 24). In articulating their support, the UK, China and US referenced the contribution of resolution 2003 to facilitating a political settlement in Darfur. Consistent with its approach to date, China emphasised the need to pursue a ‘dual track strategy’ with ‘equal emphasis’ on peacekeeping and political processes, in order to realise ‘peace, prosperity and development’ in Darfur.

Symbolic of the intent underlying resolution 2003, the UK noted that Darfur was ‘entering a critical period’. As such, resolution 2003 signalled a new approach within the Council focused upon providing an ‘enabling environment’ in combination with closer monitoring of UNAMID to maximise delivery of its ‘core tasks’ in civilian protection and humanitarian access. Consistent with this focus on enhancing existing mechanisms and continuing its preference for a negotiated solution, the Council has continued its efforts to secure cooperation among parties and develop a collective position. Based on the Doha process and DPP, regional facilitation has become a central element of international engagement in Darfur.

---

128 Statement by the Permanent Representative of the People’s Republic of China (29 July 2011) S/PV.6597.
129 Ibid.; Statement by the Permanent Representative of the UK and Northern Ireland.
5.3 R2P as a policy agenda or catalyst for action

Perceptions of legitimacy and the social process of legitimation are important elements of both the history and practice of the Security Council. With human protection located at the intersection of international law and politics, shifting conceptions of legitimacy have significantly expanded the ideational and normative framework within which the debate around Darfur revolves. Employing Bellamy’s assessment that invocation of R2P by states involves a choice in how they employ the principle, between a policy agenda and a normative call to action, this part reviews discursive signifiers identified in deliberations around Darfur to establish the choice made by the P5 and furthermore, how they engaged with the full continuum of R2P (to prevent, react and rebuild). As outlined in chapter four, according to Bellamy the disparate nature of the two functions of R2P renders them incompatible. In practice, this means states cannot sustain a political commitment to a policy agenda and its associated focus upon prevention while also employing R2P as a speech act to mobilise international engagement. It also means the choice states make between R2P as a policy agenda or normative call to action affects collective understanding of the role and impact of the principle upon international engagement with mass atrocities. During 2004-2013 R2P was employed in various ways in deliberations on Darfur. While some references were direct and others implied, this thesis concurs with Bellamy that debates around Darfur were ‘deeply infused with the language of R2P’. Where this thesis diverges from Bellamy is in its assessment of P5 engagement with preventive and reactive elements of R2P most commonly associated with a policy agenda and normative call to action respectively.

Prior to invocation by states, R2P was utilised by civil society to bring Darfur to international attention. Advocacy by NGOs including Amnesty International, International Crisis Group and Human Rights Watch, made an important contribution to the debate around Darfur by bringing the crisis ‘out of the shadows’. Around the same time, an interview with Mukesh Kapila, Human

130 Bellamy, Responsibility to protect or trojan horse, p.33.
Rights Coordinator for Sudan, on the UN’s Integrated Regional Information Network (IRIN) ‘blew the ratings’, when Kapila declared that Darfur was ‘the world’s greatest humanitarian crisis’ and that the only difference between Darfur and Rwanda were ‘the numbers involved’. With an established link to the UN, previous experience with genocide in Rwanda and R2P gaining increasing attention, significant pressure was exerted upon the Security Council to consider the crisis as a case for R2P concern. Within the Security Council, references to R2P were employed to rationalise a variety of activities, demands and positions ranging from encouraging compliance by the GOS to debating the merits and modes of international intervention, including the use of force for human protection.

As a result of a seeming reluctance to assume responsibility for civilian protection and systematic under-resourcing of peace operations, the case of Darfur is often cited as the failure of R2P to exert any considerable influence upon international engagement with mass atrocities. This is largely because while framing calls for protection in Darfur with the language of R2P contributed to recognition of the ‘severity’ of the crisis and mobilising international attention towards the conflict, it failed to activate sufficient political will among states to agree on an ‘explicit and convincing response’. Seen through the lens of the international response since 2003, particularly the reluctance of the Security Council to authorise intervention without the consent of Khartoum, critics suggest that the norms of non-intervention and sovereignty exerted greater influence among the P5, in spite of declared support for R2P. Despite these criticisms and in light of the discursive signifiers identified in part two, it is the contention of this chapter that R2P made a significant contribution to the ideational and normative framework informing international engagement in Darfur as well as broader thinking on the use of force for human protection, both as a normative call to action and a policy agenda.

---

132 Ibid., p.127.
134 Ibid.
5.3.1 A catalyst for action

The list of deliberations and decisions of the Security Council examined in section 5.2 is far from exhaustive. Despite this limitation, a number of consistencies with broader developments occurring during the period of review are distinguishable. Firstly, the two periods of engagement identified broadly align with the intellectual journey of R2P, from inception by ICISS and wider acceptance by states at the World Summit, to more recent activities of the General Assembly aimed at moving the principle from words to deeds through annual interactive dialogues. Secondly, discursive signifiers employed by states during the two periods broadly align with the disparate functions of R2P identified by Bellamy. Between July 2004, when the Security Council adopted its first resolution on Darfur, and April 2006, some six months after endorsement of R2P at the World Summit, discursive signifiers employed by both the Secretariat and P5 reflect a preoccupation with reaction. Reflective of broader deliberations across the UN, invocation of R2P in this early period of engagement manifested into identifying evidence to build a convincing case for R2P and then articulating primary responsibility of the GOS for civilian protection.

Drawing on the notion of responsible sovereignty, this invariably involved clarifying Sudan’s obligations under international law, encouraging compliance through suasion and highlighting the possible implications of non-compliance. Within the Secretariat, this was followed by triggers and mechanisms for transferring responsibility for civilian protection to the international community. Early examples include a statement by the SRSG (Sudan) noting responsibility of the GOS for civilian protection and if unable to guarantee such protections, establishing the need to ‘seek, request and accept international assistance’ to do so, and a reminder by the Secretary-General that the international community, through the Security Council, has a responsibility for protection where a state is unable or unwilling. Reflective of broader debates around R2P taking place at the time, particularly those concerned with the notion of responsible sovereignty and consistency of the principle with international law, the P5 emphasised reaction by

---

135 Briefing by SRSG (Sudan) (2 September 2004) S/PV.5027.
136 Briefing by the Secretary-General (18 November 2004) S/PV.5080.
highlighting the primary responsibility of the GOS while Secretariat staff also emphasised reaction by highlighting the implied responsibility of the Security Council for civilian protection in the event of non-compliance by Khartoum.

Having established responsibility for civilian protection, international engagement with Darfur began to shift its focus towards the more immediate task of mitigating the threat posed by an acute humanitarian crisis. Consistent with the reaction element of R2P, both the Secretariat and P5 employed the language of R2P to serve as a normative call to action. Seeking to mobilise an international response, deliberations on Darfur were framed around the urgency, immediacy and severity of the humanitarian crisis. This included calls for the Secretary-General in resolution 1564 (18 September 2004) to ‘rapidly’ establish an international commission of enquiry (paragraph 12) and for member states to ‘urgently fulfil pledges’ to support humanitarian activities (paragraph 13). The need for the Security Council to show a ‘sense of urgency’ and take ‘urgent action’ to ‘halt the killing’ featured consistently in deliberations. Similarly, emergency meetings of the Security Council were called seeking to instigate immediate action to a dire situation.

Adopted in March 2005 in response to a call to implement recommendations of the ICID report, resolution 1590 (8 March 2005) invoking Chapter VII referenced the immediacy of the problem in Darfur and called on parties to the conflict to resume the Abuja peace process ‘immediately’ (paragraph 7). However, with continued violence and an unprecedented scale of human suffering, confusion towards the role and contribution of the Security Council gained momentum. In the absence of a coordinated strategy on Darfur and dominated by a fear of an ‘Iraq scenario being played out’ in terms of an inability to secure consensus leading to unauthorised action, the central challenge for the Security Council became operational in terms of how to protect civilians rather than normative; that is, how to ‘close the gap’ between declared aspirations for Darfur and abuses that continued to occur.

---

138 Briefing by the Secretary-General (16 February 2005) S/PV.5125.
139 Briefing by SRSG (Sudan) (21 March 2006) S/PV.5392.
140 Mepham & Ramsbotham, Safeguarding Civilians, p.9.
The turning point in international engagement came in the latter part of 2006 when both the P5 and Secretariat began to realise the extent to which Darfur would test the Security Council’s authority and commitment to parallel human protection and peace agendas. Signalling the start of a movement towards greater consideration of how to deliver civilian protection, the P5 continued to demonstrate reluctance to transfer responsibility for civilian protection to the international community. In practice this meant that while the UK noted a ‘moral imperative’ for international action, the transfer of responsibility for human protection from the GOS to the Security Council was still on an “as required” basis. Complicated by a preference among the P5 for a negotiated political settlement to Darfur, this caveat on reaction reflects the qualification for a case-by-case determination for international responses contained in the 2005 Summit Outcome (paragraph 139). This caveat not only maintains the highly criticised ad hoc discretionary basis for international action, but in effect represents a more deliberate attempt by states to water down the Security Council’s responsibility, particularly implied obligations under R2P. In this regard, statements in support of resolutions along with rationalisation for abstentions by the P5 provides further insights and possible explanations for hesitancy to assume implied responsibilities under reactive elements of R2P.

In the case of abstentions, resistance towards implied responsibility and any associated call to action could be explained through the importance of existing trade and political relationships with Khartoum. China, and to a lesser extent Russia, have reliably defended Khartoum in the Security Council. While they have resisted use of the veto, abstentions could be seen as a means to dilute the possibility of more robust measures while seemingly supporting the prevailing will of the P5. Russia is a dominant supplier of military equipment to Khartoum, while China is a net importer of oil from Sudan. In 2005 Sudan exported $3.4 billion worth of goods to China, 96 percent of which were petroleum products. At the time Sudan was producing 370,000 barrels per day of crude oil, by 2008 production was up to

---

141 Statement by the Permanent Representative for the UK and Northern Ireland (18 September 2006) S/PV.5528.
142 RW Williamson *Sudan and the implications for responsibility to protect*, Policy analysis brief, Stanley Foundation, Iowa, October 2009, p.6.
512,000 barrels per day based on Chinese demand.\textsuperscript{143} In exchange for supply of oil, Beijing has been relatively supportive of Khartoum diplomatically and to a large extent has a vested interest in securing peace and stability in Sudan through a negotiated settlement. France has a deep interest in Sudan’s neighbour Chad. As conflict in Darfur spilled-over into Chad destabilising its government, France’s encountered conflicts between its interests and policies.\textsuperscript{144} In terms of the US, its record on Darfur is ‘mixed’.\textsuperscript{145} Despite rhetoric claiming genocide had occurred, the US abstained from the vote referring Darfur to the ICC allowing it to pass through. While US rhetoric has put pressure on Khartoum, it has failed to impose any ‘commensurate obligation’ on the international community to react.\textsuperscript{146} This includes the Obama administration, who as president elect demanded ‘more robust action to end the carnage in Darfur and to ensure the full implementation of CPA’, but has done little since to instigate such measures.\textsuperscript{147}

Reviewing support for subsequent calls to action dominant during 2004-2006, there are a number of fundamental omissions from deliberations concerning the international response which also comprised its effectiveness. Omissions included the question of ‘strategic purpose’ (in terms of what mandated forces would do under a reaction scenario) and ‘concept of operations’ (in terms of what counts as success, strategy to be adopted for reaction, and tasks that will need to be undertaken by the mission to achieve this).\textsuperscript{148} Largely reflective of the focus and content of the continuing broader international debate on R2P, which at the time also focussed upon reaction in terms of when and whether to intervene, not how to do so and with what aim in mind,\textsuperscript{149} it is not surprising that Darfur became symbolic of the challenges associated with implementing R2P.

\begin{flushright}
\textsuperscript{143} Prunier, \textit{Darfur: a 21st century genocide}, p.178.
\textsuperscript{144} Williamson, \textit{Sudan and the implications for responsibility to protect}, p.6.
\textsuperscript{145} N Grono ‘Darfur: the international community’s failure to protect’, \textit{African Affairs}, vol. 105, no. 421, 2006, p.627.
\textsuperscript{146} Ibid., p.628.
\textsuperscript{147} Williamson, \textit{Sudan and the implications for the responsibility to protect}, p.3.
\textsuperscript{148} de Waal, \textit{Darfur and the failure of the responsibility to protect}, p.1044; 1047.
\textsuperscript{149} Ibid., p.1045.
\end{flushright}
5.3.2 A policy agenda for prevention

By August 2006, when the Security Council encountered its greatest challenge to its authority and legitimacy through resolution 1706, discursive signifiers employed by both the Secretariat and P5 began to align more closely and frequently with the second function identified by Bellamy: a policy agenda aimed at addressing risk factors for conflict. While members of the P5, such as China, Russia and France, were in late 2005 employing discursive signifiers consistent with the preventive element of R2P, to emphasise the importance of addressing ‘root causes’ and adopting a ‘comprehensive view’ to link humanitarian and security concerns,\textsuperscript{150} from 2006 onwards Council deliberations increasingly featured references to the parallel goals of security and development; accountability; and values and conditions associated with a liberal notion of peace. Consistent with the full continuum of R2P (to prevent, react and rebuild) deliberations were framed around the need to adopt a longer-term focus on building regional and local capacity so as to avoid further atrocities. Central to this reformulation, was greater consideration of the difficult question of how to implement an R2P mandate. In supporting resolution 1769 (31 July 2007) establishing UNAMID, France captured the essence of the challenge facing the Security Council and international thinking on R2P noting that the most difficult task posed by the crisis in Darfur was mobilising a strong and decisive response to political, security and humanitarian challenges. In addition to peacekeeping, this would require activities aimed at addressing risk factors, such as humanitarian support, political settlement and reconstruction.\textsuperscript{151}

Developed largely in response to division and frustration with elements of an R2P agenda yet to be settled (particularly prevent and rebuild), demands for an “integrated”, “comprehensive”, multi-track or “tripartite approach” with coherence across all matters relevant to peace, security and development, quickly became a feature of Security Council deliberations. In practice, this meant expanding the existing narrow focus on peacekeeping to include rehabilitation, reconstruction and economic and social development to “uproot” the sources of conflict. Advocacy by

\textsuperscript{150}Statement by the Permanent Representative of the People’s Republic of China, Russian Federation and France (19 December 2005) S/PV.5331.
\textsuperscript{151} Statement by the Permanent Representative for France (31 July 2007) S/PV.5727.
some states including those who had previously abstained such as China, Russia and the US, for a longer-term and comprehensive approach, could be criticised as an attempt to dilute the possibility of more robust measures while seemingly supporting the prevailing will of the P5. However, the shift towards the use of discursive signifiers in the case of Darfur emphasising prevention and demonstrating greater consistency with a policy agenda to address risk factors, reflected shifts in the broader normative and ideational landscape surrounding R2P in the UN following endorsement at the World Summit. While this landscape was characterised by wider acceptance of R2P following the World Summit, it was also characterised by confusion regarding how to implement R2P and the relationship between individual elements of the principle, particularly prevention and reaction.

In this regard, a concluding statement of the President of the Security Council from 28 August 2007 is instructive for two reasons. Firstly, in the case of Darfur it clarified the three elements upon which a ‘comprehensive or global approach’ would be based: ‘structural prevention’ to address root causes; ‘operational prevention’ to ensure early warning and inclusion of appropriate measures to address immediate crisis; and ‘systematic prevention’ to prevent spill-over of conflict into neighbouring states. Secondly, reflective of the broader debate surrounding how to operationalise R2P within the UN, the statement provided a prelude to the development of the three non-sequential pillars by the Secretary-General, as the foundation for implementing R2P. Set against this backdrop, the establishment of UNAMID was reflective of a strengthening of international engagement with the full ‘continuum of conflict’ from prevention to peacemaking, peacekeeping and peacebuilding.

Despite various examples of P5 members highlighting the need to develop the potential of African states to ‘counter crisis through prevention, resolution and post-conflict peacebuilding’, and ongoing commitment to longer-term prevention, references to the immediate needs of Darfur resurfaced. In March 2008 a briefing by the Assistant-Secretary-General for Peacekeeping Operations cautioned that

152 Statement by the President of the Security Council (28 August 2007) S/PV.5735.
153 Opening remarks of the Secretary-General (25 September 2007) S/PV.5749.
UNAMID was not a substitute for political engagement; rather it is one element in a broader strategy that must include urgent international engagement to encourage and pressure parties to ‘lay down weapons and commit to dialogue’.\textsuperscript{155} Seen to be responding to an emerging challenge to manage expectations on the ground towards UNAMID, the ongoing reluctance to follow warnings up with more robust measures, a deteriorating humanitarian situation, and increased questioning regarding the authority and legitimacy of the Security Council, the discursive frame of R2P was employed once again as a normative call to action. Critical of the Security Council for not being ‘tough enough on Sudan’, the US recommended adopting a short-term focus on improved security, as it was not expecting much from political activities.\textsuperscript{156}

Facing mounting criticism that the situation had not improved despite being on the Council agenda for a number of years and moreover, that the international community had ‘conspicuously failed to take the steps necessary to protect the people of Darfur’,\textsuperscript{157} the US began to highlight constraints of peacekeeping as part of larger effort of political reconciliation and development.\textsuperscript{158} In contrast, the UK advocated the need to take a ‘strategic approach’ to implementation of CPA, UNMIS and UNAMID in which broad cooperation was vital.\textsuperscript{159} In October 2010 focus shifted towards redefining the role of the Security Council as one for creating an enabling environment to support longer-term preventive measures. Reflective of the development of broader international thinking on R2P through General Assembly interactive dialogues on: implementation (2009); early warning (2010); and regional and sub-regional arrangements (2011), in July 2011 the US and UK outlined the conditions necessary for establishing an enabling environment, including the conditions required to sustain an R2P agenda. To this end, resolution 2003 (2011) signalled a new approach by the Security Council in the absence of any effective action by Khartoum, to strengthen international engagement through the

\begin{itemize}
\item \textsuperscript{155} Briefing by Assistant Secretary-General for Peacekeeping Operations (11 March 2008) S/PV.5849.
\item \textsuperscript{156} Statement by the Permanent Representative of the US (24 June 2008) S/PV.5922.
\item \textsuperscript{157} Grono, \textit{Darfur: the international community’s failure to protect}, p.621.
\item \textsuperscript{158} Statement by the Permanent Representative of the US (23 January 2009) S/PV.6075.
\item \textsuperscript{159} Statement by the Permanent Representative of the UK and Northern Ireland (14 June 2010) S/PV.6338.
\end{itemize}
introduction of review mechanisms and measures to improve alignment with existing decisions.

Taken collectively with other deliberations, it is the contention of this chapter that R2P as it was employed by the P5 to frame discussions on Darfur is more accurately described as a policy agenda to address risk factors, despite R2P also being employed to bring atrocities onto the international agenda and as a call to action up until 2006. More importantly, while this chapter concurs with Bellamy that invocation of R2P invariably involves a choice by states as to how they employ the principle, it finds the international response elicited by references to R2P was fluid, demonstrating consistency with both a policy agenda and a normative call to action. This finding is based on evidence from deliberations of two distinguishable periods of engagement that broadly align with the disparate functions licensed by references to R2P. Across these two periods of engagement, discursive signifiers consistent with a policy agenda to address risk factors in order to prevent further atrocities are predominant. However, intermittent use of discursive signifiers consistent with a normative call to action to address an imminent threat, are also evident after 2006.

In effect, R2P was just as fluid as the response it elicited. Where states emphasised the need to expand the focus of peacekeeping to include preventive measures, international action could be attributed to invocation of R2P as a policy agenda to address risk factors. Led by France in 2007, advocacy for the need to supplement peacekeeping with activities such as humanitarian support, political settlement and reconstruction in order to avert further atrocities and subsequent actions to integrate these activities into the operational mandate for UNAMID, provides one example. Advocacy by the US and UK in 2011 for the need to identify conditions necessary to sustain an R2P agenda for peace, security and development lends further support to this assessment. However, it is also evident from repeated emergency meetings of the Security Council between 2004 and 2006 to instigate immediate action to a dire situation, that invocation of R2P by the P5 was also concerned with elevating the crisis on the international agenda.

As a normative call to action, R2P was employed to publicly persuade the GOS and other states to meet their R2P commitments, and privately to discourage the
incitement, commission or escalation of atrocity crimes by serving as a reminder to real and potential perpetrators that ‘impunity is not what it used to be’. In terms of escalating the crisis, this chapter finds the use of the distinct language of R2P was central to establishing the existence of an existential threat to civilian populations and the need for extraordinary measures to address an unprecedented scale of human suffering. Acknowledging that invocation of R2P as a normative call to action did not escalate the crisis sufficiently to spur a decisive response, it is the contention of this chapter that international engagement cannot be understood solely through the lens of R2P. Alongside R2P there were a multitude of other factors, unfolding dynamics and events internationally and nationally that led to various turning points in the international response.

Factors influencing international engagement can be grouped into three broad categories: national interest and national security; domestic and political pressures; and other fundamental foreign policy considerations. Confronted with large scale human suffering, the first two categories can impact upon calculations of the relative value of action in terms of costs, benefits and opportunities to influence international engagement. The third category represents ideological and ethical beliefs plus lessons learned through previous experience. In the case of Darfur, P5 interest in securing a CPA between North and South Sudan together with the common interpretation of R2P as predominantly involving military action and a coordinated non-intervention campaign by the GOS, constrained the adoption of timely and decisive response. Mindful of political, military and financial constraints associated with a continuing presence in Iraq and noting that a wider commitment to R2P by states through the World Summit occurred when some of the worst violence in Darfur had taken place, this chapter subscribes to Edward Luck’s assessment that it was ‘a stretch to expect’ that R2P alone would resolve the scale of human suffering taking place at such an early point in its intellectual development.

160 Luck, Responsibility to protect: growing pains, p.357.
162 Luck, Responsibility to protect: growing pains, p.351.
Recognising that the international response elicited by invocation of R2P demonstrated consistency with both a policy agenda and a normative call to action, this chapter finds where states demonstrated a preference for prevention, R2P appears to have been a key driver of international action. However, where states emphasised reaction, agreement among the P5 on the seriousness of the crisis appears to have driven invocation of R2P. Reflective of a broader debate around the relative value of R2P in terms of costs, benefits and opportunities to influence prevention and reaction, the two functions identified by Bellamy can essentially be reduced to a choice between “making a difference” versus “escalation”. It is evident from shifts in the way the P5 employed R2P in Darfur, particularly simultaneous emphasis upon prevention and reaction or making a difference and escalation, that the relationship between the policy and speech act functions of R2P were more ‘symbiotic, dynamic and mutually reinforcing’ than suggested by Bellamy.163

5.4 Conclusion

Concerns about ongoing events in Darfur are informed by R2P, as are considerations of future courses of action. Recognising that interests and values do not always align, but in some cases may pull in a similar direction, this thesis finds international engagement with Darfur was guided by a mix of values and interests. As a case for R2P concern, Khartoum’s denial of human protection and role in being the ‘prime mover’ behind a campaign of ethnic cleansing by ‘unleashing’ Janjaweed militias, provides compelling evidence.164 At the same time, R2P made a significant normative contribution to international engagement with mass atrocities. Evidence includes the mandates of both AMIS and UNAMID to protect civilians, which developed in response to the ongoing debate around R2P.165 With the US adamantly opposed the ICC, and China and Russia harbouring strong concerns regarding the challenge to sovereignty posed by R2P, their agreement to action which appeared to conflict with their declared interests and existing policies provides further compelling evidence of the normative contribution of R2P. Once on the international agenda, it was the constitutive relationship between R2P, ethnic

163Ibid., p.358.
164 Grono, Darfur: the international community’s failure to protect, p.625.
165 Badescu & Bergholm, Responsibility to protect and the conflict in Darfur, p.304.
identity and state institutions in Darfur that set the parameters for international engagement in terms of sovereign responsibility, accountability for atrocity crimes, political transition and human development. Within the Council, R2P was employed by the P5 as a vehicle to encourage compliance by the GOS with peace processes and to debate the merits, nature and form of international intervention, including the use of force for human protection. Through the process of legitimation, references to R2P encouraged a shift from a culture of reaction as the foundation for international engagement with mass atrocities, towards a culture of prevention similar to that envisaged by ICISS. While Darfur provides evidence that there is still a long way to go in this transition, the more recent focus of the Security Council upon developing an enabling environment to pursue the full spectrum of R2P activities, to prevent, react and rebuild, as evident in deliberations since October 2010, is encouraging.

