



**WHAT IS THE RELATIONSHIP BETWEEN THE RESPONSIBILITY TO
PROTECT AND UN PEACEKEEPING OPERATIONS?**

A Critical Analysis of the Role and Implementation of the Responsibility to Protect
in UNMISS.

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Abstract

Regardless of the moral compromises and legal obligations of the international community, the UN has in an uncountable amount of times adopted a passive posture while mass atrocity crimes were taking place. In instances it has been because of a failure of early warning, other times because of a lack of resources and capabilities to halt the crisis, but many other times it has been purely due to the absence of political willingness to act. The appearance of the Responsibility to Protect, was thus welcomed by the international community and unanimously agreed upon. Yet, R2P in spite of its aspirations of making the protection of civilians from genocide, war crimes, crimes against humanity, and ethnic cleansing a reality, it has not been able to overcome the perennial dilemmas that the international community encounters since the UN was created. Part of this is because of the attitude that the UN Security Council has adopted taking advantage of the prerogative of the Permanent Five to use their veto power and another important part it is due to a lack of understanding on how to use the available mechanisms to advance the prevent and halt mass atrocity crimes. On this basis, this thesis aims at bringing clarity of *what is the relationship between the Responsibility to Protect and UN Peacekeeping Operations*. By analyzing the relationship between R2P and Peacekeeping Operations at the conceptual and operational level, and through a reflection on the implementation of the R2P in the mandate of the United Nations Mission in South Sudan, this thesis will conclude that while R2P and Peacekeeping Operations share the same goals, their relationship at the operational level it is very contested. This is because, firstly, R2P is not understood the same way by scholars and the international community that has largely assimilated R2P with coercive interventions, which makes difficult the incorporation of R2P in the mandates of peacekeeping operations. Secondly, these operations today face important shortages of resources and capacity impairing their potential to protect civilians. And thirdly, while peacekeeping operations are not the superb mechanism for advancing the prevention and protect of civilians at the level that the international community awaits, they present a good channel to mainstream the objective embodied in the R2P and enhance its presence international community.

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ACRONYMS AND ABBREVIATIONS

AMIB	African Union Mission in Burundi
Art.	Article
CAR	Central African Republic
DRC	Democratic Republic of Congo
GCR2P	Global Centre for the Responsibility to Protect
GoSS	Government of South Sudan
HIPPO	High-Level Independent Panel on Peace Operations
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRtoP	International Coalition for the Responsibility to Protect
IDP	Internally Displaced Person
IHL	International Humanitarian Law
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission Mali
MOISL	Master of Social Science in International Security and Law
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
P5	Permanent Five Members to the UN Security Council
Para.	Paragraph
PKO	Peacekeeping Missions
PoC	Protection of Civilians
R2P	Responsibility to Protect
Res.	Resolution
SGBV	Sexual and Gender Based Violence
SOFA	Status of Force Agreement
SPLA	Sudan People's Liberation Army
UN	United Nations
UNAMID	United Nations – African Union Mission in Darfur

UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNDPKO	United Nations Department of Peacekeeping Operations
UNEF	United Nations Emergency Force
UNGA	United Nations General Assembly
UNMISS	United Nations Mission in South Sudan
UNOCI	United Nations Operation in Côte D'Ivoire
UNOSOM	United Nations Operation in Somalia
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSG	United Nations Secretary General

INTRODUCTION

With the end of the Second World War and the aberrations seen during it, the community of States naively thought that mass violations of human rights and pain was part of the past. At least, the creation of the United Nations promised so and its Charter lighted up a peaceful future ahead of humanity. Yet, in the 1990's the world witnessed some of the bloodiest and most brutal man-made calamities of contemporary history. The genocides in Rwanda and Bosnia and the subsequent inaction from States after assuring in the UN Charter to "save succeeding generations from the scourge of war", shocked the international community who rapidly recognized the problematic it was facing when the Independent Inquiry in Rwanda concluded that "the failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system *as a whole*".¹ The UN who had been created to bring all States together to ensure international peace and security and protect all human beings from tyranny was proving incapable of doing so.

The UN inevitably entered in a phase of soul searching to deliver correspondently to its commitments and promised to "Never Again" permit avoidable human suffering from happening. Given that the mass killings in Rwanda and Bosnia took place in the face of inaction of UN peacekeepers, it did not took long for the UN to assimilate that part of that soul searching needed to go towards improving the effectiveness of peacekeeping operations and ensure that the UN although "not created to bring us to heaven" would "save us from hell".² As a result, peacekeeping operations gradually started taking a human security³ perspective and the protection of civilians (PoC), like that, became a vital component of the mandates of UN Peacekeeping Operations (PKOs).

The maximum splendor came in 2005 when the international community agreed on the Responsibility to Protect (R2P). A political commitment through which all Members to the UN pledged to prevent and protect the world population from genocide, war crimes, crimes against humanity and ethnic cleansing, and for that end they accepted to cooperate jointly.

¹ UN Secretary General, *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, December 1999, UN document S/1999/1257, 3.

² Press Release SG/382, Address by Secretary-General Dag Hammarskjöld at University of California Convocation, Berkeley, California, 13 May 1954 contains this statement at the conclusion. (Available at: <https://ask.un.org/loader.php?fid=11125&type=1&key=6bf400a0db526933d8577cce49f39ad2>)

³ Opposed to the traditional conception of "state security" where security depends on the states' ability to defend themselves against external threats, "human security" aims at setting human beings as a referent to security. In the 2005 World Summit Outcome Document – in which States also unanimously agreed on the R2P – states recognized that "all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential". UNGA, Res. 60/1, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, 24 October 2005, para. 143.

Nonetheless, the international community has probably never seen a commitment with so much meaning but with so little hope as R2P; in 2014, the number of deaths caused by armed conflicts and mass atrocity crimes surpassed 100,000, the highest record since 1994.⁴ The international community, despite commitments and legal obligations, has stood passive against distress in Syria, Myanmar, the Democratic Republic of Congo or Burundi – to name some – failing to overcome what Kofi Annan pointed as an imperative test: “forge unity behind the principle that massive and systematic violations of human rights (...) should not be allowed to stand”.⁵ Such fiasco does not stem from a lack of stressing the importance and benefits of preventing mass atrocity crimes, but mainly from a lack of putting words into action. As the Carnegie Commission already noted in 1997 “The problem is not that we do not know about incipient and large-scale violence; it is that we often do not act”.⁶ But why is that? On the one hand one could argue that the UN is no more than an organization made by States and at the end of the day its decisions are guided by the political willingness and compromises that its Members are keen to undertake. On the other hand, it appears that a more thorough research of the mechanism that the UN has at hand to prevent and halt mass atrocity crimes and how to overcome international passiveness is missing.⁷

Being aware of this gap and listening to the UNSG’s calls throughout the years to deepen the understanding in the possible use of peacekeeping in the context of prevention, deterring and responding to atrocities,⁸ and to be more creative when looking into different agendas to see how they can cooperate to find different solutions for the prevention and halting of international crimes,⁹ this thesis aims to answer and bring clarity on *what is the relationship between the Responsibility to Protect and UN Peacekeeping Operations?*

At first glance R2P and Peacekeeping Operations may seem different and putting them together certainly brings many political and operational challenges. Yet, the research undertaken in this thesis will disclose that both, R2P and PKOs, could benefit from a shared relationship. While including

⁴ Erik Melander, “Organized Violence in the World 2015: an assessment by the Uppsala Conflict Data Program”, Uppsala 2015 in UN General Assembly, *Mobilizing collective action: the next decade of the responsibility to protect: Report of the Secretary General*, UN doc. A/79/99, 22 July 2016, para. 8.

⁵ UN Department of Public Information, *Secretary-General Presents His Annual Report to General Assembly*. SG/SM/7136, GA/9596. 20 September 1999. (Available at: <https://www.un.org/press/en/1999/19990920.sgsm7136.html>)

⁶ Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report*, Carnegie Commission of New York, 1997, xvii.

⁷ Alex Bellamy, “Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications of the Responsibility to Prevent”, *The Stanley Foundation*, February 2011, 7.

⁸ UNGA resolution 65/877, *The role of regional and sub-regional arrangements in implementing the responsibility to protect: Report of the Secretary General*, UN doc. A/65/877, 28 June 2011, para. 35.

⁹ UNGA resolution 79/99, *Mobilizing collective action: the next decade of the responsibility to protect: Report of the Secretary General*, UN doc. A/79/99, 22 July 2016, para. 31.

R2P in peacekeeping operations would enable them to adopt the required lens to protect effectively civilians and achieve the level of expectation that the international community awaits from peacekeeping operations, peacekeeping operations could help advance the stand and understanding of the commitment freely made by the international community in 2005. For this purpose, an analysis on the *conceptual* and *operational* relationship between R2P and UN peacekeeping operation is pertinent. The outcome of looking at their relationship and examining the role of a peacekeeping operation in a R2P scenario, namely UNMISS (the UN Peacekeeping Operation in South Sudan) will enable this thesis to draw an answer on *whether integrating R2P explicitly or implicitly in UN Peacekeeping Missions would make a difference and if so what would that mean.*

While assuming this research, this thesis will carry out a vital task: bring clarity to the concept of R2P. Much of the debate around R2P has been centered on the collective military action under Chapter VII of the UN Charter that the commitment foresees when the state in question is unable or unwilling to protect its population from imminent atrocity crimes.¹⁰ Given the weight that sovereignty has in the anarchical international system, this was expected to be a very live aspect of R2P. Nevertheless, exposing R2P as a synonym of military intervention is not only misleading and endangers its evolution, but it reduces R2P to something it is not. On this basis, this thesis will help dispel misconceptions on R2P, overcoming the limits and narrow understanding given to it and will help advance R2P for what it actually is, *prevention* of mass atrocity crimes and *cooperation* among States and the UN for this purpose. A much required task in face that the price for ambiguities around R2P are being paid by civilians in a perilous position.

At the same time, the timing of this thesis appears quite convenient: this year (2019) marks the 25th anniversary of the Rwandan genocide; the latest report of the UNSG on the R2P pleads for the international community to take advantage of the mechanism created by the UN, like peacekeeping operations, to advance the R2P and pair effectively early warning to early action;¹¹ and the current UNSG has made the advancement of the Sustainable Development Goals (SDGs) a priority of his tenure. SDG 16, “Peace, Justice and Strong Institutions” calls to “reduce all forms of violence and related death rates everywhere”.

¹⁰ See for example, Alex J. Bellamy, “The Responsibility to Protect and the problem of military intervention”, *International Affairs*, Vol. 84 No.4 (2008), 615-639; David Chandler “Unravelling the Paradox of “The Responsibility to Protect”, *Irish Studies in International Affairs*, Vol. 20 (2009), 27-39; or Justin Morris, “The Responsibility to Protect and the use of force: Remaking the Procrustean bed?”, *Cooperation and Conflict* 51, n.2 (2016), 200-2015.

¹¹ UNGA resolution 72/884, *Responsibility to Protect: from early warning to early action, Report of the Secretary General*, UN doc. A/72/884, 1 June 2018, para. 29.

Last but not least, this thesis and the debates that will appear throughout its pages will assist in deepening and advancing the studies undertaken in the Master of Social Science in International Security and Law (MOISL). MOISL aims at analyzing international relevant issues from an interdisciplinary perspective in which political, legal and ethical dimensions are integrated to comprehend how to build a response and assess how the international community and organizations can react to the given situation. When dealing with R2P and its relationship with UN Peacekeeping Operations (PKOs) a valid argument can only be built taking into account these three perspectives. At the end of it does not only exist a legal duty to prevent and save human lives from the most outrageous violations of human rights that had been said to “shock the conscience of mankind”,¹² there is certainly also a moral compel. International politics, similarly, cannot be let outside of this equation; it depends entirely on the political willingness of States to decide whether to take action or not. The different perspectives that the research of this thesis will include, thus, will reinforce the reality that MOISL puts forward: international issues need of a multidisciplinary perspective to be tackled effectively.

METHODOLOGY

Research Question, sub-questions and structure

To answer this thesis’ main research questions, *What is the relationship between the Responsibility to Protect and UN Peacekeeping Operations?*, a look into different sub-question is pertinent to draw a clear and comprehensive answer. Each of these sub-questions will be approached through a qualitative research. Such decision stems from the fact that the questions posed in this thesis are about the “what?” and “how?” as the intention is to draw more complex answers than just “yes” or “no”.¹³ Likewise, the decision to choose qualitative research over quantitative research comes from a realization on a lack of qualitative criteria and contribution when looking into peacekeeping operations.¹⁴

The first chapter will be dedicated to the first sub-question: *what is the conceptual relationship between the Responsibility to Protect and UN Peacekeeping Operations?* For this purpose an analysis of mainly primary sources, namely the UN Charter, the 2005 World Summit Outcome Document, UN resolutions, the Genocide Conventions and other sources of international law will

¹² *Reservations to the Convention on the Prevention and Punishment of Crime of Genocide*, Advisory Opinion, International Court of Justice, 28 May 1951, 23.

¹³ Kristina Simon, *Practitioner’s Guide: Qualitative and Quantitative Approaches to Rule of Law Research*, International Network to Promote the Rule of Law, July 2016, p. 14.

¹⁴ Daniel Druckman and Paul Stern, “Evaluating Peacekeeping Missions”, *Mershon International Studies Review*, Vol. 41 No. 1 (1997), 152.

be undertaking. Likewise, the work of academics in the matter will also be taken into consideration. Scholars like Alex Bellamy, Thierry Tardy, Ramesh Thakur, or Jennifer Welsh, have played a critical role in bringing clarity on the Responsibility to Protect and related issues. Analyzing their work and the one from their peers seems pertinent to grant this thesis the capacity to conduct a critical analysis that incorporates current legal and political discussions.

The second chapter will focus on the following sub-question: *what is the operational relationship between the Responsibility to Protect and UN Peacekeeping Operation?* Apart from analyzing primary sources and scholarly journals and books, an analysis of the “Big 5” PKOs, namely MONUSCO in the Democratic Republic of Congo, UNAMID in Darfur, UNMISS in South Sudan, MINUSMA in Mali, and MINUSCA in the Central African Republic (CAR), will be critical to provide the question with a nuanced answer. Likewise, looking at States’ position on the issue will help draw an attentive answer. The Responsibility to Protect is a commitment made by States and peacekeeping operations are agreed upon in the UN Security Council (UNSC). Hence, when we ask the UN to be more active or toughen its responses to prevent and halt mass atrocity crimes, we are actually asking States to support the decisions and measures presented by the UN. Knowing whether States care about R2P as much as the UN does, whether States believe that there a relationship exists between peacekeeping operations and R2P, and/or if States are really committed to prevent and halt atrocity crimes or they still regard sovereignty as an irrevocable right is of outmost importance to have a clear picture of the extent to which R2P and an atrocity prevention lens fits in PKOs’ mandates.

Finally, an instrumental case study¹⁵ of a peacekeeping mission will be conducted to help elaborate on the sub-question: *would integrating R2P more explicitly or implicitly by UN Peacekeeping Operations make a difference and if so, what would that mean?* This case study will look into an R2P scenario in which a PKO was deployed, namely the United Nations Peacekeeping Mission in South Sudan (UNMISS), with the intention to bridge the gap between theory and practice, and bring light into the findings of the thesis. This case study will be conducted bearing in mind the need to approach peacekeeping operations from critical-thinking perspective. A large extent of the study of peace operations has been done through the lenses of problem-solving theories and have

¹⁵ An instrumental case study is defined by the Encyclopedia of Case Study Research as the study of a case to provide insight into a particular issue, redraw generalization, or build theory. In instrumental case research the case facilitates understanding on something else. In other words, the case study is itself secondary to understanding a particular phenomenon, in this particular instance what the relationship between the R2P and UN Peacekeeping Operations is. Albert J. Mills, Gabrielle Eurepos and Elden Wiebe, *Encyclopedia of Case Study Research*, 2010, 473.

mainly focused on developing strategies for conflict management.¹⁶ Although this system enables scholar to offer advice and recommendation on the matter to policy makers, it has undertheorized peacekeeping operations.¹⁷ Looking at these operations from a critical approach opens up the possibility of thinking about them more creatively and reflecting about what their performance says about global politics.¹⁸

States selection to analyze relationship between R2P and UN Peacekeeping Operations.

As stated above, to come with a complete answer to what the *operational* relationship between R2P and peacekeeping operations is, it is pivotal to take a look at what States' position is on the topic. Since looking at all 193 member States statements or interactions with the UN in this matter is not feasible given the time and resources with which this thesis counts, the analysis will be based on a representative sample of States. The statement of 3 countries in favor of R2P, 3 countries that are skeptical/against R2P, 3 major troop contributing countries (TCCs) and the Permanent Members to the Security Council (P5) will be analyzed for this purpose.

The chosen countries in favor of R2P are the Netherlands, Australia, and Rwanda. The Netherlands it is a strong supporter of R2P and has shown a clear political motivation to improve the efficiency of peacekeeping mission by assisting launching in 2018 “Action for Peacekeeping”, a political commitment to improve the efficiency and overcome the challenges that peacekeeping missions face. Australia has participated in all R2P formal and informal debates in UNGA, it is a strong advocate of R2P and it has showed an interest in putting forward the operationalization of R2P by hosting in its territory the Asia-Pacific Centre for the R2P. Finally, Rwanda is an interesting State to analyze because of its support to R2P from outside the West – releasing some of the weight over the North-South dichotomy in the R2P – and because, given the brutalities it witnessed during the genocide in 1994, it is interesting to observe what is the position of a country that could have benefited from an international community and peacekeepers acting through an atrocity prevention lens.

The countries selected against R2P are Cuba, Venezuela and Iran. While Cuba and Venezuela have been great opposer to R2P, their critics have tended to be “somewhat constructive” throughout their participation in virtually all R2P annual formal and informal dialogues at the UNGA. Their

¹⁶ Paul F. Diehl and Daniel Druckman, *Evaluating Peace Operations*, in: Joachim A. Koops, Thierry Tardy, Norrie MacQueen, and Paul D. Williams (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, 2015, 95.

¹⁷ Alex Bellamy, “The “next stage” in peace operations Theory?”, *International Peacekeeping*, Vol. 11, No. 1 (2004), 18.

¹⁸ *Ibid*, 17.

position is crucial to see the other face of R2P and build a comprehensive analysis on the issue. On the other hand, Iran has not been a solid opposer to R2P, but has nonetheless showed the shared skepticism that exists among members towards the commitment when it comes to timely and reactive collective action under Chapter VII of the UN Charter to halt mass atrocity crimes.

The statements from TCCs that will be assessed are the ones from India, Pakistan and Ghana.¹⁹ Pakistan and India are major TCCs, yet their relationship with R2P is not completely friendly and have showed discontent over the pressure imposed on TCCs by the international community to fulfill its expectations. Ghana, in contrast, is a TCC that strongly supporter of R2P and openly supports the inclusion of R2P in PKOs. Its statements could be of highlighted relevance when looking into the possibility of using peacekeepers for R2P purposes.

The position of the P5, which is very much divided, should also be taken into consideration because regardless of what the rest of the international community think of the relationship between R2P and PKOs it is the UNSC who allegedly in behalf on all Member States to the UN decide upon peacekeeping mandates. To authorize a mandate not only the positive votes of the P5 are necessary, but it would be naïve to ignore the role that veto power plays in all this architecture and the importance that full political back up has for the success and legitimacy of peacekeeping operations.

Case Study: Why UNMISS?

The case study that has been chosen for the shake of the research question in this thesis is the United Nations Mission in South Sudan. UNMISS was the first UN peacekeeping mission tasked to assist a government to fulfill its responsibility to protect civilians and, as such, is the most suitable example to see to how R2P and PKOs interact in the field. It further appears as a uniquely interesting case because even if assigned to help the Government of South Sudan to fulfill its primary responsibility to protect and being authorized in all its mandates to use all necessary means under Chapter VII to protect civilians, mass violations of human rights took place at an unthinkable rate and are still taking place in the presence of peacekeepers. A bit over two years after South Sudan gained independence, a political crisis erupted leading to a political turmoil and massive scale of human rights violations that might have amounted to war crimes and crimes against humanity. The mission was then forced to change the nature of its mandate and become primarily a PoC operation. Still, the mission has been highly criticized as it was unable to fulfill the expectation of the

¹⁹ According to the latest global raking of top trop contributing countries provided by the UN, India is number two, Pakistan number three and Ghana number ten in the list. The list is available under:

https://peacekeeping.un.org/en/ranking-of-military-and-police-contributions?date_filter%5Bvalue%5D%5Bmonth%5D=&date_filter_1%5Bvalue%5D%5Byear%5D=2017

international community. In the latest report of February 2019, and after 8 years of peacekeepers deployment, the Commission on Human Rights in South Sudan concluded that “violations including rape and sexual violence continue to occur, which may amount to international crimes, including war crimes and crimes against humanity.”²⁰

Consequently, the case study is used as a tool to analyze how the mission faced the escalation of violence that amounted to mass atrocity crimes and the reasons why the blue helmets could not protect civilians from atrocities. The aim is to find the fissures and challenges that the relationship between R2P and UN Peacekeeping Operations face to bring a plausible solution and analyze the impact of including R2P in peacekeeping mandates. This analysis will be carried out being aware that each peacekeeping operation is different and that it is not possible to apply a one solution fits all approach.

How to measure the success/effectiveness of peacekeeping missions?