Employing Bellamy’s assessment that invocation of R2P by states invariably involves a choice as to how they employ the principle, this chapter finds that deliberations were framed predominantly around the need to address the root causes of conflict and adopt a comprehensive approach in order to prevent further atrocities. However, Council deliberations were also guided at times by more immediate calls for urgent action to halt human suffering. It is therefore the contention of this chapter that the international response elicited by references to R2P in Darfur was more fluid than the sharp distinction between a policy agenda and a normative call to action suggested by Bellamy. While R2P may not resolve conflict in Darfur, it has led to a strengthening of international engagement with mass atrocities. In contrast, international engagement in Libya in 2011 was framed around the need for timely and decisive action to protect vulnerable populations. This would suggest that the debate around R2P within the Security Council and any resulting choice by the P5 is far from settled.
Case Study Two—a call to action in Libya

In February 2011, when lawyers seeking justice for victims of the Abu Salim prison massacre (1996) were arrested by Libyan security forces, few anticipated that within a month the Security Council would make its first egregious human rights referral to the ICC and authorise the use of force for human protection with reference to R2P against a ‘functioning de jure government’. Moreover, few anticipated that the events of February would result in liberation from a repressive regime and the first democratic elections in Libya in over forty years. Taking place in the wake of popular uprisings in Tunisia and Egypt, anti-government demonstrations across Libya quickly turned to civil conflict as Colonel Muammar al-Qadhafi commenced a crackdown on protestors, instructing government forces to ‘cleanse’ cities of disloyalty ‘alley by alley, road by road’ and ‘house by house’. When security forces fired live ammunition into a crowd of protesters gathered outside the High Court in Benghazi killing hundreds and stormed hospitals to kill wounded civilians, armed opposition groups quickly mobilised. Set against the backdrop of hesitancy and lack of support for action in Darfur, the swift and unprecedented response of the Security Council caught many by surprise.

As the first major intervention under the umbrella of R2P, Libya became an exemplar of the timely and decisive response envisaged by the Secretary General under pillar three of his strategy for implementing R2P. By implication, Libya became a test case for both the principle of R2P and international engagement with mass atrocities more generally. Responding to a rapidly escalating crisis, the P5 demonstrated unanimous support for referral of the situation in Libya to the ICC and imposition of sanctions. However, the use of force to establish a no-fly zone to protect civilians under resolution 1973 (17 March 2011) received a mixed response. As a case for invocation of the principle of R2P, Libya became controversial.

---

3 Briefing by the Secretary-General (25 February 2011) S/PV.6490; Luis Moreno-Ocampo, Prosecutor, ICC (4 May 2011) S/PV.6528.
because some states believed civilians would only be safe if Qadhafi was no longer in power. While others argued civilians could be protected without third party intervention and that a political settlement was the only solution to the crisis.\textsuperscript{4} At the heart of this debate lie divergent perceptions of the legitimacy of the use of force without the consent of a host state. While resolution 1973 passed, invocation of the language of R2P to justify the use of force to protect civilian populations during Operation Odyssey Dawn and the NATO-led Operation Unified Protector, ‘cast a long shadow’ with grave implications for future international engagement, including the current conflict in Syria.\textsuperscript{5}

Seeking to understand the contribution of R2P in formulating an international response, part one of this chapter examines factors in Libya eliciting concern as a case for R2P. Recognising that Libyan authorities had a history of failing to provide civilian protection, this chapter turns its attention to the deliberations of the P5. Through an interpretive examination of Security Council meeting records, part two traces how the language of R2P was employed to justify action, and secondly, how the P5 engaged with the full continuum of R2P (to prevent, react and rebuild). Examined through the lens of Bellamy’s proposition, that invocation of R2P by states invariably involves a choice in how they employ the principle, between a policy agenda to address risk factors and a normative call to action to address an imminent threat, part three reviews discursive signifiers identified in Security Council deliberations to establish the choice made by the P5. From this it is clear that while deliberations were framed around the immediate need to halt human suffering and avert mass atrocities, unanimous support for a UN mission with an explicit peacebuilding mandate seven months into the crisis, demonstrates that the international response was also guided by longer-term post-conflict considerations.

\textsuperscript{5} Statement by the Representative of Singapore to the General Assembly \textit{Informal interactive dialogue on the responsibility to protect} (5 September 2012), para 6.
6.1 A case for R2P concern

Taking place in the wake of popular uprisings across the Arab world, including in Tunisia and Egypt, anti-government demonstrations in Libya were founded upon popular aspirations for democracy, freedom and rights.6 A key factor influencing the international response to the 2011 uprising was the state’s track record in human rights. Prior to the uprising Libyan authorities under the leadership of Qadhafi consistently demonstrated that they did not tolerate criticism or dissent.7 Attempting to dissolve opposition, freedom of expression, association and assembly were severely restricted in a climate of entrenched impunity for perpetrators of human rights violations. Within this climate, dissident voices were systematically silenced through imprisonment, denial of access to justice and enforced disappearances. Extrajudicial executions together with the ill treatment and torture of detainees were also consistent features of Libyan approaches to dissent. It is this track record of human rights violations combined with the public declarations of Qadhafi to anti-government protestors that ‘either I rule over you or I destroy you’,8 which framed the political and ideological landscape within which the 2011 conflict was situated. Despite the absence of firm criteria for invocation of R2P, chapter four identified five factors that elicit international concern: existing tensions that exacerbate conflict; history of atrocities; strength of a state’s institutional structures for governance; perceived receptivity or openness; and the quality of political leadership.9 Chapter five argued that the case of Darfur elicited concern against each of these criteria. The same is true for Libya. Both in terms of the behaviour of Libyan authorities prior to the 2011 uprising as well as their response to popular demands for change following the protests. Concerns against each are outlined below.

---

6 Statement by the Representative for Libya Arab Jamahiriya (25 February 2011) S/PV.6490.
8 Statement by the Representative of Libya Arab Jamahiriya (25 February 2011), S/PV.6490.
9 Evans, Responsibility to protect: ending mass atrocities, pp.74-5.
6.1.1 Existing tensions

Located in the north of Africa and representing the fourth largest state on the continent, with a total land area of 1.75 million square kilometres, Libya has a population of approximately 6.4 million. Gaining independence in 1951, Libya was the first state in Africa to secure freedom from colonial rule.


11 This map represents Libyan Arab Jamahiriya until 2011.
Rich in oil, in 2009 Libya was performing strongly in key socio-economic indicators but was a state of contradictions. According to the World Bank, Libya demonstrated high GDP growth (lifting from $27.3 billion in 1998 to $93.2 billion in 2009) and relatively high income per capita (estimated at $16,430 per capita).\textsuperscript{12} According to UNICEF, Libya also performed strongly in terms of “human development”, ranking fifty-five out of 182 states, and demonstrated high rates of literacy (95 percent for males and 78 percent for females aged fifteen and above).\textsuperscript{13} Despite substantial wealth and high levels of socio-economic achievement, Libya was characterised by disparity in development across the broader population. Compared to other oil-rich Arab states, popular opinion in Libya attributes lack of development to ‘poor planning, insufficient piecemeal development and pervasive corruption’.\textsuperscript{14} With oil wealth concentrated in a ‘narrow elite’ and Qadhafi’s children and extended family accruing substantial wealth from businesses in the health, construction, hotel and energy sectors, popular opinion in Libya was one of resentment and disaffection.\textsuperscript{15} Libya’s population also includes a significant proportion of foreign migrant workers, largely from sub-Saharan African states, estimated to be 2.5 million in 2011.\textsuperscript{16} When anti-government protests progressed into civil conflict in February 2011, migrant workers introduced a regional dimension to the conflict as many sought refuge in neighbouring states.

Traditionally, Libya was divided into three regions: Tripolitania, Fezzan and Cyrenaica. Politically, Libya became an Italian colony in 1911 following displacement of the Ottoman Turks. By the late 1930s, Italy controlled the Tripolitania and Cyrenaica regions. Government encouragement for settlement resulted in approximately one hundred and fifty thousand Italians migrating to Libya, accounting for one fifth of the population.\textsuperscript{17} As a result of the North Africa

\begin{footnotesize}
\begin{itemize}
\item[14] Ibid.
\item[15] Ibid.
\end{itemize}
\end{footnotesize}
campaigns during World War II, state infrastructure was largely destroyed and Libya became impoverished, underpopulated and divided politically, economically and religiously among its three regions. After the fall of Tripoli to Allied Forces in January 1943, Libya was placed under UN trusteeship until November 1949 when the General Assembly passed a resolution for Libya to be constituted as an independent and sovereign state.\footnote{Ibid., paras 22-23.} Libya subsequently achieved independence on 24 December 1951 under the rule of King Muhamad Idris al-Mahdi al-Senusi. The 1951 Constitution created Libya as a federal state, with each province represented by a separate parliament. An amendment in 1963 ended this federal system, leading to centralised government.

Concentration of national wealth from oil created resentment among sections of the population. In 1969 a group of military officers, led by Colonel Qadhafi, staged a military coup against King Idris bringing Qadhafi to power. Libya was subsequently declared an Arab republic.\footnote{African Union, \textit{Country Profile: Libya}, retrieved 21 April 2013 \<http://www.au.int/en/sites/default/files/Country\%20Profile\%20LIBYA.pdf>\.} The early years of Qadhafi’s leadership were characterised as transitional, during which he sought to consolidate his power through the one-party system of the Arab Socialist Union. A popular revolution was announced in 1973 in which Libya would participate directly in governance of the state through people’s committees. The General People’s Congress subsequently declared “popular rule” and the state was renamed the Great Socialist People’s Libyan Arab Jamahiriya; the word ‘Jamahiriya’ was created to describe the ‘state of the masses’ and to reflect the liberation of Libya from colonial rule as well as ‘partisan and bureaucratic obstacles’.\footnote{HRC, \textit{International Commission of Inquiry in Libyan Arab Jamahiriya}, paras 24-6.} In 1977 revolutionary committees were established to maintain support for the ideology of Qadhafi’s regime, summarised in the “green book”. In 1979 Qadhafi relinquished his position of Secretary-General of the General People’s Congress to ‘devote himself to revolutionary work’, while in 1990 the Congress appointed him as Supreme Leader and his instructions were granted ‘the force of law’.\footnote{Ibid., para 27.}
In effect, through these developments Qadhafi became both Head of State and head of government, exercising absolute power. Members of his family were appointed to key command positions in military intelligence and telecommunications, while his second son, Saif al-Islam Qadhafi, was appointed general coordinator of the Popular Social Command who oversaw the legislature. The autocratic leadership of Qadhafi, was founded upon resentment coupled with the pursuit of socialism, Islam and absolute power. Consequently, independent institutions, civil society, political parties and a judiciary to provide justice and redress were absent under Qadhafi’s leadership. Furthermore, similar to the Bashir government in Sudan, Libya became dominated by a repressive centralised government, with violence the primary means to disband opposition.

Similar to many other African states, tribes are an important foundation of social organisation in Libyan history because they brought geographically isolated groupings of nomadic people together. Common tribal heritage has provided the basis for close cooperation and alliances with neighbouring states, particularly Chad and Sudan, but also indifference and conflict. Consequently, Libyan relationships with African states are more likely to be based on opportunity and need, rather than history and kinship. Ethnically, most Libyans claim descent from Bedouin Arab tribes of the Banu Hilal and Banu Sulayn. Libya also has a considerable Amazigh population largely residing in the Nafusa Mountain region, near the border with Tunisia. Tensions between the Qadhafi regime and Amazigh populations have been a constant feature of Libyan politics resulting in bans on the teaching of native berber language or use of traditional names for children; denial of this ethnic group in population counts; and a policy of marginalisation by government authorities.

It is a similar story for the ten thousand or so nomadic Tuaregs that reside in a contiguous region within the Sahara and Shael and Tebu residing primarily in the Tibesti Mountain Range in the south of Libya along the border with Chad. While

---

22 Ibid., paras 20-21.
Qadhafi has solicited ‘good relations’ with Tuareg communities in Mali and Niger and ‘absorbed’ large numbers of Tuareg rebels into military forces as mercenaries to fight opposition, Libyan authorities have sought to expel Tebu who have entered southern Libya and in many cases resided there for many years. Frustrated with their insistence on remaining in Libya and with mounting resentment among local Arab communities towards Tebu populations, in December 2007 Libyan authorities withdrew ration books, identity cards, passports and papers from Tebu and issued instructions to expel them on the basis of being foreigners. At the same time, evidence of Tuareg rebels from Mali and Niger being recruited to form Qadhafi’s mercenary forces, has fuelled resentment among local Arab populations towards populations suspected accurately or inaccurately, to be of Tuareg descent. Collectively, it is marginalisation of minority populations such as the Amazigh, Tebu and Tuareg together with an entrenched culture of impunity and concentration of state wealth and power that led to popular resentment and disaffection towards the autocratic leadership of Qadhafi and provided the foundations for a popular uprising.

6.1.2 History of atrocities

The Arab Spring which started in Tunisia in December 2010, when Mohamed Bouazizi set himself on fire in a pro-democratic protest in the town of Sidi Bouzid, by spring 2011 had gained momentum in Egypt, Yemen, Libya, Syria and Bahrain. These popular uprisings delivered mixed results in terms of displacing existing state leadership. In Tunisia and Egypt leadership was relinquished following widespread protests, but in Libya, Yemen, and Syria thousands were wounded or killed. In Bahrain, protestors were confronted with force resulting in deep divisions and a high human cost, but were successful in securing government commitment to reformation, reparation and reconciliation. While these conflicts have different political, social and historical bases, they are characterised by a common aspiration among populations seeking progress through freedom and democracy and to end the

25 ICG, Popular protest in North Africa and the Middle East, p.23.
reign of longstanding autocratic governments. This was certainly the case in Libya where the arrest of lawyers representing the families of victims of the Abu Salim massacre triggered protests, initially in Benghazi and later Tripoli, that rapidly spread to cities and towns across Libya. The Abu Salim massacre (1996) involved the death of 1,250 civilians, largely political prisoners from the eastern regions, allegedly executed under the supervision of Qaddafi’s head of internal intelligence, Abdullah Senussi at the Abu Salim Prison in Tripoli.28 The introduction of legislation to outlaw dissent, which attracted punishments of life imprisonment, torture or the death penalty, made such action permissible among government officials. Government forces responded to the uprising by attacking protestors in Benghazi and other eastern cities. When protests spread to the capital Tripoli and other western cities of Misratah, Zawiya, Zuwarah and Zintan, government forces employed excessive force such as firing live ammunition into crowds of protestors, killing hundreds. Doctors treating casualties were not permitted to document those wounded or killed. With security forces positioned in hospitals, injury became a signifier of opposition,29 often leading to arbitrary arrest or enforced disappearance by government forces and foreign mercenaries recruited to dissolve opposition.30

In an emergency session on 15 March 2011, the Human Rights Council (HRC) established an International Commission of Inquiry on Libya (ICIL) under resolution A/HRC/RES/S-15/1 to investigate all alleged violations of IHRL in Libya; establish the facts and circumstances of such violations and of the crimes perpetrated; identify those responsible; and make recommendations on accountability measures, with a view to ensuring those individuals responsible were held accountable (paragraph 11). This included actions of Qadhafi government forces, thuwar (anti-government forces) and members of the NATO-led Operation Unified Protector. Comprising three members: Cherif Bassiouni (Egypt) (Chair), Asma Khader (Jordan) and Philippe Kirsch (Canada), the commission was supported by a secretariat within the Office of the UN High Commissioner for

---

29 Briefing by Luis Moreno-Ocampo, Prosecutor, ICC (4 May 2011) S/PV.6528.
Human Rights (OHCHR). In conducting its investigation ICIL considered all actions and violations committed before, during and following the 2011 uprising. In June 2011, the Commission reported A/HRC/17/44 (1 June 2011) that it had established direct contact with former government officials, the interim National Transitional Council (NTC), civil society and individuals across Libya. The Commission met more than 350 people, including over 100 doctors, medical staff, patients and members of families in ten hospitals; thirty people detained in Tripoli and Benghazi; and over 140 displaced persons located in Libya, transit points or in refugee camps in neighbouring states (paragraphs 2-3).

Consistent with reports from NGOs, such as Amnesty International and Human Rights Watch, the Commission found in their final report, some nine months later A/HRC/19/68 (8 March 2012), that Qadhafi forces had:

- Employed excessive force against protestors, leading to significant deaths in a number of towns and cities, suggesting a central policy of violent repression (paragraph 22);

- Systematically executed and tortured large numbers of civilian prisoners in detention centres (paragraph 35);

- Arbitrarily detained persons and refused legal protections to those suspected of supporting anti-government revolutionary brigades or thuwar, including family members and peaceful protestors (paragraph 42);

- Tortured and ill-treated detainees in a widespread and systematic manner, with methods including severe beatings on the soles of feet (falaqa), electric shock on genitalia, burning, threatening detainees with dogs, suspension over doors or from bars, being locked in small spaces or solitary confinement for extended periods, plus rape and other forms of sexual violence (paragraphs 45, 48 and 52);

- Engaged in indiscriminate attacks on civilians utilising unguided weapons (paragraph 80), such as mortar-fired cluster munitions into residential areas and anti-vehicle mines parachuted in by rockets. Government forces were also
In summary, the ICIL concluded that crimes against humanity and war crimes were committed by Qadhafi forces. These included acts of murder, torture, enforced disappearance and sexual violence committed as part of a ‘widespread and systematic attack against a civilian population’ (paragraph 118). Furthermore, as a ‘direct consequence of the legacy of the Qadhafi era’, accountability mechanisms in Libya were deficient or non-existent (paragraph 101) through the ‘deterioration’ of the legislative framework, judicial system and national institutions (paragraph 123), suggesting an entrenched culture of impunity.

While the commission’s findings relate directly to the uprising in February 2011, the means and ends identified in the report apply equally to Libya prior to the conflict. A significant source of evidence eliciting concern in this regard were Libya’s security forces who exploited the autocratic leadership of Qadhafi to harass, repress, arrest and detain, journalists, sources of dissent or civilians suspected of supporting *thuwar* forces during and immediately prior to the 2011 uprising. NGOs such as Amnesty International have consistently documented the culture of fear and persecution that paralysed the Libyan population. A recent review of conditions preceding the uprising found

Draconian legislation outlawed dissent and the establishment of independent organisations…Special courts were sentencing opponents after grossly unfair trials…Foreign nationals were living under risk of arrest, indefinite detention for “immigration offences” and torture and ill-treatment. Discrimination against women existed in law and practice. The death penalty and other cruel punishments such as flogging were prescribed for a wide range of “offences”.

Of particular concern, was the failure of Libyan authorities to repeal immunity for security forces or loyalists from prosecution and disciplinary measures for human rights violations.

---

31 Ibid.
32 Amnesty International, *Year of rebellion*. 

184
In the case of anti-Qadhafi *thuwar* forces, the ICIL report A/HRC/19/68 (8 March 2012) concluded that they had committed serious violations, including unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks against civilians and pillaging. Furthermore, ICIL found that the *thuwar* were targeting sub-Saharan migrant communities together with dark-skinned Libyan communities because they were perceived, often inaccurately, to be Qadhafi’s African mercenaries recruited from neighbouring states such as Sudan, to dissolve opposition. In the case of Tawergha communities, this included blocking access to towns, burning and destruction of houses and public buildings, with the aim of removing populations (paragraph 59). Further evidence is provided in examples of *thuwar* targeting Arab Mashashiya towns, perceived as loyalist to Qadhafi, citing looting of vacated towns and beating of displaced persons attempting to return (paragraphs 60-61). In light of an entrenched culture of impunity and the absence of judicial and national institutions, gaining central control over detention facilities and establishing effective institutions for accountability was identified by ICIL, the Security Council and NGOs, as an enormous challenge and transition priority for the new government.

6.1.3 Institutional capacity

In chapter three this thesis argued a common risk factor underpinning mass atrocities is the nature and capacity of the state, which is often weak or repressive in nature. Key features of weak or repressive states which increase the propensity for violent conflict include economic mismanagement, lack of social service delivery and lack of capacity or willingness to guarantee human rights. Consistent with this explanation, chapter five found that weak or repressive states often lack the capacity and/or will to establish and maintain legitimate, transparent and accountable political institutions. In the case of Libya, the capacity of the state was strong. However, despite Libya’s strong economic performance effective judicial and national institutions were largely absent due to Qadhafi’s forty-two years of autocratic leadership. To fully appreciate the institutional performance of Libya, it is necessary to engage in a closer assessment.

---

Drawing on Rice and Patrick’s 2008 Index of State Weakness examined in chapter five, this thesis finds Libya performed very strongly, ranking eighty-sixth in comparative state performance out of one 141 developing states reviewed (Sudan appears in sixth position). When scores are collated into functional or basket categories, Libya demonstrates very strong performance in the areas of: social welfare (scoring a staggering 9.77 out of ten); security (scoring 8.12 out of ten); and economic (scoring 6.80 out of ten). Not surprisingly, Libya scores poorly on political indicators (scoring 2.45 out of ten). Interrogation of this poor performance reveals that Libya scores 4.85 for rule of law; 3.87 for government effectiveness; 2.85 for control of corruption; 1.10 for voice and accountability; and 0.00 for freedom. Interestingly, this latter score is marginally lower than Sudan’s score for freedom (0.83). Despite scoring relatively well in the area of security, Libya ranks below average for gross human rights abuses (scoring 4.91). Collectively, these scores confirm during 2008-2009 economically and socially Libya demonstrates it is a strong state in terms of capacity and performance. However, over the same period politically Libya falls into the category of a “state to watch”. These states usually demonstrate significant poor performance in a particular area(s) rather than weakness. Although “states to watch” demonstrate higher aggregate scores, they generally perform poorly in at least one of the four core areas of sovereign responsibility.

With repression of dissent through autocratic government a central feature in Libyan politics, it is not surprising that Libya performs poorly in indicators related to individual rights and freedoms. Looking at political rights and civil liberties, indicators such as the Freedom in the World Survey (2010) are instructive. Chapter five (see section 5.1.3) noted that in states rated as “not free” there is generally an absence of political rights, accompanied by widespread and systematic denial of basic civil liberties. Of the forty-seven states deemed “not free”, Libya appears in fourth position (behind North Korea, Turkmenistan and Uzbekistan but in front of

---

34 Ibid.
35 Ibid., p.41.
36 Ibid.
37 Ibid., p.41.
38 Ibid., p.44,46.
39 Ibid., p.20.
Sudan) attracting the lowest possible rating of seven. However, the case of Libya requires a more nuanced understanding to fully appreciate the significance of these scores. Taken collectively, the scores outlined here demonstrate the paradoxical nature of Libyan performance. While the scores above demonstrate relatively high material well-being consistent with developed states, examination of comparative performance across individual indicators confirms poor performance in indicators related to freedom and human rights. Given the relative material wealth of Libya, what these scores confirm is that the poor institutional performance of Libya is related more to a lack of political will, rather than institutional weakness arising from lack of material capacity; that is, Libya was a strong but illiberal state.

6.1.4 Receptivity or openness

Relatively wealthy with low levels of foreign direct investment, totalling $200 million nationally in 2011 compared to $1.9 billion in Sudan, and not dependent upon foreign aid, little is known about Libyan trade and engagement with global markets. Representative of the repressive and insular approach of Libyan authorities under Qadhafi, politically it was a similar story until 2003 when Libya entered into a deal with the US lifting extended sanctions against Libya. Following the Lockerbie terrorist bombing of Pan Am flight 103 in December 1988, killing all 259 passengers on board and crew plus eleven people on the ground, Libya was plunged into extended sanctions resulting in a sharp decline in oil exports and corresponding revenue, and severely restricting Qadhafi’s ability to manoeuvre in international politics. The following year, in September 1989 a terrorist attack on UTA flight 772 killing 171 on board, led to the Security Council imposing a series of embargoes and sanctions on Libya through resolutions 731 (1992), 748 (1992) and 883 (1993). These embargoes and sanctions were suspended under resolution 1192 (1998) and later lifted under resolution 1506 (2003), as parties agreed on judicial proceedings against two Libyan suspects. Abandoning weapons of mass destruction and agreeing to compensate families of the victims of the Lockerbie bombing, this

---

represented an unprecedented rapprochement between Qadhafi and Western states. Consequently, Qadhafi and Libya returned to international politics by becoming a member of the HRC in 2010.