When looking at the case study, a critical question appears: how is the effectiveness or success of the UNMISS going to be measured to prove whether the inclusion of R2P was or was not meaningful? In other words, *how can peacekeeping mission's effectiveness be proven at all?* This is a rather defiant question to answer since there is a range of intellectual challenges that stem from the complexity of peacekeeping operations. There is no agreed definition on what implies *peace*,²¹ neither on what the *definition* and *purposes* of peacekeeping missions are,²² and on what is rendered as *success* in peacekeeping missions.²³

For the objective of this thesis, PKOs are going to be understood by the definition given by the UNSG Boutros-Ghali in Agenda for Peace in 1992, “the deployment of a United Nations presence in the field, hitherto with the consent of all parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace”.²⁴ Although many years have passed by since the establishment of this definition, it appears to be a definition that depicts peacekeeping operations in a holistic and comprehensible way from a people’s centered

²⁰ Human Rights Council, res. 40/69, *Report of the Commission on Human Rights in South Sudan*, UN Doc. A/HRC/40/69, 12 March 2019, summary.

²¹ William Maley, *Introduction: Peace Operations and their Evaluation*, in: Daniel Druckman and Paul F. Diehl (eds.), *Peace Operations Success: A Comparative Analysis*, 1.

²² Bellamy *supra* note 17, 22.

²³ Mateja Peter, “Measuring the Success of Peace Operations: Directions in Academic Literature”, *Norwegian Institute of International Affairs*, paper 862 (2016), 5.

²⁴ UNGA, res. 47/277, *An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping*, UN Doc. A/47/277-S/24111, 17 June 1992, para. 20.

perspective. In the face of overlapping terminologies, it also appears relevant to clarify how “making peace” in the definition of peacekeeping operations is interpreted in this thesis. The Report of the High-Level Panel on Threats, Challenges and Change stated that genocidal acts or other atrocities could be considered a threat to international peace and security²⁵ and the UNSC has further reinforced this idea in various of its resolutions.²⁶ Hence, it is in the dearth of grave violations of human rights and humanitarian law that peace can start finding its way. Following this idea, when “making peace”, peacekeeping missions are to aim at preventing and halting mass atrocity crimes.

That being said, it appears the problematic of how to *measure the success* of peacekeeping missions. As peacekeeping missions have evolved into a rather complex tool, one could have expected the UN to develop a mechanism to analyze the success or failure of peacekeeping missions. Yet, the political factors that so much influence the work of the UN have worked against the development of such an instrument.²⁷ It was not until recently, in September 2018, that the Under-Secretary-General for Peacekeeping Operations, Mr. Jean-Pierre Lacroix, announced the elaboration of a new comprehensive performance assessment system (CPAS) to assess the whole of missions performance and better tailor efforts to strengthen peacekeeping.²⁸ Nevertheless, to fill this vacuum different scholars have developed holistic systems that can be applied to different peacekeeping missions. At this time, one of the most cited attempts at providing a comprehensive and generalized criteria comes from the framework developed by Paul Diehl and Daniel Druckman.²⁹ As they realized that the literature on peacekeeping was not well developed and that determining what constitutes a success or failure in peacekeeping missions was essential to build reliable knowledge, they developed a mechanism that could help overcome this problem.³⁰

Their systems defend that analyzing the success or failure of peacekeeping missions requires of prior conceptual and analytical decisions. On this basis, 4 elements need to be determined before starting with the analysis: (1) success is defined differently depending on the stakeholder that was

²⁵ UNGA, res. 59/565, *Report of the High-Level Panel on Threats, Challenges and Change*, UN Doc. A/59/565, 2 December 2004, para. 200.

²⁶ The UNSC has recognized that “flagrant and widespread violations of application international humanitarian and human rights law in situations of armed conflict may constitute a threat to inter peace and security”. UNSC, res. 1894 (2009), *Resolution on the Protection of Civilians*, UN Doc. S/RES/1894 (2009), 11 November 2009, para. 3. See also, for example, UNSC, res. 688 (1991) on Iraq, UN Doc. S/RES/688 (1991), 5 April 1991 and UNSC, res. 794 (1992) on Somalia, UN Doc. S/RES/794 (1992), 3 December 1992.

²⁷ Maley, *supra note* 21, 7.

²⁸ United Nations Peacekeeping, “Under-Secretary-General for Peacekeeping Operations at the UN Security Council Thematic Debate on Peacekeeping Reform and Performance”, 8349th Meeting, 12 September 2018. (Available at: <https://peacekeeping.un.org/en/under-secretary-general-peacekeeping-operations-un-security-council-thematic-debate-peacekeeping>)

²⁹ Peter, *supra note* 23, 6.

³⁰ Diel and Druckman, *supra note* 16, 95.

to be asked, hence *success for whom?*; (2) missions change over time and the consequences of intervention do not disappear once the mission has withdrawn, thus are we looking at the *short or long term consequences?*; (3) there has to be a benchmark of comparison to analyze the mission effectively, otherwise the mission could always be rendered as successful, so the mission is successful *compared to what?*; (4) peacekeeping missions are far from homogeneous and each has its own objectives depending on the final goal to achieve, hence the analysis needs to be done bearing in mind *what the primary goals of the mission are*. Once these elements are clear, Diehl and Druckman elaborated an evaluation template that consists on a series of interrelated steps that aim at identifying the primary goals, assess the measures taken to achieve those goals, and make a holistic assessment in the accomplishment of the goals.³¹ This system, like many other system, does not offer a clear cut answer on whether the mission has been successful or not. But when talking about peacekeeping missions, there is no possible way to answer simply *yes* or *no*, because these missions have many effects and are complex, thus it is unusual that a mission is uniform in its success or in its failure.³²

Although this thesis does not aim to prove the effectiveness of UNMISS as a whole, but the effectiveness of the mission to prevent and halt the commission of the 4 crimes (genocide, war crimes, crimes against humanity, and ethnic cleansing) and to protect civilians, Diehl and Druckman's framework can be adapted to the purpose as the aim is still proving the effectiveness of some of the mission's primary goals. Following their analytical pattern, the decisions with respect to the stakeholders, time perspective, baselines and mission type goes as follow. First, the success is going to be related to civilians as they are the custom targets of mass atrocity crimes. Second, both long-term and short-term consequences are going to be taken into consideration since the cooperation aspect of R2P (Pillar II) calls for rather long-term measures whereas the timely and decisive aspect of R2P (Pillar III) aims at immediate reactions. Third, deciding on the benchmark of UNMISS is difficult because there is not a before and after to which it could be compared to. South Sudan became independent in 2011, UNMISS was authorized the same year, and the life of the territory before the independence has been marked by an almost permanent state of instability. Being aware that the success of PKOs as stated by Robert C. Johansen cannot be measured against "an ideal state of peace"³³ but taking into consideration the current political international context, the benchmark that is going to be used is that of that of any other country that complies with at least the

³¹ Diehl and Druckman, *supra note* 16, 100.

³² Paul F. Diehl and Daniel Druckman, *Peace Operations Success: The Evaluation Framework*, in: Daniel Druckman and Paul F. Diehl (eds.), *Peace Operations Success: A Comparative Analysis*, 2013, 13.

³³ Robert C. Johansen, "U.N. Peacekeeping: How Should We Measure Success? Review of International Peacekeeping by Paul F. Diehl", *Mershon International Studies Review*, Vol. 38 No. 2, October 1994, 309.

minimum standards of human rights. In other words, it is going to be contrasted against a situation in which civilians are not directly targeted to advance the interests of the conflicting parties and where no mass atrocity crimes are taking place. Finally, the analysis is going to be carried out bearing in two primary goals set UNSC res. 1996 (2011) (1) advising and assisting the Government of South Sudan in fulfilling its responsibility to protect civilians and (2) protecting civilians from imminent threats.

To evaluate the efficiency of these two goals, further mandates extending the peacekeeping mission are going to be analyzed to see to what extent the peacekeeping mission aims at adapting to the reality in the field. To analyze the first goal a look into national initiatives to prevent and halt mass atrocities crimes appears pertinent to see whether the government is aiming at fulfilling its primary responsibility to prevent the commission of gross violations of human rights. Ratification of international conventions and treaties will also be considered for this purpose. On the other hand, to determine the success of the second goal the analysis will look at number of civilians casualties, pattern of human rights violations and the number of displaced people, which includes refugees and Internally Displaced Persons (IDPs). This will allow to effectively analyze whether the mission was able to halt the commission of mass atrocity crimes or at least act as a deterrence.

This examination will be done being aware that, firstly, prioritizing objectives when evaluating peacekeeping missions, as Diehl and Druckman's framework propose, can be misleading.³⁴ Although the goals that are going to be measured are central to UNMISS's mandate, there are also a number of other goals in the mandate and rendering the PKO successful or not as a whole based only on these two goals would be unfair. Likewise, this analysis will be done bearing in mind that UNMISS mandate has not been static – the mandate radically changed in 2014 from after the eruption of the civil war – and that the deployment of UNMISS is not yet over.

Interviews

To help nuance the work on this thesis, bring up to date information, and help bridge the gap between practitioners and scholars and theory and practice, a number of interviews were conducted with experts on the matter. The people that agreed to be interviewed were: Ms. Aditi Gorur, Senior Fellow and Director of Protecting Civilians in Conflict Program and a Senior Associate at Stimson Centre; Ms. Juliette Paauwe, Senior Research Analyst at the Global Centre for the Responsibility to Protect (GCR2P); Mr. Francois Grignon, Deputy Director for East African Division and Team

³⁴ Darya Pushkina, "A recipe for Success? Ingredients of a successful peacekeeping mission", *International Peacekeeping*, 13:2 (2006), 134.

Leader for UNMISS IOT at the United Nations; Mr. Frank Okyere, Researcher at the Faculty of Academic Affairs and at the Kofi Annan International Peacekeeping Training Center; Mr. Eugene Ruzindana, Head of Research Department at the Rwanda Peace Academy; and three other interviewees, experts on UN peacekeeping operations that preferred staying anonymous. For the clarifying purposes they will be referred as “Anonymous expert X”, “Anonymous expert Y”, and “Anonymous expert Z”.

Limits of the research

The first limitation that this thesis encounters is that the time and resources available for this research does not render possible to carry out a field research to actually observe what is the reality in the places where peacekeeping operations are being deployed , and in particular in South Sudan. For the aim of this thesis this would have been ideal but not vital. The interviews conducted, nevertheless, proved to be very useful to overcome this barrier.

The second limitation is that peacekeeping operations are not alike, each of them is different and their mandates, evolution and results so much depend on the environment, conflict, and political situation in which it was mandated. On this basis, it is virtually impossible to draw concluding remarks that will fit to every peacekeeping operations. Yet, this thesis does not aim at solving all the problems but helping understand what are the challenges and the standing of the relationship between R2P and PKOs.

Finally, this research will be conducted being aware of the difficulties that a qualitative research on this topic poses. Qualitative research methods use work that are analyzed by a researcher, who has its own understanding, own convictions and on conceptual orientation in the matter.³⁵ Additionally, mass atrocity crimes are so outrageous that affects to humanity as a whole, as such at times it appears difficult to stay emotionless. Yet, the analysis in this thesis will be done bearing in mind that words must be used and considered carefully for the benefit of all: scholars, the international community, and the victims of these crimes.

CHAPTER I: THE CONCEPTUAL RELATIONSHIP BETWEEN THE RESPONSIBILITY TO PROTECT AND PEACEKEEPING OPERATIONS.

This first chapter bears the responsibility to set light in the conceptual relationship between the Responsibility to Protect and UN Peacekeeping Operations. Starting the analysis with this chapter seems only logical, since it is here where one understands what are both concepts about, how they

³⁵ Matthew B. Miles and A. Michael Huberman, *An Expanded Sourcebook: Qualitative Data Analysis*, Second Edition, 1994, 8.

are intertwined, and if they aim for the same goal. It is important to begin by stating that the way we conceive both concepts today is due to the same happenings: the genocides in Rwanda and Srebrenica. Although PKOs existed well before both genocides, after 1995 PKOs went through a significant transformation and conceptual revisionism. At the same time, the idea that sovereignty was not a right but actually a responsibility started to flourish and with it the life of civilians became a central topic in the table of conversations and decision-making. The number of deaths and brutalities seen in the 90s was not all in vain; the decade opened up the momentum for a legal, political and moral revolution towards human security that so much has shaped the behavior and expectations of the international community.³⁶

Peacekeeping Operations, a path towards human security

The first peacekeeping operation pursuing the intention of the UN Charter to create a system of collective security where the international community exercised pressure against a state threatening or breaking the peace was established in 1956 with the eruption of Suez Canal Crisis. UNSG Hammarskjöld together with the Canadian Foreign Minister at the time, Lester B. Pearson, designed the UN Emergency Force (UNEF).³⁷ The decision to establish PKOs came into being as a consequence of the UN Security Council blockade and inaction during the Cold War. The tensions at that time between the East and the West made consensus among super powers on response to breaches of peace, threats to peace and acts of aggression unimaginable in the face of a vivid risk on the use of the veto power.³⁸ Similarly, the horrors of the Second World War had produced contradictory responses on sovereignty and protection of human rights from the international community.³⁹ Nonetheless, these did not make the international community change its idea on the use of military components as a measure to maintain or restore peace. On this basis, and following the functions entrusted to it under articles 10, 11 (2) and 14 of the UN Charter,⁴⁰ the UN General Assembly (UNGA) decided to take over UN's main purpose of maintaining international peace and security. Under the resolution of *Uniting for Peace* (1950), the Assembly established that when the UNSC, due to a lack of unanimity, failed to perform its primary responsibility to maintain

³⁶ Robert Schütte, *Civilian Protection in Armed Conflicts. Evolution, Challenges and Implementations*, 2013, 144.

³⁷ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus, *The Charter of the United Nations: A Commentary Volume I*, Third Edition, 2012, 1175.

³⁸ *Ibid.*

³⁹ Alex J. Bellamy and Paul D. Williams *Understanding Peacekeeping*, 2010, Second Edition, 81.

⁴⁰ Art. 10 states that the UNGA “may discuss any question or any matters within the scope of the present Charter”. Art. 11 (2) allows it to “consider the general principles of co-operation in the maintenance of international peace and security (...) and may make recommendations with regard to such principles to the Members or the Security Council or both”. And art. 14 establishes it “may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impart the general welfare or friendly relations among nations”.

international peace and security it would “consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including (...) the use of armed force when necessary”.⁴¹

This pronouncement was not taken without controversy. Some Member States defended that the resolution overstepped on the Security Council’s responsibilities as established by art. 24 of the Charter, which allocated the primary responsibility for the maintenance of international peace and security on the Council. The International Court of Justice (ICJ) brought light into the discussion stating that the responsibility conferred to the UNSC is “primary”, which does not mean exclusive.⁴² Likewise, the wording on the use of force in the 1950 resolution was also very problematic, since under the UN Charter only the UNSC under Chapter VII can authorize the use of force in collective responses. The ICJ in this regard was also very clear stating that “It is only the Security Council which can require enforcement by coercive action against an aggressor”.⁴³ Hence, while the UNGA had the power and capacity to recommend peacekeeping missions, it was exclusive authority of the Security Council to decide on enforcement actions. Nevertheless, it is important to note that since 1963 all PKOs have been established by the UNSC.⁴⁴ When doing so, the UNSC does not need to mention the exact Chapter under which it authorized the establishment of peacekeeping operations. This is because PKOs are not explicitly provided in the Charter and its precise constitutional basis remain unclear.⁴⁵ That is not to say that international law does not play a pivotal role within the operations. As Oscar Schachter explained in the first, the UN Charter, mainly through Chapter VI and VII,⁴⁶ provides authority for the deployment; secondly, law helps to control the behavior of the parties to the conflict; and thirdly, international law provides common standards of reference on how to deal collectively with threats to international peace and security.⁴⁷

Following UNEF framework and coming discussions on the topic, PKOs started find its way and shape as a type of collective security tool used by the UN to maintain or preserve peace. On these basis, PKO were tasked to assist in the creation and maintenance of conditions that would enable long-term conflict resolutions by the parties themselves.⁴⁸ For this to work they had to be grounded

⁴¹ UNGA, Res. 377, *Uniting for Peace*, UN Doc. A/RES/5/377, 3 November 1950, para. 1.

⁴² *Certain Expenses of the United Nations*, Advisory Opinion, International Court of Justice, 20 July 1962, 151.

⁴³ *Certain Expenses of the United Nations*, *supra* note 48.

⁴⁴ Simma, Khan, Nolte, Paulus, *supra* note 37, 1186.

⁴⁵ Christine Grey, *The Use of Force and the International Legal Order*, in: Malcolm D. Evans (ed.), *International Law*, 2018, Third Edition, 624.

⁴⁶ Chapter VI of the UN Charter deals with the Pacific Settlement of Disputes and Chapter VII envisions actions with respect to Threats to Peace, Breaches of Peace, and Acts of Aggression.

⁴⁷ Quoted in Nigel D. White, *Peacekeeping and International Law*, in: Joachima A. Koops, Norrie MacQueen, Thierry Tardy and Paul D. Williams (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, 43.

⁴⁸ Bellamy and Williams, *supra* note 39, 173.

on the consent of parties involved in the conflict and non-existent or minimal use of force for the mere purpose of self-defense. Basing the missions on this principles was critical for the UN to clarify that this operations were not a synonym of peace enforcement. To further overcome complications that the rivalries between the Cold War could trigger, and given that many of the PKOs in the 60s were aimed at helping monitoring cease-fires and borders after the withdrawal of colonial powers, the permanent members of the UNSC as well as States with historic or geographical interests generally did not participate in these operations.⁴⁹ This decision ensured that operations were also impartial. This third element, together with consent and non- use of force form what is regarded as the “holy trinity” of traditional peacekeeping operations. This trinity ensures that PKOs respect the fundamental principles of international law of sovereignty, non-use of force and non-intervention, found in art. 2 of the UN Charter.

As the UN become more confident with the deployment of PKOs, these became more multifaceted and their complexity started to increase. In fact, the 80s where marked by a moment of euphoria in peacekeeping operations as UN Peacekeeping Operations were awarded the Nobel Peace Prize in 1988.⁵⁰ But it is after the end of the Cold War that things started to really change. The Berlin Wall in its fall took with it the major obstacle for achieving unanimity at the Security Council and the nature and shape of PKOs transmuted at a speedy rhythm. As Alex Bellamy and Paul Williams explain, with the end of the Cold War, the triumph of liberalism, and the acceleration of globalization, governments and the UN started to feel encouraged and to believe that PKOs could help transform societies affected by war, protect human rights, pursue democracy and enforce peace around the world.⁵¹ Hence, peacekeeping missions were not any more deployed to simply preserve the peace and monitor cease-fires but started to undertake multidimensional mandates that included elements of development and assistance to civilians such as disarming belligerents, organizing and supervising elections, delivering humanitarian aid, guaranteeing freedom of movement or enforcing no-fly zones that made peacekeeping operations highly complex.⁵² Some of these missions were deployed in Angola, Cambodia or Namibia.

But soon peacekeeping operations were going to face one of its major backlashes after earlier successes as the expansion of peacekeeping operations was not followed by a growth in UN’s institutional capacity or a gradual increasement of willingness by Member States to provide troops

⁴⁹ Christine Gray, *International Law and the Use of Force*, 2008, Third Edition, 301.

⁵⁰ Ronald Hetto, “From peacekeeping to peacebuilding: the evolution of the role of the United Nations in peace operations”, *International Review of the Red Cross*, 95 (891/892) (2013), 506.

⁵¹ Bellamy and Williams, *supra note* 39, 119.

⁵² Simma, Khan, Nolte and Paulus, *supra note* 37, 1178.

and financial support.⁵³ In fact, the 90s was marked by the authorization of PKO operations that did not count with appropriate mandates, support, and guidance in places where “guns had not yet fallen silent” and where there was no peace to keep.⁵⁴ A clear example of this is the mission in Somalia in 1992. The UN deployed with the support of the USA its very first PKO acting under Chapter VII.⁵⁵ But the equation of putting the command of the mission outside the UN and allowing the use of force soon failed; it was drawn into conflict, 18 American soldiers died, and was unable to carry out its mandates. After this failure the reluctance towards PKOs increased having a deadly impact on the operations in Rwanda (UNAMIR) and former Yugoslavia (UNPROFOR), where peacekeepers in the face of major violations of human rights and genocides did not react because States were hesitant of authorizing the use of force to peacekeepers. In UNAMIR, soldiers did not open fire on any occasion during the genocide.⁵⁶ These PKOs ended up passing to history as a catastrophic disaster for the UN, put PKOs in the spotlight and obliged the UN to look into a conversation that had been continuously postponed: the strict attachment to the “holy trinity” had led PKOs to repeated failures in the prevention of mass human rights violations.⁵⁷

From every failure comes a lesson, and so after the genocides that occurred in 1994 and 1995 in Rwanda and Srebrenica respectively and once the UN realized that its credibility depended on its capacity to protect civilians, the UN confronted between two options: going “back to basics”, in other words going back to traditional peacekeeping, or reconceptualize the basis of PKOs.⁵⁸ The UN decided to adopt a position in which it would “Never Again” allow civilians to bare the sufferings seen during the brutalities committed in Rwanda and Srebrenica and two actions were taken reshaping PKOs. First, Kofi Annan, the UNSG at the time, ordered a High-Level Panel to undertake a comprehensive review on PKOs from all aspects. The report, known as the Brahimi Report, was published in 2000 and apart from establishing the key conditions for the success of future complex operations – political support, rapid deployment and sound peace-building strategy –, it reinforced the necessity of peacekeepers to protect civilians as peacekeepers “who witness violence against civilians should be presumed to be authorized to stop it.”⁵⁹ It concluded that political neutrality has

⁵³ Bellamy and Williams, *supra note* 39, 119.

⁵⁴ United Nations Peacekeeping, *Our History*. (Available at: <https://peacekeeping.un.org/en/our-history>)

⁵⁵ UNSC, Res. 814 (1993), *Somalia*, UN Doc. S/RES/814 (1993), 26 March 1993, section B.

⁵⁶ Conor Foley, *UN Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations*, 2017, 92.