Despite an assurance on 19 March 2011 that a ceasefire with rebel forces participating in the uprising had been secured and was being upheld, Libyan authorities adopted a policy of non-cooperation. In practice this translated into a variety of counter-productive activities including: the use of heavy weaponry to target civilian populations; arbitrary arrest and detention of anti-government protestors; torture, ill treatment and execution of sources of criticism or opposition; and restricting access for the delivery of humanitarian aid and movement of personnel. A continuation of impunity for perpetrators of mass atrocities occurred alongside a refusal to recognise the jurisdiction of the ICC.

6.1.5 Leadership

According to Alex de Waal, Qadhafi ‘cut a unique figure in African politics’, proving ‘divisive, controversial and ambiguous’. Qadhafi was pivotal in the founding of the AU as a regional organisation with a stronger focus on peace and security. The extraordinary session of the Assembly of Heads of State and Government of the Organisation for African Unity (OAU) that resulted in the Sirte Declaration establishing the AU, was hosted by Qadhafi in September 1999. Qadhafi went on to become the first North African chairperson 2009-2010. Libya is also a major source of funding for the AU as one of five major African states contributing seventy-five percent of dues. It has also been suggested that Qadhafi paid the annual dues of approximately fifteen to twenty other states, in many cases so they could vote at summit meetings. Despite this pivotal role in AU politics, Qadhafi’s refusal to be bound by rules and autocratic approach to leadership ‘put him at odds’ with other African leaders. Consequently, Libya’s presidency of the

---

42 de Waal, African roles in the Libyan conflict, p.365.
45 de Waal, African roles in the Libyan conflict, p.366.
AU comprised ‘repeated public arguments’ with other leaders as well as ‘considerable effort’ on the part of African leaders to persuade Qadhafi that his presidency was for one year and not permanent.46

Prior to presidency of the AU, Qadhafi was a ‘consistent and vocal pole’ of support for anti-colonialism and liberation through armed rebellion.47 This ranged from opposition to apartheid in South Africa to support for a number of coups and insurgencies, including different factions in Somalia and rebellions by Charles Taylor in Liberia and Foday Sankoh in Sierra Leone. In the 1980s Libya used Darfur as a staging post for operations in Chad, sparking the creation of the Janjaweed militia and Darfur’s first conflict in 1987-89. Following the outbreak of conflict in Darfur in 2003, Qadhafi continued his support, becoming ‘financier, arms supplier and protector’ of rebel JEM forces founded by the late Khalil Ibrahim.48 At the same time, Qadhafi occupied a contradictory role of peacemaker in Darfur, hosting peace talks in his home town of Sirte in October 2007. Supported by the AU and UN, hosting of the peace talks signalled the increased involvement and desire of the Arab world to secure a political settlement to the conflict. Reflective of his approach to governance, during extensive opening remarks, Qadhafi indicated that the best thing foreign peacemakers and peacekeepers could do to resolve the conflict in Darfur, was to ‘stay out of it’ and let the people of Sudan settle it themselves.49

Following reconciliation between Sudan and Chad in January 2010, Libya became a refuge for JEM leaders expelled from Chad, including during the uprising in 2011. De Waal explained a possible motivation for providing refuge for JEM rebels was that further Darfur peace talks were being hosted by Qatar. Given Qadhafi harboured deep resentment towards Qatar, because of the state’s aspiration for Arab leadership, this provided a possible motivation for providing refuge to JEM

46 Ibid.
47 Ibid.
48 Ibid.
led. Interestingly, Sudan played a significant role during the uprising in Libya, providing military support to the NTC in terms of weapons and ammunition, communications equipment, intelligence officers and trainers, while cooperating with NATO to provide forward air controllers to assist in air strikes. Following the NTC declaration of liberation, Sudan continued to cooperate with Libya through joint border monitoring in the south. The same is true for Qatar who provided support to coalition air strikes under Operation Odyssey Dawn and the NATO-led Operation Unified Protector that followed. From this perspective, Alex de Waal’s assessment that Libya’s Saharan politics ‘came to resemble a vast patronage machine, renting the allegiances of diverse political entrepreneurs’ as required, appears to be an accurate assessment.

Looking more broadly at leadership as a risk factor, it is clear from the case of Libya examined here and the case of Darfur examined in chapter five that there are distinguishable features or characteristics of leadership that are more likely to elicit concern under R2P. Characteristics of leadership within this emerging typology include: a past history of armed rebellion; large scale and systematic human rights violations including summary executions, arbitrary detention, torture, enforced disappearances and sexual violence perpetrated by a combination of government forces and proxy militia or foreign mercenaries; a strong ideological commitment; marginalisation of specific populations in terms of legal status, political representation or wealth sharing or discrimination to repress cultural identity through centralised government; lack of political will or material capacity to resolve tensions peacefully despite rhetoric of a commitment to a negotiated settlement; indifference to international and national perceptions of legitimacy to rule or relative performance against sovereign responsibilities; a refusal to be bound by rules or held accountable, resulting in an entrenched culture of impunity; and allegiances based on political patronage. From the evidence examined in this chapter and chapter five, it would appear that Qadhafi and President Bashir of

50 de Waal, African roles in the Libyan conflict, p.366.
51 Ibid., p.377-8.
52 Ibid., p.367.
Sudan share many characteristics of this typology, as does President al-Assad of Syria.

6.2 Security Council deliberations

Between February 2011 and January 2013, there were forty-eight substantive references to Libya in Security Council deliberations, resulting in a total of seven resolutions and seven presidential statements (a summary of meeting records reviewed appears at Appendix B). Similar to sources of empirical evidence examined in the previous chapter, the nature and scope of these references reflect a variety of deliberations, ranging from situational reports on the crisis, fact-finding and mission updates, progress reports on ICC investigations, the use of Libya as an example during thematic debates or indirect references during deliberations on broader regional security arrangements. Chapter five argued that meeting records offer a valuable source for understanding how states engage with mass atrocities in specific situations. Consistent with this approach, this section examines how conceptions of legitimacy were constituted and re-constituted through references to R2P, to construct and reconstruct the limits of normatively permissible agency and action.53

Returning to Bellamy’s assessment that invocation of R2P involves a choice in how states employ the principle this review is looking for the use of discursive signifiers relevant to the disparate functions licensed by this choice. In the case of a normative call to action, signifiers would take the form of references to “immediacy”, “timely and decisive” action, a sense of “urgency” or “swift” action and a narrow focus on “security” and “stability”. In the case of a policy agenda, signifiers would reference addressing “structural issues” underlying conflict, “conflict prevention”, “capacity building” or make a solid link between security, accountability and development or peacekeeping and peacebuilding. Examining meeting records, resolutions, presidential statements and secretariat reports, this chapter argues that while international engagement with Libya is more accurately characterised as a normative call to action through the Council’s focus upon civilian protection and

accountability as measures to avert further atrocities, signifiers consistent with a policy agenda and longer-term objectives associated with democratic transition are also evident in Security Council deliberations.

6.2.1 Timely and decisive action

Seven days after the uprising in Libya commenced, on 22 February 2011 the League of Arab States (LAS) formally suspended Libya from the organisation. The same day the Security Council held its first deliberations on the crisis in Libya, taking the form of a closed meeting. Following the meeting, Council President, Maria Luiza Ribeiro Viotti (Brazil), issued a statement condemning the use of force against civilians and calling for Libya to ‘meet its responsibility to protect its population’. In addition, the statement urged Libyan authorities to provide safe passage for humanitarian assistance, medical supplies and humanitarian workers and underscored the need to hold those responsible for attacks on civilians accountable. From the outset, this remarkably early invocation of R2P, one week into the crisis, framed international engagement around the parameters of civilian protection and accountability for violations of IHRL and IHL, including crimes against humanity and war crimes. Three days later on 25 February 2011, the Security Council held its second round of deliberations on Libya, as part of a broader briefing on peace and security in Africa, by Secretary-General, Ban Ki-moon. As the first round of deliberations to be made public, the meeting provided substantial evidence on atrocities occurring in Libya, highlighted the failure of Libyan authorities to provide human protection and outlined potential measures to be considered in the formation of an international response under the umbrella of R2P.

During his briefing, the Secretary-General reported that the streets of Tripoli were deserted as civilians lived in fear of being shot by government forces or militia. The Council heard evidence that Qadhafi supporters had been conducting house-to-house searches to arrest anti-government protestors. Reports from human rights

---

55 Briefing by the Secretary-General (25 February 2011) S/PV.6490.
56 Ibid.
groups, press and civilians in Libya of government forces entering hospitals to kill wounded opponents or soldiers unwilling to kill civilians were also conveyed along with public statements by Qadhafi threatening civil war and mass killings if protests continued. Consistent with this alarming trend, Libyan representative, Abdurrahman Mohamed Shalgham, reported one million Libyans seeking democracy, freedom and rights had gathered in Benghazi. In terms of international engagement with the crisis, the Secretary-General advised that a special session of the HRC was being convened for the first time against a member, to establish an international independent commission of inquiry. At the same time, the Secretary-General reiterated a recent statement by the High Commissioner for Human Rights making an explicit reference to pillar three of the Secretary-General’s approach to implementing R2P, which suggested where there is a ‘manifest failure of a state to protect its population’ the international community has ‘a responsibility to take protective action in a collective, timely and decisive manner’. In discussing measures being considered, he reminded members it was ‘time for the Security Council to consider concrete action’ and cautioned them to be ‘mindful of the urgency of the moment’. Concluding the meeting, the representative of Libya appealed to the Security Council for a ‘swift, decisive and courageous resolution’.

The following day, the Council met for the third time on Libya. Acting under Chapter VII, the Security Council adopted resolution 1970 (26 February 2011) demanding an ‘immediate’ end to violence (paragraph 1), calling for steps to be taken to fulfil the legitimate demands of the Libyan population and imposing sanctions on Libya through an arms embargo (paragraph 9), travel bans on members of the Libyan government and a travel ban and asset freeze on the Qaddafi family (paragraphs 15 and 17). A sanctions committee chaired by Portugal was established to oversee implementation of these measures (paragraph 24). Acting under article 13(b) of the Rome Statute, Security Council resolution 1970 also referred the situation in Libya since protests commenced on 15 February 2011, to the ICC (paragraph 4). While Libya is not a party to the Statute, it is obliged to cooperate

---

57 Ibid., Statement by the Representative for Libya Arab Jamahiriya.
58 Ibid, Briefing by the Secretary-General.
59 Ibid.
60 Ibid., Statement by the Representative for Libya Arab Jamahiriya.
with the ICC under the terms of the referral (paragraph 5). Other states not party to the ICC were urged to cooperate, but were not obliged to do so as officials would be subject to national jurisdiction for any action taken in implementing the resolution (paragraph 6). In terms of the significance of resolution 1970 and contribution to international engagement with mass atrocities, it was the second referral to the ICC, following the referral of Darfur under resolution 1593 (31 March 2005), but the first egregious human rights situation unanimously referred to the ICC for investigation.

Speaking to the vote, the US challenged Qadhafi’s leadership stating that his resort to mass violence to stay in power meant that he had lost his ‘legitimacy to rule’. 61 Russia called for an ‘immediate’ end to violence, noting that Libyan compliance with the resolution was necessary to ‘avert full scale war’ and to ‘preserve the sovereignty and territorial integrity’ of Libya. 62 In its statement China advocated that the ‘greatest urgency’ should be to secure an ‘immediate cessation’ of violence and to resolve the crisis through dialogue. In contrast, France reminded states of their ‘responsibility to protect their populations’ and the international community to intervene where states fail to discharge this duty. France went further to note that support for adoption of resolution 1970 rested on the ‘hope that it would extend liberty beyond Libya’, signalling a ‘new era for the international community as a whole’. 63 In his concluding remarks, the Secretary-General commended the adoption of resolution 1970 as a ‘vital step and clear expression’ of the united will of the international community, but cautioned that ‘even bolder action’ may be required. 64

On 5 March 2011 the interim NTC in Benghazi, an opposition mobilised in February 2011 as an alternative government to support democratic transition, met for the first time calling for the international community to fulfil its obligation to protect Libya’s population without resorting to direct military intervention. 65 Adopting a similar approach, on 12 March 2011 the LAS called upon the Security Council to establish a no-fly zone with the support of the Gulf Cooperation Council

61 Statement by the Permanent Representative of the US (26 February 2011) S/PV.6491.
62 Ibid., Statement by the Permanent Representative of the Russian Federation.
63 Ibid., Statement by the Permanent Representative of the People’s Republic of China and France.
64 Ibid, Statement by the Secretary-General.
65 ICG, Popular protest in North Africa and the Middle East, p.24.
(GCC) and the Organisation of the Islamic Conference (OIC).\textsuperscript{66} One month after the uprising commenced at the fourth round of deliberations on Libya, the Security Council adopted Resolution 1973 (17 March 2011) establishing a no-fly zone (paragraph 6) and authorising the LAS and member states to take action to implement this provision (paragraph 8); plus ‘all necessary measures’ to protect civilians, excluding occupation by a foreign force (paragraph 4); and prohibiting all international flights by Libyan-owned or operated airlines (paragraph 17).

Furthermore, resolution 1973 strengthened existing sanctions and established a Panel of Experts to support the sanctions committee established under resolution 1970. Sanctions were strengthened by the inclusion of seven more individuals and five entities, including state-owned companies, subject to freezing of assets and travel bans (paragraph 22).

Unlike resolution 1970, support for resolution 1973 was not unanimous. Among the P5 China and Russia abstained (as did Brazil, Germany and India). Speaking to the vote, Russia explained abstention was principles-based. While Russia agreed that the use of force against civilians by Libyan authorities was unacceptable, questions about how the no-fly zone would be enforced, rules of engagement and limits on the use of force were not addressed during deliberations on the draft resolution. Russia went further expressing concern that the draft resolution ‘morphed’ as steps were introduced beyond the initial request for assistance issued by the LAS,\textsuperscript{67} opening the door for full-scale military intervention. In conclusion, the Russian representative reiterated a preference for a political settlement on the basis that the use of force could further destabilise North Africa and the Middle East. China indicated its support for action that would ‘stabilise the situation in Libya’ and halt acts of violence, but rationalised abstention with reference to a general opposition to the use of force stating that the Council should ‘respect the sovereignty, independence and territorial integrity of Libya’ along with efforts of the AU and

\textsuperscript{66} Bellamy, \textit{Libya and the responsibility to protect}, p.266.
\textsuperscript{67} Statement by the Permanent Representative of the Russian Federation (17 March 2011) S/PV.6498.
LAS to broker a political settlement.\textsuperscript{68} Similar to Russia, China also found elements of the resolution ‘difficult’ because of unresolved questions.\textsuperscript{69}

In contrast, the US characterised resolution 1973 as a ‘powerful response’ to a ‘call for action’ by the LAS to ‘urgent needs’ on the ground. Speaking to the vote, the US representative, Susan Rice, suggested the US was ready with its Arab and NATO partners to ‘shoulder our responsibilities to implement resolution 1973’.\textsuperscript{70} Whereas the UK rationalised support on the basis that Libyan leaders had commenced air strikes against civilians in anticipation of a ‘brutal attack’.\textsuperscript{71} Two days after resolution 1973 passed, coalition forces from the US, France, UK, Italy and Canada launched Operation Odyssey Dawn to enforce resolution 1973. On 23 March 2011, NATO assumed responsibility for enforcement of the arms embargo, followed by enforcement of the no-fly zone three days later. By 31 March 2011 NATO had assumed full command of military activities, signalling the commencement of Operation Unified Protector.\textsuperscript{72}

Over the next six months the Security Council met a further thirteen times on Libya without any direct action. Eleven of those meetings were dedicated to receiving briefings and updates on the situation on the ground, implementation of existing resolutions, investigations of the ICC, reports on the conduct of the NATO mission or AU activities. The remaining two represented thematic discussions on UN peacekeeping and peace and security in Africa, respectively. In deliberations dedicated to the situation in Libya, there were a number of developments during the period that influenced international engagement. In an alarming development, a briefing by the Secretary-General on 24 March 2011 reported that threats by Qadhafi towards opponents had aired on national television, while a number of journalists had been arrested, including four \textit{Al-Jazeera} crew.\textsuperscript{73} Foreign press warned UN staff in Tripoli of a general fear among the population, tight control by security services, further arbitrary arrests and enforced disappearances. In response

\textsuperscript{68} Ibid.
\textsuperscript{69} Ibid.: Statement by the Permanent Representative of the People’s Republic of China.
\textsuperscript{70} Ibid., Statement by the Permanent Representative of the US.
\textsuperscript{71} Ibid., Statement by the Permanent Representative of the UK and Northern Ireland.
\textsuperscript{72} Wiiliams & Bellamy, \textit{Principles, politics and prudence}, p.274-5.
\textsuperscript{73} Statement by the Secretary-General (24 March 2011) S/PV.6505.
to these developments, the Secretary-General reminded the Council of the ‘imperative to continue to act with speed and decisiveness’ in response to the ‘critical situation on the ground’.\(^{74}\)

In April and May the Special Envoy for Libya briefed the Council on a meeting he had with the Chairman of the NTC, Mustafa Mohammed Abdul Jalil. During the meeting, the NTC clarified that a ceasefire alone was not sufficient to end the conflict. Furthermore, as the objective of the uprising was the departure of Qadhafi, the NTC refused to negotiate with the leader or members of his family.\(^{75}\) By May, over 665,000 people had fled Libya as fighting intensified in the western cities of Yafran, Zintan and the Dehiba-Wazin border crossing with Tunisia; south-eastern towns of Kura and Jula; and Misratah, where government forces imposed a sea blockade positioning mines throughout the port. Concurrently, it was alleged that NATO forces had bombed the Qadhafi family home killing his son Saif al-Arab and grandchildren.\(^{76}\) Responding to the briefing the UK noted increased rocket attacks against civilians together with disruptions to electricity and water supplies were starting to resemble the deteriorating situation in Syria.\(^{77}\)

Around the same time, Russia and China began to express concerns with civilian casualties arising from the NATO-led operation, especially in Tripoli. These concerns were twofold. Firstly, they criticised what they saw as arbitrary interpretation of resolution 1973. Put simply, Russia and China were concerned with what appeared to a subjective interpretation of the provisions of resolution 1973 by P5 members US, UK and France. Arguing that civilian protection could be achieved without intervention, Russia and China were concerned specifically with the use of force for human protection and the enforcement of a no-fly zone becoming the means to realise individual Western political objectives. Secondly,

---

\(^{74}\) Ibid., Statement by the Secretary-General.

\(^{75}\) Briefing by Special Envoy of the Secretary-General on Libya Arab Jamahiriya (4 April 2011) S/PV.6509 and (3 May 2011) S/PV.6527.

\(^{76}\) Ibid.

\(^{77}\) Statement by the Permanent Representative of the United Kingdom and Northern Ireland (4 May 2011) S/PV.6528.
both were critical that members of the NATO-led coalition were adopting actions that appeared to exceed the mandate authorised by the Council.78

In terms of allegations that members of the NATO-led Operation Unified Protector had engaged in deliberate targeting of civilians, ICIL concluded in its report A/HRC/19/68 (8 March 2012) that out of the 17,939 missions flown, five resulted in civilian casualties, killing sixty and injuring fifty-five (paragraph 86).

Responding to the allegations of deliberate targeting, ICIL found NATO conducted a ‘highly precise campaign, employing precision guided munitions exclusively’ with a demonstrable determination to avoid civilian casualties’ (paragraphs 84 and 89). In effect, what Russia and China were suggesting was that the objective of the NATO-led operation mandated by the Security Council had fundamentally shifted from human protection to forced regime change. While Russia and China’s reaction could be rationalised with reference to a general opposition to the use of force and an accompanying preference to preserve the sovereignty, independence and territorial integrity of Libya, regional organisations such as the LAS and AU together with states who originally voted in favour of resolution 1973, such as Colombia and South Africa,79 began to express similar concerns. This ‘edging back’ from consensus for international action is similar, at least in nature, to the edging back in commitment to R2P that took place among some states following the World Summit.80 In the case of Libya, this suggested the start of what has been characterised as “buyer’s regret” towards international action under the umbrella of R2P.

6.2.2 Democracy, freedom and rights

Consistent with objections raised by Russia and China, in April 2011 Commissioner of the AU Peace and Security Council, Ramtane Lamamra, expressed concern that the ‘pursuit of other agendas in Libya by non-African actors’ compromised AU

79 Paris, R2P v ICC.
80 See n.103 chapter two.
attempts to promote a political settlement to the crisis. Furthermore, the international response was marginalising African efforts to implement a roadmap for peace in a manner consistent with and complementary to resolutions 1970 and 1973. The following month, the AU issued a press statement reiterating its commitment to respect resolution 1973 but cautioned states involved in implementation to ‘act in a manner fully consistent with’ provisions of the resolution and the ‘sole objective’ of civilian protection, recognising however, that the NATO-led operation posed an ‘increased risk of more civilian casualties’.

Building on this criticism, at its annual meeting 30 June-1 July 2011 the AU Assembly expressed deep concern towards referral of Libya to the ICC and requested that the Security Council defer the process under Article 16 of the Rome Statute for a period of twelve months. Not surprisingly, the Assembly decided that AU member states should not cooperate with execution of the indictment of Colonel Qadhafi. This decision was defended on the basis that issuance of a warrant complicated AU efforts to ‘negotiate a political solution to crisis, which would also address, in a mutually reinforcing way, issues of impunity and reconciliation’.

This response by the AU can be located in a general reluctance to take measures against incumbent leaders and governments, regardless of popular opinion on their performance. In addition, the AU is generally opposed to governments that gain power through ‘unconstitutional means’. While the AU was not prepared to engage in direct action it did compromise its opposition regarding reactionary activities when issuing a statement indicating its support for resolution 1973, and further noting that imposition of a no-fly zone constituted an ‘important element for the protection of civilians and delivery of humanitarian assistance.

---

82 African Union, The AU intensifies its efforts towards a political solution in Libya and stresses the importance of the respect of the letter and spirit of resolution 1973 (2011), Press release, Addis Ababa, 3 May 2011.
84 Ibid.
86 African Union, Press statement of the 268th meeting of the Peace and Security Council (23 March 2011) PSC/PR/BR.1 (CCLXVIII).
Briefings of the Council in 2011 delivered mixed results in terms of clarifying the AU position, the situation on the ground and focus of international engagement, in terms of emphasis between prevention and reaction. In May, Secretariat staff advised the Council that they had commenced planning for post-conflict peacebuilding, by initiating pre-assessment activities to determine political, security, rule of law and human rights, economic recovery, public administration and physical infrastructure needs. This suggested that while events on the ground were still volatile, the focus of international engagement would begin to shift from reaction, and its associated short-term focus on security, towards prevention, through a longer-term focus upon assisting new Libyan authorities build the conditions for sustainable peace. Briefings throughout June and July appeared to support this perception of a gradual shift in the focus of international engagement, with an emphasis upon both reaction and prevention. In particular, the briefings recommended that the Council continue to focus on the immediate task of tackling priorities on the ground while ‘inscribing action in a longer-term vision’. In June 2011, following the issuance of arrest warrants for Colonel Qadhafi, his son Saif al-Islam and head of Libyan intelligence Abdullah al-Senussi for alleged war crimes and crimes against humanity, and as the NATO operation reached the 100 day mark, Secretariat staff began to place a greater emphasis upon prevention advising Council members that early preparation for peacebuilding and peace consolidation had to be part of their planning. This message was reiterated again in the July briefing of the Council, at which it was suggested post-conflict planning would prove ‘invaluable if and when the UN is called upon to react quickly in a post-conflict Libya’.