⁵⁷ *Ibid*, 72.

⁵⁸ Bellamy and Williams, *supra note* 39, 120.

⁵⁹ UNSC, res. 2000/809, *Report of the Panel on United Nations Peace Operations*, UN Doc. S/2000/809, 21 August 2000, para. 63.

often degenerated into military cowardly and abandonment of the duty to protect civilians.⁶⁰ On these grounds, impartiality should not be translated into “complicity with the evil”.⁶¹ The traditional principles in which peacekeeping operations were based needed to adapt to the requirements and expectations of the wider international community.

The first operation with an explicit protection of civilians mandate was authorized by the Security Council in 1999 to Sierra Leone (UNAMSIL) who was authorized to “afford protection to civilians under imminent threat of physical violence”.⁶² The Council since then has adopted a “stronger” posture towards the protection of civilians through affirmations of International Humanitarian Law (IHL) and human rights law and a more explicit emphasis on the physical protection of civilians. From the current fourteen peacekeeping operations, nine have a PoC mandate,⁶³ which means that 95% of the peacekeepers have to protect civilians.⁶⁴ Nevertheless, as we will see later in this thesis, the coexistence between the “holy trinity” and PoC mandates is a rather uneasy one.

And second, sovereignty was reconceptualized as a responsibility. The shift in the Council position towards PKOs and civilians was an imperative after the international community unanimously agreed on the Responsibility to Protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing. Making human security core to the actions of the UN was highlighted by Kofi Annan in its report on “We the people” already in 2000, where he clearly presented that the wars of the new century are very much internal in where borders are not violated as much as people and as such “the protection of fundamental human rights, once considered the province of sovereign states alone, is now a universal concern transcending both governments and borders”.⁶⁵

Hence, what appeared as a mechanism to overcome the inaction of the Security Council during the Cold War has become the main mechanism of the UN to achieve the purposes entrusted to it by the UN Charter⁶⁶ and what began as pure military actions to guarantee peace between States in conflict, it has developed into wider actions aiming at keeping up with the challenges of the new century and the importance that people centered perspectives have gained in the international realm.

⁶⁰ Ramesh Thakur and Thomas G. Weiss, “R2P: From Idea to Norm – and Action?”, *Global Responsibility to Protect*, 1 (2009), 31.

⁶¹ UNSC, res. 2000/809, *supra note* 59, ix.

⁶² UNSC, res. 1270 (1999), *On the situation of Sierra Leone*, UN Doc. S/RES/1270 (1999), 22 October 1999, para.14.

⁶³ Global Centre for the Responsibility to Protect, “Peacekeeping and Civilian Protection”. (Available at: http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection)

⁶⁴ United Nations Peacekeeping, “Protecting Civilians”. (Available at: <https://peacekeeping.un.org/en/protecting-civilians>)

⁶⁵ Kofi Annan, “Millennium Report: We the Peoples: The Role of the United Nations in the 21st Century”, 2000, 68.

⁶⁶ Gray *supra note* 45, 625.

The appearance of sovereignty as a responsibility

Since the beginning of the 1990s the feeling that art. 2(4) of the UN Charter, which prohibits the use of force in the relation between States, could not be longer used by States as a shield to excuse all of their actions started to spread. UNSG Javier Perez de Cuellar in 1991 stated that “we are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents”.⁶⁷ Indeed, the world was facing a real dilemma between supporting the legal principle of sovereignty of States and defending the protection of human beings. The UN started to realize that clashing nature of the articles of its Charter were of no help in facing this dilemma. While art. 2(7) prevented the UN to intervene in the internal matter of States, art. 55 and 56 called for Member States to take joint action in the universal respect for human rights.⁶⁸ This situation moved to legal scholars like David J. Scheffer to confirm in 1992 that a “new commitment” was on its way, because “to argue that norms of sovereignty, non-use of force, and the sanctity of international affairs are paramount to the collective human rights of people whose lives and well-being are at risk, is to void the hard question of international law and to ignore the march of history”.⁶⁹ Scheffer was not wrong, a new commitment was on its way. After the brutalities committed in Kigali and Srebrenica, the strict thinking of sovereignty as absolute was left behind embracing that the behavior of States towards its own citizens was a matter of concern for the international community. Following this line of thinking, in 1996 D. Francis Deng and his colleagues at the Brookings Institution started to reframe sovereignty in a positive way as a form of responsibility towards States’ population.⁷⁰ This set the foundation to what later the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) called the Responsibility to Protect in 2001.

The 1999 NATO intervention in Serbia to halt human suffering was the cherry on top of the 1990s catastrophic events that moved the international community to realize that looking at the role of States and the UN as a whole when mass atrocity crimes were taking place was imperative. The UN was having a hard time to make sense of the endless stream of human protection crises and the normative and material capacity of the international community could no longer keep up with the

⁶⁷ UN Press Release, SG/SM/4560, 24 April 1991.

⁶⁸ Roberta Cohen, *From Sovereign Responsibility to R2P*, in: W. Andy Knight and Frazer Egerton (Eds.) *The Routledge Handbook of the Responsibility to Protect*, 2012, 7.

⁶⁹ David Scheffer, “Toward a Modern doctrine of Humanitarian Intervention”, *University of Toledo Law Review*, Vol. 23 (1992), 259.

⁷⁰ Roberta Cohen and Francis M. Deng, *Sovereignty as a Responsibility: Building Block for R2P*, in: Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect*, 2016, 75.

situation.⁷¹ As such, the ICISS was entrusted the task to set light on what to do when States were committing gross violations of human rights. It presented to the world what they named as the “Responsibility to Protect”. The Commission reconceptualized sovereignty as the primary responsibility of States to protect its population from gross violations of human rights and if the State failed to do so, the responsibility would be transferred to the international community. After years of deliberations and trying to frame what the High-level Panel on Threats, Challenges and Change called in 2004 as an “emerging norm”,⁷² the 192 Member States of the UN at the time unanimously agreed on the R2P in the World Summit in 2005.

The World Summit Outcome Document, which is regarded as the most authoritative statement of R2P,⁷³ conceptualized the political commitment of the responsibility to protect in 2 paragraphs:⁷⁴

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

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

R2P would be activated in the face of the most serious crimes against humankind: genocide, war crimes, crimes against humanity and ethnic cleanings. The decision to reduce to these 4 crimes in

⁷¹ Brett R. O’ Bannon, *Reassessing the Responsibility to Protect: Conceptual and operational challenges*, 2016, 7.

⁷² UNGA, res. 59/565, *supra* note 25, para. 203.

⁷³ Simma, Khan, Nolte, and Paulus, *supra* note 37, 1203.

⁷⁴ UNGA, res. 60/1, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, 24 October 2005, paras. 138 and 139.

opposition to “large scale loss of life” or “where population is suffering a serious harm” as presented by the ICISS probably arised from the reality that, except from the crime of ethnic cleansing,⁷⁵these are crimes that all count with an agreed definition under international law in the 1998 Rome Statute, the Convention for the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions of 1949.⁷⁶ Additionally, such is the pain that these crimes envision, that they have been rendered as not only inflicting pain in the person who directly suffers them but on the entire humanity. This has motivated the international community to consider these crimes part of customary international law and the prohibition of their commission is *jus cogens*,⁷⁷ in other word their prohibition accepts no derogation. Reducing R2P to these crimes was potentially done to gather greater common understanding and less constrains when aiming for collective action. But the reality is far from that; the nature of these crimes is a very challenging barrier. First, these crimes do not occur from one day to another, they require a planning, and the initial violations might not yet reach the threshold of mass atrocity crimes making it difficult to assemble international action before the actual happenings of genocide, ethnic cleansing, war crimes or crimes against humanity. And second, given the level of resources, planning, and intention behind the perpetration, they require to be organized by people in a position of control and power. Thus, it is not unusual that these crimes are ordered by elites in the highest ranks of a government.

On the other hand, the UN became the epicenter of the concept. The international community can collectively take peaceful actions under Chapter VI and VIII to protect civilians, and solely the UNSC, when national authorities “manifestly fail to protect their population” from the four crimes, is to decide on a “case-by-case” basis to take robust collective action under Chapter VII. To overcome blockades on the UNSC on R2P situation, the ICISS foresaw an agreement between the Permanent Five (P5) to avoid the use of their veto. Nevertheless, this was totally rejected in the 2005 agreement⁷⁸ and it is an on-going battle which might not see a positive resolution any time soon.

⁷⁵ Ethnic cleansing has not yet been recognized as an independent crime under international law. There is no precise definition or exact acts that can qualify as ethnic cleansing. Yet, different attempts have been made to describe the crime in a suitable manner. See UNSC, res. 25275, *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, UN Doc. S/25274, 26 January 1993 and UNSC, res. 1994/674, *Final Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, UN Doc. S/1994/674, 27 May 1992.

⁷⁶ For a view on the definition of the crimes look at: *Rome Statue of the International Criminal Court*, 17 July 1998, arts. 6, 7, 8.

⁷⁷ *Jus cogens* or peremptory norm of general international law, as defined by the Vienna Convention on the Law of the Treaties in art. 53, “is a norm accepted and recognized by the international community of States as a whole from which no derogation is permitted”. This originates from the idea that certain legal rules cannot be omitted given the fundamental values they uphold.

⁷⁸ Spencer Zifcak, *The Responsibility to Protect*, in: Malcolm Evans (ed.) *International Law*, Fifth Edition, 2018, 495.

This consensus has been recognized as one of the main achievements of the World Summit and as a milestone in the change of thinking of the international community towards protection of human beings. Nevertheless, the wording of paragraphs 138 and 139 let ample room for arguments on the meaning, standing, and application of the new and much desired concept. Firstly, R2P as agreed upon did not bring anything new: it did not add any new legal duty and was presented as a mere political or moral commitment. As Bellamy and Reike pointed out, what R2P did was putting together a set of preexisting legal rules under the same concept to ensure their application and avoid future failures.⁷⁹ Hence, its appearance does not guarantee that those crimes will not be perpetrated. And secondly, lacking of legal status it does not impose any legal duty requiring positive action from the members of the UNSC, who will still decide on the existence of international threats to peace and security and to agree when and where to act.

To bring clarity to the meaning and scope of the doctrine, the UNSG has since 2009 presented annual reports on the R2P. In 2009, Ban Ki-Moon set out a comprehensive strategy to implement R2P in “a fully and consistent manner”.⁸⁰ This strategy is based on three non-consecutive and equally important pillars. Pillar I, “the protection responsibilities of States”, holds that the primary responsibility to protect population is on the States and as such are to protect people in its territory. Pillar II, “international assistance and capacity-building”, foresees the responsibility of the international community to assist and encourage States to meet its primary responsibility. And finally, pillar III, “timely and collective action”, calls the international community to respond collective in a timely and decisive manner, under the auspices of the UNSC, when the state in question is manifestly failing to halt mass atrocity crimes. Although further UNSG have reiterated the importance of the three pillars and that without one of them to concept would be incomplete,⁸¹ much of the attention has been posed on the third pillar, which states fear that could be used as a tool of Western States to advance their interests. Also, given the working method of the UNSC, the application of the R2P has been rendered as selective and inconsistent and some States still fear that the principles of state sovereignty and non-intervention in domestic affairs are very much endangered by this notion.⁸² This position has overshadowed the necessity to further strengthen the

⁷⁹ Alex J. Bellamy and Ruben Reike, “The Responsibility to Protect and International Law”, *Global Responsibility to Protect*, n. 2 (2010), 274.

⁸⁰ UNGA, res. 63/677, *Implementing the responsibility to protect: Report of the Secretary-General*, UN Doc. A/63/677, 12 January 2009, para. 2.

⁸¹ UNGA, res. 66/874, *Responsibility to protect: timely and decisive response. Report of the Secretary-General*, UN Doc. A/66/874, 25 July 2012, para. 2.

⁸² In August 2010, the Global Centre for the Responsibility to Protect (GCR2P) found that 81% of states supported the concept while 19% opposed it. (Available at: http://www.globalr2p.org/media/files/gcr2p-report_informal-interactive-dailogue-2010.pdf) In the 2018 Summary of the UN General Assembly Plenary Meeting on the Responsibility to Protect, the GCR2P only noted 6 states as totally against the principle of R2P, namely Cuba, Democratic People’s Republic of

prevention and cooperation envisioned in pillars I and II, and thus the relationship between R2P and other mechanisms of the UN, namely peacekeeping operations.

One shared goal: the protection of human beings and creating secure environments

Having understood what R2P and Peacekeeping Operations are about and how their evolution came along, it comes as no secret that both concepts have a common aim: protecting civilians and creating the appropriate environment to ensure peace. As we have seen, much of this has been possible due to the international community shifts in mentality, which has made possible changing the scenarios where peacekeeping operations act. Frederic Megret claims that the metamorphosis that peacekeeping operations have went through is the result of an anti-atrocity turn in international politics and law, making their activities unfold directly in the areas where the international crimes that R2P is supposed to prevent occur.⁸³ Certainly, PKOs have shifted from undertaking mainly military actions to assume what is regarded as “multi-dimensional operations” or “wider peacekeeping” like in the DRC or the CAR. These operations are typically deployed in scenarios of aftermath or on-going internal conflicts, where the environment is violent and dangerous, and where major violations of IHL and human rights law, including mass atrocity crimes, are very present. Peacekeepers in these PKOs are forced to support the host-State with a wide arrange of activities and military, police, and civilian capabilities to guarantee the implementation of a peace agreement.⁸⁴

But as we will shortly see, it is not only their common goal what bounds them together, the capacity to complement each other and ability to fill their vacuums is an important asset to take into consideration when looking at their conceptual relationship because it is through their active cooperation that they can achieve their shared goal. The UNSG has been trying to make the relationship a more stable one, but so far it has not been quite successful. This stems most plausibly from a lack of understanding of the concepts, mostly on the side of the Responsibility to Protect, a lack of looking into more creative ways to overcome the challenges that the UN faces when talking about mass atrocity crimes, and the role of international politics in peacekeeping operations.

The Responsibility to Prevent and Peacekeeping Operations

Korea, Russia, Sudan, Syria and Venezuela. (Available at: <http://www.globalr2p.org/media/files/2018-summary-of-unga-plenary-on-r2p.pdf>)

⁸³ Frederic Megret, “Between R2P and The ICC: “Robust Peacekeeping” And the Quest for Civilian Protection”, *Criminal Law Forum*, 26 (2015), 103.

⁸⁴ UN Department of Peacekeeping Operations (UNDPKO), *United Nations Peacekeeping Operations: Principles and Guidelines*, March 2008, 22.

A very often overshadowed by critical element that brings PKOs and R2P together at the conceptual level is prevention of human suffering. In the case of R2P this is done with mass atrocities in mind and in the case of PKO it has traditionally been done with armed conflicts in perspective. Although the prevention of armed conflicts is not a synonym of prevention of mass atrocity crimes and treating them as equals could lead to unsuccessful operations,⁸⁵ it is true that armed conflicts are enablers of mass atrocity crimes⁸⁶ and it has been proven that the presence of peacekeeping missions in intrastate armed conflicts reduces the risk of mass killings of civilians from starting.⁸⁷ It is because of this that PKOs appear as a suitable tool to achieve the common goal of the UN and R2P.

The ICISS when elaborating on the responsibility to protect it made clear that the prevention of mass atrocity crimes lays at the center of R2P. As a matter of fact, R2P was divided by the Commission into three responsibilities: the responsibility to prevent, to react and to rebuild. The prevention aspect of R2P was said to be “the single most important dimension” of the compromise and prevention options should be exhausted before the going for a full intervention.⁸⁸ Nevertheless, there is an overall lack of comprehensiveness of what the responsibility to prevent entails.⁸⁹ Although the blame for this situation is on different bodies, it is true that the ICISS while calling out on the relevance for prevention and the gap that exists between rhetorical support and tangible commitments,⁹⁰ it missed a great opportunity to provide a well-based definition and clear actions on how the state and the international community are meant to prevent atrocity crimes.⁹¹ The ICISS just explained that the responsibility to prevent entails “to address the root causes and direct causes

⁸⁵ In Burundi, AMIB the African Union Mission on the country, failed to prevent future atrocity crimes as it approached the prevention of mass atrocity crimes with the same perspective and mentality as preventing armed conflicts. See, Walter Lotze and Alexandra Martins, *The Responsibility to Prevent Atrocity Crimes*, in: Serena K. Sharma and Jennifer M. Welsh, *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015.

⁸⁶ The Framework of Analysis for Atrocity Crimes developed in 2014 by the UN Office on Genocide Prevention and the Responsibility to Protect, established armed conflicts or other forms of instability as a risk factor for the commission of atrocity crimes since “armed conflicts are periods characterized by a high incidence of violence, insecurity and the permissibility of acts that would otherwise not be acceptable” and during this times the capacity of States to inflict harm is higher. See, UN *Framework of Analysis for Atrocity Crimes – A tool for prevention*, 2014.

⁸⁷ Erik Melander, “Selected To go Where Murderers Lurk? The Preventive Effect of Peacekeeping on Mass Killings of Civilians”, *Conflict Management and Peace Science*, Vol. 26 No. 4, (2009), 402.

⁸⁸ The International Commission on the Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, 2001, xi.

⁸⁹ See, Deborah Mayersen, “Current Potential Capacity for the Prevention of Genocide and Mass Atrocity through the UN” *Research Paper of University of Wollongong*, 2010; Serena K. Sharma and Jennifer M. Welsh, *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015; Alex Bellamy “Realizing the Responsibility to Protect”, *International Studies Perspectives*, Volume 10, no. 2 (2009); or Fritz Nganje, “The Rhetoric and Practice of the International Responsibility to Prevent Mass Atrocities: Reflections on South Africa’s peacebuilding role in South Sudan (2005-2013)”, *African Security Review*, 26:3 (2017).

⁹⁰ ICISS, *supra note* 88, 19.

⁹¹ Cf. Alex Bellamy “Realizing the Responsibility to Protect”, *International Studies Perspectives*, Volume 10, no. 2 (2009), 118.

of internal conflict and other man-made crisis putting population at risk.”⁹² and presented the three essential conditions for effective prevention: early warning, preventive toolbox, and political will.⁹³ Basically, without a throughout knowledge of the fragility of the situation, awareness of the measures at disposal to address the situation before it escalates, and the necessary political willingness, prevention could not work. But this was something that the international community knew well before 2001; it followed the logical steps of prevention and failed to bring clarity to its own critics.

A second attempt to bring clarity on prevention was made in paragraphs 138 and 139 of the World Summit Outcome. Para. 138 clearly states that the responsibility to protect entails “the prevention of such crimes” and that the international community should “encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capacity”. Para. 139, further reinforced that to do so the international community should “use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VII of the Charter, to help to protect populations” and Member States pledge to commit themselves to “helping States build capacity (...) and to assist those which are under stress *before* crises and conflicts break out”.⁹⁴ The wording still let ample room for interpretation on tangible ways in which to come around about prevention, but it rightly put pressure on the Chapter of the UN Charter.

It is here where peacekeeping operations come into play. When the paragraphs talk about the UN, one can think about peacekeeping operations as a means to put prevention into action. Certainly, this can be seen as a very extensive interpretation of the paragraphs since they do not directly mention peacekeeping operations, but doing an interpretation of the wording of paragraph 139, which directly mentions Chapter VI, one can see that there is room to fit peacekeeping operations; it is in Chapter VI where peacekeeping operations find part of its legal foundation.⁹⁵ Furthermore, this idea of collective interaction for the prevention of unnecessary human suffering also streams from the fact that since the appearance of peacekeeping operations, much of their tasks and existence have pursued the prevention of conflict. In 1992 Boutros-Ghali defined peacekeeping operations as measures undertaken by the UN for both preventing conflicts and making peace. He defined peacekeeping operations this way because he defended that preventing deployment “could help in a

⁹² ICISS, *supra note* 88, xi.

⁹³ ICISS, *supra note* 88, 20.

⁹⁴ UNGA, res. 60/1, *supra note* 74, para. 139. Emphasis added in quotation.

⁹⁵ Although para. 138 and 139 are not part of treaty *per se*, the Vienna Convention on the Law of the Treaties, which a wide extent of its provisions are considered customary law, is useful for interpretation purposes. Art. 31 of the Convention states that treaties shall be interpreted in good faith, in accordance with the ordinary meaning of the treaty and in light of the object and purpose of it.

number of ways to alleviate suffering and to limit or control violence.”⁹⁶ Nonetheless, morality to alleviate human suffering is not the only driving motor behind prevention; economic reasons – in 1997 The Carnegie Commission on Preventing Deadly Conflict explained that of the seven major interventions of the 1990s (Bosnia, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia and El Salvador) \$130 billion could have been saved through a more effective preventive approach⁹⁷ – and the legal obligation that the UN and Member States have to prevent both conflicts and mass atrocity crimes play an equal important role. On the one hand, the organization was tasked by its Charter to rid the world from the scourge of war and to “take appropriate measures to strengthen universal peace”, which implies that the UN should not just reconstruct societies ravaged by war, but should develop measures to prevent these wars from happening. On the other hand, while the UN cannot be a party to human rights treaties,⁹⁸ the sources of the obligations to prevent mass atrocity crimes can be found in the Charter and other legal documents that are today part of customary law.

The UNSC was conferred with the primary responsibility for the maintenance of international peace and security and, as Lawrence Woocher explains, this responsibility needs to be exercised in accordance with the purposes and principles of the UN.⁹⁹ Probably the most remarkable purpose of the UN is to “take effective collective measures for the prevention and removal of threats to the peace”, given that the commission of mass atrocity crimes is considered a threat to peace the UN, through the UNSC, has a responsibility to prevent them. In cooperation with the Council, and following art. 25 of the UN Charter, Member States are to assist in this task.¹⁰⁰ Additionally, the Genocide Convention in art. I declares that “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish”. To fulfill this obligation, which is rendered as *erga omnes* – an obligation owed to the international community as a whole –, art. VIII foresees calling upon “competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate”. One could truly argue that one of the means available to prevent this crime would be through peacekeeping operations. In the case of crimes against humanity, they seem to have acquired also an *erga omnes* character due to their relationship with crimes of genocide, but there is no

⁹⁶ UNGA, res. 47/277, *supra* note 24, para. 29.

⁹⁷ Karl R. DeRouen Jr and Shaun Goldfinch, “Putting the Numbers to Work: Implications for Violence Prevention”, *Journal of Peace Research*, Vol. 42, No. 1, 2005, 27.

⁹⁸ Simma, Khan, Nolte and Paulus, *supra* note 37, 1889.

⁹⁹ Lawrence Woocher, *The Responsibility to Prevent: toward a strategy*, in: W. Andy Knight and Frazer Egerton, *The Routledge Handbook of the Responsibility to Protect* 2P, 2012, 23.

¹⁰⁰ Art. 25 of the UN Charter states that “All Member of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”.

customary law obligation to prevent such crimes through positive measures.¹⁰¹ This situation might soon change as the International Law Commission is currently working on a convention specifically for these crimes.¹⁰² And the prevention of commission of war crimes is also entrusted in the Geneva Conventions; common art. 1 establishes that the contracting States “undertake to respect and to ensure the respect for the present Convention in all circumstances”. Hence, the international community, through the UN when required, has a legal obligation to prevent mass atrocity crimes and the unnecessary suffering that is characteristic of the environments in which peacekeepers are deployed.

Additionally, since the prohibition of these crimes is considered *jus cogens* the UNSC also must abide to their prohibition. The UNSC in 2001 passed a resolution reiterating that Member States have a fundamental responsibility to prevent and end impunity of genocide, crimes against humanity and war crimes.¹⁰³ On this way, peacekeeping operations become a suitable tool to undertake the duty to prevent mass human suffering given to the UN and Member States. Foremost, when one realizes that they are actually entitled to do so. As Nigel White explain, peacekeepers actually have human rights obligations that emanate from two sources. First, peacekeepers are state agents and as such the obligations to which their sending state has agreed upon becomes an obligation for them.¹⁰⁴ Secondly, peacekeepers as members of a UN force also have to undertake the obligations under customary law attached to the organization;¹⁰⁵ the UN is recognized as having both rights and duties under international law.¹⁰⁶ Genocide, war crimes, crimes against humanity and ethnic cleansing are certainly (mass) violations of human rights and as such, peacekeepers have a legal obligation to do something about it and protect civilians in a vulnerable position and under threat.

Nevertheless, prevention is a very complicated task and although it should be the first step in the face a rising conflict, this has been a very much ignored practice of PKOs.¹⁰⁷ The “prevention dilemma”,¹⁰⁸ the interests of international politics and the difficulty of States to accept that mass

¹⁰¹ Simma, Khan, Nolte and Paulus, *supra note* 37, 1225.

¹⁰² See Draft Proposal, UNSGA res. CN.4/L.892, *Crimes against humanity*, UN Doc. A/CN.4/L.892, 26 May 2017.

¹⁰³ UNSC res. 1366, *The situation in Angola*, UN Doc. S/RES/1336 (2001), 23 January 2001.

¹⁰⁴ UN Human Rights Committee, General Comment No. 31[80]: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev. 1/Add.13, 26 May 2004, para. 10.

¹⁰⁵ The International Law Commission Draft Articles on the Responsibility of International Organizations through its articles 3-7, clarifies that wrongful acts can be attached to the UN. On this basis, the UN has also certain duties under customary international law from which certain responsibilities derive. See, International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001.

¹⁰⁶ White, *supra note* 47, 53.

¹⁰⁷ Susan C. Breau, The Impact of the Responsibility to Protect on Peacekeeping, *Journal of Conflict & Security Law*, 11:3 (2007), 439.

¹⁰⁸ The Prevention Dilemma appears from the reality that even if the international community has at its reach advanced mechanism for conflict forecasting, the early warning models are not accurate enough to provide a firm base for conflict

atrocities may unfold in its territory, have been a great barrier and operations have tended to be deployed after or during an armed conflict.¹⁰⁹ As a case in point, to date there has only been once case in which the UN deployed a peacekeeping operation with a purely preventive mandate: UNPREDEP in Macedonia. The peacekeeping operation was deployed in 1995 before the actual outbreak of a violent conflict in the country instead of waiting for the hostilities to begin and it did not only successfully prevent a major conflict but it also prevented an escalation of interethnic disputes that could have led to mass atrocities as it happened in its neighbor country of Kosovo. As Abiodun Williams explain, the case of Macedonia demonstrated that with political support, good timing, the right mandate, resources and organizational structure, the UN has the capacity to prevent violence that can lead to mass atrocities.¹¹⁰ Being able to align all of these elements, as we will see in the next chapter, is not an easy task and very much depends on the political situation of the moment. Nonetheless, this case proves that the authorization of peacekeeping operations can have a direct impact in the contribution to prevent mass atrocities, that prevention aspects of peacekeeping operations at the conceptual level are a plausible reality and that UN can actually undertake the task of preventing and protect civilians from the crimes that R2P envisions.

Pillar II and Peacekeeping Operations

Very much related to the main objective of R2P and Peacekeeping Operations and the obligation that States and the international community have to prevent mass violations of human rights, comes the potential that PKOs have to advance Pillar II of R2P or what para. 139 envisioned in helping States to “build capacity to protect their population and to assist those which are under stress before crises and conflicts break out”.

Creating a separate part to explain this relationship is done merely for structural and understanding purposes because the reality is that it is through the responsibility to prevent that pillar II comes into being and that is only through pillar II that the international community can really exercise their responsibility to protect and assist States in undertaking theirs. Hence, prevention and assisting to build capacity are symbiotic and very much intertwined. In fact, the three pillars of R2P are not parallel concepts that act on their own but they are rather “conceptually intertwined” that

action. In other words, States might see that the risk of mass atrocities in a country is real, but do not dare to take action because, what if in the end no mass atrocities take place? Preventing mass atrocities means taking a risk, and not all states are willing to take this risk. See, Alex J. Bellamy and Adam Lupel, “Why We Fail: Obstacles to the Effective Prevention of Mass Atrocities”, *International Peace Institute* (2015), 6.

¹⁰⁹ Bellamy and Williams, *supra note* 39, 155.

¹¹⁰ Abiodun Williams, *The Possibilities for Preventive Deployment*, in: Serena K. Sharma and Jennifer M. Welsh (eds.), *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015, 229.

rely on each other.¹¹¹ The UNSG defends this posture and has over and over again highlighted that for R2P to work all three pillars need cooperate and be weighted equally; given their close existence at times it is difficult to even differentiate which pillars is in play.¹¹² Yet, Pillar II has been the most overlooked and under-researched of the three pillars.¹¹³ A research that if timely done could have avoided many debates on the R2P and would have avoided many atrocities.

Pillar II of R2P basically relies on the international community to assist States in fulfilling protection obligations; as to uphold their R2P States must count with the appropriate knowledge and institutional capacity, Pillar II envisions an array of measures through which the international community can encourage and assist States to uphold their pillar I responsibilities. Hence, this pillar aims at establishing and/or strengthening mechanisms used to identify signs of and prevent mass atrocities.¹¹⁴ As Fritz Nganje explains, pillar II can be fulfilled by presenting persuasive measures and positive incentives, by the use of military support or by building capacities that will enable the state to prevent, response and mitigate the risk of mass atrocity crimes.¹¹⁵

Given the activities that PKOs carry out, their capacity to cooperate directly with the state government, and their presence in the field, peacekeeping operations have the advantage and potential to help and advise the state in question in developing steps and institutions to prevent the commission of mass atrocity crimes and fulfill the activities overseen in Pillar II. In other words, PKOs present the tangible aspects of direct and structural prevention that R2P so much seems to lack.¹¹⁶ This is the position that has been defended by the UNSG who has recently explained that the “risk of atrocity crimes should be addressed through concerted and coordinated actions by UN field operations”,¹¹⁷ making peacekeeping operations play a vital role in early-warning and prevention actions. Coming back to the case of UNDPREP, the UNSG in its first annual report on R2P used UNPREDEP as an example of R2P’s pillar II in action, as the mission rightly helped the

¹¹¹ Cf. Adrian Gallagher, “The promise of pillar II: analysing international assistance under the Responsibility to Protect”, *International Affairs*, 91:6, (2015), and Alex J. Bellamy *Responsibility to Protect: a defense*, 2014, 193.

¹¹² The UNSG clearly said that “pillar two (...) can also compromise elements of prevention and response, sometimes even at the same time” and “it may not always be possible to clearly determine whether an activity falls exclusively under one or another of the three pillars and such a determination is not necessary”. See, UNGA, res. 66/874, *supra note* 81, para. 12.

¹¹³ Gallagher, *supra note* 111, 1260.

¹¹⁴ The International Coalition for the Responsibility to Protect – Clarifying Pillar II. (Available at: [http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two\(1\).pdf](http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two(1).pdf))

¹¹⁵ Fritz Nganje, “The Rhetoric and Practice of the International Responsibility to Prevent Mass Atrocities: Reflections on South Africa’s peacebuilding role in South Sudan (2005-2013)”, *African Security Review*, 26:3 (2017), 276.

¹¹⁶ While direct or operational prevention aim at preventing imminent attacks that may lead to armed conflicts or the commission of mass atrocity crimes, structural or root prevention focuses on applying and working on measures that reduces the risk of those eventualities from happening.

¹¹⁷ UNGA res. 72/884, *supra note* 11, para. 29.

country to build the capacity necessary to ensure human rights and humanitarian standards that prevented mass violations of human rights and humanitarian law.

Furthermore, as PKOs act in the basis on consent, which means that the international community has a consensus with the government to carry out the mandate, they face the possibility to establish institutions that are legitimate and that count with the rightful legal, political and moral understanding. Nevertheless, prevention does not only come before a crisis and in the case of the current PKOs, building the capacities that Pillar II foresees comes after a major crisis has happened or at a moment in which their commission is very vivid due to political instabilities in the country. Hence, the relationship between Pillar II and PKOs in the paper looks way more simple than in the field. In any case, it happens to be that given the characteristics of peacekeeping operations and their direct presence in the place where there is a risk of mass atrocity crimes they have the potential to become one of those measures in the “toolbox” of R2P to help operationalize this commitment.¹¹⁸ Focusing on this relationship could have a direct impact in the understanding of R2P; it would let the international community see that R2P is not a substitute for military humanitarian intervention and that there are actually other alternatives to the use of force.

R2P and Protection of Civilians mandates

This bring us to the last of the relationships between R2P and PKOs, which has been the most accepted and suited one given that it resembles very much the R2P commitment and in many instances brings together the aspects explained above. This is the relationship between R2P and Protection of Civilians mandates. It has been understood that this is where their relation seems most obvious because of the human centered aspect of both R2P and PoC, and because it has been largely due to the appearance of R2P that PoC mandates started to find a place in PKOs. But their similarities do not come without critics; their different nature makes them clash at times. This reality has made scholars to be quite divided in this matter, some like Paul D. Williams are positive and argue that de-coupling R2P and PoC is unlikely to succeed because although they are distinct themes they are inescapably related ideas.¹¹⁹ Others are more skeptical and as Thierry Tardy defend that linking R2P and PoC can be counterproductive mainly due to the narrow and political scope of R2P.¹²⁰ Hence, an overview of their similarities and differences is required to avoid falling in the false assumption

¹¹⁸ Gallagher, *supra* note 111, 1264.

¹¹⁹ Paul D. Williams, *The R2P, Protection of Civilians, and UN Peacekeeping Operations*, in: Alex Bellamy and Time Dunne (eds.), *The Oxford Handbook of the Responsibility to Protect*, 2016, 526.

¹²⁰ Thierry Tardy, “Protecting Civilians in Africa: The risks of Issue-Linkage between RtoP and Peacekeeping”, *Journal of International Peacekeeping*, n. 17 (2013), 201.

that the link at the conceptual level between R2P and PKOs rises from an idealized role accredited to peacekeepers and to understand how their goal is shared.

The protection of civilians plays a very important role currently in PKOs and “Wherever United Nations peace operations are deployed with a protection of civilian mandate, they must do everything in their power to protect civilians under threat.”¹²¹ This is because, as the Independent Panel on Peace Operations put it down, peacekeeping operations are deployed to conflicts where civilians account for the vast majority of casualties.¹²² The wars we are currently witnessing are not the wars between States that prompted the appearance of traditional peacekeeping, but what we are currently facing are intra-state civil wars in which the different parties – in which the difference between civilians and combatants is blurred – fight to take over the control of the political power.¹²³ A common tactic to achieve this has been by inflicting major pain and controlling civilians, which are ultimately the ones who will legitimate a party or another. On this basis, both governments and rebel groups are being responsible for the commission of mass killings that at times have amounted to mass atrocity crimes.¹²⁴ In the 18th century about 50 per cent of the war-related deaths were civilians, in the 1970s the number of civilians deaths account for a 73% and in the 1990s it went all the way up to 90%.¹²⁵

This reality has forced peacekeeping operations to adapt to the environments where they are deployed and the UNSC to authorize Protection of Civilian mandates to PKOs. The UNSC when authorizes a PoC mandate grants peacekeepers the authority to “protect civilians, particularly those under imminent threat of physical violence”,¹²⁶ which entails peacekeepers to use “all necessary means, up to an including use of deadly force, aimed at preventing or responding threats of physical violence against civilians within capabilities and areas of operations, and without prejudice to the responsibility of the host government”.¹²⁷ It is in this definition that the similarities between R2P and PoC begin.

¹²¹ UNGA and UNSC, res. 70/95 – 2015/446, *Report of the High Level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people*, UN Doc. A/70/95-S/2015-446, 17 June 2017, para. 83.

¹²² UNDPKO, *supra note* 84, 24.

¹²³ Dennis Jett, “Why Peacekeeping Fails”, *Middle East Policy*, Vol. XXVI, No. 1 (2019), 92.

¹²⁴ In December 2006 on the UNSC, the Under-Secretary-General Jan Egeland made eco of this reality: “...the armed men in the remaining armed conflicts, war, and internal strife are more ruthless than ever. They are better armed than ever, and their whole purpose seems to be to make the situation as bad as possible for the defenceless of civilian population (...) And it is really a question of crimes against humanity and war crimes – in certain cases amounting to genocide.” See, UNSC, *Protection of civilians in armed conflicts*, S/PV.5577 (Resumption 1), 19.

¹²⁵ Jett, *supra note* 123, 92.

¹²⁶ UN Department of Peacekeeping Operations/Department of Field Support, *The Protection of Civilians in United Nations Peacekeeping*, April 2015, 5.

¹²⁷ *Ibid.*

For both, the central purpose of the concept is to protect people's rights of physical violence from large-scale violence¹²⁸ and ensure that everyone is granted a life in dignity. While the R2P applies to crimes against "population", PoC focuses solely on crimes against "civilians" which, as established by common art. 3 of the Geneva Conventions, are any person who is not a member of an armed group. This differentiation comes at the expenses that PoC mandates are usually authorized in the context of active armed conflicts. This means that the laws of wars govern the scenario where peacekeepers are deployed. On the other hand, R2P protects people against mass atrocity crimes that can happen anywhere at any time.¹²⁹ Either way, when protecting from "threats to physical violence", peacekeepers are instructed to protect civilians from "all hostile acts or situation that are like to lead to death or serious bodily injury",¹³⁰ which undoubtedly includes the four crimes included in the R2P.

This bring us to their second similarity, both R2P and PoC are based on obligations rooted in IHL, refugee law and human rights law, on this basis both impose duties on States and their organs based on international law to refrain from certain acts that put the freedom and dignity of people at the verge. As explained above, the commission of mass atrocity crimes is prohibited by the 1998 Rome Statute, the 1948 Genocide Convention, the 1949 Geneva Convention and customary law. Likewise, although the civilian casualties in war are not considered to be a crime, when conducting an armed conflict the parties need to bear in mind the fundamental principles of humanity, distinction, proportionality and military necessity in which IHL is based. This means that it is illegal to target civilians indiscriminately to advance the position of either parties to the armed conflict.

Similarly, in the very same resolution that the UNSC embraced the responsibility to protect, that it also reinforced the necessity of giving peacekeepers with a PoC mandate "clear guidelines as to what missions can and should do to achieve these goals".¹³¹ By putting both concepts together the UNSC recognized the role that peacekeepers play to make the prevention and halt of mass atrocity crimes a reality. But since that resolution in 2006, the UN has have a fluctuant approach to the relationship between R2P and PoC. While in 2011 the UNSG Report on R2P stressed that the doctrine for possible use of peacekeeping in the context of atrocities was not well developed and

¹²⁸ Hugh Breakey, Angus Francis, Vesselin Popovski, Charles Sampford, Michael G. Smith and Ramesh Thakur, *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflicts*, Institute for Ethics, Governance and Law, 2012, 9.

¹²⁹ Emphasis added. The Global Centre for the Responsibility to Protect, *The Relationship between the Responsibility to Protect and the Protection of Civilians in UN Peacekeeping*, 2018. (Available at: <http://www.globalr2p.org/media/files/relationship-between-r2p-and-poc.pdf>)

¹³⁰ UN Department of Peacekeeping Operations/Department of Field Support, *supra note* 126, 19.

¹³¹ UNSC res. 1674 (2006), *On the protection of civilians*, UN Doc. S/RES/1674 (2006), 28 April 2006, para 16.

that there is a need for deeper and more inclusive discussions on such matter,¹³² in 2012 in a report of the same nature the SG took a step backwards and clarified that although the mission of peacekeepers can help achieve the R2P goal, R2P and PoC have “separate and distinctive prerequisites and objectives”.¹³³ Nonetheless in 2014 the UNSG appeared to reconduct the relationship between the two concepts establishing that PoC mandates can support national authorities in implementing their R2P.¹³⁴

This leads us to the most common critics towards the relationship between both concepts. Firstly, R2P only focuses on four crimes while the protection of civilians goes beyond those crimes and linking them together could narrow the approach to PoC mandates making them less beneficial for the people they actually intent to protect. But one could easily counter argue that reinforcing the necessity to protect civilians from mass atrocity crimes does not exempt peacekeepers from protecting them from less grave abuses. As a matter of fact, the commission of mass atrocity crimes begins with the perpetration of crimes that appear as “less” grave and isolated; it is their systematic and widespread commission that allows them to reach the threshold of atrocity crimes. The UNSG has already pointed out R2P’s scope should be kept narrow but the responses ought to be deep.¹³⁵ This is a critical notion that should be keep in mind throughout the analysis of this thesis.

That being said, it appears the second critic: R2P envisages a range of actions that goes beyond the principles of peacekeeping. In both, R2P and PoC, the primary responsibility to protect the population or civilians resides in the state in question, and it is only after this has failed in the face of unwillingness or lack of capacity that the international community acts directly. Hence none of them is a synonym of military intervention and actually they upheld the sovereignty of States. Nonetheless, in contrast to PKO, R2P foresees the possibility to intervene without consent, which clashes against the principles in which PKOs rest. But in PoC mandates, the source of the threat is often rendered irrelevant regardless of the need of consent by the host-state for the deployment of the mission. This is due to the other principle in which peacekeeping operations are based: impartiality. Peacekeepers must implement the mandate without favor or prejudice to any party.¹³⁶ Likewise, when acting under Chapter VII, peacekeepers are authorized to use force. It is not only R2P that presents problems to the traditional conception of peacekeeping operations; PoC mandates

¹³² UNGA res. 65/877, *supra* note 8, para. 35.

¹³³ UNGA res. 66/874, *supra* note 81, para. 16

¹³⁴ UNGA res. 68/974, *Fulfilling our collective responsibility: international assistance and the responsibility to protect*, UN Doc. A/68/974, 28 June 2011, para. 67.

¹³⁵ UNGA res. 63/677, *supra* note 80, 10 (b).

¹³⁶ UNDPKO, *supra* note 84, 33.

tent to be accepted with worry by the Security Council since they put the traditional peacekeeping operations' principles in an awkward position.

Finally, the third critic to their relationship is the fear that the controversial political commitment of R2P could undermine the strong legal basis of PoC mandates.¹³⁷ But this is a rather misleading assumption. Firstly, international law cannot and has not been able so far to avoid the influence of international politics and, secondly, the authority of R2P and PoC resides in the UNSC, a body which over and over again has prioritized the political interests of its members above its legal obligations.¹³⁸

Although one could argue that these critics do not have a very solid stand, they are beneficial in the relationship between R2P and PKOs in that they help set the light of what R2P is or is not advancing the relationship between both concepts. The appearance of R2P has certainly helped transform the standing of the protection of civilians in PKO from a highly desirable goal for peace into a more clearly pronounced legal and moral obligation.¹³⁹

Interim Conclusion

After looking at the conceptual relationship between R2P and PKOs one could say that R2P and PKOs do not only share a common aim in preventing human suffering but that PKOs appear as the element that R2P was lacking to make its words become a reality, making PKOs and R2P good companions in the fulfilment of their obligations. A very accurate way to explain it is using the words of the Netherlands on the Open Debate on the Protection of Civilians in the Security Council: "conceptually, the responsibility to protect and protection of civilians are distinct (...) At the same time, the two concepts are also closely related, as they share a similar normative foundation: the protection of civilians is a primary responsibility of States, and prevention and early warning are key to both concepts. The international community plays a supportive role in both principles."¹⁴⁰ Following this line of thinking, R2P did not appear to give peacekeeping operations a drastically new view; R2P provides a new lens to effectively tackle their shared aim and to work jointly towards the same end.¹⁴¹ Likewise, the appearance of R2P has certainly helped transform the standing of

¹³⁷ Tardy, *supra note* 120, 219.