In his August 2011 briefing, the Secretary-General painted an encouraging picture as he reported NTC opposition had entered Tripoli toppling the regime and forcing Qadhafi to seek asylum in Algeria. While violent clashes between opposition and government forces continued in Sirte and Bani Walid, hospitals had reopened. More importantly, discussions regarding the ongoing role of the UN were underway with

---

87 Briefing by Under-Secretary-General for Political Affairs (31 May 2011) S/PV.6541.
88 Briefing by African Union Ad Hoc High-Level Committee on Libya (15 June 2011) S/PV.6555.
89 Briefing by Under-Secretary-General for Political Affairs (27 June 2011) S/PV.6566.
90 Briefing by Under-Secretary-General for Political Affairs (28 July 2011) S/PV.6595.
the NTC and other world leaders. These discussions focused on preventive activities such as election assistance, transitional justice, policing and humanitarian needs. Suggesting that Council members could be hopeful of a ‘quick conclusion to the conflict’, the Secretary-General returned momentarily to the use of reactionary discursive signifiers to caution members that ‘time is of the essence’ for developing preventive measures, such as a ‘proactive and effective’ response to post-conflict challenges. He went further, suggesting that the Council should aim to get UN personnel on the ground quickly under a robust mandate of three principles: national ownership (the UN acts in accordance with Libyan needs and desires); rapid response and delivery (the UN responds swiftly to the request of Libyan authorities); and effective coordination (to ensure multilateral, bilateral and regional efforts are complementary with short-term and long-term priorities).91

On 16 September 2011, the General Assembly recognised the NTC as the sole representative of Libya, voting 114-17 in favour.92 On the same day and building on the preparatory work of the Secretariat outlined a month earlier to shift the focus of international engagement towards preventive activities commonly associated with a policy agenda to address risk factors, the Security Council unanimously adopted resolution 2009 (16 September 2011) establishing the UN Support Mission in Libya (UNSMIL) with an explicit peacebuilding focus (paragraph 12). Acting under Chapter VII and taking measures under Article 41, UNSMIL was mandated to assist and support Libyan national efforts to restore public security, order and rule of law; prepare for elections; engage in institution-building; promote and protect human rights; and initiate economic recovery. Speaking to the vote, Russia stated support for the resolution was based on a policy of rebuilding post-conflict Libya under the auspices of the UN and Security Council. Furthermore, as the purpose of the mission was to support transition, Russia reiterated the importance that the resolution reflected the Council’s intention to consider lifting the no-fly zone. In

---

91 Briefing by the Secretary-General (30 August 2011) S/PV.6606.
92 General Assembly, After much wrangling, General Assembly seats National Transitional Council of Libya as country’s representative for sixty-sixth session (16 September 2011) GA/11137.
terms of political transition, Russia emphasised the importance of the NTC taking steps to give effect to the ‘declaration to create a new democratic Libya’.  

Similar to Russia, China rationalised support for the resolution with reference to the principles it had emphasised during deliberations on the draft: stability and order should be restored as soon as possible; Libya’s sovereignty, independence, unity and territorial integrity must be genuinely respected; future national affairs must be decided by Libyans; an inclusive political process should be launched as soon as possible; and the UN and Security Council should play a leading role in reconstruction.  

In terms of political transition, China stopped short of any reference to democratic transition reiterating that it would support Libyans to ‘safeguard national sovereignty, rebuild their country and pursue development’. In response, the representative of Libya, Ibrahim Omar Dabbashi, indicated that as a result of resolutions 1970 and 1973, this was the first time Libya had ‘witnessed operationalisation of R2P’, in terms of a focus upon prevention and its associated policy agenda to address risk factors underlying conflict. Continuing his emphasis upon preventive elements of R2P, the representative of Libya confirmed that the transitional government was ‘looking forward to building democratic institutions’ as part of the process of political transition.

On 20 October 2011, Qadhafi was captured by the thurwa and killed later that day. Three days later the NTC formally declared national liberation in Benghazi. Seven days after the capture and subsequent death of Qadhafi, the Security Council unanimously adopted resolution 2016 (27 October 2011) terminating the provisions of resolution 1973, authorising a no-fly zone, and in effect reactionary elements of the international response such as the use of force for human protection. On 31 October 2011, the seven month NATO-led Operation Unified Protector concluded. During the period of review, a further two resolutions emphasising preventive activities were adopted by the Council: resolution 2022

---

93 Statement by the Permanent Representative of the Russian Federation (16 September 2011) S/PV.6620.
94 Ibid., Statement by the Permanent Representative of the People’s Republic of China.
95 Ibid.
96 Ibid., Statement of the Representative of Libya.
97 Ibid.
(2 December 2011) extending the mandate of the UNSMIL for a further three months and introducing a provision to assist and support national efforts to address the threat of proliferation of all arms, including portable surface to air missiles (paragraph 2); and resolution 2040 (12 March 2012) renewing UNSMIL for a further twelve months and modifying its mandate to include a range of activities consistent with a prevention-based policy agenda, such as democratic transition, promotion of the rule of law, institutional capacity-building and coordination of international assistance (paragraph 6). Resolution 2040 also called upon Libya to comply with its obligations under international law to hold those responsible for serious violations of IHRL and IHL accountable (paragraph 3) and urged all states to cooperate with Libya in its efforts to end impunity for violations (paragraph 6). In a statement following the vote, the representative for Libya characterised the renewal as evidence of the Security Council’s commitment to the ‘security and stability’ of Libya. Furthermore, in praising the Council for its actions to protect civilians, he noted that the unity of the Council was a necessary prerequisite for preserving its credibility in addressing similar situations.98

6.3 R2P as a policy agenda or catalyst for action

The conflict in Libya caught members of the Security Council by surprise. While Libya had a questionable human rights record and illiberal institutional basis, it did not appear on any early warning watch lists, it wasn’t flagged as a rapidly deteriorating situation, nor had it featured in broader debates around the R2P as a potential candidate for application of the principle. However, temporally Libya occurred during an interesting period in the development of collective understanding towards R2P. Set against the backdrop of increased cooperation between the AU and UN in Darfur, preceding a General Assembly dialogue on the role of regional and sub-regional arrangements in implementing R2P A/65/877 (28 June 2011), and following a dialogue on contribution of early warning and assessment to prevention the previous year A/64/864 (14 July 2010), the conflict in Libya occurred at a time when prevention was still dominating debates around operationalising R2P. What remained to be tested in 2011 was collective

98 Statement by the Representative of Libya (12 March 2012) S/PV.6733.
understanding of pillar three of the Secretary-General’s approach to implementation: a timely and decisive response. Thomas Weiss offers a practical assessment of this situation. With an overwhelming focus on preventive elements of R2P since 2009, driven largely by the Secretary-General and the interactive dialogues of the General Assembly, the use of force for human protection was largely absent from the international agenda until Libya. According to Weiss, if intervention in Libya went well it would give ‘teeth’ to R2P; whereas, if intervention went badly it would enable critics to ‘redouble their opposition’ to make future invocation far more difficult.99

6.3.1 A catalyst for action

Employing Bellamy’s assessment that invocation of R2P necessarily involves a choice by states on how they employ the principle, this part reviews discursive signifiers identified in Security Council deliberations discussed in section 6.2 to establish the choice made by the P5, including the extent they engaged with the full continuum of R2P (to prevent, react and rebuild). Over the course of 2011-12, deliberations on Libya were heavily infused with the language of R2P. References were mostly direct, but some were implied. In light of the discursive signifiers identified in part two, it is the contention of this chapter that R2P made a significant contribution to the ideational and normative framework for international engagement, largely as a normative call to action to address an imminent threat but also as a policy agenda seeking to address risk factors for future atrocities.

From the outset of the crisis in Libya, UN officials and regional organisations warned of an imminent threat of mass atrocities. Seeking to mitigate this threat, briefings and statements by Secretariat staff and regional organisations were framed around the protection of vulnerable civilian populations in order to prevent mass atrocities. In terms of formulating an international response, during this early period of engagement R2P helped identify the imminent risk of mass atrocities, portrayed the crisis in Libya as a human protection problem, and reminded both the Libyan

99 Weiss, RtoP alive and well after Libya, p.287.
authorities (to no effect) and the Security Council (to good effect) of 
their responsibilities.\textsuperscript{100}

For the Security Council, this remarkably early invocation of R2P one week into the 
crisis translated into three practical priorities for international action: stability, 
accountability and averting further atrocities. Consistent with this approach, the first 
round of deliberations on 22 February 2011 reiterated the responsibility of Libya for 
protection of its population under IHRL and IHL and underscored the importance of 
establishing effective accountability mechanisms within Libya in order to monitor 
the actions of all parties to the conflict and avert mass atrocities. From a similar 
perspective, a briefing by the High Commissioner for Human Rights the same day 
reminded Libya of its sovereign responsibilities, highlighting that the protection of 
civilians ‘should always be a paramount consideration in maintaining order and the 
rule of law’.\textsuperscript{101} Moreover, the briefing emphasised the imminent threat that existed 
if Libya failed to ‘immediately’ cease violence against protestors and cautioned that 
‘widespread and systematic attacks against civilians may amount to crimes against 
humanity.’\textsuperscript{102} The next round of deliberations three days later featured similar 
discursive references to the ‘urgency of the situation’ by the Secretary-General, 
with the representative of Libya calling for ‘swift and decisive’ action.\textsuperscript{103} This time, 
responsibility was framed around the international community intervening where a 
state manifestly failed to protect its population.

This ‘early activism’ to establish state and international responsibility for civilian 
protection and highlight an imminent threat, made a significant normative 
contribution to international engagement with Libya as it became ‘part of the 
catalyst’ for adoption of resolution 1970.\textsuperscript{104} Specifically, it was references to the 
‘urgency of the moment’, the need for ‘swift, decisive and courageous action’, 
along with invocation of pillar three of the Secretary-General’s approach to 
implementation of R2P, which encouraged the Security Council to take ‘collective,

\textsuperscript{100} Bellamy, \textit{Libya and the responsibility to protect}, p.265.

\textsuperscript{101} Office of the High Commissioner for Human Rights (OHCHR), \textit{Pillay calls for international 
inquiry into Libyan violence and justice for victims}, press statement (22 February 2011) retrieved 5 

\textsuperscript{102} Ibid.

\textsuperscript{103} Statement by the Representative of Libya (25 February 2011) S/PV.6490.

\textsuperscript{104} Bellamy, \textit{Libya and the responsibility to protect}, p.265
timely and decisive’ action. Put simply, these early references to R2P enabled international engagement with the crisis, through the legitimacy that R2P accorded. Contributing factors to perceptions of legitimacy included: clarity of the case and threat (made all the more evident by the various public statements by Qadhafi); the degree to which coercive action was gaining regional and international legitimacy (following ten years of debate around R2P and the use of force); and realisation that diplomacy alone would not prevent the threat of mass atrocities becoming real. Consequently, invocation of R2P became the ‘legitimating principle’ for international intervention, playing an important role in setting the parameters for the adoption of coercive measures, as a last resort, to protect populations from mass atrocities.

Once responsibility for civilian protection had been established, international engagement with Libya began to focus on the more immediate tasks of accountability and mitigating the imminent threat posed by a rapidly escalating crisis. Demanding an ‘immediate end’ to violence (paragraph 1), resolution 1970 represented the second time the Security Council referred a situation to the ICC for investigation. While both the Libya referral and its predecessor on Darfur (2005) were motivated by a common need to address an entrenched culture of impunity, they diverged in the level of support for the referral within the Security Council, the timeframe it took to secure support and the need for judicial endorsement. As a call to action to establish accountability, resolution 1970 took only two weeks to secure unanimous support for the referral of Libya; whereas Darfur, as part of a policy agenda seeking to address structural issues, took two years. Similarly, while both referrals were accompanied by a commission of inquiry, in the case of Darfur it was the inquiry that triggered the referral; whereas the referral of Libya occurred prior to the commission conducting its investigation, which meant it was not reliant upon judicial endorsement.

105 Briefing by the Secretary-General; Statement by the Representative of Libya (25 February 2011) S/PV.6490.
106 Dunne, Libya and the state of intervention.
108 Ibid., p.524.
The other notable difference concerns the actions of the P5, specifically the US who abstained in the Darfur referral on the basis of opposition to the ICC. In contrast, the US co-sponsored and supported resolution 1970. In terms of normative contribution, the shift towards a language of atrocity “crimes” in Darfur and Libya, rather than “large scale violations”, instigated a subsequent shift from impartiality to partiality on the part of the Security Council. As noted by Jennifer Welsh, this is because crimes have ‘particular perpetrators’ as opposed to multiple and often ambiguous parties to a conflict. Welsh explains ‘actions required to change the incentives’ of perpetrators push the Council away from ‘mediation and compromise’ towards accountability and enforcement, thereby forcing Council members to take targeted action to assist one side and restrict the activities and movements of the other. This ‘creep towards partiality’ means the ‘ambition’ of a targeted military operation may not always align with the ‘narrowly circumscribed’ political objective of civilian protection.

Deliberations the following month continued to employ discursive signifiers of a ‘critical situation’ on the ground, while emphasising the need for a ‘prompt response’ to send a ‘clear signal of determination’ to enable the Libyan population to pursue their aspirations for political reform. The adoption of resolution 1973 (17 March 2011) establishing a no-fly zone made an important normative contribution to broader international understanding, confirming that Libya had ‘crossed a threshold’ and that the Security Council ‘will not be inhibited as a matter of principle from authorising the use of force where a state fails to protect their population’. While the US described the resolution as a ‘powerful’ response to mitigating an imminent threat and the UK welcomed the ‘swift and comprehensive action’, Russia and China abstained with reference to general opposition to the use of force and concerns around provisions of resolution 1973. From this perspective, the passing of resolution 1973 and the commencement of enforcement

109 Welsh, Civilian protection in Libya, p.259.
110 Ibid.
111 Briefing by the Secretary-General (24 March 2011) S/PV.6505; Briefing by Chairman, 1970 Sanctions Committee (28 March 2011) S/PV.6507
112 Williams & Bellamy, Principles, politics and prudence, p.293. Emphasis in original.
action by NATO provides a compelling example of reaction, and its associated normative call to action to address an imminent threat of mass atrocities.

6.3.2 A policy agenda for prevention

As argued by many, the Security Council’s response to Libya should have been a vindication of R2P and an exemplar of pillar three activities. However, deep concerns over how resolutions were interpreted and the international response played out on the ground resulted in “buyer’s regret” among some supporters of Council action in Libya.¹¹⁴ For states such as Russia and China, Operation Unified Protector challenged perceptions of legitimate state action for human protection, which was largely based on securing a political settlement to the conflict combined with the deterrence value of a referral of Libya to the ICC. Central to this debate was the precedent set by the use of force without host state consent and the contentious issue of the relationship between regime change and reactionary elements of R2P. As suggested by Tim Dunne and Jess Gifkins, the NATO-led operation in Libya demonstrated the problematic link between military means and humanitarian ends that Operation Allied Force encountered in 1999.¹¹⁵ Where Allied Force encountered political disunity securing a mandate, Libya was problematic because for some states, such as Russia and China, the interpretation of the operation’s mandate compromised the legitimacy of international action. Central to these concerns was the perception that Security Council members, France, Britain and the US (the P3), had selectively implemented provisions consistent with their objectives and expanded interpretation of all necessary measures to include actions beyond civilian protection.

Drawing on public statements, such as one given by US President Barack Obama on 28 March 2011, suggesting an awareness that international consensus towards the use of force was fragile and that openly pursuing regime change would dissipate support for international action, Alex de Waal posits that the P3 resolved this challenge by claiming they were ‘simultaneously pursuing a military track for

¹¹⁴ Statement by the Representative of Singapore to the General Assembly Informal interactive dialogue on the responsibility to protect, 5 September 2012, para 6.
¹¹⁵ Dunne & Gifkins Libya and the state of intervention, p.516.
protecting civilians’ plus a ‘non-military track for democratic transformation’.\textsuperscript{116} In what seemed to be a contradictory development, the rhetoric of coalition leaders who suggested that Qadhafi had to step down or his regime would end, tended to support the notion that any perceived success of international action would be measured by the demise of Qadhafi.\textsuperscript{117} With a no-fly zone seemingly insufficient to halt the advance of government forces and a political settlement to the crisis unlikely, preparing a plan for a negotiated settlement was never really contemplated.\textsuperscript{118} The use of discursive signifiers highlighting the urgency of the situation, imminent threat of mass atrocities and calling for immediate and decisive response supported this approach.

Irrespective of these tensions among the P5, by May 2011 deliberations had started to shift to the use of discursive signifiers more closely aligned with a policy agenda to address risk factors. If all substantive references by the P5 are aggregated, discursive signifiers employed in Council deliberations are evenly split between a normative call to action and a policy agenda. In the case of the Secretariat, twice as many discursive signifiers were used to reference actions associated with a policy agenda than for a normative call to action. The turning point came in deliberations when NATO assumed command control for enforcement action under resolution 1973. Following the adoption of resolution 1973, deliberations were characterised by a variety of briefings on the situation on the ground and progress with ICC investigations. Statements by Council members during this period largely reflected Russia and China’s ongoing concerns towards civilian casualties arising from Operation Unified Protector, the arbitrary interpretation of resolution 1973 and replacement of the language of imminent threat in resolution 1973 with the more expansive civilian populated areas under threat of attack. Statements by the UK, US and to a lesser extent France, were naturally concerned with defending the legitimacy of action under resolution 1973. Alongside these tensions, Secretariat staff informed the Council that contingency planning for peacebuilding had commenced.

\textsuperscript{116} de Waal, \textit{African roles in the Libyan conflict}, p.368.
\textsuperscript{118} Ibid; de Waal, \textit{African roles in the Libyan conflict}, p.368.
In the early stages of planning, staff emphasised that they were not abandoning the call to action underpinning the international response thus far; rather they sought to complement short-term priorities with a longer-term focus. This longer-term focus was primarily concerned with assisting new Libyan authorities to build the conditions and institutions for sustainable peace. In June and July this led to a recommendation from the Secretariat to ‘tackle priorities on the ground while inscribing a longer-term vision’. To give this practical effect, Secretariat staff recommended integration of peacebuilding into ‘current planning’. Discursive signifiers employed in these deliberations included references to: rule of law and human rights; economic recovery; public administration; peace consolidation; building accountable institutions; change and modernity; reform, as well as reconstruction and transitional justice. This shift in focus and discursive references to R2P culminated in the unanimous adoption of resolution 2009 (16 September 2011) establishing UNSMIL, with an explicit peacebuilding mandate. Speaking to the vote, Russia emphasised support for the resolution was based on a ‘policy of rebuilding post-conflict Libya’. In complete contradiction to abstention on resolution 1973, China supported resolution 2009 arguing the UN and Security Council should ‘play a leading role in reconstruction’. The UK characterised the mission as a ‘transition opportunity’ for Libya to realise its full potential. In terms of vindication of R2P, the representative of Libya argued the adoption of resolution 2009 represented an important development in ‘normalisation’ of the situation in Libya, and was symbolic of the commencement of ‘reconstruction and development’.

In what Lloyd Axworthy and Allan Rock describe as a ‘fortuitous coincidence’, Libya was liberated exactly a decade after articulation of R2P by ICISS. As a case for R2P, Libya is representative of a ‘high water mark’ in terms of application

---

119 Briefing by African Union Ad Hoc High-Level Committee on Libya (15 June 2011) S/PV.6555.
120 Ibid.
121 Briefing by Under-Secretary-General for Political Affairs (31 May 2011) S/PV.6541.
122 Briefing by SRSG for Libya (22 December 2011) S/PV.6698.
123 Briefing by the Permanent Representative for the Russian Federation, People’s Republic of China and UK and Northern Ireland (16 September 2011) S/PV6620.
124 Ibid., Statement by the Representative of Libya.
of the principle and the test case it provided to the Security Council. While the circumstances surrounding the 2011 uprising in Libya were remarkable in terms of the immediacy of the threat of mass atrocities, convergence between perceptions of legality and legitimacy, political will and operational capacity (and possibly for these reasons was more conducive to international intervention than other examples), the invocation of R2P as a normative call to action in effect escalated the crisis on the international agenda. Moreover, R2P can be credited with quickly and lawfully mobilising an international response to protect civilian populations and prevent mass atrocities.

Concerned primarily with reaction, invocation of R2P early in the crisis assisted the P5 to establish civilian populations in Libya were existentially threatened, emergency measures were required to avert atrocities, and through a process of securitisation, convince members of the Security Council that collective and decisive action outside the bounds of normal procedure was legal and moreover, legitimate. Regardless of continued contestation over the means and ends, this chapter concurs with Axworthy and Rock’s assessment that the remarkably quick and decisive way in which the international response mobilised demonstrates the normative value and contribution of R2P to international engagement with mass atrocities. Furthermore, Libya demonstrates that while it is preferable that there is consensus among the P5 for collective enforcement action, for R2P to function it only requires that members do not block such action through the use of the veto.

It was the contention of chapter five that international engagement in Darfur could not be understood solely through the lens of R2P. Alongside R2P there were a multitude of other factors, unfolding dynamics and events internationally and nationally that led to various turning points in the international response. The same is true with respect to Libya. Contributing factors to international engagement in Libya included clarity of the threat of atrocity crimes, the increasing legitimacy of coercive action within the remit of R2P following ten years of debate, and the shared realisation among states that diplomacy alone was unlikely to prevent

---

126 Ibid.
127 Ibid.
atrocities from becoming real. Unlike Darfur where contributing factors constrained international engagement, in the case of Libya unfolding dynamics internationally and nationally legitimised escalation of the crisis under the umbrella of R2P.

Aware that international consensus towards the use of force was fragile, from March 2011 onwards P3 statements confirm that human protection activities associated with R2P as a normative call to action were increasingly being supplemented with the simultaneous invocation of R2P as a policy agenda. Driven largely by an increasing need to resolve tensions around the use of force, this shift in focus was central to reuniting a divided Security Council. In effect, simultaneous invocation of R2P as a normative call to action and policy agenda led to the adoption of an explicit peacebuilding mandate in resolution 2009. Recognising that this simultaneous focus upon prevention and reaction has not resolved ongoing tensions around the two functions licensed by invocation of R2P, it is the contention of this chapter that the relationship between the policy and speech act functions of R2P are far more dynamic and mutually reinforcing than the sharp distinction suggested by Bellamy.

6.4 Conclusion

As a case for invocation of R2P, popular uprisings that occurred in Libya in 2011 presented the Security Council with a situation that was both unexpected and controversial. Libya provided the Security Council with what seemed to be a textbook case for invocation of R2P to mobilise international action to provide civilian protection and in doing so, prevent mass atrocities. Libya was also unusual because of a convergence between perceptions of legality and legitimacy, political will and operational capacity, as well as the clarity of the threat of mass atrocities, short time-frame and role of regional organisations in supporting intervention. Yet until Libya, prevention had dominated the debate around R2P. Subsequent invocation of R2P framed the debate as a question of timely and decisive action to protect vulnerable populations. While the passing of Resolution 1973 should have been a vindication of R2P, it was quickly followed by regret when intentional action

128 Bellamy, *Libya and the responsibility to protect*, p.266
129 Weiss, *RtoP alive and well after Libya*, p.290.
seemingly exceeded its human protection mandate. Central to this debate lie divergent perceptions of the legitimacy of the use of force without the consent of a host state. In this regard, this chapter concurs with Thomas Weiss’ that while the use of force in response to mass atrocities ‘is not a panacea’ or ‘cause for celebration’ it is a ‘crucial option’ for international engagement with mass atrocities.\(^{130}\)

Within two weeks of appearing on the international agenda, the Security Council unanimously adopted resolution 1970 reiterating Libya’s primary responsibility for protection, and moreover setting a precedent by making its first egregious human rights referral to the ICC. Following the adoption of resolution 1970 architects and proponents of R2P suggested that these developments represented the ‘coming of age’ of the principle.\(^{131}\) One month into the crisis, the Security Council invoked R2P to authorise the use of force in response to the failure of Libya in civilian protection and to enforce a no-fly zone. However, unlike resolution 1970, resolution 1973 received a mixed response, becoming the source of contestation about both the principle of R2P and international engagement with mass atrocities more generally. Libya subsequently became controversial as it divided the P5 between states who believed civilian populations would only be safe once Qadhafi was no longer in power and others, specifically Russia and China, who believed a political settlement was the only solution to the crisis.\(^{132}\) Employing Bellamy’s assessment that invocation of R2P invariably involves a choice between R2P as a policy agenda and a normative call to action, this chapter finds that deliberations were framed largely around R2P as a normative call to action enabling, at least in part, adoption of resolution 1970.\(^{133}\) However, from May 2011 onwards following the commencement of the NATO-led Operation Unified Protector, concern for a longer-term focus to plan for reconstruction and political transition is also evident. Moreover, in the latter stages of Operational Unified Protector the P5 referenced R2P in both a preventive and reactive sense. This was most evident when

---

\(^{130}\) Ibid.