¹³⁸ Hitoshi Nasu, "Operationalizing the Responsibility to Protect in the context of Civilian Protection by UN Peacekeepers", *International Peacekeeping*, Vol. 18 No. 4, 2010, 367.

¹³⁹ Megret, *supra note* 83, 118.

¹⁴⁰ Statement by the Netherlands at UNSC Open Debate on the Protection of Civilians in Armed Conflicts in The Global Centre for the Responsibility to Protect, *The Protection of Civilians in Armed Conflict UN Security Council Debate 12 February 2014*, Meeting Summary, 4 March 2014. (Available at: <http://www.globalr2p.org/media/files/poc-debate-2014-2.pdf>)

¹⁴¹ Charles Hunt and Alex J. Bellamy, "Mainstreaming the Responsibility to Protect in Peace Operations", *Civil Wars*, Vol. 13, No. 1 (2011), 5.

protection of civilians in PKOs from a highly desirable goal for peace into a more clearly legal and moral obligation.¹⁴² This makes, as Siobhan Will explains, the relation between the responsibility to protection operations and peacekeeping operations with a protection mandate not as distinct as some advocates suggest.¹⁴³

Nonetheless, it would be naïve to take this for granted and just expect the international community to abide to it. Their relationship at the conceptual level still faces some obstacles, not only due to a lack of trust by some Member States, but the state-centric perspective on R2P does also appears as an impediment. When talking about the relationship between PKOs and Pillar II, it appears as an obvious relationship, nonetheless at the end of the day it will inevitably depend on the willingness of the state in question to accept that help or not regardless of the presence of PKOs. Similarly, it comes also into play the reality that in much of the current conflicts, non-state actors are a party to it and are also being responsible to wide violations of human rights law an international humanitarian law. The questions then arises on how to make them also part of the R2P.

CHAPTER II: THE OPERATIONAL RELATIONSHIP BETWEEN THE RESPONSIBILITY TO PROTECT AND PEACEKEEPING OPERATIONS

Having comprehended what is the relationship between R2P and PKOs at the conceptual level and knowing that both aim for the same and could cooperate for this end, it appears the moment to bring clarity and explaining at what point does the relationship between R2P and PKOs at the operational level stands and if they relate in practice. Here is where the relationship becomes more blurry as it falls a victim of the gap that usually exists in international law and politics between the theory and the practice and between the rhetoric and the action. Regardless of the moral commitment and good intentions that R2P puts forward, and to which Member States have freely compromised, the reality is that when it comes to “saving strangers”,¹⁴⁴ raising resources, willingness and the put protection into motion things change. Andrea Marrone has already recalled this reality and defends that more work is needed on this level to understand which protection activities constitute an active response to the commission of mass atrocity crimes, and how and where are both concepts symbiotic.¹⁴⁵ Given the resources and space available for this thesis, exhaustively completing the

¹⁴² Megret, *supra note* 83, 118.

¹⁴³ Siobhán Will, *Protecting Civilians: The Obligations of Peacekeepers*, 2009, 253.

¹⁴⁴ Nicholas Wheeler in *Saving Strangers: Humanitarian Intervention in International Society*, 2002, explains that humanitarian interventions in the 1990s were the product of not only *realpolitik* but also of a new solidarity conception in international society. His idea is very much based on cosmopolitanism, which defends that all humans belong to a single community, humanity, and what bring us together is a shared morality. As such, all the people equally valuable and are to enjoy the same rights and protection.

¹⁴⁵ Andrea Marrone, *The Governance of Complementary Global Regimes and the Pursuit of Human Security*, 2016, 62.

task that Marrone proposes is unbearable, yet this chapter will draw on the bigger picture and challenges and ways in which PKOs and R2P can work together at the operational level to prevent and halt mass atrocity crimes.

Does the Responsibility to Protect and Peacekeeping Operations relate in practice?: the inclusion of the R2P in Peacekeeping Operations mandates.

The success today of peacekeeping operations, at least in the eyes of the public, largely depends on their ability to protect civilians. On this basis and taking into account to the legal obligations of the UN and its Member States, PKOs are now tasked in their mandates to protect civilians. The mandates provide legal and political authorization to the peacekeepers to undertake the tasks agreed upon. Peacekeeping operations are typically organs to the UN, as such it is only the UN – namely the UNSC – who has the power to address the rights and obligations of the peacekeeping operation; not the States providing military capabilities nor the host State.¹⁴⁶ Since 1999 all the mission but one have been tasked by the UN to protect civilians;¹⁴⁷ even when the specific term of “protection of civilians” was not present, the operations have still been responsible to do so implicitly.¹⁴⁸

Today most mandates include wording similar to “protect civilians from imminent threat of physical violence” within their zones of deployment, in accordance to their means available and, following the principles of sovereignty, mandates usually stress that such actions should be done “without prejudice to the responsibility” of the host State.¹⁴⁹ With the appearance of the Responsibility to Protect, the surge of concepts like human security, and the rise of an anti-atrocity sentiment among the international community as a result, the mandates have evolved and become more specialized when dealing with the protection of civilians. As Emily Paddon Rhoads and Jenifer Welsh explains, the evolution of R2P and PoC has followed a diamond-shaped fashion: both concepts had a similar normative starting-point; in their early developments they distanced from each other as they identified themselves with different audiences; but gradually they have come

¹⁴⁶ Simma, Khan, Nolte, and Paulus, *supra note* 37, 1187.

¹⁴⁷ Hunt and Bellamy, *supra note* 141, 4.

¹⁴⁸ For instance, KFOR in Kosovo (Resolution 1244) or UNTAET in East Timor (Resolution 1272). Richard Gowan and Ian Johnstone, “New Challenges for Peacekeeping: Protection, Peacebuilding and the “War on Terror”, *International Peace Academy, Coping with Crisis Working Paper Series* (2007), 5.

¹⁴⁹ See, UNSC res. 1528(2004), *The Situation in Côte d'Ivoire*, UN Doc. S/RES/1528 (2004) 27 February 2007, para. 6; or UNSC res. 1542 (2004), *The Question Concerning Haiti*, UN Doc. S/RES/1542 92004), 30 April 2004, para. 7. Victoria K. Holt, “The Responsibility to Protect: Considering the Operational Capacity for Civilian Protection”, *Discussion Paper Stimson Center*, 2005, 46-56.

closer at a state-centric level focusing on building and strengthening the capacity of States to protect populations.¹⁵⁰

This evolution can be seen in the peacekeeping mandates authorized by the UNSC. Taking the peacekeeping mission in the DRC as example, MONUC was established in 2000 and was authorized to “take any necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect (...) civilians under imminent threat of physical violence”.¹⁵¹ With the appearance of the R2P, the resolutions renewing the mandate of the mission in the following years started to include a language that resemble the responsibility to protect of States with paragraphs in the preamble like “Stressing the primary responsibility of the Government of the Democratic Republic of the Congo for ensuring security in its territory and protecting its civilians with respect for the rule of law, human rights and international humanitarian law.”¹⁵² Not explicitly calling for a responsibility to protect was a way to maintain PoC and R2P as separated terms and including R2P language in the preamble set the tone of the mission without authorizing peacekeepers to take actions beyond those agreed upon in the mandate.¹⁵³ But in 2010 when the mission was renewed under MONUSCO and as the relationship between R2P and PKOs appeared closer, the PKO was given a more detailed resolution compared to that one of 2000. It was not only once again authorized to act under Chapter VII to protect civilians “using all necessary means”, but this time the mandate also included measures of protection focused on state-capacity building. The mandate called upon the UN and the international community to “focus its efforts on helping the Government of the Democratic Republic of Congo to consolidate the conditions to ensure effective protection of civilians and sustainable development in the Democratic Republic of Congo”.¹⁵⁴ Hence, while the centrality of the mandates has always been the protection of civilians, we see how the diamond-shape evolution towards an attempt to develop the ways in which to do from a capacity-building perspective.

The appearance of R2P has helped peacekeeping operations’ mandates to expand their creative thinking on how to ensure the protection of civilians at all levels. As Kofi Annan highlighted in the 2001 report on PoC, protection is complex and may be approached as a “multi-layer process,

¹⁵⁰ Emily Paddon Rhoads and Jennifer Welsh, “Close cousins in protection: the evolution of two norms”, *International Affairs*, Vol. 95 No. 3 (2019), 598.

¹⁵¹ UNSC, res. 1291 (2000), *The situation concerning the Democratic Republic of Congo*, UN Doc. S/RES/1291 (2000), 24 February 2000, para. 8.

¹⁵² UNSC, res. 1756 (2007), *The Situation concerning the Democratic Republic of the Congo*, UN Doc. S/RES/1756 (2007), 15 May 2007, preamble.

¹⁵³ Interview with Mr. Frank Okyere 8 May 2019.

¹⁵⁴ UNSC, res. 1925 (2010), *The Situation concerning the Democratic Republic of the Congo*, UN Doc. S/Res/1925 (2010), 28 May 2010, para. 9.

involving a diversity of entities and approaches. It depends on the circumstances and stages of a particular conflict” and the activities may include “delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law (...); institutions building, governance, and development of programmes”.¹⁵⁵ Using non-coercive measures brings together R2P and PKOs and reinforces the capacity of States to respond to mass atrocity crimes as Pillar II envisions. The UNSG in its report on R2P in 2009 already pointed out that non-coercive peace operations can assist States in exercising their R2P by designing programmes that are targeted to build specific capacities such as rule of law, competent and independent judiciary or reforms in the security sector, that “make them less likely to travel the path to crimes relating to the responsibility to protect.”¹⁵⁶ This can be rendered as a very wise strategy since non-coercive measures can enhance the political legitimacy of peacekeeping operations, help overcome political blockades in face of controversies on the use of force and avoids the perception of R2P as a neo-liberalist imposition. It is usually underestimated, but the non-coercive measures that art. 139 of the 2005 World Summit Outcome envisages was one of the reasons why R2P was able to gather unanimous commendation.¹⁵⁷

Yet, the UNSC has not been very prone to include explicitly that the state as well as the international community has a Responsibility to Protect in PKOs. It has only done it in a very reduced amount of times and, as explained above, usually only using a language similar to R2P and in the preambles. It only dares to do more explicit mentions when the risk of commission of mass atrocity crimes and political support seems evident. When renewing the mandate of MINUSCA in 2016 the UNSC recalled in the preamble that “the CAR Authorities have the primary responsibility to protect all populations in the CAR in particular from genocide, war crimes, ethnic cleansing, and crimes against humanity”.¹⁵⁸ There are various reasons why it is extremely rare to see R2P explicitly mentioned in the operative part of a peacekeeping mandate. Firstly, having R2P references in the operative clause of a resolution can be understood as an indication that either genocide, war crimes, crimes against humanity or ethnic cleansing are taking place and there is not only a general reluctance towards this assumptions because of the legal responsibilities that it entails for the wider international community and the overall political statement it makes about a host Government,¹⁵⁹

¹⁵⁵ UNSC, res. 2001/331, *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflicts*, UN Doc. S/2001/331, 30 March 2001, para. 6. In Rhoads and Welsh, *supra note* 150, 600.

¹⁵⁶ UNSG res. 63/677, *supra note* 80, para. 44.

¹⁵⁷ Jennifer Welsh, “The Responsibility to Prevent: Assessing the gap between rhetoric and reality”, *Cooperation and Conflict*, Vol. 51 No. 2 (216), 220.

¹⁵⁸ UNSC res. 2301 (2016), *The situation in the Central African Republic*, UN Doc. S/RES/2301, 26 July 2016, preamble.

¹⁵⁹ The USA has been very reluctant to use the word genocide because it is aware that doing so implies certain legal obligations. Similarly, the international reaction to the genocide that is taking place in Myanmar since 2017 points in

but also because only a court, like the ICC, has the authority to determine that those crimes have taken place.¹⁶⁰ Doing this postulation can, in addition, put the relationship between the UN and the country in case in an awkward position leading to the state in question to retrieve its consent over the peacekeeping operations. No state wants to be in the position where they have to accept that mass atrocity crimes are taking place in their soil. Secondly, this reality is a symptom of the blank check given by the UNSC to the military intervention in Libya in 2011 supposedly on the name of R2P that ended up with a regime change.¹⁶¹ Since this intervention took place there has been a general reluctance by some Member States to agree on mandates or resolutions that include R2P. Brazil, together with other countries, adopted a skeptical position as it was afraid that “there is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change.”¹⁶² And thirdly, due to the skepticism of some Member States towards the R2P, there are some members of the peacekeeping community including from the DPKO that have spoken against incorporating R2P into the work of peacekeeping operations as it might affect negatively their PoC agenda.¹⁶³

Nevertheless, these alarms overshadow the reality that it is not vital for the aim of R2P to appear explicitly in the mandates. Using the explicit wording of R2P and mandating peacekeeping operations to act under the pillars of R2P would be a very important step for R2P to help the compromise transform into something more than a political agreement, to build on the state practice and *opinio juris* that a norm requires to be rendered as customary law,¹⁶⁴ and one could even dare to

this direction. Even if the UN described the persecution of Rohingyas as “a textbook example of ethnic cleansing” and later it was found that Myanmar authorities are guilty of the crime of genocide, the international community has avoided mingling with the situation and calling it a real genocide. See, UNGA res. HRC/39/64, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/64, 12 September 2018.

¹⁶⁰ Interview with Mr. Francois Grignon, 30 April 2019.

¹⁶¹ Supposedly in the name of R2P because although the intervention in Libya has been regarded as an example of failure of R2P Pillar III in action, UNSC res. 1973 (2011) when allowing the use military force to intervene in Libya to protect civilian only mentions R2P in its preamble: “the responsibility of the Libyan authorities to protect Libyan population”. Thus it could be argued that the intervention was done under Chapter VII of the UN Charter and not because the agreements was reached in the UNSC on the application of pillar III of R2P. If it would the intervention would have been purely on the name of R2P, Russia and China would have most probably vetoed the resolution instead of adopting an absent posture as they did. See, UNSC res. 1973 (2011), *On the situation of Libya*, UN Doc. S/RES/1973 (2011), 17 March 2011.

¹⁶² UNGA res. 66/551, *Follow-up to the outcome of the Millennium Summit*, UN Doc. A/66/551, 11 November 2011, para 10. It is because of the intervention in Libya that Brazil also came along with the idea of the “Responsibility While Protecting” to strengthen the commitment to seek peaceful measures to address mass atrocity crimes threats to population, and to enhance accountability for those who use force in the name of the UN. See, Jennifer Welsh, Patrick Quinton-Brown and Victor MacDiarmid, “Brazil’s “Responsibility While Protecting” Proposal: A Canadian Perspective”, *Canadian Center for the Responsibility to Protect*, 2013.

¹⁶³ Hunt and Bellamy, *supra note* 141, 4-5.

¹⁶⁴ Art. 38 (1)(b) of the Statue of the International Court of Justice (ICJ) describes customary international law as “a general practice accepted as law”. For the formation of an international custom two things must be present: state practice (pattern of behavior by states motivated by the conviction that the action or non-action is required as a matter of law)

say that to guarantee its survival. Yet, not mentioning R2P explicitly does not impede peacekeeping operations for aiming at advancing R2P's objective. As Charles Hunt and Alex Bellamy explained, peacekeeping operations provide protection through many differing channels and this has helped implement R2P in different ways.¹⁶⁵ They explicated that through capacity building, indirect protection and direct protection peacekeepers are undertaking either preventive or reactive actions to protect civilians from harm.¹⁶⁶ And in that sense they are right. Civilian protection cannot only be ensured through military protection (*direct protection*)¹⁶⁷ but it can also be achieved approaching protection from a holistically perspective in which different elements come into play to empower victims and strengthen communities to ensure that they can protect themselves (*indirect protection*) and they can build the required stability necessary to make the risk of commission of mass atrocity crimes decrease (*capacity building*).¹⁶⁸ Repeating Annan's words, the protection of civilians is a multi-layered project.¹⁶⁹ The International Coalition for the Responsibility to Protect (ICRtoP) supports this vision and argues that peacekeeping operations through their mandate to protect civilians, backings demobilization, disarmament and reintegration, assist with political processes and elections, and help in the restoration of the rule of law they can contribute "invaluably" to the State's capacity to prevent and respond to mass atrocity crises.¹⁷⁰ This actuality can be seen reflected in MONUSCO task in 2017 ahead of elections to "Enhance its interaction with civilians, including by the troops, to raise awareness and understanding about its mandate and activities, to strengthen its early warning mechanism, and to increase its efforts to monitor and document violations of international humanitarian law and violations and abuses of human rights in the context of elections".¹⁷¹

Examples of direct and indirect protection and state-capacity building can be found in existing peacekeeping mandates. As mentioned above *direct protection* is ensured by protecting civilians

and *opinio juris* (belief that the action was carried out as a legal obligation). The ICJ, UN and Member States regard customary law among the primary sources of international law.

¹⁶⁵ Hunt and Bellamy, *supra note* 141, 5.

¹⁶⁶ *Ibid*, 5.

¹⁶⁷ Military protection is understood as preventing and limiting physical attacks on the civilian population and securing humanitarian access. See, Bellamy and Williams, *supra note* 39, 344.

¹⁶⁸ Bellamy and Williams, *supra note* 39, 344.

¹⁶⁹ The DPKO defends this position and has already explained that peacekeeping missions can protect civilians by dialogue and engagement (Tier I), provision of physical protection (Tier II) and establishment of a protective environment (Tier III). See, DPKO/DFS Policy, *supra note* 126, 8.

¹⁷⁰ International Coalition for the Responsibility to Protect, "At a Glance: Clarifying the Second Pillar of the Responsibility to Protect: Building State Capacity to Protect Populations from Atrocity Crimes". (Available at: [http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two\(1\).pdf](http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two(1).pdf)) In this same document the ICRtoP affirms that "authorizing and deploying peacekeeping operations" can put forward the protection assistance that Pillar II envisions.

¹⁷¹ UNSC, res. 2348 (2017), *The situation concerning the Democratic Republic of Congo*, UN Doc. S/RES/2348 (2017), 31 March 2017, para 34 (i)(c).

“from imminent threat of physical violence” and in the instances when the environment is hostile and mass atrocities are taking place this task is given maximum priority and reinforced highlighting that “protection of civilians must be given priority in decisions about the use of available capacity and resources within the mission” like in UNMISS.¹⁷² Additionally, when peacekeepers are to protect civilians directly they do so by, for instance, interposing troops between the population that is at risk and the element that threatens them or by creating “safe areas” where the population can turn in for protection. UNMISS has been commended for the creation of “PoC sites” that have set a precedent for PKOs with a PoC mandate and has helped protect thousands of civilians from falling victims to possible war crimes and crimes against humanity.¹⁷³

Peacekeepers have equally been cooperating with civilians and police troops on the ground to ensure *indirect protection*. On the one hand, civilians with knowledge on human rights protection have been pivotal at developing programs that ensure instant and structural physical and legal protection, and at creating prevention mechanisms so much required to restore order and confidence.¹⁷⁴ For instance, MINUSMA was tasked to “to provide specific protection for women and children affected by armed conflict, including through Child Protection Advisors and Women Protection Advisors as well as consultations with women’s organizations, and address the needs of victims of sexual and gender-based violence in armed conflict”.¹⁷⁵ Police troops are also essential figures in the protection since their mere presence can act as a deterrence instrument and when patrolling they have the possibility to gather valuable intelligence that ultimately allows the peacekeeping mission to monitor and observe the escalation or possible escalation of human rights violations.¹⁷⁶ The UNSG recommended UNAMID in Sudan “to monitor through proactive patrolling policing activities in camps for internally displaced persons”.¹⁷⁷

Finally, peacekeeping operations also undertake capacity-building activities which are key to prevent the commission of mass atrocity crimes. In countries of internal instability and state fragility the potential of mass atrocity crimes is higher and peacekeeping operations have the potential to develop a wide-range of activities that can assist to mitigate this risk also in the long-run. In this sense, Hunt and Bellamy explain that peacekeeping missions can help implement relevant areas of

¹⁷² UNSC, res. 2406 (2018), *On the situation of South Sudan*, UN Doc. S/RES/2405 (2018), 15 March 2018, para. 11.

¹⁷³ Caelin Briggs, “Protection of Civilians (PoC) sites and their impact on the broader protection environment in South Sudan” in *Special Feature: The crisis in South Sudan*, Humanitarian Exchange, no. 68 (2017), 17.

¹⁷⁴ Hunt and Bellamy, *supra* note 141, 10.

¹⁷⁵ UNSC res. 2364 (2017), *The situation of Mali*, UN Doc. S/RES/2364 (2017), 29 June 2017, para. 20 (c) (iii).

¹⁷⁶ Hunt and Bellamy, *supra* note 141, 12.

¹⁷⁷ UNSC res. 2363 (2017), *Report of the Secretary-General on the Sudan and South Sudan*, UN Doc. S/RES/2363 (2017), 29 June 2017, para. 15 (v).

R2P like assisting in disputes resolutions capacities, facilitating inclusive and participatory processes of dialogue, or assist in mediation initiatives.¹⁷⁸ These are initiatives that the UNSG highlighted in its report on R2P in 2009¹⁷⁹ and measures that Pillar II of R2P envisions to assist States in their capacity to prevent and halt mass atrocity crimes. As a case example, MINUSMA was tasked to “support the implementation of the political and institutional reforms provided by the Agreement [the Agreement on Peace and Reconciliation in Mali] (...) notably to support the Government’s efforts for the effective and restoration and extension of State authority and rule of law through the territory, including through supporting the effective establishment of interim administration in the North of Mali under the conditions set out in the Agreement”¹⁸⁰ and to “support the redeployment of the reformed and reconstituted Malian Defence and Security Forces”.¹⁸¹

All of these instances point to the veracity that peacekeeping operations, although not explicitly tasked to do so, are facilitating the implementation of R2P, evidencing that the relationship between R2P and PKOs exists at the operational level. Yet, by just agreeing on them and tasking peacekeepers with all of these chores does not imply that when it comes down to the field they are actually capable of comprehending and fulfilling all of them in a the manner that was intended, neither does imply that the international community can just settle and check R2P out of their to-do list; there are many challenges ahead of peacekeeping mission that largely undermine their capacity to protect civilians.

Divided opinions: state’s stand on the operationalization of the Responsibility to Protect through Peacekeeping Operations

An important aspect to take into consideration when it comes to the relationship between R2P and PKOs, is the stand of States in the matter. The UN is composed by Member States whose believes and interests drive the decisions that the organization takes. In light of this, the calls of the UNSG to close the gap between “our stated commitment to the Responsibility to Protect and the daily reality confronted by populations exposed to the risk of genocide, war crimes, ethnic cleansing and crimes against humanity”¹⁸² depends on their actions and their willingness to change the reality.

As explained in the methodology, the statements of 3 States in favor of R2P, 3 States against R2P, 3 TCCs and the P5 will be analyzed. Choosing different States with different mentalities on the

¹⁷⁸ Hunt and Bellamy, *supra note* 141, 8.

¹⁷⁹ See, UNGA, resolution 63/677, *supra note* 80, para. 45.

¹⁸⁰ UNSC res. 2295 (2016), *The situation in Mali*, UN Doc. S/RES/2295, 29 June 2016, para. 19 (a) (i).

¹⁸¹ *Ibid*, para. 19 (ii).

¹⁸² UNGA, res. 71/1016, *Implementing the Responsibility to Protect: Accountability for Prevention. Report of the Secretary-General*, UN Doc. A/71/1016, 10 August 2017, para. 1.

matter and backgrounds helps approach what is the stand of the international community on the relationship between R2P and PKOs.

Countries in favor of R2P

Countries in favor of R2P have tended to promote the mainstreaming of R2P through difference channels including peacekeeping operations. Their visions very much supports the analysis done in the previous chapter in that peacekeeping operations and R2P share a same goal and peacekeeping operations have the potential to advance the prevention and halt of mass atrocity crimes.

The Netherlands, a strong advocate in the Group of Friends of the R2P believes “that the principle of the responsibility to protect should be increasingly applied and further operationalized”.¹⁸³ In 2011 already used UNOCI in Ivory Coast as an example of the role that peacekeeping operations can play to operationalize R2P since by halting further violence “it also contributed to the prevention of further events which might have amounted to crimes against humanity from happening.”¹⁸⁴ Following this line it has defended that “we do not need to reinvent the wheel, but we need to do things smarter” in the sense that the UN does not need to create new ways in which to operationalize R2P but it should adopt a more creative posture and look into ways of using the already established mechanism to operationalize R2P. But probably the most direct mentioning to the relationship between R2P and PKOs came recently in 2018 when in the Formal Interactive Debate on R2P in the UNGA it stated that peacekeeping “is one of the most concrete tools at our disposal in protect civilians and laying down the foundation for a safer environment”.¹⁸⁵ This is a step forward in the understanding of R2P and PKOs because it rightly affirmed that the relationship between both concepts does not only reside in PoC direct protection tasks but also in the creation of safer environments as Pillar II of R2P envisions. It was also in the debate of 2018 that Rwanda “as a top Troop and Police Contributing Country” affirmed that “peacekeeping can be a catalytic tool to stabilize countries where they are deployed, allowing for a conducive atmosphere for actors to reinforce peace.”¹⁸⁶ This is certainly a very valuable insight coming from a country that lived in flesh a genocide that could possibly have been prevented, or at least mitigated, if peacekeepers would have been allowed to fully protect civilians. It is most probably because of this experience

¹⁸³ Statement by the Netherlands in the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2014. (Available at: <http://www.globalr2p.org/media/files/poc-debate-2015.pdf>)

¹⁸⁴ Statement by the Netherlands at the SC Debate on the Protection of Civilians in Armed Conflicts, 2011. (Available at: http://www.globalr2p.org/media/files/rtop-statements_docs-poc-may-2011.pdf)

¹⁸⁵ Statement by the Netherlands in the UNGA Formal Interactive Dialogue on the Responsibility to Protect, 2018. (Available at: <http://statements.unmeetings.org/media2/19407287/statement-by-netherlands.pdf>)

¹⁸⁶ Statement by Rwanda in the UNGA Formal Interactive Dialogue on the Responsibility to Protect, 2018. (Available at: <http://statements.unmeetings.org/media2/19407370/rwanda.pdf>)

that it also defends that “conflict prevention at the national level is strengthened through development of strong institutions that establish the foundation of good governance based on rule of law and principal values”,¹⁸⁷ something that can be achieved by mainstreaming R2P through PKOs.

On the other hand, Australia, which is a “strong supporter of R2P”¹⁸⁸, during its term as a non-permanent member to the UNSC, also played an active role in trying to “bring an R2P sensibility to all our work” by, in between others, “supporting protection of civilians to sit at the core of UN peacekeeping.”¹⁸⁹ This reality demonstrates that while the P5 retain a great deal of control over the decisions of the Council, and as such over the mandates to the peacekeeping missions, not everything depends entirely on their vote; the work of non-permanent member is pivotal to bring light into certain topics and pressure for action in the international community. The Netherlands was also until recently a non-permanent member to the UN and has put considerable effort into bringing R2P into the work of the organ.¹⁹⁰

The problematic with countries in favor of R2P, however, is that their actions fall short to their words. Given to the liberal ideas, democratic institutions and cosmopolitan values in which the West believes, the Western countries have been more prone to welcome the principles of R2P and with it any mechanism that would advance the prevention and protection of civilians from the four crimes. This is not to say that R2P is a Western conception, nor that no other countries outside the West do not support R2P. The African Union was actually the first organization to reserve a right to intervene in a Member State against war crimes, genocide and crimes against humanity.¹⁹¹ Yet, the lack of western troops in PKOs sends mixed signals to the world, making it feel like peacekeeping operations, as Denis Jett said, “has become a way for rich countries to send the soldiers of poor countries to deal with conflicts the rich countries do not care about” shifting later the blame to the UN and peacekeepers if the mission fails.¹⁹² Andrew Gilmour has in like manner highlighted that to

¹⁸⁷ Statement by Rwanda in the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iiid-rwanda.pdf>)

¹⁸⁸ Statement by Australia in the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/150908-r2p-informal-dialogue-australian-statement-final.pdf>)

¹⁸⁹ *Ibid.*

¹⁹⁰ As a member to the UNSC the Netherlands wanted to make an active contribution to international peace and security and in the Government’s view “the Security Council must deal effectively with conflicts and wars, not only by deploying well-equipped peace missions, but also by helping to prevent conflict in the first place by focusing on its causes.” See, The Netherlands at the International Organizations, *Government aims to use Security Council 2018 term to contribute to peace and security*, 1 November 2017. (Available at: <https://www.permanentrepresentations.nl/latest/news/2017/11/01/government-aims-to-use-security-council-term-to-contribute-to-peace-and-security>)

¹⁹¹ African Union, *Constitute Act of the African Union*, 1 July 2000, para. 4(h).

¹⁹² Jett, *supra note* 123, 96.

ensure the future credibility of the principle and to act against the perception that R2P is an idealistic principles, Western States should take a stand in the contribution of PKOs and PoC mandates.¹⁹³

Countries against R2P

All the good intentions to link R2P with peacekeeping operations are usually slowed down by the critics of the minority of countries that are against R2P (Venezuela, Cuba or Iran), which are often supported by Russia, a P5. Certainly the issue of “reconceptualizing” sovereignty is a very boiling topic among States, as for many – in particular for small States – it is their shield to protect themselves from “western influences”. There are, notwithstanding, various noteworthy aspects to their opposition. Firstly, the States that oppose to R2P is primarily because of its Pillar III and the believe that R2P can be shaped to the advantage of the most powerful. Venezuela believes that “powerful countries are manipulating the concept of the responsibility to protect, when they are seeking solely to impose their strategic interest on the world”. Secondly, the strongest opposers share a common feature: it appears difficult to categorize their national government and institutions as democratic.¹⁹⁴ And thirdly, the greatest opposers, namely Cuba, Venezuela and Russia, have participated in virtually all the Formal and Informal Dialogues on R2P. The reading that one could take out of this is that although their participation is done to speak out loud their discrepancies, their persistence in being active in the dialogues to advance their position is a symptom of their gradual awareness that R2P has continued to develop regardless of their viewpoints on the matter. Else, they could have long time ago adopted a less proactive position, shut down and neglect the existence of R2P.

Their distrust towards R2P has inescapably influenced their perspective on linking R2P with PoC mandates, and thus peacekeeping operations. Venezuela affirmed that there is a distinction between protecting civilians and the concept of R2P in that “the protection of civilians has gradually been accepted, universalized and codified in international law over the course of decades (...) The concept of the responsibility to protect, however, is nothing more than a political statement on which there is no consensus within the Organization.”¹⁹⁵ Likewise, it has also stated that while the R2P has

¹⁹³ Andrew Gilmour, Andrew Gilmour, “The Future of Human Rights: A view from the United Nations”, *Ethics & International Affairs*, vol. 28 no.2 (2014), 246.

¹⁹⁴ Freedom House through its annual global report on political rights and civil liberties it ranks States as “Free”, “Partly Free”, and “Not Free” depending on the score they obtaining, being 0 the minimum/worst score and 100 the maximum/best score. Cuba has been ranked as “Not Free” with a score of 14, Venezuela too with a score of 19, and the same goes for Russia and Iran who have been ranked with 20 and 18 points respectively. (Available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2019/map>)

¹⁹⁵ Statement by Venezuela at the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2015. (Available at: <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/5695-statement-by-venezuela-at-the-security-council-open-debate-on-the-protection-of-civilians->)

abrogated almost all of the mechanisms that the UN Charter foresees, including the measures contemplated by Chapter VI and VII, peacekeeping operations or peacebuilding, it has not developed the steps and framework to delimitate how and when these instruments can be used for R2P purposes.¹⁹⁶

Similarly, Cuba has also pointed out that it did not agree with some of the links done by UNGS reports “that assume that there is a certain widespread acceptance or consensus regarding a number of questions relating to R2P, and which in various cases exceed what has been agreed on by governments, in dealing with (...) peacekeeping or peacebuilding operations”.¹⁹⁷ This is also motivated by the same perspective that Venezuela, that “at the present we cannot talk about implementation of the responsibility to protect because there is not even consensus about its scope and implications yet”.¹⁹⁸ Arguably, they have some strong points to defend their positions; when R2P should coming into play seems quite clear, the 4 crimes, and how to, through assistance based on consent of the state and following the guidelines of the UNSC. Nevertheless, the arbitrary selection of cases by the UNSC in which to apply R2P has not helped in settling down these uncertainties. Nevertheless, a more nuance approach towards R2P could tackle these fears. Iran, which is also quite skeptical towards R2P has stressed some ways in which this situation could be overcome. For instance, it has defended that “it is crucial, that prior to implementation of the concept of the Responsibility to Protect, its normative content, as well as its scope of application be defined in objective, impartial and non-politicized manner, fully in line with the 2005 World Summit outcome document”¹⁹⁹ and to control the scope of military means to protect populations from atrocity crimes “The Security Council should monitor the operations on the ground.”²⁰⁰ It seems to be that while they accept that the UNSC is to deal with R2P situations, they demand a more comprehensive and apolitical approach by the organ to R2P situations.

Troop Contributing Countries

¹⁹⁶ Statement by Venezuela at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/venezuela.pdf>) Translated from Spanish into English.

¹⁹⁷ Statement by Cuba at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2016. (Available at: <http://www.globalr2p.org/media/files/cuba-eng.pdf>)

¹⁹⁸ Statement by Cuba at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iid-cuba.pdf>)

¹⁹⁹ Statement by Iran at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iid-iran.pdf>)

²⁰⁰ Statement by Iran at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2016. (Available at: <http://www.globalr2p.org/media/files/iran-2.pdf>)

The initial aspirations of the UN to create an standing army never became a reality, as such it depends on its Member States to carry the tasks that the UN Charter envisages.²⁰¹ Peacekeepers are military and police personnel from UN Member States, who are members of their own national service but seconded to work for the UN mission. Countries are not obliged to contribute with troops, and it is up to the Member States to decide whether to contribute or not and if decided to contribute with how many personnel. When authorizing a peacekeeping operation, thus, the UNSC and UNSG must have certain guarantees that the States contributing will be willing to participate proactive and agree with the tasks that the mandate foresees for the operation, else it puts at risk the success of the operation and its capacity to protect civilians. On this basis, being aware of the position of some of the TCCs, in this case of India, Pakistan and Ghana, on the relationship between R2P and PKOS seems a priority.

In the debates on R2P and PoC, India has not yet openly disclosed its position in relation to their relationship. What it has certainly highlighted is certain skepticism towards R2P as the “political commitment has to be intrinsic and not imposed externally”.²⁰² Yet, it has been quite clear in that it believes in prevention and that the international community should do more for this aim and as such “further discussions are required within the international community on issues like – which instruments would be used; what are the thresholds that will trigger preventive measures and who would identify them; who should empower the implement R2P”.²⁰³ Although not clearly talking about PKOs, it does praise for instruments to achieve this goal. India as a the one of the largest contributors since the beginning of PKOs has not opposed deploying peacekeepers to areas in which civilians were ought to be protect, as long as the operation complied with the “holy trinity”.²⁰⁴ It has participated in operations in DRC, Sierra Leone, Sudan, Gaza, but as it said “We recognize that suffering of civilians is an emotive issue. It is not that we are stone-hearted and indifferent to the horrors of war, to the maiming and killing of civilians, the orphaning of children and the sexual

²⁰¹ The UN Charter envisioned the creation of an standing army to maintain international peace and security, nevertheless due the environment of the aftermath of the ratification of the UN Charter this was never accomplished. Art. 43 of the UN Charter states that “All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, (...) necessary for the purpose of maintaining international peace and security”.

²⁰² Statement by India at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/india-1.pdf>)

²⁰³ Statement by India at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iid-india.pdf>)

²⁰⁴ Cf, Dan Krause, *It is Changing After All: India's Stance on "Responsibility to Protect"*, ORF Occasional Paper #90, April (2016), 10-11.

brutalizing of women. It is, however, our conviction that the solutions that we need to find should be based on fact and also on pragmatism.”²⁰⁵

Pakistan on the other hand has embraced the R2P as long as all actions “have the weight of international law behind them”²⁰⁶ and has been plain in its belief that “there should be no exceptionalism in pursuit of the goal of protection of civilians”.²⁰⁷ For that it has defended that “military action, whenever needed, should be provided with the consent of the affected state and in accordance with the scale and needs of the situation”.²⁰⁸ This could be seen as Pakistani support, to certain extent, towards the operational relationship between R2P and PKOs. Nonetheless, it has also pointed out that “the Council [UNSC] tends to embrace Chapters VII and VI-and-a-half more readily” and that “full use of conciliation, mediation, arbitration, ICJ and good office should be made”,²⁰⁹ probably implying that it is not only PKOs the instrument through which R2P should be mainstreamed. Similarly, Pakistan has also been at times cautious on its approach to R2P. It has stressed that “we cannot ignore the decisions, especially of the so-called “most powerful” amongst us, are interest in geopolitics rather than pure humanitarian concerns”²¹⁰ and that “the clear distinction between established norm of the protection of civilians and the evolving concept of responsibility to protect should be maintained.”²¹¹

Ghana, unlike the previous two States, has been quite open and supportive toward R2P, PoC mandates and the relationship between R2P and PKOs. Ghana has outspoken that “R2P principle remains relevant both as an expression of political commitment and as a blueprint for actions to prevent and end genocide, war crimes, and crimes against humanity”.²¹² It is not then astonishing to see that it has defended that “prevention must not only be evaluated as a core aspect of R2P, but must also be enhanced through close-linkages to related regional and global activities in conflict prevention, peacebuilding, and protection of civilians” as such has welcomed “the important reviews

²⁰⁵ Statement by India at the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2014. (Available at: <https://www.pmineyork.gov.in/pdf/uploadpdf/97077ind09.pdf>)

²⁰⁶ Statement by Pakistan at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2014. (Available at: <http://statements.unmeetings.org/media2/4493826/pakistan.pdf>)

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ Statement by Pakistan at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2013. (Available at: <http://responsibilitytoprotect.org/Pakistan%2013.pdf>)

²¹¹ Statement by Pakistan at the UNSC Open Debate on the Protection of Civilians in Armed Conflicts, 2013. (Available at: http://www.pakun.org/statements/Security_Council/2013/08192013-01.php)

²¹² Statement by Ghana at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iiid-ghana.pdf>)

that have been initiated by the Secretary General especially in the area of peacekeeping operations and the overall UN peacebuilding architecture.”²¹³

One cannot truly draw a conclusion on what all TCCs are willing to do or not based on the position and statements of just 3 TCCs. But it appears to be that there is certain predisposition to prevent and protection civilians from mass atrocity crimes and use PKOs for this end. As such they might support operations that include mentions to R2P, as long as these operations respect the “holy trinity”, especially the respect of state sovereignty. But it then appears the question on what would happen in the instances in which the host States retrieves its consent in the face of mass atrocity crimes. This is a question to which no answer can be ensured because every peacekeeping operations vary widely from one another and R2P is assessed on a “case-by-case” basis. Yet, regardless of the rhetoric of TCCs, there has been a general reluctance towards implementing robust mandates against a host because of the implications for the Mission as a whole and the risks involved.²¹⁴ Some TCCs are even against robust action in peacekeeping as a national policy.²¹⁵

The Permanent Five

The Security Council is not only composed of the permanent five, but it would be naïve to ignore the real threat of veto power any time a resolution starts to see the light.²¹⁶ Hence, it is vital for the relationship between R2P and PKOs, which are mandated by this organ, to be aware of the standing of its members. Their position can either work in detrimental or in favor of the relationship between concepts and it depends almost solely in their disposition to operationalize, or not, the international community’s responsibility to protect.. While the UK, France, USA, are strong supporters, and China has gradually accosted their line of thinking, Russia is still a determined adversary to the R2P.

The UK has proven in multiple times its willingness to advance the causes of R2P and even humanitarian interventions in the face of UNSC blockade,²¹⁷ which although are not a synonym for R2P they reflect the reach of the State’s commitment towards “saving strangers”. The UK has welcomed the international community’s initiative to focus on implementing R2P, which in between

²¹³ Statement by Ghana at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/ghana.pdf>)

²¹⁴ Interview with Mr. Francois Grignon.

²¹⁵ Interview with Mr. Francois Grignon.

²¹⁶ The UN Charter did not actually give veto power to the P5, it has passed to be understood as veto power because to pass a resolution all permanent members must vote in favor of it. Art. 27 (3) states that “Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members”.

²¹⁷ UK participation in the arm reprisal against Syrian territory due to the allegedly use of chemical weapons by Assad’s Regime last April (2018), together with USA and France, was based on the principles of humanitarian intervention. See, Marko Milanovic, “The Syria Strike: Still Clearly Illegal”, EJIL: Talk!, 15 April 2018. (Available at: <https://www.ejiltalk.org/the-syria-strikes-still-clearly-illegal/>)

others can be done by “putting Protection of Civilians at the heart of Peacekeeping mandates.”²¹⁸ Being aware of the critics towards R2P and its relationship with PKOs it rightly highlighted that “we need to articulate how preventative actions and activities under the first and second pillar help deliver the responsibility to protect. (...) we must help dispel misconception that responsibility to protect is synonym with military intervention. It is so much more – including building the rule of law, enshrining gender equality and mitigating tensions between communities.”²¹⁹ Following this trend, USA has not doubted to use the peacekeeping mission in DRC as an example to “demonstrate the advancement of the normative concept”²²⁰ of the R2P. Under Obama’s presidency, the USA even took a proactive position holding summits on peace operations “to galvanize Member States to make new and significant contributions to peacekeeping” as “over the years, the United Nations and Member States have improved the peacekeeping tool kit to prevent and deter violence against civilians.”²²¹ Nevertheless, the tendency of the USA to approach military tactics more coercively has in some instances sparked skepticism towards R2P by other Members to the UN.²²²

France has played a remarkable role in advancing the position of R2P, not only by highlighting its relationship with PKOs when emphasizing the importance of MINUSCA in fighting against impunity for mass atrocity crimes²²³, but also by advocating for a Code of Conduct on the use of the veto power to ensure that the political interests of the P5 do not act as a barrier when it comes to protect innocent people from mass atrocity crimes.²²⁴ As it has pointed out “the veto is a responsibility and the Council must be able, in particular in mass atrocity situations, to respond”.²²⁵

²¹⁸ Statement by the United Kingdom at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/united-kingdom.pdf>)

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ Statement by the United States of America at UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/resources/835>)

²²² USA together with the NATO led the very much contested intervention in Libya for the sake of protecting civilians. See Allan J. Kuperman, “Obama’s Libya Debacle: How a Well-Meaning Intervention Ended in Failure”, *Foreign Affairs*, March/April 2015 Issues. (Available at: <https://www.foreignaffairs.com/articles/libya/2019-02-18/obamas-libya-debacle>)

²²³ Statement by France at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iiid-france-english.pdf>)

²²⁴ Since October 2011 the veto on resolutions meant to address mass atrocity crimes in Syria has been used twelve times, Russia has vetoed the twelve time and China six times. As such, over the past years there has been a growing call to regulate the veto power and today over 120 governments support the initiative to create a Code of Conduct. The France/Mexico Initiative, supported by over 95 Member States to the UN, was announced in 2013 by President François Hollande and in 2015 France launched a “Political Declaration on suspension of veto power in cases of mass atrocity” open to all member to support. Global Centre for the Responsibility to Protect, *UN Security Council Code of Conduct*. (Available at: <http://www.globalr2p.org/our-work/un-security-council-code-of-conduct>)

²²⁵ Statement by France, *supra note* 223.