\(^{131}\) G Evens, *The responsibility to protect after Libya and Syria*, Address to annual Castan Centre for Human Rights Law conference, Melbourne, 20 July 2012.


\(^{133}\) Williams, & Bellamy, *Principles, politics and prudence*, p.273;
peacebuilding measures were adopted unanimously under resolution 2009 (16 September 2011) while Operation Unified Protector, designed to halt an imminent threat of human suffering, was still under way.

Irrespective of tensions among the P5, the response elicited by invocation of R2P made two important contributions. First and foremost, it demonstrated that more than ever, inaction is inexcusable.\(^{134}\) While some may remain sceptical, locating international engagement within the remit of R2P makes it increasingly difficult to legitimise inaction. Secondly, the response to Libya confirmed what many have argued for some time, that ongoing contestation about R2P is concerned more with how the Security Council responds, rather than the applicability of R2P. This is particularly the case where the two more controversial elements of R2P, prevention and reaction, are involved. This has had serious implications for the current conflict in Syria. With the impact of R2P in Libya ongoing in the form of rebuilding, this chapter concurs with Ramesh Thakur that it will be the willingness, duration and effectiveness of international engagement to assist political transition and reconstruction that will ultimately ‘shape the judgement’ on the legacy of R2P.\(^{135}\) Until this complete, it would seem the debate around R2P will remain fluid, similar to the response it elicits.

---

\(^{134}\) Statement by the Permanent Representative of France (7 November 2012), S/PV.6855.

Examining how states justify their actions is integral to understanding international responses to large scale human suffering. Sceptics of R2P, such as Aidan Hehir, argue there is nothing to suggest that the acceptance of the principle by states at the World Summit has altered the decision-making process by which organs such as the Security Council respond to mass atrocities, aside from expanding the rhetoric available to states seeking to rationalise their position. Citing reluctance and hesitancy to take decisive action in Darfur, concerns regarding measures adopted in Libya and the use of the veto with respect to Syria in 2012, critics argue this is particularly the case among the P5. Central to this critique of R2P, is a perceived disparity between words and deeds. In contrast to this assessment, this thesis finds acceptance of R2P by states has significantly expanded the normative and ideational framework surrounding human protection in terms of the values, rules and meanings that underpin perceptions of legitimacy with regard to state identity and interests. Despite criticism highlighting variances in Security Council practice, this thesis finds that the normative advance of R2P since its articulation by ICISS has been remarkable. R2P has become an integral component of Security Council thinking and deliberations on mass atrocities, particularly with respect to what the P5 regard as legitimate state action. Most importantly, R2P has facilitated increased recognition of the relationship between longer-term preventive measures seeking to address risk factors underlying a conflict and the shorter-term need for a timely and decisive response to halt human suffering.

Consistent with this focus, this concluding chapter reviews the contribution of this thesis to the debate around R2P. To this end, the first part of this chapter reviews the research question and investigative framework guiding this examination of Security Council practice and summarises the key findings of this thesis. The second part of this chapter examines the significance of these findings for international engagement with mass atrocities, particularly the increased emphasis within the Security Council upon the relationship between preventive and reactive

1 Hehir, Sound and fury signifying nothing, p.219.
2 Klotz & Lynch, Strategies for research in constructivist international relations, pp.7-8.
elements of R2P. Acknowledging that the normative influence of R2P and constructivist approach employed in this thesis are often subject to criticism, the third part of this chapter addresses counter arguments to both the findings and methodology of the research presented here. Seeking to consolidate the interpretation of R2P developed throughout this thesis, the final part of this chapter considers the consequences of a dual commitment to prevention and reaction upon current and future Security Council action under the umbrella of R2P. The conclusion to be drawn from this thesis is that the invocation of R2P has played a central role in constituting international engagement with mass atrocities through a social process of legitimation. This process of legitimation confirms the dynamic, complex and challenging reality of international engagement with mass atrocities, which by virtue of its very nature, means that the utilisation of R2P in response to mass atrocities does not involve a distinct choice between a policy agenda that seeks to address risk factors and a normative call to action seeking to mitigate an imminent threat, as suggested by Bellamy. Rather, invocation of R2P by states inherently involves both.

**Research framework and findings**

This research set out to examine how R2P has evolved since its articulation by ICISS and the broader acceptance by states at the World Summit, to influence international engagement with mass atrocity crimes, defined as genocide, ethnic cleansing, war crimes and crimes against humanity. Narrowing the focus of this research further, the central question of this thesis is: does the invocation of R2P by the P5 within the Security Council necessarily occupy opposite ends of the spectrum of choice for states, between a policy agenda requiring implementation and a normative call to action, as suggested by Alex Bellamy? In response, this thesis has argued that the invocation of R2P involves a rich and complex process of validation based on established and codified precepts of what is regarded as legitimate state action. Employing Bellamy’s assessment that invocation of R2P by states licences two disparate functions, a policy agenda to address risk factors or a normative call to action seeking to mitigate an imminent threat, it is the contention of this thesis that the international response elicited by references to R2P in Darfur and Libya was fluid, demonstrating consistency with both a policy agenda and a
normative call to action at different times during the conflict. In developing this response, this thesis engaged in a constructivist assessment of the relationship between the Security Council, the principle of R2P and international engagement with mass atrocities. The rationale for engaging in a constructivist examination of Security Council practice is its capacity to accommodate the multi-dimensional nature of international politics, particularly the politically and socially constituted environment within which state action takes place.³

Constructivism as it is employed throughout this thesis is defined as an approach within international politics concerned with explaining how social phenomena such as shared ideas, beliefs and values, distinctive languages, culture and ideology condition state behaviour.⁴ In a practical sense, constructivism is concerned with explaining the role of normative and ideational frameworks in setting the parameters for international engagement with mass atrocities, including what behaviour is regarded as legitimate and the possibilities with regard to identity and interests among states.⁵ With interpretation a key feature of constructivist epistemology, this approach opens up international institutions to assessment of their communicative dynamics,⁶ in terms of the interplay between how states interpret the behaviour of other states, the practice of rationalising and justifying their action and the response of other states to such reasoning.⁷ To this end, this thesis finds it is the constant interplay between sources of international law and practice, or established rules and norms, values and ideas within the Security Council that helps to yield a multi-dimensional picture of the organ, including its role in advancing R2P through successive adaptations.⁸ Within this framework, the question of human protection under the umbrella of R2P is not just one of legality, but to a larger extent, a question of legitimacy.

Methodologically, this thesis engaged in an interpretive assessment of situations where the principle of R2P featured in Security Council deliberations regarding

---

³ Reus-Smit, *Politics of international law*, p.14
⁵ Ibid.
⁷ Ibid., p.769.
prominent cases of mass atrocities. Representing two cases where references to the distinctive language of R2P were made following the commitment by states at the World Summit, the cases of Darfur and Libya demonstrate disparity in terms of levels of resistance or accommodation by the P5 towards elements of the R2P normative framework, the international response elicited by references to the principle and finally, what states conceive as a legitimate international response. Within this interpretive assessment, this thesis pursued two lines of enquiry. The first was concerned with how the distinctive language of R2P was employed by the P5 to justify their actions (or inaction). The second line of enquiry examined how and to what extent the P5 engaged with the continuum of R2P (to prevent, react and rebuild) in deliberations following a general commitment to the principle at the 2005 World Summit. Employing Bellamy’s assessment that invocation of R2P licenses disparate functions, a policy agenda versus a normative call to action, this thesis concurs with Bellamy on two key points, but diverges in its overall assessment of R2P.

First and foremost, this thesis concurs with Bellamy that R2P is about more than just an international reaction to mass atrocities. In contrast to its conceptual predecessor humanitarian intervention, R2P provides a comprehensive and constructive continuum of international engagement that seeks to not only protect populations, but also prevent further conflict by rebuilding communities. Furthermore, consistent with the documented desire of ICISS to shift the basic mindset underpinning international engagement with mass atrocities from a narrowly defined culture of reaction towards a more holistic culture of prevention, R2P encourages a broader focus that marries mitigating an imminent threat with addressing risk factors for mass atrocities. Recognising the link between a state’s capacity to discharge its sovereign responsibilities to protect populations and a human development agenda, from the cases of Darfur and Libya examined here it is evident that peacebuilding has become a key feature of international engagement with mass atrocities.

The second point of concurrence is that the invocation of R2P by states licenses two functions. As posited by Bellamy, when states invoke the discursive frame of R2P they make a choice regarding how they employ the principle. Taking this
assessment one step further, this thesis argues this choice also involves a preference regarding which elements of the principle states emphasise to rationalise their actions in response to the unique circumstances of each situation. Reflective of a broader debate about the relative value of R2P in terms of costs, benefits and opportunities to influence international engagement, the choice identified by Bellamy essentially represents a choice between making a difference versus escalating an issue as a catalyst for action. Invariably involving rationalising action in terms of prevention and reaction, the responses of the P5 are significant as they affect collective understanding of the role and impact of R2P upon international engagement with mass atrocities.

Supporting this finding, the cases of Darfur and Libya examined in this thesis demonstrate that the P5 consider preventive and reactive elements of R2P as distinct in nature. In turn, their choice as to which element of R2P they emphasise to rationalise action affects collective understanding towards the measures required for implementation and imperatives legitimising state action. Where prevention is emphasised action is likely to be based on an imperative for proactive international engagement to address risk factors underlying conflict so as to prevent a crisis occurring, rather than rely on responding to a crisis once it occurs. At a practical level this would involve providing assistance to build institutional capacities required to resolve societal differences without recourse to violence and persuade perpetrators (potential or real) that they are likely to pay high costs for the commission of mass atrocities. Where reaction is emphasised the resulting response is likely to be based on a moral imperative to halt and avert large scale suffering among civilian populations. In this case, highlighting the imminent threat posed by a rapidly deteriorating situation elevates the crisis on the international agenda as being above normal politics, and in doing so, provides a catalyst to generate sufficient political will to mobilise an operational deployment.

The point on which this thesis diverges from Bellamy is in its interpretive assessment of Security Council practice, specifically the practices of the P5 in responding to mass atrocities. It is the contention and contribution of this thesis that the international response elicited by references to R2P and the relationship between the two functions of the principle in cases such as Darfur and Libya, is far
more fluid than suggested by Bellamy. Rather than occupy opposite ends of the spectrum of choice for states, cases such as Darfur and Libya reflect a range of choices. Within this range, rationalisations of R2P as a policy agenda versus a normative call to action are not fixed and are often subject to variation by individual states, as they seek to recalibrate their position to meet shifting values, interests and expectations. Based on the observable variation in the use of preventive and reactive discursive signifiers by the P5, this thesis finds the international response elicited by references to R2P since 2005 demonstrates varying levels of consistency with both a policy agenda and a normative call to action at different times, rather than a sharp distinction. This has significant implications for both current and future instances of international engagement with mass atrocities.

The key contention of this thesis is that members of the P5 have collectively utilised R2P simultaneously as a normative call for action and policy agenda addressing risk factors. This was evident in Darfur where the P5 emphasised prevention as the most effective means to counter the crisis through its focus on addressing the root causes of conflict, but in June 2008 when confronted with a rapidly deteriorating humanitarian situation, also employed R2P as a normative call for urgent action. Collective utilisation of R2P by the P5 is also evident in Libya when peacebuilding measures were adopted unanimously by the P5 under resolution 2009 (16 September 2011) while the NATO-led Operation Unified Protector designed to halt human suffering and avert mass atrocities was still underway. The persistence and further development of R2P rests on the broad nature of this dual response to mass atrocities which embraces both prevention and reaction.

**Research significance**

Taken collectively, these findings confirm that both conceptually and in practice R2P is founded upon a dual commitment to prevention and reaction. This dual commitment is consistent with the “culture of protection” first articulated by ICISS as the basic mindset for international engagement with mass atrocities. In terms of

---

Security Council practice, this finding is significant for collective thinking on human protection under R2P in two ways. Firstly, with R2P founded upon a dual commitment to prevention and reaction, Security Council action is directed towards the risk of mass atrocities in a particular crisis rather than a defined threshold to trigger international engagement, such as the number of civilian deaths. In this regard, the inclusion of atrocity crimes in the 2005 Summit Outcome made an important contribution to sharpening the focus of R2P and played a significant role in the political evolution of IHL, as serious violations constitute an atrocity crime. Focussing upon the risk of atrocities rather than a threshold or specific criteria for engagement is an encouraging development because it means R2P is applicable to both the threat and not just the commission of mass atrocities. Enabling earlier engagement in a crisis, R2P has the dual effect of maximising the deterrence value of appearance on the Security Council’s agenda and in doing so, provides a greater opportunity to prevent mass atrocities before they occur. In this regard the Security Council may compel a state to meet its sovereign responsibilities through pressure associated with international condemnation and the threat of further measures, such as sanctions. The Security Council can also provide direct assistance to a state to increase its institutional capacity to protect civilian populations. More than likely, as demonstrated in Darfur and Libya, international engagement in a crisis will involve a combination of both.

Secondly, this focus upon both prevention and reaction recognises that R2P is founded upon a positive obligation to assist with developing political, economic and societal capacity so as to avoid future atrocities. Within this framework, increasing linkages between the legitimacy of peace operations to civilian protection has had a twofold effect upon Security Council engagement with mass atrocities. As demonstrated in the cases of Darfur and Libya, linking the legitimacy of peace operations to civilian protection has resulted in wider recognition that the P5 cannot ignore the responsibilities of protection set under IHL, IHRL and the principle of R2P, if they are to avert further atrocities. At the same time, greater recognition of the link between a state’s capacity to discharge its sovereign responsibilities to protect populations and a human development agenda has resulted in peacebuilding becoming a key feature of Security Council engagement with mass atrocities. With legitimacy of peace operations and the Security Council itself firmly linked to its
role in civilian protection, it becomes clear that contemporary responses under the umbrella of R2P inherently involve a simultaneous commitment to prevention and reaction.

Based on this assessment, it is the manner in which deliberations within the Security Council on Darfur and Libya distinguished collective thinking on R2P from earlier adaptations by recognising the mutually reinforcing relationship between longer-term preventive measures seeking to address risk factors underlying a conflict and the shorter-term need for a timely and decisive response to halt human suffering. The problem with this assessment is that according to Bellamy, states cannot sustain a political commitment to prevention and its associated policy agenda to address risk factors and employ R2P as a normative call to action to address an imminent threat. In direct contrast with Bellamy, Security Council deliberations on Darfur and Libya examined in this thesis demonstrate that states do not just claim to focus upon both prevention and reaction at different times during the crisis, but in practice do both, as the social process of legitimation that accompanies invocation of R2P to constitute or constrain international engagement with mass atrocities enables them to do so. This process of legitimation is significant as it confirms the dynamic, complex and challenging reality of international engagement with mass atrocities, which by virtue of its very nature demands both functions of R2P identified by Bellamy.

**Counter arguments**

Critics may argue there are limitations in the research presented here because of its reliance on public meeting records to examine state practice. Such criticism is most likely to be based on the assessment that invocation of R2P by the P5 is not representative of a genuine commitment to the principle or reflective of a proper debate over its application to a specific situation, but in contrast represents carefully crafted rhetoric full of ‘posturing and pretence’. Drawing on the fact that Security Council deliberations are part of a broader international discourse around human protection and through verbatim meeting records form part of the official narrative

and public record of the UN, this line of criticism may suggest that the P5 frame the
normative claims within their statements with the intent of influencing the discourse
around human protection and accumulation of precedent through state practice ‘in
ways compatible with their interests and values’. 11 Put simply, in asserting the
exceptional or unique circumstances of a case, the P5 may attempt to constrain the
setting of precedent from which general norms or principles can be derived and
applied to future cases. 12 From a similar perspective, abstention from voting, while
avoiding any compromise to international engagement through use of the veto, may
be seen as an attempt to dilute the possibility of more robust measures while
seemingly supporting the prevailing will of the Council.

In response to such criticism, it is the contention of this thesis that verbatim meeting
records do provide an insight into the normative reasoning employed by states in
their interpretation of the legal, political and ethical dimensions of large scale
human suffering. Furthermore, the case studies of state practice that appear in this
thesis provide strong evidence that the P5 refer to both ‘analogy and precedent’ as
they engage in normative reasoning. 13 This assessment is based on the evidentiary
value of meeting records for charting the normative contribution of R2P, in terms of
silencing opposition and facilitating conformance with collective values, purpose
and interests. Regardless of whether invocation of R2P by states is driven by self-
interest or more altruistic motives, what meeting records evidence is that R2P is
inherently about both prevention and reaction.

Acknowledging international engagement in Darfur was guided by a mix of values
and interests, meeting records confirm that while the US was adamantly opposed to
the jurisdiction of the ICC, and China and Russia held strong concerns regarding the
challenge posed by R2P to state sovereignty, each agreed to action which appeared
to conflict with their declared interests and existing policies. Interestingly, over the
course of 171 meetings on Darfur between 2003 and 2013 (see Appendix A), China
demonstrated the greatest frequency in the use of discursive signifiers emphasising
prevention or reaction (twenty-eight), followed closely by the UK (twenty), then

11 Ibid.
12 Ibid., p.264.
13 Ibid., p.267.
Russia and France (nineteen) and the US (seventeen). In the case of prevention, China frequently cited the need to address the root causes of conflict,\textsuperscript{14} France emphasised the need for a comprehensive approach linking peacekeeping to peacebuilding\textsuperscript{15} and Russia stated the need to harmonise justice with peacebuilding in order to prevent further violence.\textsuperscript{16} With regard to reaction, the US regularly referenced a more immediate need to “do something”,\textsuperscript{17} while Russia called for urgent action to halt human suffering and the UK highlighted a moral imperative for the Security Council to take action.\textsuperscript{18} In sum, while early deliberations evidence a greater focus upon reaction, from 2006 onwards deliberations increasingly focused upon the mutually reinforcing relationship between prevention and reaction through an emphasis upon the need to supplement peacekeeping with rehabilitation, reconstruction and economic and social development so as to ‘uproot the sources of conflict’.\textsuperscript{19}

In the case of Libya, over the course of forty eight meetings between 2011 and 2013 (see Appendix B), China demonstrated the greatest frequency in use of discursive signifiers emphasising prevention or reaction (ten), followed closely by Russia (nine), the UK (eight), then France and the US (seven). With respect to reaction following the outbreak of violence in February 2011, the US, UK and China all called for urgent and decisive action to protect civilian populations while France made an explicit reference to R2P in terms of the Security Council intervening where states fail to meet their sovereign responsibilities for civilian protection.\textsuperscript{20} A few weeks into the crisis, invocation of R2P by the US, UK and France to rationalise measures that appeared to link international action with forced regime change, fuelled contestation towards the legitimacy of R2P and the Security Council itself. China directed its concern towards the challenged posed by regional socio-economic impacts arising from the NATO-led operation to the authority and

\textsuperscript{14} See (10 December 2005) S/PV.5331.
\textsuperscript{15} See (23 January 2009) S/PV.6075.
\textsuperscript{16} See (13 December 2012) S/PV.6887.
\textsuperscript{17} See (25 September 2007) S/PV.5749.
\textsuperscript{19} Statement by the Permanent Representative for France (31 July 2007) S/PV.5727.
\textsuperscript{20} See (26 February 2011) S/PV.6491.
legitimacy of the Security Council, while Russia emphasised the responsibility of intervening forces to avoid civilian harm.\textsuperscript{21}

With respect to prevention, P5 statements also evidence direct referrals to international responsibility for political transition and post-conflict reconstruction. In particular, China suggested the Security Council should play a lead role in reconstruction, Russia emphasised the need to support transition,\textsuperscript{22} the US advocated assistance for reform in the justice sector, re-establishing the rule of law, advancing human rights and promoting international law and the UK highlighted the importance of addressing the root causes of the conflict.\textsuperscript{23} The most salient evidence of the mutually reinforcing relationship between prevention and reaction was the discussions that accompanied adoption of resolution 2009 (16 September 2011), which cited Libya as a precedent for future application of R2P by the Security Council in terms of post-conflict challenges,\textsuperscript{24} primarily serious large scale security and humanitarian issues that need to be addressed in order to prevent further atrocities.

**The consequences of prevention and reaction**

Taken collectively, the cases of Darfur and Libya examined here provide compelling evidence that R2P is inherently both prevention and reaction. More importantly, Darfur and Libya provide evidence of both the mutually reinforcing relationship and tension that exists between prevention and reaction. Representing two cases where references to the distinctive language of R2P were made following the commitment by states at the 2005 World Summit, Darfur and Libya demonstrate disparity in terms of levels of resistance or accommodation by the P5 towards elements of the R2P normative framework, the international response elicited by references to the principle and finally, what states conceive as a legitimate international response. Within this framework, an emphasis by states upon prevention, including its associated policy agenda to address risk factors, does not

\textsuperscript{22} See (16 September 2011) S/PV.6620.
\textsuperscript{23} See (7 November 2012) S/PV.6855.
\textsuperscript{24} See (16 September 2011) S/PV.6620.
dismiss an emphasis upon reaction and its associated normative call for action to mitigate an imminent threat, but rather refines international engagement with mass atrocities into a more nuanced and comprehensive approach to human protection. Central to this approach is increased recognition of the link between a state’s capacity to discharge its sovereign responsibilities and a human development agenda.

Applied to the current uprising in Syria against the leadership of President Bashar al-Assad, which began modestly in March 2011 but escalated into entrenched armed conflict in 2012 following a crackdown by security forces on anti-government protestors, first impressions suggest state experience in Darfur and more recently in Libya, significantly constrained subsequent engagement in Syria. Based on allegations of subjective interpretation of resolution 1973 by Western members of the P5 in Libya and the buyers regret that transpired among supporters of the resolution including China and Russia, fears regarding the legitimacy of Security Council action have reignited concerns traditionally reserved for R2P’s conceptual predecessor humanitarian intervention. Prominent among these concerns is an implied relationship between R2P and forcible regime change. For Russia and China these concerns challenge prevailing understandings of state identity and interest, including the ideological basis for international engagement with mass atrocities under the umbrella of R2P. This has led to the use of the veto three times to block proposed action by the Security Council to address the humanitarian crisis in Syria. Citing concerns towards the adoption of the ‘Unified Protector model’ in Syria, in which a desire for regime change provides the basis for international engagement with the crisis, in October 2011, February 2012 and again in July 2012, Russia and China vetoed draft resolutions proposing various measures to address the crisis.

Drawing on the collective experience of hesitancy and reluctance in Darfur, concerns regarding measures adopted in Libya and paralysis in reaching agreement

---

26 Statement by the Permanent Representative of the Russian Federation (4 October 2011) S/PV.6627 and (17 July 201) S/PV.6711.
on how to respond to Syria, critics argue these developments cement the demise of R2P. In contrast, this thesis finds that while the actions of France, the UK and US in Libya and the use of the veto by China and Russia in Syria may have reignited contestation around R2P, it is important to note that concerns generally relate to how the Security Council responds and R2P is operationalised, rather than the principle itself. Seeking to mediate the tension between prevention and reaction or international demands and local needs, the question for the Security Council when confronted with future mass atrocities is not whether the international community needs to act, to rebuild communities torn apart by conflict or what institutions and characteristics need to be reconstructed, but rather how to do so in order to avoid recreating the conditions, tensions and unsustainable structures that contributed to large scale violence.  