It is also relevant to point out that France is one of the P5 that contributes with the largest number of troops.²²⁶

China's position has gradually evolved towards greater support of both R2P and Peacekeeping Operations. Lacking of statements to support this, a look at its actions is required. The evolution of its approach towards R2P is alluring, it started quite skeptical but as time has passed and the concept has been further developed it has become a cautious supporter.²²⁷ In 2015 it reiterated that "we must fully implement the 2005 World Summit Outcome Document" as the document "provides a clear description of the concept of R2P". Likewise, it has passed from being very reluctant to peacekeeping operations in the 1970s to today being number one among the P5 in contribution of personnel to PKOs²²⁸ and the second largest budget contributor in PKOs.²²⁹ Thus, even if it has decided to remain silent on the relationship between R2P and PKOs, its position seems to be closer to that of UK, France and USA on the matter than to Russia. This is not to say that China has dispelled its long understanding of traditional sovereignty. As a strong supporter of the principle of sovereignty it has highlighted that "nobody should expand or arbitrarily interpret such a concept."²³⁰ This position has been present in its vetoes in resolutions on the situation of Syrian where there are overwhelming evidences that war crimes have taken place.²³¹ Yet, its expanding political and economic interests over the African regions, has make the country someone more lax towards instances of non-interference in internal affairs for other States.²³² When mentioning the link between R2P and PoC its concern has been on the use of force: "using coercive mandatory measures authorizing the protection of civilians by force can only be the last resort when all peaceful means are exhausted".²³³

²²⁶ United Nations Peacekeeping, "Troops and Police Contributors", *supra note* 19.

²²⁷ Courtney J. Fung, "China and the Responsibility to Protect. From Opposition to Advocacy", *United States Institute of Peace*, Peace Brief 2015.

²²⁸ Yin He, *China Rising and Its Changing Policy on the UN Peacekeeping*, in: Cedric De Coning and Mateja Peter (eds.), *United Nations Peace Operations in a Changing Global Order*, 2019, 261.

²²⁹ *Ibid*, 262.

²³⁰ Statement by China at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. (Available at: <http://www.globalr2p.org/media/files/china-1.pdf>)

²³¹ See, UNGA, res. 39/65, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/39/65, 9 August 2018.

²³² Adriana Erthal Abdenur, *UN Peacekeeping in a Multipolar World Order: Norms, Role, Expectations, and Leadership*, in: Cedric De Coning and Mateja Peter (eds.), *United Nations Peace Operations in a Changing Global Order*, 2019, 54.

²³³ Statement by China at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iiid-china.pdf>)

The situation becomes less prosperous when analyzing the position of Russia, the permanent member who has more times vetoed a resolution.²³⁴ While Russia has reaffirmed “its commitment to political obligations to protect populations against genocide, war crimes, ethnic cleansing and crimes against humanity in the context of what agreed at the 2005 Summit”²³⁵ and has agreed that “priorities should be given to strengthening preventive mechanism allowing one at an early stage to highlight/detect problematic situations and prevent large scale of atrocities”,²³⁶ it has found it hard to drop its argument that the commitment “does not contain a well-defined understanding of what “responsibility to protect” means”²³⁷ nor are references to “any example of successful implementation thereof”.²³⁸ As such, “further institutionalization and formalization of the concept” seems illogical.²³⁹ It is on this basis that, Russia has expressed its concerns on “tendency to equate those [PoC] norms to the highly ambiguous concept of R2P” since “practice has shown that invoking this concept with what was initially seen as a noble goal often leads to interference in the international affairs of sovereign States and to violent regime change”.²⁴⁰

Based on these statements it seems then evident that the main obstacle to the inclusion of R2P more explicitly and to operationalize R2P through peacekeeping operations among the P5 could potentially be Russia. This is mainly because of its classical understanding of sovereignty and its differences with the West. Russia apparently mostly fears that R2P could be used in its immediate post-Soviet neighbor countries.²⁴¹ Yet, if the cause can help advance its political interests – a reality that also applies to the rest of the P5 –, it has not provide much opposition when R2P appeared in the resolution. For instance, Russia actually used the R2P pretext when it intervened in Georgia threatening the concept in the way it has continuously condemned.²⁴² Neither did Russia – nor China – vetoed the resolution to intervene in Libya in 2011, questionably placing humanities above the

²³⁴ Emma McClean, “Hard Evidence: who uses veto in the UN Security Council most often – and for what?” The Conversation, 31 July 2014. (Available at: <https://theconversation.com/hard-evidence-who-uses-veto-in-the-un-security-council-most-often-and-for-what-29907>)

²³⁵ Statement by Russia at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2012. (Available at: <http://www.globalr2p.org/resources/228>)

²³⁶ *Ibid.*

²³⁷ Statement by Russia at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iid-russian-federation.pdf>)

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ Statement by Russia at the UNSC Open Debate on the Protection of Civilians in Armed conflicts, 2012. (Available at: <http://www.globalr2p.org/media/files/r2psummaryjune2012pocdebate.pdf>)

²⁴¹ Vladimir Baranovsky and Anatoly Mateiko, “Responsibility to Protect: Russia’s Approaches”, *The International Spectator*, Vol. 51, No. 2, p. 61.

²⁴² See, The Global Centre on the Responsibility to Protect, “The Georgia-Russia Crisis and the Responsibility to Protect: Background Note”, 19 August 2008. (Available at: <http://www.globalr2p.org/media/files/the-georgia-russia-crisis-and-the-r2p-background-note.pdf>)

principle of non-intervention.²⁴³ Hence, while Russia rhetoric has strongly argued against R2P, the reality is that resolutions mentioning R2P have found the light, as such, the other members to the UNSC still have a chance to find ways in which to implement the prevention and halting of mass atrocity crimes in PKOs.

The challenges of peacekeeping operations in the field to prevent and halt mass atrocity crimes: lack of training, limited resources and political constrains.

The relationship at the operational level between R2P and PKOs, nonetheless, cannot merely be reduced to the inclusion or not of R2P in the mandates explicitly or implicitly, or their mention in the statements of Member States. These are good indicators of where does this relationship between both concepts stand at the international level, but still they miss a very important aspect: the reality of their relationship in the field. PKOs in the implementation of the mandates still face many challenges and obstacles that delimitate their performance, having a direct impact of their capacity to mainstream R2P and protect civilians from mass atrocity crimes. These challenges come from a variety of sources including lack of authority to use all necessary means to protect civilians, unwillingness from States to deployed peacekeepers in hostile environments, insufficient capacity, and shortage of operational guidance and preparation to act in environments where the risk of mass atrocity crimes is high.²⁴⁴ These confines could be arranged in 4 groups: conceptual cavities, doctrinal limits, institutional constrains and political interests.

Conceptual Cavities

Probably the most problematic challenge that peacekeeping missions face in the field is the lack of understanding of peacekeepers, and the mission, on the prevention and halt of mass atrocity crimes mainly due to the general tendency to use prevention of armed conflicts as a synonym for prevention of mass atrocity crimes.

This is a matter that has been already dealt with in the previous chapter of this thesis, but it is important to highlight once again that although the risk of commission of mass atrocity crimes elevates in an scenario of armed conflict and political turmoil, and that the presence of peacekeepers can act as a deterrence, preventing a conflict does not automatically equalizes to preventing mass atrocity crimes. Their strategies might be similar but their objectives are different. This misunderstanding can stem from the fact that the conditions that give rise to armed conflicts are

²⁴³ McClean, *supra note* 234.

²⁴⁴ Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, The Responsibility to Protect and Modern Peace Operations*, The Henry L. Stimson Center, 2006, 6-7.

similar to those that give rise to mass atrocity crimes,²⁴⁵ from the reality that compared to the scholarly work on prevention of conflict, less attention has been devoted to the prevention of the four crimes of R2P,²⁴⁶ and from a lack of understanding of why some countries spiral into mass atrocity crimes, while others not.²⁴⁷ This absence of knowledge, which is directly influenced by the veracity that irrespective of their increase in the past years mass atrocity crimes are still rare, restrains the capacity of peacekeepers to act accordingly in an scenario where the risk of mass atrocity crimes is high.

As a direct consequence of this knowledge gap, peacekeeper that are deployed to countries in which the risk of mass atrocity crimes is elevated usually are not trained different types of violence (atrocity crimes versus routine criminality). This diminish their capacity to actually know which patterns of violence can lead to the commission of the 4 crimes, and how to rightly monitor violence and prevent the commission of these crimes in their daily tasks.²⁴⁸ As a matter of fact, this lack of knowledge on genocide, war crimes, crimes against humanity and ethnic cleansing can actually exacerbate violence, in that peacekeepers may create unintended incentives to motivate their commission; parties to the conflict might perpetrate mass violation of human rights to “earn” a seat in the negotiations.²⁴⁹ Thus, to rightly prevent and halt mass atrocity crimes, peacekeepers need to be aware before deployment of *what* mass atrocity crimes are, under *which circumstances* may atrocity crimes arise, and *how* to assess them and tackle them.

To help overcome this barrier there are different mechanisms now in play: the UNSG in its report of 2013 on the R2P already mentioned some of the risk factors that may lead to mass atrocity crimes which could be used to analyze the specific country situation before and during deployment,²⁵⁰ in 2014 the UN Office on Genocide Prevention and the Responsibility to Protect issued a Framework of Analysis for Atrocity Crimes; and the GCR2P since 2017 works in partnership with the government of Canada on a project intended to train peacekeepers in how to identify and respond to warning signs of mass atrocity crimes.²⁵¹ Mainstreaming these mechanisms, together with education on the culture and history of the countries of deployment, could have a remarkable impact on the

²⁴⁵ Bellamy, *supra note* 7, 4.

²⁴⁶ Welsh, *supra note* 156, 223.

²⁴⁷ *Ibid.*

²⁴⁸ Interview with Ms. Juliette Paauwe.

²⁴⁹ Lisa Hultman, “Keeping Peace or Spurring Violence? Unintended Effects of Peace Operations on Violence against Civilians”, *Civil Wars*, Vol. 12 Nos. 1-2 (2010), 39.

²⁵⁰ UNGA, res. 67/929, *Responsibility to protect: State responsibility and prevention. Report of the Secretary General*, UN Doc. A/67/929, 9 July 2013 para. 12-29.

²⁵¹ The Global Centre for the Responsibility to Protect, “Peacekeeping and Civilian Protection”. (Available at: http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection)

capacity of peacekeepers to act in the field. As the Report of the Independent High-Level Panel on Peace Operations (HIPPO) – convened by UNSG Ban Ki-moon in 2015 to carry out a thorough review of UN PKOs and the needs for the future– stressed “Effective training is essential” and “in protection operations (...) understanding how and why perpetrators attack civilians is critical to identify the proper responses”.²⁵²

Doctrinal constrains

The scenario in which mass atrocity crimes might happen are usually scenarios of violence and turmoil. In these instances, the use of force might be required to protect civilians, and given the nature of these crimes it can be that the government that the PKO is actually intended to assist is also perpetrating them. This lets peacekeepers with the dilemma of either attaching to the core principles of traditional peacekeeping – consent, impartiality, non-use of force – or protecting civilians.

Consent is probably the principle that is most carefully treated when dealing with peacekeeping operations. Peacekeeping operations are only deployed on the basis of having the consent and if the consent is withdrawn, the legal status from the missions changes from consensual peacekeeping operations to coercive enforcement action, a situation that the UN, peacekeeping operations and the TCCs aim at preventing at all costs.²⁵³ Firstly, because without consent it could be rendered as a military intervention, making peacekeeping operations become an actual part to the conflict. As the Principles and Guidelines developed by the UN in 2008 explains “in the absence of such consent, a United Nations peacekeeping operation risks becoming a party to the conflict; and being drawn towards enforcement action, and away from its intrinsic role of keeping the peace”.²⁵⁴ As a matter of law, becoming a party to the conflict would have major implications for the missions as peacekeepers would be required to abide to IHL.²⁵⁵ Customary IHL rule 33 states that directing attacks against personnel and objects involved in a peacekeeping missions is prohibited. Yet, this protection only applies “as long as they are not taking a direct part in the hostilities”.²⁵⁶ Secondly,

²⁵² UNGA, res. 70/95 – UNSC res. 2015/446, *supra note* 121, para. 99.

²⁵³ White, *supra note* 57, 48.

²⁵⁴ UNDPKO, *United Nations Peacekeeping Operations: Principles and Guidelines*, *supra note* 87, 32.

²⁵⁵ Bruce Oswald, “The Security Council and the Intervention Brigade: Some Legal Issues”, *Insight*, Vol. 17 No. 15 (2013).

²⁵⁶ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, Volume I: Rules, 2005, rule 33.

if consent is withdrawn and peacekeepers are to leave the territory thousands of civilians would be left totally unprotected.

But consent can be tricky, foremost when it comes to mass atrocity crimes. Host governments are aware that peacekeeping operations are to abide to the consent and have the potential to use it in their benefit to advance their political agendas. Any action taken by PKOs to set light on human rights violations and protection of civilians might be seen by the government as a form of robust approach and threat to sovereignty and their agenda.²⁵⁷ Likewise, it is through consent that the State delimitates the areas of deployment of peacekeepers, being able to let aside those areas in which violence is higher. To avoid this situations and let clear the relationship between the PKO and the host government in terms of duties, composition and presence of the force, the UN signs with the state in question a Status of Force Agreement (SOFA)).²⁵⁸ Yet, SOFA violations are not rare²⁵⁹ and if gone unnoticed and not tackled appropriately they can lead to an erosion of the relationship between the mission and the host government and end up in a deterioration of the legitimacy and credibility of the PKOs.²⁶⁰ Hence, when it comes to areas where mass atrocity crimes can take place peacekeepers are to find the right balance, if they fall too close to the line of consent peacekeepers might grow too close to the government and fail to act against it when required,²⁶¹ and if they fall too apart they might erode their presence rendering it impossible for them to protect civilians.

On the other hand, impartiality is also very problematic. Impartiality was established as mean to ensure that peacekeeping operations would remain neutral in face of a conflict between States. Given that peacekeeping operation have been deployed to situations of intra-state conflict in which mass atrocities are taking place, the line between impartiality and inaction has been blurred. On this basis, the Capstone Doctrine highlighted that PKOs are to be “impartial in their dealings with the parities to the conflict, but not neutral in the execution of their mandate.”²⁶² In cases of widespread violations of human rights this understanding of impartiality has been embraced by the UNSC when establishing the mandates of the operations, which in instances authorized “to protect civilians from threat of physical violence regardless of the source of such violence.”²⁶³ Still, the willingness of

²⁵⁷ Sofia Sebastián and Aditi Gorur, *UN Peacekeeping & Host-State Consent. How Missions Navigate Relationships with Government*, Stimson Center, 2018, 24.

²⁵⁸ White, *supra note 57*, 49.

²⁵⁹ During the interview with Ms. Aditi Gorur I asked why would States agree on a PKO if they were going to violate the SOFA agreement or feel reluctance to cooperate with the mission. She explained that some countries agree on the deployment on PKOs as a way to win the support of the population at home and of the international community if the standing of the state in question is too weak.

²⁶⁰ Interview with Ms. Aditi Gorur.

²⁶¹ Sebastián and Gorur, *supra note 257*, 26.

²⁶² UNDPKO, *United Nations Peacekeeping Operations: Principles and Guidelines*, *supra note 87*, 33.

²⁶³ UNSC, res. 2241 (2015), *On the situation of South Sudan*, UN Doc. S/RES/2241 (2015), 9 October 2015, para. 4(a)(i).

TCCs to defend civilians has been determinant in this aspect. Even if peacekeepers are “not to standby as civilians are threatened or killed”²⁶⁴ and they should look at the “nature of the actions and not the source of the actions”,²⁶⁵ the reality is different in the ground; it has been difficult for peacekeepers to establish a credible break between neutrality and impartiality allowing peacekeepers to stay passive in the face of mass violations of human rights.²⁶⁶ Yet, it would be unfair to attribute this passiveness just to the extent to which TCCs are prepared to protect civilians impartially; it should also be attributed to the information, mobility and back-ups with which peacekeepers can count on, which are usually rather limited.²⁶⁷

Many times impartiality and willingness not to act is a by-product of the reluctance of TCCs to use force, as the third principle in which peacekeeping operations is based is the non-use of force, except for self-defense and to defend the mandate.²⁶⁸ This is certainly a very hot topic at the international community, while some advocate for a wider use of the force to protect civilians, there are other that support more conservative positions. Those against, specially TCCs, are afraid that the use of force could put compromise the impartiality of the mission and that this situation might put peacekeepers in danger, which could lead to discontent at home as it happened to the USA in Somalia.²⁶⁹ On the other hand, those who push forward the use of force to protect civilians is because, as the genocide in Rwanda portrayed, there are instances in which it is only through the coercive measures that civilians can be protected and because when the protection of civilians is part of the mandate it is ought to be protected, foremost when the mandate is authorized under Chapter VII. Yet, reached this point, it is important to highlight that not only coercive measures might have a determinant impact in stopping parties from committing mass atrocity crimes. Blockades in trading, naming and shaming, and imposing sanctions can have wider repercussion on a State making it rethink its position.

In light of the containments that the holy trinity advances when it comes to the protection of civilians from mass atrocity crimes, two different options to overcome this logjam appears. The first is, as Holt and Breckman postulate, creating missions with a different name that are willing to use force when protecting civilians from atrocity crimes. Yet the plausibility of this happening in current

²⁶⁴UNGA, res. 70/95 – UNSC res. 2015/446, *supra note* 121, para. 90.

²⁶⁵UNGA, res. 70/95 – UNSC res. 2015/446, *supra note* 121, para. 123.

²⁶⁶ White, *supra note* 57, 50.

²⁶⁷ Cf. Victoria Holt and Glyn Taylor with Max Kelly, “Protecting Civilians in the Context of UN Peacekeeping Operations. Success, Setbacks, and Remaining Challenges”, *Independent study jointly commissioned by the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs*, 2009.

²⁶⁸ UNSC, res. 2000/809, *supra note* 59, para. 55.

²⁶⁹ John Karlsrud, “The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali”, *Third World quarterly*, Vol. 36, No.1 (2015) 45.

times is rather reduced given the current political scenario. They would most probably face the same difficulties that action under Pillar III of R2P . The second, is clarifying the principles and agreeing on what they mean. This might be actually a possibility, because while there is no appetite to revise them and some worry that bringing them to discussion could be used by the most conservative States to water down the principles and constrain even more the hands of the UN to react in the face of mass violations of human rights, there is a general will to clarify the principles.²⁷⁰

Institutional Limitations

When it comes to protection of civilians in mass atrocity scenarios is not only about willingness or principles; missions need to count with the capacity and resources to do so. A chronic setback of peacekeeping operations is that they do not count with enough staff and peacekeepers, neither with sufficient and adequate equipment to assist the population of large countries like DRC, Mali or CAR.²⁷¹

For every new operation, the UN has to plead countries for peacekeepers and staff, foremost when the operation is to be deployed in adverse environments. Interestingly, the countries with most capable armies are those that adopted a more disinclined position to provide troops. This has been translated in larger number of poorly trained and equipped peacekeepers from countries attracted by the economic compensation for the deployment of their women and men.²⁷² Likewise, when deciding to provide with peacekeepers, it also appears the “national caveats” of TCCs, which although not allowed for many years, they have become the reality of PKO.²⁷³ Through these caveats TCCs decide the terms under which their women and men are deployed, they are not open to the public and can very much undermine the capacity of peacekeepers to protect civilians from imminent threat.²⁷⁴ For instances, these caveats might now allow peacekeepers to use force or engage in protection actions until they get a national authorization to do. That means that before engaging in an action that might be determinant to save civilians, they need to ask for permission

²⁷⁰ Interview with Ms. Aditi Gorur.

²⁷¹ Alex Bellamy, “Why we fail: Obstacles to the Effective Prevention of Mass Atrocities”, *International Peace Institute*, 2015, 13.

²⁷² Jet, *supra note* 123, 92. See also United Nations Peacekeeping, “How we are funded”. (Available at: <https://peacekeeping.un.org/en/how-we-are-funded>)

²⁷³ Ms. Juliette Paauwe was the first expert to highlight national caveats, and actually noted that these were one of the main problems in the protection of civilians.

²⁷⁴ Alexandra Novosseloff, “No Caveats, Please?: Breaking a myth in UN Peace Operations”, in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review*, Global Peace Review, *Annual Compilation 2016*, 47.

and hope that the person authorized to grant that permission is at that precise moment in their office, which is difficult to guarantee given the different time zones in the world.