It is evident from the cases of Darfur and Libya examined here that R2P is constantly subject to variations in emphasis by states as they seek to recalibrate their response to meet shifting needs, prevailing values, expectations, or mediate tensions between individual elements of R2P. As such, the legitimacy of the Security Council in future engagement with mass atrocities has become dependent upon its ability to consider and incorporate changing social contexts associated with IHRL and IHL and increasingly complex and multi-dimensional security problems, into its deliberations. Put simply, this means that in order for Security Council action to be deemed legitimate, it needs to demonstrate its transformative capacity to respond to contemporary insecurity challenges, which largely involve mass atrocities. Looking at the cases of Darfur and Libya examined here as contemporary examples, this demand for transformative capacity translates into the need to incorporate both preventive and reactive elements into international responses. Within the Council, the social process of legitimation is important here because it implies a ‘measure of social consensus’ has been reached following deliberation with relevant agents, as basis for transformation. Legitimacy as it is employed here is two dimensional. Firstly, it is understood in the substantive sense

---

to locate shifts in the way ideas and beliefs towards what is regarded as legitimate action is conceived and employed by states to contest, rationalise or reinforce established rules and practices. Secondly, legitimacy is understood to contain a procedural element in that shifts in collective understanding may influence institutional processes and organisational outcomes, such resolutions, member voting or even the ‘general orientation’ of an organisation.\(^{31}\)

Since its first articulation by ICISS, successive adaptations of R2P by the Security Council demonstrate a material improvement in collective thinking towards human protection. In its most recent and significant form, collective thinking marries prevention with reaction to recognise that human protection under the umbrella of R2P is inherently both. With R2P founded on a commitment to both prevention and reaction, the legitimacy of the Security Council is dependent upon its capacity and willingness to engage in measures consistent with both functions elicited by references to R2P, in order to achieve international security within a context influenced by complex cases of human suffering. Given that invocation of R2P by the P5 in Darfur and Libya demonstrates consistency with the two functions of R2P identified by Bellamy, a policy agenda to address risk factors and a normative call to action to mitigate an imminent threat, it is evident that the capacity to engage in both is not only a core component of international engagement with mass atrocities, but significantly enhances the effectiveness of international action to respond to the multi-dimensional challenges that characterise large scale human suffering.

---

\(^{31}\) Kratochwil & Ruggie, *A state of art*, p.756.


____ *The AU intensifies its efforts towards a political solution in Libya and stresses the importance of the respect of the letter and spirit of resolution 1973 (2011)*, press release, Addis Ababa, 3 May 2011.


____ *Press statement of the 268th meeting of the Peace and Security Council (23 March 2011) PSC/PR/BR.1 (CCLXVIII)*.


Annan, KA Secretary-General defends, clarifies ‘responsibility to protect’ at Berlin event on responsible sovereignty: international cooperation for a changed world (15 July 2008), SG/SM/11701.


Asia-Pacific Centre for the Responsibility to Protect, Implementing the responsibility to protect: Asia-Pacific and the General Assembly dialogue, St Lucia, October 2009.


__Global politics and the responsibility to protect: from words to deeds, Routledge, Oxon, 2011.


Bull, C No entry without strategy: building the rule of law under UN transitional administration, United Nations University Press, Tokyo, 2008.


Byers, M War law: understanding international law and armed conflict, Grove, New York, 2005.

Care International, Has peacebuilding made a difference in Kosovo?, Priştina, Kosovo, July 2006.


Chomsky, N, Statement by Professor Noam Chomsky to the United Nations General Assembly thematic dialogue on the responsibility to protect (23 July 2009), New York.


Department of Public Information, Responsibility to protect faces urgent test “here and now” (5 September 2012) SG/SM/14490.
Taking up annual report of Peacebuilding Commission, Security Council members call for enhanced cooperation between the two bodies (25 November 2009) SC/9797.

Delegates weigh legal merits of responsibility to protect concept as General Assembly concludes debate, Media release (28 July 2009), GA/10850.


‘Libya and the state of intervention’, R2P Ideas in Brief, Asia Pacific Centre for the Responsibility to Protect, vol. 1, no. 1, 2011.


Evans, G *The responsibility to protect after Libya and Syria*, Address to Annual Castan Centre for Human Rights Law Conference, Melbourne, 20 July 2012.

_____ ‘The responsibility to protect: an idea whose time has come...and gone?’, *International Relations*, vol. 22, no. 3, 2008, pp.283-298.

_____ *The responsibility to protect: ending mass atrocity crimes once and for all*, Brookings, Washington, DC, 2008.


_____The relationship between the responsibility to protect and the protection of civilians in armed conflict, Policy brief, New York, January 2009.

_____Meeting summary, uniting to support the responsibility to protect: preserving the spirit of the 2005 agreement (25 September 2008), GCRP, New York.

Goetze C & D Guzina ‘Peacebuilding, statebuilding, nationbuilding: turtles all the way down?’, *Civil Wars*, vol. 10, no. 4, 2008, pp.319-347.


Hamann, EP *The protection of civilians in armed conflict and Brazil’s “responsibility while protecting”*, Norewegian Peacebuilding Resource Centre, October 2012.


Hunt, CT & AJ Bellamy, Mainstreaming the responsibility to protect in peace operations, Working paper No. 3, Program on the Protection of Civilians, Asia-Pacific Centre for the Responsibility to Protect, University of Queensland, St Lucia, March 2010.


Popular protest in North Africa and the Middle East: making sense of Libya, Middle East/North Africa report no. 107, Cairo/Brussels, 6 June 2011.


Jacoby, T ‘Hegemony, modernisation and post-war reconstruction’, *Global Society*, vol. 21, no. 4, 2007, pp.521-537.


____ Implementing the responsibility to protect at the United Nations, Presentation to Asia-Pacific Centre for the Responsibility to Protect (3 August 2009), University of Queensland, retrieved 2 October 2009 <http://www.r2pasiapacific.org/index.php?option=com_content&task=view&id=1138&Itemid=81>.

____ Remarks to the General Assembly on the responsibility to protect (23 July 2009), New York.


Mayersen, D The responsibility to prevent: opportunities, challenges and strategies for operationalisation, Asia-Pacific Centre for the Responsibility to Protect, University of Queensland, St Lucia, May 2010.


President General Assembly, *Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity* (20 July 2009).


Stewart F & G Brown Fragile states, Centre for Research on Inequality, Human Security and Ethnicity (CRISE), Working paper No. 51, Oxford University, January 2009.


Strauss, E The emperor’s new clothes? the United Nations and the implementation of the responsibility to protect, Nomos, Munich, 2009.


General Assembly, After much wrangling, General Assembly seats National Transitional Council of Libya as country’s representative for sixty-sixth session (16 September 2011) GA/11137.


Security Council, Taking up annual report of Peacebuilding Commission, Security Council members call for enhanced cooperation between the two bodies, (25 November 2009), SC/9797.

General Assembly, Delegates weigh legal merits of responsibility to protect concept as General Assembly concludes debate, Media release (28 July 2009), GA/10850.

Statement by U Kyaw Zwar Minn, Deputy Permanent Representative on agenda item 44 and 107 “follow-up to the outcome of the millennium summit: report of the Secretary-General” (23 July 2009), New York.

Implementing the responsibility to protect, Report of the Secretary-General (12 January 2009), A/63/677.


Secretary-General defends, clarifies ‘responsibility to protect’ at Berlin event on responsible sovereignty: international cooperation for a changed world (15 July 2008) SG/SM/11701.


2005 Summit Outcome, (24 October 2005), A/RES/60/1.


No exit without strategy, Report of the Secretary-General (20 April 2001), S/2001/394.

Statement by the President of the Security Council (20 February 2001), S/PRST/2001/5.

____ Annual report of the Secretary-General on the work of the organisation (22 August 1995) A/50/1.


Williamson RW Sudan and the implications for responsibility to protect, Policy analysis brief, Stanley Foundation, Iowa, October 2009.

### Appendix A: Security Council Deliberations—Darfur

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
<th>Agenda</th>
<th>Press release</th>
<th>Action</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/PV 4879</td>
<td>10 October</td>
<td>Sudan</td>
<td>SC/7893</td>
<td>S/PRST-2003/16</td>
<td>Welcome agreement between GOS and SPLM-A secured at Naivasha (Kenya). Request Secretary-General examine how the UN could support implementation of a comprehensive peace agreement.</td>
</tr>
<tr>
<td>S/PV 4978</td>
<td>9 December</td>
<td>Protection of civilians in armed conflict</td>
<td>SC/7947</td>
<td>No action</td>
<td>Briefing by Jan Egeland, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator indicating serious concern towards displacement of 600,000 Darfurians.</td>
</tr>
<tr>
<td>S/PV 5015 Corr. 1</td>
<td>25 May</td>
<td>Situation in Darfur</td>
<td>SC/8104</td>
<td>S/PRST-2004/18</td>
<td>Call for international community to respond rapidly and effectively and on all parties to comply with resolution 1592 (2003) to allow full unimpeded access to vulnerable populations.</td>
</tr>
<tr>
<td>S/PV 5071</td>
<td>30 July</td>
<td>Situation in Darfur</td>
<td>SC/8160</td>
<td>S/RES/1556 (2004)</td>
<td>Draft resolution (S/2004/311) submitted by Chile, France, Germany, Romania, Spain, UK, US. Demand GOS fulfil its responsibilities to disarm Janjaweed militias, apprehend those who have incited or carried out IHRL and IHL violations and expresses intention to consider further measures under Article 2 in the event of non-compliance.</td>
</tr>
<tr>
<td>S/PV 5077</td>
<td>2 September</td>
<td>Progress of GOS towards meeting resolution 1556</td>
<td>SC/8180</td>
<td>No action</td>
<td>Responsibility of GOS to protect population and if unable to do so to seek, request and accept international assistance.</td>
</tr>
<tr>
<td>S/PV 5093</td>
<td>5 October</td>
<td>Progress of GOS towards meeting resolution 1556</td>
<td>SC/8606</td>
<td>No action</td>
<td>Briefing by AU on observer mission, Abuja peace negotiations, relationship to conflict in South Sudan and link between peace, security and development.</td>
</tr>
<tr>
<td>S/PV 5094</td>
<td>4 November</td>
<td>Report of Secretary-General</td>
<td>SC/8236</td>
<td>No action</td>
<td>Need for a three-pronged approach to facilitate deployment of third party AU force, speed up negotiations and end impunity through accountability of Darfur leadership.</td>
</tr>
<tr>
<td>S/PV 5095</td>
<td>18 November</td>
<td>Report of Secretary-General</td>
<td>SC/8247</td>
<td>No action</td>
<td>Responsibility of international community through Security Council, when states unable or unwilling to protect populations.</td>
</tr>
<tr>
<td>S/PV 5096</td>
<td>18 November</td>
<td>Closed meeting</td>
<td>SC/8249</td>
<td>No action</td>
<td>Exchange of views with Lazarus Sambunya, Special Envoy IGAD, Aminu Wali, AU, and Dr John Garang, Chairman of SLM-AW.</td>
</tr>
<tr>
<td>S/PV 5098</td>
<td>7 December</td>
<td>Situation in Darfur following signing of Humanitarian and Security Protocols, Abuja</td>
<td>SC/8262</td>
<td>No action</td>
<td>AMIS deployment reporting shortage of communications equipment, ground transport, fixed-wing aircraft, aviation fuel and medical capabilities.</td>
</tr>
<tr>
<td>S/PV 5109</td>
<td>11 January</td>
<td>Security and humanitarian situation in Darfur</td>
<td>SC/8290</td>
<td>No action</td>
<td>Need to de-link talks on political future from humanitarian and security. Abuja talks should focus on political configuration of Darfur including sharing of power and wealth. AU Ceasefire Commission should focus on the humanitarian and security situation.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>-------------</td>
<td>---------------</td>
<td>---------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.5119</td>
<td>4 February</td>
<td>Report of Secretary-General</td>
<td>SC/8305</td>
<td>No action</td>
<td>Require support operation that is catalytic and not turn-key. Recommendation Security Council act under Chapter VI to authorise a multidimensional peace operation mandated to assist parties with security, governance, humanitarian assistance and development.</td>
</tr>
<tr>
<td>S/PV.5120</td>
<td>8 February</td>
<td>Report of ICID</td>
<td>SC/8306</td>
<td>No action</td>
<td>ICID finding of mass violations of human rights no less serious than genocide, but not genocide.</td>
</tr>
<tr>
<td>S/PV.5125</td>
<td>16 February</td>
<td>Report of ICID</td>
<td>SC/8313</td>
<td>No action</td>
<td>GOS and Impoverished responsible for large scale atrocity, including war crimes and crimes against humanity, supported by a policy of impunity. Credible evidence that rebel forces also responsible for serious violations, including war crimes.</td>
</tr>
<tr>
<td>S/PV.5151</td>
<td>24 March</td>
<td>Sudan</td>
<td>SC/8343</td>
<td>S/RES/1590 (2005) Vote: 15-0-0</td>
<td>Draft resolution (S/2005/198). Establishes UNMIS to support implementation of the CPA, protect civilians by force if necessary and encourage the GOS, SLM/A and JEM to rapidly resume the Abuja peace process.</td>
</tr>
<tr>
<td>S/PV.5153</td>
<td>29 March</td>
<td>Sudan</td>
<td>SC/8346</td>
<td>S/RES/1591 (2005) Vote: 12-0-3 (China, Russia, Algeria)</td>
<td>Draft resolution (S/2005/206) submitted by the US. Establishes a sanctions committee to monitor implementation of measures to freeze assets and economic resources of those suspected of violations of HR, IHL, other atrocities and offensive military flights over Darfur.</td>
</tr>
<tr>
<td>S/PV.5154</td>
<td>30 March</td>
<td>Report of Secretary-General</td>
<td>No action</td>
<td>Delay consideration of report until 31 March 2005 at request of France.</td>
<td></td>
</tr>
<tr>
<td>S/PV.5176</td>
<td>12 May</td>
<td>Report of Secretary-General</td>
<td>SC/8383</td>
<td>No action</td>
<td>AMIS deployment 2,409 military and 244 police. AU Peace and Security Council to strengthen deployment to 8,171 military and 1,560 police within six months.</td>
</tr>
<tr>
<td>S/PV.5177</td>
<td>12 May</td>
<td>Sudan</td>
<td>SC/8383</td>
<td>S/PRST/2005-9</td>
<td>Welcome leadership role of AU in AMIS. Commit to consult on scope and nature of possible support for strengthening of AMIS.</td>
</tr>
<tr>
<td>S/PV.5216</td>
<td>29 June</td>
<td>Report of Secretary-General</td>
<td>SC/8429</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC on volume of credible evidence disclosing commission of grave crimes in Darfur.</td>
</tr>
<tr>
<td>S/PV.5217</td>
<td>29 June</td>
<td>Close meeting</td>
<td>Communiqué</td>
<td>Exchange of views with Luis Moreno-Ocampo, Prosecutor, ICC.</td>
<td></td>
</tr>
<tr>
<td>S/PV.5331</td>
<td>22 July</td>
<td>Sudan</td>
<td>SC/8456</td>
<td>No action</td>
<td>One year since first resolution. Key developments include constitution of Government of National Unity comprising al-Bashir (GOS), Gerog (SPLM/A) and Talib (NCP), lifting of censorship by government and state of emergency (with exception of Darfur).</td>
</tr>
<tr>
<td>S/PV.5277</td>
<td>13 October</td>
<td>Sudan</td>
<td>SC/8521</td>
<td>S/PRST/2005-48</td>
<td>Condemn October attack by SLM/A and JEM on AMIS personnel in Darfur. Concern over no visible effort by GOS to disarm and hold militias accountable.</td>
</tr>
<tr>
<td>S/PV.5321</td>
<td>13 December</td>
<td>Report of Secretary-General</td>
<td>SC/8578</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC on ongoing ICC investigation.</td>
</tr>
<tr>
<td>S/PV.5331</td>
<td>19 December</td>
<td>Africa</td>
<td>SC/8589</td>
<td>No action</td>
<td>Briefing by Jan Egeland, Under-Secretary-General Humanitarian Affairs and Emergency Relief Coordinator. Spillover of conflict fuelling tensions with host communities and attacks on civilians crossing borders from Sudan. Call for Security Council to show a sense of urgency, rebuilding security and humanitarian efforts through increased resourcing (personnel).</td>
</tr>
<tr>
<td>S/PV.5344</td>
<td>13 January</td>
<td>Report of Secretary-General</td>
<td>SC/8607</td>
<td>No action</td>
<td>International support should have a broad mandate, be an integral element of a unified approach encompassing humanitarian, political, police, legal, human rights, reconstruction and economic development instruments.</td>
</tr>
<tr>
<td>S/PV.5345</td>
<td>13 January</td>
<td>Close meeting</td>
<td>Communiqué</td>
<td>Exchange of views with Jan Pronk, SRSG Sudan and Salim A Salim, Special Envoy, AU Inter-Sudanese Peace Talks on Darfur.</td>
<td></td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td>--------</td>
<td>--------------</td>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>S/PV.5364</td>
<td>3 February</td>
<td>Report of Secretary-General</td>
<td>SC/8628</td>
<td>S/PRST-2006/5</td>
<td>Welcome AU Peace and Security Council communiqué (12 January 2006) expressing support for transition of AMIS to UN operation, request AU initiate consultations with UN and other stakeholders.</td>
</tr>
<tr>
<td>S/PV.5392</td>
<td>21 March</td>
<td>Report of Secretary-General</td>
<td>SC/8668</td>
<td>No action</td>
<td>Evidence in Darfur of confusion about UN, including Charter, principles and objectives of Security Council. Fear of an Iraq scenario playing out.</td>
</tr>
<tr>
<td>S/PV.5409</td>
<td>11 April</td>
<td>Report of Secretary-General</td>
<td>SC/8688</td>
<td>S/PRST/2006/16</td>
<td>Transition from AMIS to UN operation not a challenge to sovereignty, unity, independence and territorial integrity of Sudan. Explanation being sought from Government of National Unity for decision not to renew mandate of Norwegian Refugee Council and denial of entry for UN Emergency Relief Coordinator.</td>
</tr>
<tr>
<td>S/PV.5413</td>
<td>18 April</td>
<td>Report of Secretary-General</td>
<td>SC/8694</td>
<td>No action</td>
<td>Continued distrust and mutual suspicion among parties in peace process. Outstanding issues include assistance for IDPs and refugees, formula for transfers from national government to states, seed money for reconstruction and development fund and compensation for victims of conflict.</td>
</tr>
<tr>
<td>S/PV.5414</td>
<td>18 April</td>
<td>Closed meeting</td>
<td></td>
<td>Communiqué</td>
<td>Exchange of views with Salim A Salim, Special Envoy, AU Inter-Sudanese Peace Talks on Darfur.</td>
</tr>
<tr>
<td>S/PV.5428</td>
<td>25 April</td>
<td>Chad-Sudan</td>
<td>SC/8702</td>
<td>S/PRST-2006/19</td>
<td>Concern towards spill-over of Darfur conflict, border tensions and refugees with Chad and Sudan.</td>
</tr>
<tr>
<td>S/PV.5434</td>
<td>9 May</td>
<td>Report of Secretary-General</td>
<td>SC/8715</td>
<td>S/PRST-2006/21</td>
<td>Meeting called by U.S. Sealing broader support for AMIS and transformation into UN operation. Ready to support wider reconstruction to facilitate return of Darfurians, but require funding to address threat of hunger, malnutrition and disease.</td>
</tr>
<tr>
<td>S/PV.5439</td>
<td>16 May</td>
<td>Report of Secretary-General</td>
<td>SC/8721</td>
<td>S/RES/1679 (2006)</td>
<td>Vote: 13-0-0</td>
</tr>
<tr>
<td>S/PV.5441</td>
<td>19 May</td>
<td>Chad-Sudan</td>
<td>SC/8724</td>
<td>No action</td>
<td>Briefing by Jan Egeland, Under-Secretary-General Humanitarian Affairs, Emergency Relief Coordinator on visit to Chad and Sudan 6-11 May 2006.</td>
</tr>
<tr>
<td>S/PV.5459</td>
<td>14 June</td>
<td>Report of Secretary-General</td>
<td>SC/8748</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Gravity of crimes central to case selection. Anticipate investigation and prosecution of a sequence of cases rather than case dealing with Darfur.</td>
</tr>
<tr>
<td>S/PV.5460</td>
<td>14 June</td>
<td>Closed meeting</td>
<td></td>
<td>Communiqué</td>
<td>Exchange of views with Luis Moreno-Ocampo, Prosecutor, ICC.</td>
</tr>
<tr>
<td>S/PV.5462</td>
<td>15 June</td>
<td>Security Council mission to Sudan, Chad and AU Headquarters (Addis Ababa)</td>
<td>SC/8750</td>
<td>No action</td>
<td>Purpose of visit to persuade GOS a UN operation is best option for Darfur and address concerns over Chapter VII basis of resolution 1679 (2006). Negative perceptions among civilians towards intentions of Security Council, demonstrations held in camps across Darfur.</td>
</tr>
<tr>
<td>S/PV.5517</td>
<td>28 August</td>
<td>Closed meeting</td>
<td></td>
<td>Communiqué</td>
<td>Exchange of views with Jan Egeland, Under-Secretary-General Humanitarian Affairs, Hédi Annabi, Assistant-Secretary-General Peacekeeping Operations, AU, LAS and OIC.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
<td>------------------------------------------------------------------------</td>
<td>---------------</td>
<td>--------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.5549</td>
<td>14 December</td>
<td>Report of Secretary-General</td>
<td>SC-9001</td>
<td>No action</td>
<td>Deep concern regarding continuing instability along borders with Sudan, Chad and Central African Republic.</td>
</tr>
<tr>
<td>S/PV.5550</td>
<td>14 December</td>
<td>Cloud meeting</td>
<td>Communiqué</td>
<td>No action</td>
<td>Draft resolution (S/2007/240). Extends mandate of UNMIS until October 2007 and calls upon all parties to the CPA and DPA to implement all aspects of these agreements without delay.</td>
</tr>
<tr>
<td>S/PV.5557</td>
<td>7 June</td>
<td>Report of Secretary-General</td>
<td>SC-9036</td>
<td>No action</td>
<td>Reaffirmed need to expand narrow focus on peacekeeping to include conflict prevention and DDR. Progress of GOS on cooperation is the result of Security Council maintaining pressure.</td>
</tr>
<tr>
<td>S/PV.5558</td>
<td>6 June</td>
<td>Closed meeting</td>
<td>Communiqué</td>
<td>No action</td>
<td>Deep concern regarding continuing instability along borders with Sudan, Chad and Central African Republic.</td>
</tr>
<tr>
<td>S/PV.5560</td>
<td>23 June</td>
<td>Security Council mission to Africa</td>
<td>SC-9061</td>
<td>No action</td>
<td>Draft resolution prepared by UK mandating hybrid operation in Darfur, outlining political process and humanitarian tracks for international support.</td>
</tr>
<tr>
<td>S/PV.5565</td>
<td>16 July</td>
<td>Security Council mission to Addis Ababa and Khartoum</td>
<td>SC-9079</td>
<td>No action</td>
<td>Draft resolution (S/2007/488). Establishes AU-UN Hybrid Operation in Darfur (UNMID) to take necessary action to protect personnel, facilities and equipment and humanitarian workers, support implementation of the DPA and protect civilians.</td>
</tr>
<tr>
<td>S/PV.5573</td>
<td>28 August</td>
<td>Peace and security—Africa</td>
<td>SC-9105</td>
<td>S/PRST/2007/31</td>
<td>Darfur reminder of how much needs to be done before the international community completes transformation from a culture of reaction to one of effective prevention.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release Code</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
<td>---------------------------------------------</td>
<td>--------------------</td>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV. 5749</td>
<td>25 September</td>
<td>Peace and security—Africa</td>
<td>SC/9129</td>
<td>No action</td>
<td>Hybrid operation in Darfur expression of collective commitment to end crisis.</td>
</tr>
<tr>
<td>S/PV. 5752</td>
<td>2 October</td>
<td>Report of Secretary-General</td>
<td>SC/9135</td>
<td>S/PRST/2007/35</td>
<td>Extends mandate of Panel of Experts until October 2008 and requests it coordinate its activities with AMIS and UNAMID.</td>
</tr>
<tr>
<td>S/PV. 5768</td>
<td>24 October</td>
<td>Report of Secretary-General</td>
<td>SC/9156</td>
<td>S/PRST/2007/41</td>
<td>Urgent need for inclusive and sustainable political settlement in Darfur. Calls on Security Council to make available aviation and ground transport units required to facilitate UNAMID deployment.</td>
</tr>
<tr>
<td>S/PV. 5776 Res. 1</td>
<td>6 November</td>
<td>Role of regional organizations and sub-regional organisations in maintenance of international peace and security</td>
<td>SC/9163</td>
<td>No action</td>
<td>Five weeks before transfer of authority from AMIS to UN operation short on critical military capabilities including transport units (medium, heavy), aviation utility (twin-hub helicopters) and tactical (six helicopters). If gap between pledge and commitment is not resolved will have to return to Security Council for ground forces despite preference for aerial capability.</td>
</tr>
<tr>
<td>S/PV. 5789</td>
<td>5 December</td>
<td>Report of Secretary-General</td>
<td>SC/9188</td>
<td>No action</td>
<td>June 2007 Ahmad Harun accompanied President Bashir to Darfur as Minister of State for Humanitarian Affairs. September 2007 released by GOS following investigation for lack of evidence and appointed to committee on human rights violations. November 2007 government website announces Harun appointed to UNAMID monitoring group with responsibility for oversight of deployment.</td>
</tr>
<tr>
<td>S/PV. 5792</td>
<td>6 December</td>
<td>Sudan</td>
<td>SC/9189</td>
<td>No action</td>
<td>GOS restricting access to Addis and Jebel Marra as well as IDP camps near Nyala (South Darfur). Highjacking of humanitarian vehicles totals 128, with 118 hostages and twelve deaths.</td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV. 5817</td>
<td>9 January</td>
<td>Report of Secretary-General on deployment of the AU-UN hybrid operation</td>
<td>SC/9222</td>
<td>No action</td>
<td>Ongoing impediments to transfer of authority from AMIS to UNAMID under resolution 1769 (2007).</td>
</tr>
<tr>
<td>S/PV. 5832</td>
<td>8 February</td>
<td>Report of Secretary-General</td>
<td>SC/9243</td>
<td>No action</td>
<td>Challenge of managing gap between expectations of Darfurans and international efforts. If UNAMID fails to meet expectations could undermine confidence-building efforts. International community needs to accept this and adopt a more active role in post-conflict recovery.</td>
</tr>
<tr>
<td>S/PV. 5840</td>
<td>19 February</td>
<td>Report of Secretary-General</td>
<td>SC/9256</td>
<td>No action</td>
<td>National census in Darfur a continuing challenge, especially political ramifications of an incomplete census.</td>
</tr>
<tr>
<td>S/PV. 5849</td>
<td>11 March</td>
<td>Report of Secretary-General on deployment of the AU-UN hybrid operation</td>
<td>SC/9271</td>
<td>No action</td>
<td>UNAMID not a substitute for political engagement. Urgent international engagement required to encourage and pressure parties to lay down weapons and commit to dialogue.</td>
</tr>
<tr>
<td>S/PV. 5868 Res. 1</td>
<td>16 April</td>
<td>Reports of Secretary-General on relationship between regional organisations in maintenance of international peace and security and conflict prevention in Africa</td>
<td>SC/9301</td>
<td>S/RES/1809 (2008)</td>
<td>Vote: 15-0-0 Concept note (S/2008/223) submitted by South Africa. Express determination to enhance relationship between UN and regional organisations (especially AU).</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
<td>---------------------------------------------</td>
<td>---------------</td>
<td>--------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.5872</td>
<td>22 April</td>
<td>Report of Secretary-General</td>
<td>SC-9304</td>
<td>No action</td>
<td>Peace in Darfur no longer attractive politically and economically to DPA signatories, frustrated with lack of political and logistical support from international community and GOS. Non-signatories enjoy logistical and financial support.</td>
</tr>
<tr>
<td>S/PV.5802</td>
<td>30 April</td>
<td>UNMIS relationship to Darfur and UNAMID</td>
<td>SC-9117</td>
<td>S/RES/1812 (2008)</td>
<td>Vote: 15-0-0</td>
</tr>
<tr>
<td>S/PV.5801</td>
<td>13 May</td>
<td>Report of Secretary-General</td>
<td>SC-9329</td>
<td>S/PRST/2008/15</td>
<td>Condemns attack on government forces in Omdurman on 10 May 2008 by JEM forces from Darfur.</td>
</tr>
<tr>
<td>S/PV.5802</td>
<td>13 May</td>
<td>Report of Secretary-General on relationship between regional organisations in maintenance in international peace and security</td>
<td>SC-9330</td>
<td>No action</td>
<td>Among eighty-one IDP camps, twenty-five per cent participated in the census, ten per cent partially participated and fifty per cent did not participate at all.</td>
</tr>
<tr>
<td>S/PV.5903</td>
<td>5 June</td>
<td>Report of Secretary-General</td>
<td>SC-9349</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Despite GOS claims would investigate and prosecute perpetrators of crimes in Darfur, courts and investigative mechanisms created but no trace of proceedings in last three years. GOS have clarified there were none. Request Security Council act and send a strong message to GOS.</td>
</tr>
<tr>
<td>S/PV.5922</td>
<td>24 June</td>
<td>Report of Secretary-General</td>
<td>SC-9370</td>
<td>No action</td>
<td>Darfur difficult to resolve, requires simultaneous effort by international community, regional partners, Government of National Unity and rebel movements combined with political will to compromise; credible diplomatic, financial and socio-economic incentives and disincentives; and active engagement of Darfurians. Credibility of Security Council and those involved in peace process also contingent upon follow-up action.</td>
</tr>
<tr>
<td>S/PV.5934</td>
<td>16 July</td>
<td>Closed meeting</td>
<td></td>
<td></td>
<td>Briefing by Andreiush Quot , SRSG Sudan.</td>
</tr>
<tr>
<td>S/PV.5950</td>
<td>18 August</td>
<td>Relationship of Darfur to CPA and UNMIS</td>
<td>SC-9424</td>
<td>No action</td>
<td>Briefing by Andreiush Quot , SRSG Sudan.</td>
</tr>
<tr>
<td>S/PV.5959</td>
<td>23 September</td>
<td>Peace and security</td>
<td>SC-9452</td>
<td>S/PRST/2008/36</td>
<td>High level meeting on mediation and settlement of disputes. Darfur example of cooperation of UN and regional organisations in maintenance of international peace and security.</td>
</tr>
<tr>
<td>S/PV.6003</td>
<td>28 October</td>
<td>Report of Secretary-General on deployment of AU-UN hybrid operation</td>
<td>SC-9485</td>
<td>No action</td>
<td>UNAMID needs acknowledgement by Security Council that risks being taken are accepted as a collective and full responsibility.</td>
</tr>
<tr>
<td>S/PV.6028</td>
<td>3 December</td>
<td>Report of Secretary-General</td>
<td>SC-9516</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Evidence President Bashir ordered scorched earth attack against Fur, Masalit, Zaghawa groups in March 2003.</td>
</tr>
<tr>
<td>S/PV.6029</td>
<td>3 December</td>
<td>Chad-Sudan</td>
<td>SC-9517</td>
<td>No action</td>
<td>Alleviating suffering and protection of populations from abuses as much a part of humanitarianism as food, water and other material assistance.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>------------</td>
<td>-----------</td>
<td>------------------------------------------------------------------------</td>
<td>---------------</td>
<td>------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.6054</td>
<td>19 December</td>
<td>Report of Secretary-General on deployment of AU-UN hybrid operation</td>
<td>SC/9550</td>
<td>No action</td>
<td>Transition to UNAMID too slow to provide real improvements for Darfurians and inadequate in resolving crisis (but question of whether it was intended to).</td>
</tr>
<tr>
<td>S/PV.6062</td>
<td>8 January</td>
<td>Briefing by UNHCR</td>
<td>SC/9566</td>
<td>No action</td>
<td>Prevention most important element of R2P. Requires careful, balanced and coordinated action based on a combination of political, diplomatic, developmental, environmental and humanitarian measures. Security Council has responsibility to prevent and end violations of HR, IHL and IBL. Example of Darfur cited.</td>
</tr>
<tr>
<td>S/PV.6075</td>
<td>23 January</td>
<td>Peacekeeping operations</td>
<td>SC/9581</td>
<td>No action</td>
<td>Unified voice of Security Council (unequivocal political message) and political pressure from key players critical. Peacekeeping and political leverage must work together to tackle larger systemic challenges. UNAMID one of the most complex and difficult operations ever contemplated by UN.</td>
</tr>
<tr>
<td>S/PV.6079</td>
<td>5 February</td>
<td>Report of Secretary-General</td>
<td>SC/9590</td>
<td>No action</td>
<td>Briefing by Ashraf Jangane, head of UNSMIS on pending decision of ICC.</td>
</tr>
<tr>
<td>S/PV.6096</td>
<td>20 March</td>
<td>Report of Secretary-General</td>
<td>SC/9622</td>
<td>No action</td>
<td>Rapid assessment underway to determine impact of expulsion of INGOs and suspension of operations in North Sudan on four life-saving sectors: food aid, health and nutrition; shelter; water and sanitation. President Bashir forecasts potential departure of all foreign humanitarian organisations within one year.</td>
</tr>
<tr>
<td>S/PV.6112</td>
<td>27 April</td>
<td>Report of Secretary-General</td>
<td>SC/9644</td>
<td>No action</td>
<td>Compared to 2003-04 Darfur presently low intensity conflict in numerical terms.</td>
</tr>
<tr>
<td>S/PV.6133</td>
<td>11 June</td>
<td>Sudan</td>
<td>SC/9678</td>
<td>No action</td>
<td>Working with GOS on “Sudanisation” of humanitarian activities, in line with UN global policy on building national and local capacity.</td>
</tr>
<tr>
<td>S/PV.6139</td>
<td>24 July</td>
<td>Closed meeting</td>
<td>SC/9716</td>
<td>No action</td>
<td>Examination of views with Luis Moreno-Ocampo, Prosecutor, ICC.</td>
</tr>
<tr>
<td>S/PV.6169</td>
<td>24 July</td>
<td>Report of Secretary-General</td>
<td>SC/9716</td>
<td>No action</td>
<td>Working with GOS on “Sudanisation” of humanitarian activities, in line with UN global policy on building national and local capacity.</td>
</tr>
<tr>
<td>S/PV.6170</td>
<td>24 July</td>
<td>Report of Secretary-General</td>
<td>SC/9716</td>
<td>No action</td>
<td>More than five years since Security Council first addressed Darfur crisis. While situation on the ground has changed, no closer to a solution. Responsibility for peace and stability in Darfur lies with GOS but international community has central role to play in creating conditions to support, including provide concrete incentives to reach an agreement and guarantee new agreement will be implemented.</td>
</tr>
<tr>
<td>S/PV.6227</td>
<td>30 November</td>
<td>Report of Secretary-General on deployment of AU-UN hybrid operation</td>
<td>SC/9800</td>
<td>No action</td>
<td>Briefing by Edmond Mulet, Assistant Secretary-General Peacekeeping Operations and Djibril Boussoî, Joint AU-UN Chief Mediator, Darfur on new peace process in Doha.</td>
</tr>
<tr>
<td>S/PV.6230</td>
<td>4 December</td>
<td>Report of Secretary-General</td>
<td>SC/9804</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC on efforts to encourage GOS to respect its responsibilities, end crimes and comply with decisions of the ICC.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>----------</td>
<td>------------</td>
<td>---------------------------------------------</td>
<td>---------------</td>
<td>-----------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.6252</td>
<td>21 December</td>
<td>Closed meeting</td>
<td>Communiqué</td>
<td>Exchange of views with AU Commission and High-Level Panel on Darfur.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6257</td>
<td>13 January</td>
<td>Cooperation between UN and regional and sub-</td>
<td>SC/9840</td>
<td>S/PRST/2010/1</td>
<td>Darfur as example of partnership with regional organisations that grants local legitimacy to international action.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>regional organisations in maintenance of international peace and security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6258</td>
<td>11 February</td>
<td>Report of Secretary-General on deployment of</td>
<td>SC/9859</td>
<td>No action</td>
<td>Registration process for national elections peaceful but flawed with large numbers of IDPs loyal to Abdul Wahid boycotting registration while in West Darfur no numbers available on registration of estimated 747,000 IDPs as centres are outside camps.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AU-UN hybrid operation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6270</td>
<td>12 February</td>
<td>UN peacekeeping operations: transition and</td>
<td>SC/9860</td>
<td>S/PRST/2010/2</td>
<td>Darfur as example of contemporary operations.</td>
</tr>
<tr>
<td>Rev.1</td>
<td></td>
<td>strategies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6106</td>
<td>4 May</td>
<td>Cooperation between UN and regional and sub-</td>
<td>SC/9918</td>
<td>No action</td>
<td>Darfur as an example of enhanced cooperation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>regional organisations in maintaining</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>international peace and security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6118</td>
<td>20 May</td>
<td>Report of Secretary-General on deployment of</td>
<td>SC/9932</td>
<td>No action</td>
<td>These UN institutions operating in Darfur: UNMIS, UNAMID and AU-UN Joint Chief Mediator.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AU-UN hybrid operation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6136</td>
<td>11 June</td>
<td>Report of Secretary-General</td>
<td>SC/9950</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC summarising cases investigated to date: 1. Attacks against civilian population 2003-05 (Harun and Kachayb); 2. Involvement of Sudanese officials (state) in attacks on villages and crimes committed against displaced persons (Basher); 3. Prosecution of three rebel commanders for attack on peacekeepers in Haskanita September 2007.</td>
</tr>
<tr>
<td>S/PV.6137</td>
<td>11 June</td>
<td>Closed meeting</td>
<td>Communiqué</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6138</td>
<td>14 June</td>
<td>Preparation for referendum in South Sudan and</td>
<td>SC/9932</td>
<td>No action</td>
<td>AU pursuing Darfur-Darfur dialogue through High-Level Panel and UNAMID. Essential for international community to impress need on parties to cease hostilities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Darfur-Darfur dialogue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6161</td>
<td>19 July</td>
<td>Closed meeting</td>
<td>Communiqué</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>AU-UN hybrid operation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------</td>
<td>-------------------------------------------------------------------------</td>
<td>---------------</td>
<td>-------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.6366</td>
<td>30 July</td>
<td>Report of Secretary-General on deployment of AU-UN hybrid operation</td>
<td>SC-997</td>
<td>S/RES/1935 (2010)</td>
<td>Draft resolution (S/2010/40), extends UNAMID mandate until July 2011, stresses the importance of achievable and realistic targets against which the progress of UN operations can be measured and stresses the importance of early recovery efforts.</td>
</tr>
<tr>
<td>S/PV.6397</td>
<td>14 October</td>
<td>Security Council mission-Africa 4-10 October 2010</td>
<td>SC-10052</td>
<td>No action</td>
<td>Visit characterised by ongoing insecurity, restricted access to populations in need and attacks on peacekeepers and humanitarian workers. Mission found better understanding and political will required to meet challenges.</td>
</tr>
<tr>
<td>S/PV.6409</td>
<td>22 October</td>
<td>Report of Secretary-General – support to AU peacekeeping operations by UN</td>
<td>SC-10067</td>
<td>S/PRST/2010/21</td>
<td>Darfur cited as example.</td>
</tr>
<tr>
<td>S/PV.6410</td>
<td>25 October</td>
<td>Report of Secretary-General on deployment of AU-UN hybrid operation</td>
<td>SC-10069</td>
<td>No action</td>
<td>Security Council support required to pressure GOS to create an enabling environment and impose consequences on parties that remain outside of peace process.</td>
</tr>
<tr>
<td>S/PV.6425</td>
<td>16 November</td>
<td>Report of Secretary-General</td>
<td>SC-10086</td>
<td>S/PRST/2010/24</td>
<td>Core objective of international community in Sudan is peaceful coexistence and to build conditions for conflict affected communities to build strong, sustainable livelihoods, democratic governance, rule of law, accountability, equality, respect for human rights, justice and economic development.</td>
</tr>
<tr>
<td>S/PV.6441</td>
<td>9 December</td>
<td>Closed meeting</td>
<td></td>
<td></td>
<td>Exchange of views with Luis Moreno-Ocampo, Prosecutor, ICC.</td>
</tr>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6468</td>
<td>18 January</td>
<td>Report of Secretary-General</td>
<td>SC-10155</td>
<td>No action</td>
<td>Briefing on South Sudan referendum and relationship to Darfur conflict.</td>
</tr>
<tr>
<td>S/PV.6474</td>
<td>26 January</td>
<td>Report of Secretary-General</td>
<td>SC-10165</td>
<td>No action</td>
<td>16 December AU High-Level Panel and GOS agree to joint UNAMID-GOS technical taskforce to monitor enabling environment.</td>
</tr>
<tr>
<td>S/PV.6478</td>
<td>9 February</td>
<td>Report of Secretary-General</td>
<td>SC-10169</td>
<td>S/PRST/2011/3</td>
<td>Positive referendum outcome in South Sudan, implementation in Darfur and UNAMID.</td>
</tr>
<tr>
<td>S/PV.6499</td>
<td>21 March</td>
<td>Closed meeting</td>
<td></td>
<td></td>
<td>Exchange of views with Pagan Amun and Mr. Aeid Khare, Assistant Secretary-General Peacekeeping Operations.</td>
</tr>
<tr>
<td>S/PV.6519</td>
<td>20 April</td>
<td>Report of the Secretary-General</td>
<td>SC-10229</td>
<td>No action</td>
<td>April intervention leads to twelve being released unharmed. Three air crew of UN Humanitarian Air Service abducted in West Darfur, detained by government for ninety-eight days.</td>
</tr>
<tr>
<td>S/PV.6521</td>
<td>21 April</td>
<td>Sudan</td>
<td>SC-10231</td>
<td>S/PRST/2011/8</td>
<td>Important aspects of enabling environment necessary for comprehensive political agreement not in place.</td>
</tr>
<tr>
<td>S/PV.6531 Res. 1</td>
<td>10 May</td>
<td>Protection of civilians in armed conflict</td>
<td>SC-10245</td>
<td>No action</td>
<td>Darfur cited as example.</td>
</tr>
<tr>
<td>S/PV.6546</td>
<td>6 June</td>
<td>Briefing by Security Council mission to Africa</td>
<td>SC-10271</td>
<td>No action</td>
<td>GOS commitment to issue 800 visas still outstanding, support Doha process and lift state of emergency in Darfur. International humanitarian staff in Darfur down from 1,000 to 250. Visit disparring.</td>
</tr>
</tbody>
</table>
APPENDIX A

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
<th>Agenda</th>
<th>Press release</th>
<th>Action</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/PV.6548</td>
<td>8 June</td>
<td>Report of Secretary-General</td>
<td>SC/10274</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Crimes against humanity, air attacks on civilians, direct killing of members of ethnic groups (Far, Masalit and Zaghawa) continue unabated during last six months. Crimes consequence of strategic decision by Sudanese officials not by product of conflict, inter-tribal clashes or climate change. President Bashir challenging authority and legitimacy of Security Council.</td>
</tr>
<tr>
<td>S/PV.6549</td>
<td>8 June</td>
<td>Report of Secretary-General</td>
<td>SC/10286</td>
<td>No action</td>
<td>Briefing by Hilde Mamo, Chairperson AU High-Level Implementation Panel and SRSG Sudan.</td>
</tr>
<tr>
<td>S/PV.6550</td>
<td>20 June</td>
<td>Report of Secretary-General</td>
<td>SC/10288</td>
<td>No action</td>
<td>Briefing by UN Office to AU (DGOAU), established to support AU-UN partnership and part of contribution to institutional development of AU. References to examples of Darfur and Libya.</td>
</tr>
<tr>
<td>S/PV.6576</td>
<td>8 July</td>
<td>Sudan</td>
<td>SC/10314</td>
<td>S/RES/1996 (2011) Vote: 15-0-0</td>
<td>Establishes a UN Mission in South Sudan (UNMISS) to use all means necessary for protection.</td>
</tr>
<tr>
<td>S/PV.6583</td>
<td>13 July</td>
<td>Special Report of Secretary-General on Sudan</td>
<td>SC/10323</td>
<td>No action</td>
<td>Briefing on transition from UNMIS to UNMISS, UNISFA and cooperation with UNAMID.</td>
</tr>
<tr>
<td>S/PV.6585</td>
<td>18 July</td>
<td>Cloud meeting</td>
<td>Communiqué</td>
<td></td>
<td>Exchange of views with Edmund Mulet, Assistant Secretary-General Peacekeeping Operations, Major-General Abhijit Gohia, Deputy Military Advisor, Andrew Carpenter, Acting Police Advisor and states contributing troops and police to UNAMID.</td>
</tr>
<tr>
<td>S/PV.6587 Res.1</td>
<td>20 July</td>
<td>Maintenance of international peace and security—impact of climate change</td>
<td>SC/10332</td>
<td>No action</td>
<td>Darfur cited as example in terms of drought and rapid desertification contributing to conflict.</td>
</tr>
<tr>
<td>S/PV.6589</td>
<td>22 July</td>
<td>Report of Secretary-General</td>
<td>SC/10336</td>
<td>No action</td>
<td>Operation Spring Basket a coordinated effort with humanitarian agencies to expand access to parts of Darfur long been inaccessible in North, South and West Darfur. Recommends Security Council endorse Doha Document for Peace in Darfur (DDPD).</td>
</tr>
<tr>
<td>S/PV.6592</td>
<td>27 July</td>
<td>UN peacekeeping operations</td>
<td>SC/10343</td>
<td>No action</td>
<td>Robust posture adopted by UNAMID cited as example.</td>
</tr>
<tr>
<td>S/PV.6621</td>
<td>22 September</td>
<td>Maintenance of international peace and security</td>
<td>SC/10392</td>
<td></td>
<td>Darfur cited as example of conflict prevention.</td>
</tr>
<tr>
<td>S/PV.6638</td>
<td>25 October</td>
<td>Report of the Secretary-General</td>
<td>SC/10421</td>
<td>No action</td>
<td>Briefing by Hervé Ladsous, Under-Secretary-General Peacekeeping Operations on attacks on peacekeepers and humanitarian workers.</td>
</tr>
<tr>
<td>S/PV.6650 Res.1</td>
<td>9 November</td>
<td>Protection of civilians in armed conflict</td>
<td>SC/10442</td>
<td>No action</td>
<td>Briefing by Assistant Secretary-General Humanitarian Affairs, UNHCR, Director of International Law and Cooperation ICRC citing Darfur as an example.</td>
</tr>
<tr>
<td>S/PV.6656</td>
<td>11 November</td>
<td>Report of Secretary-General</td>
<td>SC/10445</td>
<td>No action</td>
<td>Call for better coordination in support of peace process, humanitarian assistance and early recovery in Darfur.</td>
</tr>
<tr>
<td>S/PV.6660</td>
<td>15 November</td>
<td>Report of Secretary-General</td>
<td>SC/10450</td>
<td>No action</td>
<td>Briefing by Hervé Ladsous, Under-Secretary-General Peacekeeping Operations on establishment of new rebel alliances counter-productive to peace process.</td>
</tr>
<tr>
<td>S/PV.6679</td>
<td>8 December</td>
<td>Report of Secretary-General</td>
<td>SC/10477</td>
<td>No action</td>
<td>Cooperation between SPLM-North and Darfur rebel movements against GOS.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
<td>---------------------------------------------</td>
<td>---------------</td>
<td>------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.6688</td>
<td>15 December</td>
<td>Report of Secretary-General</td>
<td>SC/10489</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Additional warrant for arrest of former Minister for the Interior, Abdelrahim Mohammed Hussein (currently Minister of Defence) issued. Played central role in coordinating crimes (recruiting, mobilising, funding, arming, training and deploying militia/Jamnaward as part of GOS forces).</td>
</tr>
<tr>
<td>S/PV.6689</td>
<td>15 December</td>
<td>Closed meeting</td>
<td></td>
<td></td>
<td>Exchange of views with Luis Moreno-Ocampo, Prosecutor, ICC.</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6700</td>
<td>11 January</td>
<td>Report of Secretary-General on AU-UN hybrid operation</td>
<td>SC/10515</td>
<td>No action</td>
<td>December 2011 President Bashir issued decree appointing new governors to Darfur states including two new states East and Central Darfur bringing total number to five (West Darfur Governor LJM, all others NCP representatives).</td>
</tr>
<tr>
<td>S/PV.6702</td>
<td>12 January</td>
<td>Cooperation between the UN and regional and sub-regional organisations in the maintenance of international peace and security</td>
<td>SC/10519</td>
<td>S/RES/2033 (2012)</td>
<td>Draft resolution (S/2012/25). Expresses determination to take steps to enhance the relationship between the UN and regional and sub-regional organisations.</td>
</tr>
<tr>
<td></td>
<td>plus Res.1</td>
<td></td>
<td></td>
<td>Vote: 15-0-0</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6762</td>
<td>26 April</td>
<td>Report of Secretary-General on AU-UN hybrid operation</td>
<td>SC/10628</td>
<td>No action</td>
<td>Doha Document for Peace and negotiations for political settlement – JEM and SLA-MM members of Sudan Revolutionary Front alliance will only negotiate national, political and economic reforms, while SLA-AW not negotiating until root causes of conflict addressed.</td>
</tr>
<tr>
<td>S/PV.6778</td>
<td>5 June</td>
<td>Sudan</td>
<td>SC/10663</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Security Council needs to determine measures to ensure compliance with resolutions. Individual members must reconcile national interest with responsibility for international peace and security. In absence of compliance by Sudan, Security Council could ask member states or regional organisations to execute warrants.</td>
</tr>
<tr>
<td>S/PV.6780</td>
<td>20 June</td>
<td>Peacekeeping operations</td>
<td>SC/10679</td>
<td>No action</td>
<td>Interactive dialogue with Force Commanders in Darfur</td>
</tr>
<tr>
<td>S/PV.6790</td>
<td>25 June</td>
<td>Protection of civilians in armed conflict</td>
<td>SC/10683</td>
<td>No action</td>
<td></td>
</tr>
<tr>
<td>S/PV.6800</td>
<td>5 July</td>
<td>Report of Secretary-General</td>
<td>SC/10700</td>
<td>S/RES/2057 (2012)</td>
<td>Draft resolution (S/2012/514). Extends mandate of UNMIS to July 2013 and requests the Secretary-General include in his reports a summary of cooperation with UNAMID.</td>
</tr>
<tr>
<td>S/PV.6806</td>
<td>18 July</td>
<td>Closed meeting</td>
<td></td>
<td></td>
<td>Exchange of views with Margaret Carey, Director Africa Division, Department of Peacekeeping Operation, and states contributing troops/police to UNAMID.</td>
</tr>
<tr>
<td>S/PV.6813</td>
<td>24 July</td>
<td>Report of Secretary-General on AU-UN hybrid operations</td>
<td>SC/10724</td>
<td>No action</td>
<td>Darfur Regional Authority with support of UNAMID initiated Joint Assessment Mission to assess economic recovery, development and poverty eradication required. Provides UNAMID with direct partner to work towards peace.</td>
</tr>
<tr>
<td>S/PV.6819</td>
<td>31 July</td>
<td>Report of Secretary-General on AU-UN hybrid operations</td>
<td>SC/10735</td>
<td>S/RES/2065/2012 (Azerbaijan)</td>
<td>Draft resolution (S/2012/382) submitted by France, Germany, UK, US. Extends UNAMID mandate until July 2013, underlines the need for UNAMID to make full use of its mandate and capabilities, emphasises Chapter VII mandate set out in resolution 1709 to protect civilians, UNAMID personnel and humanitarian workers and expresses serious concern that situation in Darfur has not improved.</td>
</tr>
</tbody>
</table>
### APPENDIX A

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
<th>Agenda</th>
<th>Press release</th>
<th>Action</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/PV.6849 + Res.1</td>
<td>17 October</td>
<td>Promotion of strengthening of rule of law in maintenance of international peace and security</td>
<td>SC/10793</td>
<td>No action</td>
<td>Darfur and Libya clear follow-up to ICC. Reformals have been problematic but symbolic of complementary nature of relationship between Security Council and ICC. Unity of referral of Darfur and Libya, but deep division on Syria.</td>
</tr>
<tr>
<td>S/PV.6851</td>
<td>24 October</td>
<td>Report of Secretary-General on the AU-UN hybrid operation</td>
<td>SC/10801</td>
<td>No action</td>
<td>Negotiations between GOS and delegation of former JEM executive council to adopt DDPP.</td>
</tr>
<tr>
<td>S/PV.6887</td>
<td>13 December</td>
<td>Report of Secretary-General</td>
<td>SC/10855</td>
<td>No action</td>
<td>Words of GOS promising peace initiatives undermined by actions on the ground that show ongoing commitment to crimes against civilians. ICC shares frustration of Darfurians regarding lack of progress in arresting those indicted. Resolution 2063 (2012) expressed concern towards ongoing impunity, lack of national proceedings following nearly eight years of reported efforts on part of GOS.</td>
</tr>
<tr>
<td>S/PV.6907</td>
<td>20 December</td>
<td>Report of Secretary-General on peacebuilding in the aftermath of conflict</td>
<td>SC/10868</td>
<td>S/PRST/2012/29</td>
<td>Darfur as example of cooperation of AU and UN and contribution to post-conflict peacebuilding.</td>
</tr>
<tr>
<td>S/PV.6910</td>
<td>24 January</td>
<td>Report of Secretary-General on AU-UN hybrid operation</td>
<td>SC/10899</td>
<td>No action</td>
<td>Breakthrough in Doha negotiations underway since 20 January 2013 between GOS and Mohamed Bashir faction of JEM. Root causes of conflict traditionally land, water and grazing now includes precious metals, especially gold (North Darfur). Comprehensive and sustainable peace required. GOS holistic settlement of political and economic marginalisation affecting not only Darfur but whole of Sudan.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>------------------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>S/PV.6486</td>
<td>22 February</td>
<td>Closed meeting</td>
<td>SC/10180</td>
<td>Communique</td>
<td>Call upon the Libyan government to meet its responsibility to protect population, ensure safe passage of medical supplies and humanitarian workers and hold those responsible for attacks on civilians accountable, including forces under their control.</td>
</tr>
<tr>
<td>S/PV.6490</td>
<td>25 February</td>
<td>Peace and security in Africa—Libya</td>
<td>SC/10185</td>
<td>No action</td>
<td>Evidence of Muammar Qadhafi threatening civil war and mass killings if protests continue. Special session of HRC being convened to establish international independent commission of inquiry.</td>
</tr>
<tr>
<td>S/PV.6491</td>
<td>26 February</td>
<td>Peace and security in Africa—Libya</td>
<td>SC/10187</td>
<td>S/RES/1970 Vote: 15-0-0</td>
<td>Draft resolution (S-2011/95). Demand immediate end to violence, full respect for human rights and international law and accountability for those responsible for violence. Authorize targeted travel bans and assets freeze against Libyan leadership, arms embargo upon state and immediate referral to the ICC, representing the first egregious human rights referral.</td>
</tr>
<tr>
<td>S/PV.6498</td>
<td>17 March</td>
<td>Situation in Libya</td>
<td>SC/10200</td>
<td>S/RES/1973 Vote: 15-0-3</td>
<td>Draft resolution (S-2011/142) submitted by France, Lebanon, UK, US. Establish a no-fly zone, authorize LAS and member states to take action to implement plus all necessary measures to protect civilians (excluding occupation by a foreign force). Prohibits all international rights by Libyan owned or operated airlines, extends sanctions and establishes a Panel of Experts to support resolution 1970 Sanctions Committee.</td>
</tr>
<tr>
<td>S/PV.6505</td>
<td>24 March</td>
<td>Situation in Libya</td>
<td>SC/10210</td>
<td>No action</td>
<td>Briefing by Secretary-General pursuant to resolution 1973 (2011). Communication from Libyan Prime Minister suggests ceasefire adopted. Evidence of increased violence including use of tanks and heavy weaponry to target civilians. AU to convene meeting with Libyan government, opposition and regional organizations to negotiate a political settlement.</td>
</tr>
<tr>
<td>S/PV.6507</td>
<td>28 March</td>
<td>Situation in Libya</td>
<td>SC/10214</td>
<td>No action</td>
<td>Briefing by Chairman, resolution 1970 Sanctions Committee. Eighteen individuals subject to travel bans and thirteen individuals and five entities subject to assets freeze.</td>
</tr>
<tr>
<td>S/PV.6509</td>
<td>4 April</td>
<td>Situation in Libya</td>
<td>SC/10217</td>
<td>No action</td>
<td>Ruling by African Court of Human and People’s Rights (25 March 2011) demanding Libyan government refrain from action resulting in loss of life and/or violation of physical integrity of a person and report within fifteen days on actions taken to comply with ruling. London Conference (29 March 2011) attended by UN, OIC, EU, LAS and NATO, establishes Contact Group to lead international effort and provide political direction, coordinate response and provide focal point for contact with Libyan parties.</td>
</tr>
<tr>
<td>S/PV.6527</td>
<td>3 May</td>
<td>Situation in Libya</td>
<td>SC/10240</td>
<td>No action</td>
<td>Agreement between UN and Libyan government to facilitate humanitarian access and indicate willingness to accept ceasefire with impartial monitors. Role of AU critical in monitoring ceasefire. Allegation NATO forces bombed Qadhafi’s family home killing his son Saif al-Arab and grandchildren. Consultations with parties on key elements of resolutions 1970 and 1973, unrestricted access for humanitarian assistance, securing an immediate ceasefire and political process to meet aspirations of Libyans immediate tasks.</td>
</tr>
<tr>
<td>S/PV.6528</td>
<td>4 May</td>
<td>Situation in Libya</td>
<td>SC/10241</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Evidence of widespread systematic attacks on civilians committed under direction of a few members of Libyan leadership, including: • Shooting of protestors, arrests, torture, killings, enforced disappearances, rape, persecution for speaking with media, blocking of humanitarian access and direct targeting of medical facilities; • Use of improvised weaponry (cluster munitions, rocket launchers, mortars) in urban areas, civilians being used as human shields and torture of prisoners of war.</td>
</tr>
<tr>
<td>S/PV.6530</td>
<td>9 May</td>
<td>Situation in Libya</td>
<td>SC/10244</td>
<td>No action</td>
<td>Conflict, breakdown of state infrastructure, shortages of cash and fuel causing serious problems for population. Fuel shortages disrupting supply lines, including water from desalination. Schools closed and educational supplies not getting through. Food stocks rapidly depleting with only two-three month supply left in most regions.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action</td>
<td>Statements</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
<td>----------------------</td>
<td>---------------</td>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>S/PV.6541</td>
<td>31 May</td>
<td>Situation in Libya</td>
<td>SC/10266</td>
<td>No action</td>
<td>Report on extraordinary summit of AU Assembly. Leaders agree on need for political settlement. Peace and Security Council will consider deployment of AU observers and monitors. Pre-assessment for post-conflict peacebuilding commenced by SRSIG for Libya.</td>
</tr>
<tr>
<td>S/PV.6555</td>
<td>15 June</td>
<td>Situation in Libya</td>
<td>SC/10280</td>
<td>No action</td>
<td>All particularly concerned at regional spill-over from conflict. Moral and political imperative to tackle short-term priorities to relieve suffering while inscribing action with a longer-term vision.</td>
</tr>
<tr>
<td>S/PV.6561</td>
<td>21 June</td>
<td>Peace and security in Africa</td>
<td>SC/10288</td>
<td>No action</td>
<td>Briefing by UN Office to the African Union (UNOAU). Importance of greater coordination between Security Council and AU. High-Level Panel on Libya as an example.</td>
</tr>
<tr>
<td>S/PV.6566</td>
<td>27 June</td>
<td>Situation in Libya</td>
<td>SC/10297</td>
<td>No action</td>
<td>One hundred days since NATO-led operation began. Arrest warrants issued for Qadhafi, son Saif al-Islam and Abdullah al-Senussi. Early preparatory for post-conflict peacebuilding and peace consolidation must be part of planning (to be discussed further in private meeting).</td>
</tr>
<tr>
<td>S/PV.6595</td>
<td>28 July</td>
<td>Situation in Libya</td>
<td>SC/10346</td>
<td>No action</td>
<td>Both sides willing to talk but emphasise maximum demands for a political settlement. UN Department of Peacekeeping Operations (DPKO) undertaking contingency planning for military and police roles in anticipation of a ceasefire.</td>
</tr>
<tr>
<td>S/PV.6603</td>
<td>26 August</td>
<td>UN peacekeeping operations: taking stock and preparing for the future</td>
<td>SC/10368</td>
<td>No action</td>
<td>Concern towards foreign forces promoting, financing and supporting regime change under resolution 1973.</td>
</tr>
<tr>
<td>S/PV.6606</td>
<td>30 August</td>
<td>Situation in Libya</td>
<td>SC/10374</td>
<td>No action</td>
<td>Ongoing role of UN in areas of election assistance, transitional justice, policing and humanitarian needs. Aim to get personnel on ground quickly under a robust mandate founded upon:</td>
</tr>
<tr>
<td>S/PV.6607</td>
<td>16 September</td>
<td>Situation in Libya</td>
<td>SC/10389</td>
<td>S/RES/2009</td>
<td>Draft resolution (S/2011/578). Establishes UNMIL with mandate to support preparations for elections, assist in institution-building, promote and protect human rights and support economic recovery. Includes mechanism to progressively de-list sanctioned entities and unfreeze assets. Soudo reintegration of Libya into UN (with NTC assuming seat).</td>
</tr>
<tr>
<td>S/PV.6621</td>
<td>22 September</td>
<td>Maintenance of international peace and security: conflict prevention</td>
<td>SC/10392</td>
<td>S/PRST/2011/18</td>
<td>Libya as an example of the use of “all means necessary” to protect civilians.</td>
</tr>
<tr>
<td>S/PV.6622</td>
<td>26 September</td>
<td>Situation in Libya</td>
<td>SC/10395</td>
<td>No action</td>
<td>Tripoli returning to some normalcy but security fragile. Post-conflict challenges include addressing national reconciliation and unity (to ensure all military groups come under political authority of NTC); establish control over large weapons stocks; secure mass grave site near Abu Salim prison (Tripoli) for forensic investigation and accountability; and welfare of African migrants and third party nationals.</td>
</tr>
<tr>
<td>S/PV.6639</td>
<td>26 October</td>
<td>Situation in Libya</td>
<td>SC/10422</td>
<td>No action</td>
<td>Announcement of Libyan liberation (23 October 2011) but international assistance required to build a democratic state, commerce reconstruction and achieve prosperity. Allegation of war crimes on both sides in latest fighting, including among coalition forces. Death of Qadhafi and son requires investigation.</td>
</tr>
<tr>
<td>Meeting</td>
<td>Date</td>
<td>Agenda</td>
<td>Press release</td>
<td>Action Statement</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>---------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>S/PV.6640</td>
<td>27 October</td>
<td>Situation in Libya</td>
<td>SC/10424</td>
<td>Draft resolution (S/2011/699). Modifies arms embargo to facilitate further exemptions, terminates or modifies assets freeze on entities, ceases measures imposed by resolution 1973 (2011), essentially imposition of a no-fly zone.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6643</td>
<td>31 October</td>
<td>Post-conflict peacbuilding</td>
<td>SC/10428</td>
<td>UNSMIL as an example of good practice in post-conflict peacbuilding.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6644</td>
<td>31 October</td>
<td>Situation in Libya</td>
<td>SC/10429</td>
<td>Draft resolution (S/2011/670). Calls upon Libyan authorities to take all necessary steps to prevent arms proliferation and destroy chemical weapons stockpiles. Requests the resolution 1970 Sanctions Committee assess threats and challenges of proliferation and present proposals to counter threat.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6647</td>
<td>2 November</td>
<td>Situation in Libya</td>
<td>SC/10433</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC. Arrest warrants issued for Qadhafi; son Saif and al-Senussi for murder and persecution as crimes against humanity. Mnammur and Saif al-Qadhafi found jointly responsible as indirect co-perpetrators of crimes against humanity with al-Senussi responsible as a direct perpetrator. Further investigation into allegations of sexual violence by security service underway. Allegations of crimes by all parties including NATO forces.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6650 Res. 1</td>
<td>9 November</td>
<td>Protection of civilians in armed conflict</td>
<td>SC/10442</td>
<td>Libya as example of failure of state to protect population and importance of cooperative post-conflict reconstruction and institutional building.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6650</td>
<td>23 November</td>
<td>Maintenance of international peace and security: new challenges to international peace and security and conflict prevention</td>
<td>SC/10457</td>
<td>Libya as example of new threats in regional arms and the work of the UN Office on Drugs and Crime to establish programs in Tunisia, Egypt and Libya.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6673</td>
<td>2 December</td>
<td>Situation in Libya</td>
<td>SC/10469</td>
<td>Draft resolution (S/2011/752) submitted by France, Germany, Lebanon, Portugal, UK, US. Extends UNSMIL to March 2012 and includes provision to support Libyan national efforts to contain proliferation of all arms.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6698</td>
<td>22 December</td>
<td>Situation in Libya</td>
<td>SC/10503</td>
<td>Dual challenge for interim government to respond to immediate needs of population while reforming and building institutions that will support aspirations for change and modernity.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6705 Res. 1</td>
<td>19 January</td>
<td>Maintenance of international peace and security: promotion and strengthening of the rule of law</td>
<td>SC/10524</td>
<td>Libya as an example of ICC’s positive contribution to accountability and combating impunity.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6707</td>
<td>25 January</td>
<td>Situation in Libya</td>
<td>SC/10528</td>
<td>Seven priorities for transitional government-Outside security sector: civil society and media elections; public administration; public financial management; social service delivery; strategic communications; and transitional justice. Briefing by Navanethem Pillay, UNHCR. Following liberation, challenge to create conditions necessary for long-term stability and to ensure respect for rule of law and human rights. Civil society can play a key role in addressing social and political challenges.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6709</td>
<td>26 January</td>
<td>Peace and security in Africa</td>
<td>SC/10533</td>
<td>Highest priority to reintegrate refugees from Libya while assisting communities adjust to loss of remittances. Recommendations to address underlying structural challenges fall into three categories: 1. Support and capacity-building for national initiatives to address immediate humanitarian, socio-economic and security challenges; 2. Support for existing regional mechanisms related to control of borders and information-sharing on cross-border activity such as human trafficking and arms movements; 3. Mobilising greater international support through UN/UN in addressing human insecurity, underdevelopment, security and terrorism.</td>
<td></td>
</tr>
<tr>
<td>S/PV.6717</td>
<td>21 February</td>
<td>Peace and security in Africa</td>
<td>SC/10546</td>
<td>Impact of transitional organised crime on peace, including impact of Libyan crisis on Sahel region.</td>
<td></td>
</tr>
</tbody>
</table>

APPENDIX B
<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
<th>Agenda</th>
<th>Press release</th>
<th>Action</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/PV.6728</td>
<td>29 February</td>
<td>Situation in Libya</td>
<td>SC/10563</td>
<td>No action</td>
<td>Government plan for reintegrations and demobilisation of ex-combatants nearing completion. UNSMIL assisting Ministry of Justice to assert control over brigade facilities housing detainees. Deteriorating situation in Syria led to an influx of refugees to Libya from Egypt.</td>
</tr>
<tr>
<td>S/PV.6731</td>
<td>7 March</td>
<td>Situation in Libya</td>
<td>SC/10570</td>
<td>No action</td>
<td>Libyan wealth in resources and skilled personnel confirms does not need traditional donor support but is weak in institutions. High priority for UNSMIL supporting Libyan authorities and civil society to ensure transitional justice processes are anchored in solid rule of law systems, institutions and practices that respect human rights.</td>
</tr>
<tr>
<td>S/PV.6733</td>
<td>12 March</td>
<td>Situation in Libya</td>
<td>S/RES/2040</td>
<td>Vote: 15-0-0</td>
<td>Draft resolution (S/2012/146) submitted by France, Germany, Morocco, Portugal, UK, US. Removal of UNSMIL mandate for twelve months.</td>
</tr>
<tr>
<td>S/PV.6731</td>
<td>29 March</td>
<td>Situation in Libya</td>
<td>SC/10624</td>
<td>S/PRST/2012/16</td>
<td>Libya as example of illicit cross-border trafficking of goods and proliferation of weapons.</td>
</tr>
<tr>
<td>S/PV.6760</td>
<td>10 May</td>
<td>Situation in Libya</td>
<td>SC/10644</td>
<td>No action</td>
<td>Elections a positive development and part of transition, but not the beginning nor the end. Following elections Libyans must commit to serious long-term state building.</td>
</tr>
<tr>
<td>S/PV.6772</td>
<td>16 May</td>
<td>Situation in Libya</td>
<td>SC/10651</td>
<td>No action</td>
<td>Briefing by Luis Moreno-Ocampo, Prosecutor, ICC.</td>
</tr>
<tr>
<td>S/PV.687</td>
<td>18 July</td>
<td>Situation in Libya</td>
<td>SC/10710</td>
<td>No action</td>
<td>Briefing by Ian Martin, SRSG for Libya and Head of UNSMIL. Over 2.8 million votes registered and over sixty-two percent casting votes during elections. UNSMIL working with Libyan government to develop first ever Defense white paper.</td>
</tr>
<tr>
<td>S/PV.6832</td>
<td>12 September</td>
<td>Situation in Libya</td>
<td>SC/10740</td>
<td>No action</td>
<td>Attacking US embassy resulting in death of Ambassador Chris Stevens, plus three other US staff and Libyan security personnel. Transfer of authority from NTC to General National Congress (8 August 2012), first democratically elected body in over 40 years.</td>
</tr>
<tr>
<td>S/PV.6849</td>
<td>17 October</td>
<td>Promotion and strengthening</td>
<td>SC/10793</td>
<td>No action</td>
<td>Role of the ICC, with Libya example of relationship between ICC and Security Council. First unanimous referral by Security Council to ICC.</td>
</tr>
<tr>
<td>Res. 1</td>
<td>17 October</td>
<td>of the rule of law in the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>maintenance of international</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>peace and security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6855</td>
<td>7 November</td>
<td>Situation in Libya</td>
<td>SC/10807</td>
<td>No action</td>
<td>Briefing by Fatou Bensouda, Prosecutor, ICC. Issuance of arrest warrants for Qadhafi, his son and al-Senussi played a crucial role in delegitimising the former authoritarian regime.</td>
</tr>
<tr>
<td>S/PV.6857</td>
<td>8 November</td>
<td>Situation in Libya</td>
<td>SC/10809</td>
<td>No action</td>
<td>Challenges for Libya include institution-building, constitutional processes, containing violence, IDPs, assassination attempts and targeting of security officials. Outpouring of public opposition to violence and support for new government provides an opportunity to move quickly and decisively in advancing security sector reform.</td>
</tr>
<tr>
<td>S/PV.6882</td>
<td>10 December</td>
<td>Peace and Security in Africa</td>
<td>SC/10849</td>
<td>S/PRST/2012/26</td>
<td>Towards a coordinated and more comprehensive approach in Sahel theme for meeting. Libya as example of regional dimension to conflict (weapons proliferation).</td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/PV.6912</td>
<td>29 January</td>
<td>Situation in Libya</td>
<td>SC/10902</td>
<td>No action</td>
<td>Libyan Prime Minister and Cabinet take up office in Tripoli. UNSMIL providing technical assistance in developing effective institutions and processes, supporting women’s political participation, demobilisation and reintegration, development of national security policies, legal frameworks, organisational structures and budgets.</td>
</tr>
</tbody>
</table>