The financing of peacekeeping operations has been another ongoing debate in the UN since the establishment of the UNEF. Today, peacekeeping operations are financed by the annual contributors that Member States make to the organization, as provided by art. 17 of the UN Charter, but still it is not sufficient to cover all the costs and necessities that the activities that peacekeepers are expected to fulfill incur.²⁷⁵ It is not rare to see in PKOs mandates calls to Member States and organizations to “consider providing the necessary voluntary funding.”²⁷⁶ Not having the necessary equipment and personnel constrains the capacity of peacekeepers to protect civilians; they are usually outnumbered and things like moving rapidly around the country becomes a great obstacle given the lack of equipment that can adapt to the conditions of the road and the large expansion of the countries where they are deployed.²⁷⁷ Additionally, there is also lack of coordination and communication between the different components of the missions, that undermines the capacity of the mission to protect civilians. Different agendas, miscommunications, and overlapping activities can lead to a reduction of the efficiency of the missions.²⁷⁸ As a result of this mandates usually feel forced to reiterate the necessity of the different components to work in an integrated way.²⁷⁹

Political Interests

The UNSC has made of its primary responsibility to protect a political debate in which its members have the monopoly over the decisions that are to be taken in the international community. Peacekeeping mandates have not been able to evade this reality. Member States to the UNSC, as any other Member to the UN, have political interests and when peacekeeping operations are deployed they make sure that their interests are safeguarded. Nonetheless, crafting mandates that supply the desires of all members is a rather arduous task, which in the majority of the times results in mandates that are vague and ambiguous to accommodate the interests of all States while reaching the required consensus.²⁸⁰ This lack of clarity is very dangerous; they have led to inefficiencies in

²⁷⁵ Apart from having a reduced budget, member states are behind in the payment of their contributions to peacekeeping operations, which affects the entire system. See, Wasim Mir, “Financing UN Peacekeeping: Avoiding another Crisis”, *International Peace Institute*, Issue Brief April 2019, 7.

²⁷⁶ UNSC, res. 2364 (2017), *supra note* 175, para. 23.

²⁷⁷ Interview with Anonymous Expert Z, 22 May 2019.

²⁷⁸ Bellamy and Williams, *supra note* 39, 356.

²⁷⁹ See, res. 2363 (2017) *supra note* 177, para. 11: “requests all components of the UNAMID Force, police, and civilian components to work together in an integrated way, encourages UNAMID the United Nations Country Team and other United Nations entities operating in Darfur to strengthen integration and stresses the importance of the appropriate distribution of tasks and coordination between UNAMID and the United Nations Country Team”.

²⁸⁰ Nasu, *supra note* 138, 367.

on the ground when it comes to protect civilians. Peacekeepers cannot agree on what kind of actions the tasks included in the mandate demand and there are often discrepancies on the Rules of Engagement. This reality does not only reduce the effectiveness of the mission but also ends up in detriment for the population that the mission is intending to protect. Similarly, the difficulty to reach a consensus on the Council has also led to the authorization of mandates or renewals of mandates in which the wording does not match the reality on the ground. Afraid that including new terminologies can end up in a lack of consensus, Members have tended to use wording that was already agreed upon.²⁸¹ Nonetheless, it also comes along the reality that only through full political backing of the UNSC can the mission operate in credible terms. Division within the UNSC can send mixed messages on the ground and can undermine the legitimacy and authority of the mission in the eyes of the population and the parties to a conflict.²⁸²

Furthermore, while Member States have been reluctant to provide the required equipment and personal to carry out peacekeeping operations in hostile environments, they have filled mandates with abounding tasks. The fact that peacekeeping operations are legal authorizations product of a political debate does not make things easier for the mission. UN Peacekeeping Operations, unlike Funding Programs of the UN, count with a fixed budget and staff, as such Members to the UNSC try to take advantage of this situation by including their own council agenda items, which guarantees them that their objectives will be fulfilled.²⁸³ This has led to what has been called as “Christmas trees mandates”, mandates overloaded with tasks that seem to forget what is the reality on the ground.²⁸⁴ This has resulted in mandates that are unrealistic, where the means at disposal cannot meet the ends expected from the international community, and where the protection of civilians and prevention and halt of mass atrocity crimes becomes just one more task of the mandate and not a priority. The HIPPO report already stressed that “successful mandates need of a clear and serious political strategy for resolving armed conflicts”, which in instances due to this overfilled mandates with tasks and politics is not achievable.²⁸⁵ The desperation of TCCs towards these kind of mandates is palpable. India already pointed out that “there should be an accountability of those who mandate. Their responsibility does not end with the generation of mandates. They should be held accountable

²⁸¹ Duu Renn and Paul F. Diehl, “Déjà vu All Over Again and Peacekeeping Reform?. The HIPPO Report and Barriers to Implementation”, *Journal of International Peacekeeping*, 19 (2015), 216.

²⁸² UNGA and UNSC, res. 70/95 – 2015/446, *supra note* 121, 50.

²⁸³ Interview with Mr. Francois Grignon.

²⁸⁴ Security Council Report, “Is Christmas Really Over? Improving the Mandating of Peace Operations”, *Research Report* (2019), 2.

²⁸⁵ UNGA, res. 70/95 – UNSC res. 2015/446, *supra note* 121, para. 100.

if unachievable mandates are generated for political expedience or if adequate resources are not made available.”²⁸⁶

Slow deployments due to lack of consensus among member to the UNSC have also had a tremendous impact in the protection of civilians, especially in situations where there is a high risk of mass atrocity crimes. Long political debates to agree on the mandate of the missions, have led to the deployment of peacekeepers with delays to scenarios that do not any longer resemble the one that was present when the discussion began. This has forced mission into reactive postures, instigating the cycles of violence and undermining the capacity of the mission to protect civilians.²⁸⁷

Being aware of these gaps, the international community has set in motion different measures to overcome this situation and guarantee the protection of civilians. The “Action for Peacekeeping” is an initiative launched by the UNSG to refocus peacekeeping operations and come along with more effective and comprehensive mandates as “political solutions are often absent, and missions seem to have mandates that lack of focus and clear priorities”.²⁸⁸ So far it has been endorsed by 151 member States. Likewise, the Kigali Principles, a set of eighteen non-binding pledges, were agreed upon in 2015 to help defeat some of the problems mentioned above. These principles are specially focused on the protection of civilians; among others they call for undue delays when it comes to the protection of civilians or to contributing with enabling capabilities to PKOs to improve civilian protection. If widely endorsed, these principles could have a positive impact in advancing the R2P of the international community. In spite of all of these, the betterments have gone at a very slow pace and the members of the UNSC still in many instances conduct business as usual, which points in the direction that regardless of recommendations, mechanisms, and studies in place it will depend on their willingness to change things.

Interim Conclusion

Based on the analysis done in this chapter it appears that while R2P is not explicitly mentioned in peacekeeping mandates, the missions are or could practice the responsibility to protect of the wider international community through their activities of indirect protection, direct protection and capacity-building. In the last years PKOs have tried to actually improve their responses to grave violations of human rights and the creation of offices like the Human Rights Divisions within PKOs

²⁸⁶ Statement by India at the UNSC Open Debate on the Protection of Civilians in Armed Conflicts, 2009. (Available at: <https://www.pminewYork.gov.in/pdf/uploadpdf/18901ind1642.pdf>).

²⁸⁷ Aditi Gorur and Lisa Sharland, “Prioritizing the Protection of Civilians in UN Peace Operations. Analyzing the Recommendations of the HIPPO Report”, Stimson Center, 2016, 5.

²⁸⁸ United Nations Peacekeeping, “Action For Peacekeeping (A4P)” (Available at: <https://peacekeeping.un.org/en/action-for-peacekeeping-a4p>)

to monitor, investigate and report to the UNSC on IHL violations and abuses of human rights, points in this direction.

Still, even if PKOs were determined to cooperate and encourage the host State to bear its primary responsibility to protect, the creation of institutional capacities at the governmental level only has a limited effect in prevent and deterring mass atrocity crimes, since it will depend utterly on the willingness of States to accept that help and comply or not. Given the principle of sovereignty and non-intervention in which the international system is based there is no possible way to force States to comply with it. The same way that in the face of inaction by the international community to act on its legal positive obligations there is no way to render it accountable for the actions that it failed to take to prevent and protect civilians from mass atrocity crimes. This reality together with the extensive limits imposed by the holy trinity on the UN capacity to protect civilians from mass atrocity crimes, the fact that peacekeeping operations are not provided with the required capacities and resources to keep up with their mandates and the reality that international politics is still a powerful tool even in the face of commission of unspeakable and unimaginable crimes does not help when the situation in the ground starts to get more complex. On top of this, peacekeepers move from a mission to another without getting to really understand what the is the context in which they operation, what are the actions they are ought to take and at times they have taken advantage of their position of power for their own benefit. It appears that the UN Peacekeeping Operations have faced multiple accusations over sexual abuses by its peacekeepers, which has forced the organization to adopt a policy of zero tolerance.²⁸⁹ This reality inevitably sparks the critics and doubts on how is a PKO going to protect civilians from mass atrocity crimes if the people in charge of their protection are also becoming themselves a source additional harm.

Equally, the analysis of the position of states toward the relationship between R2P and PKOs highlights that 14 years after the unanimous consensus on the R2P took place, many question on its implementation are still in the air, which negatively affects to its operational relationship with PKOs. Developing R2P is, nonetheless, an arduous tasks; the instances in which it could have come into play, the political interests of some States have spoiled its momentum, and mass atrocity crimes – even if in the last years we have seen a rise around the world, including a genocide in Myanmar – do not happen often enough to solve all in the interrogatives on what is the best way to approach them. Nonetheless, for what seen in the statements, it appears to be a general consensus over the fact

²⁸⁹ See, United Nations Peacekeeping “MINUSCA takes action on reports of sexual abuse by peacekeepers”, 5 October 2018. (Available at: <https://peacekeeping.un.org/en/minusca-takes-action-reports-of-sexual-abuse-peacekeepers>)

that the UN and the international community should do more to prevent genocide, war crimes, crimes against humanity and ethnic cleanings, under the name of R2P or standing alone, “whoever has committed them and wherever they are perpetrated”²⁹⁰, as Venezuela defended. The problem for many States in this regard is how to do so. Some weight the balance towards a hierarchy in which the protection and promotion of human rights is on top, while others are more prone to non-violation of basic principles of international law like the principles of sovereignty, non-intervention and non-use of force. This dichotomy, motivated by the misleading assumption that R2P is a synonym of military intervention, is detrimental for the relationship between R2P and PKOs when it comes to the operational level. As such, the UN as well as those States advocating for the mainstream and operationalization of R2P should work out ways to overcome this barrier and take advantage of already established agreements on the prevention of genocide, war crimes, crimes against humanity, and ethnic cleansing.

CHAPTER III: THE EXPERIENCE IN UNITED NATIONS MISSION IN SOUTH SUDAN

South Sudan: a new country

After the longest civil war in Africa and a referendum, South Sudan gained independence from Sudan in 2011. The international community, who had for over 20 years witnessed the evolution of the conflict over the rich oil area, cheered the new country and rapidly committed itself through the authorization under res. 1996 (2011) on the United Nations Mission in South Sudan to help advance the standing of the country and develop democratic institutions that would allow the Republic of South Sudan to become a promoter of the international values and principles. It seemed to be that the violence, ethnic clashes, and the well-known disputes between different factions in the south had disappeared with the independence. But just two years and five months after South Sudan became the 193rd member of the UN, a political crisis fiercely erupted. On 15 December 2013, with elections in the horizon and after disputes over the leadership of the ruling party – the Sudan People’s Liberation Movement (SPLM) –, President Salva Kiir accused its Vice-president Riek Machar of looting a coup d’état and ordered its arrest.

In 2015 the first attempt to reach peace between the warring parties was made under the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS). Yet, it did

²⁹⁰ Statement by Venezuela at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. (Available at: <http://www.globalr2p.org/media/files/2017-iid-venezuela-english.pdf>)

not last long. In 2016 the parties returned to hostilities in the most brutal way pushing to the limit UNMISS' credibility and trust.²⁹¹ It was not until September 2018 that the parties reached a second agreement, the Revitalized Agreement on the Resolution of conflict in South Sudan (RARCSS). The expectations over this agreement are high as it could provide a lasting peace for the young country. UNMISS announce in May 2019 that it would began to work on creating secure spaces for the return to civilians to their lives.²⁹² Still and all, serious violations of human rights and extremely high rates of sexual violence are still present in the country making a risky business to put all hopes for a peaceful future on the shoulders of the agreement.²⁹³

From 2013 until today, major violations of human rights and IHL have been perpetrated by all parties to the conflict, including the Government of South Sudan (GoSS). Civilians not taking active part in the hostilities have become targets of the conflict and have been burned and raped in the middle of the clashes. The UNSG reported in 2015 that “Conflict related sexual violence remains a key feature of the conflict. Rape, gang-rape abduction, sexual slavery, forced abortion and mutilation of women’s bodies have been perpetrated by all sides”.²⁹⁴ Civilians have likewise been arbitrarily detained and subjected to torture and/or cruel, inhuman or degrading treatment by National Security Services and Sudan People’s Liberation Army (SPLA).²⁹⁵ Children were abducted to become part of the ranks of the fighting parties.²⁹⁶ Churches, mosques and hospitals were also attacked during the fighting.²⁹⁷ All these are act prohibited by international law: torture is prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is considered to be part of customary law, and as a matter of law its prohibition is also rendered as a *jus cogens*

²⁹¹ In the Malakal Massacre (17-18 February 2016), named after the Malakal Protection of Civilians Site, the UN failed to provide safety for the civilians when fighting erupted inside the PoC site. The trust of the population and displaced civilians living in the PoC sites towards UNMISS drastically reduced after this attack. See, John Tanzan and Carol Van Dam Falk, UN Peacekeepers Accept Responsibility for Massacre at Malakal, *VOA News*, 24 June 2016. (Available at: <https://www.voanews.com/a/un-peacekeepers-accept-responsibility-for-massacre-in-malakal/3390321.html>.) Doctors without Borders, “South Sudan: MSF report on massacre in Malakal Protection of Civilian site shows UN failure”, *Doctors without Borders*, 21 June 2016. (Available at: <https://www.doctorswithoutborders.ca/article/south-sudan-msf-report-massacre-malakal-protection-civilians-site-shows-un-failure>)

²⁹² Africa News, “UNMISS and partners aim to de-militarize civilian facilities; improve conditions for returns in Upper Nile”, 24 May 2019. (Available at: <https://www.africanews.com/2019/05/24/unmiss-and-partners-aim-to-de-militarize-civilian-facilities-improve-conditions-for-returns-in-upper-nile/>)

²⁹³ UN Meetings Coverage and Press Releases, “Sexual Violence Persist in South Sudan Despite Recent Political Strides, Top United Nations Official Says while Briefing Security Council”, 8 March 2019. UN Document SC/13732. (Available at: <https://www.un.org/press/en/2019/sc13732.doc.htm>)

²⁹⁴ UNSC res. 2015/899, *Special Report of the UNSG on the review of the mandate of the United Nations Mission in South Sudan*, UN Doc. S/2015/899, 23 November 2015, para. 13 and 14.

²⁹⁵ UN Human Rights Council, res. HRC/40/69, *Report of Commission on Human Rights in South Sudan*, UN Doc. A/HRC/40/69, 21 February 2019, para. 96.

²⁹⁶ African Union Commission of Inquiry in South Sudan, *Final Report of the African Union Commission of Inquiry on South Sudan*, 15 October 2014, 221.

²⁹⁷ African Union Commission of Inquiry, *supra note 297*, 117.

norm;²⁹⁸ using sexual violence as a weapon of war has been rendered as a crime against humanity if it perpetrated in a widespread and systematic manner and even a genocide if it is done with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group;²⁹⁹ and the use of child soldiers and attacks to public spaces is considered a war crime.³⁰⁰ These horrors in South Sudan were further exacerbated by ethnically driven motivations making a reality the fears of the UNSC that “what began as a political conflict could transform into an outright ethnic war”.³⁰¹ President Kiir from Dinka descendance and Machar from Nuer origins moved the population to aligned in these lines creating deep divisions and mistrust around civilians. Though these are just some examples, the aberrations that took place and still take place clearly appeal to the international community to exercise its R2P in South Sudan in the face of lack of willingness and capacity of the GoSS to protect its population.

Has UNMISS successfully implemented its mandate?

In the face of mayor violations of human rights in the presence of peacekeepers it appears the uncertainty of whether UNMISS has been successful or not in protecting civilians from mass atrocity crimes. The story repeats itself and peacekeepers are not able to put forward the “never again” promise. Yet, it is important to bear in mind before starting the analysis that firstly, what started as a clear state-capacity building mission soon had to change to adapt to the reality on the ground to protect civilians from mass atrocity crimes. UNMISS’ life can be divided in two phases: the first phase (2011-2014) was primarily focused on building state capacity and in the second phase (2014-today) the protection of civilians became the priority.³⁰² Secondly, UNMISS was essentially caught in the middle of a challenging peace process in which one of the army rivalries and perpetrators of human rights abuses was the host government.³⁰³

²⁹⁸ See, Erika de Wet, “The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law”, *EJIL* Vol. 15 No. 1 (2004), 97-121.

²⁹⁹ The International Criminal Tribunal for Rwanda in *Akayesu* case it concluded that “raped formed part of widespread and systematic attack on a civilian population (...) and that rape crimes in *Akayesu* were punishable as a crime against humanity”. See, Mark Ellis, “Breaking the Silence: Rape as an International Crime”, *Case Western Reserve Journal of International Law*, Vol. 38 Issue 2 (2006), 234.

³⁰⁰ The Rome Statute of the ICC in art. 8 has included as war crimes “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” and “Intentionally directing attacks against building dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”

³⁰¹ UNSC Res. 2327 (2016), *Reports of the Secretary-General on the Sudan and South Sudan*, UN Doc. S/RES/2327 (2016), 16 December 2016.

³⁰² Interview with Anonymous Expert Z.

³⁰³ Hannah Dönges “Protection of Civilians needs to be understood as a Collaborative Strategy and not a Campsite” in: Jim Della-Glacoma, Alexandra Novosseloff, and Alexis Guidotti (eds), *Global Peace Operations Review*, 2017, 80.

Analyzing UNMISS through Diehl and Druckman's framework – as explained in the methodology – and making a holistic assessment on the situation and how UNMISS accomplished the R2P-related goals it appears that if UNMISS was not that as successful as expected is because external elements out its control were also in place. When retrospectively analyzing the events, things appear more clear and different ways to deal with an issue come along. But the reality is that PKOs are constrained and they cannot protect everyone from everything. For UNMISS it was not different and faced many of the challenges mentioned in the previous chapter.³⁰⁴ This might not be a clear cut answer to the question posed, but the reality with PKOs is that there is no possible way to answer simply yes or no; there are different elements involved and the complexity of the matter does not allow such a thing. The achievement of its two primary goals related to the prevention and protection of civilians from mass atrocity crimes has been curtailed by the reality on the ground and the decisions and mentality at the UN level.

To achieve the first goal, assist the government in fulfilling its responsibility to protect, which based on the analysis done in the previous chapter could be translated in assisting in the creation of state capacity building, UNMISS should have counted with more time, resources and willingness from the GoSS. South Sudan was entirely a new country, with no national system whatsoever, which means that institutions had to be built from scratch. In a time frame of 2 years before violence erupted UNMISS could have not build the national capacity required to prevent R2P crimes. When violence against civilians began, UNMISS was ordered to cut all the state-capacity building activities to prioritize the protection of civilians and to avoid jeopardizing its impartiality. In 2018, 50 per cent of the mission's efforts in time, money, staffing and energy was still placed in protecting PoC sites, only 20 per cent of the troops strength is available for other tasks.³⁰⁵ Additionally, the GoSS since the early years of deployment of UNMISS put in place austerity measures when the clashes with Sudan started to affect the oil revenues. On this basis, it has been unbearable for the mission to reengage with its original mandate of capacity building tasks until last year, once the signature of the peace agreement between Kiir and Machar came into place and the fighting between the two leaders was somehow neutralized.

³⁰⁴ Interview with Anonymous Expert X and Y.

³⁰⁵ UNSC Res. 2018/143, *Special report of the Secretary-General on the renewal of the mandate of the United Nations Mission in South Sudan*, UN Doc. 2018/143, 20 February 2018, para. 16.

UNMISS, nonetheless, through a small Rule of Law section has had an essential impact in helping the GoSS in building anti-impunity, human rights and due process capacities.³⁰⁶ For instance, it partnered with UN Development Program to study the viability of a Sexual and Gender Based Violence (SGBV) legislation in the country, which has motivated the establishment of a SGBV Special Court in Juba; it has worked with the GoSS to create a mobile court to pursue accountability for crimes in PoC sites; it has also supported the National Prison Service to develop legal and policy reforms to challenge arbitrary and lengthy detentions.³⁰⁷ The pressure exercise through UNMISS by the international community, also pushed the GoSS to ratify after the signature of the ARCSS selected human rights treaties, namely the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.³⁰⁸

On the other hand, in its capacity to protect civilians the issue gets more complex. As the threshold of successfulness rises higher, so does it the prospects of the international community. The lack of institutions and reporting system in the country as well as the impossibility of UNMISS to reach all the areas in the country has made it difficult to know the exact number of people that have died in the conflict. Yet, it appears that an estimated of 383,000 people have died due to direct and indirect causes of the conflict.³⁰⁹ This rate is higher than that of Darfur and analogous to that of Syria, a country with twice the population of South Sudan.³¹⁰ The number of displaced people has raised through the years; in 2015 there were approximately 2 million displaced people³¹¹ and by 2018 the number had increased to almost 4 million.³¹² This shows that the presence of UNMISS did not deter the capacity of the parties to inflict major pain on civilians. By looking at these numbers, one finds it difficult to argue that UNMISS was successful in protecting civilians. Nonetheless, when analyzing the situation, it appears that UNMISS, although it could have certainly done more and a proper response was missing in uncountable occasions, its actions were very restrained due to the

³⁰⁶ Adam Day, Charles T. Hunt, He Yin, and Liezelle Kumalo, “Assessing the Effectiveness of the United Nations Mission in South Sudan/UNMISS”, *Effectiveness of Peace Operations Network (EPON) Norwegian Institute of International Affairs* (2019), 85.

³⁰⁷ *Ibid.*

³⁰⁸ UN Human Rights Office of the High Commissioner, “Ratification Status for South Sudan”. (Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en).

³⁰⁹ Francesco Checchi, Adrienne Testa, Abdihamid Warsame, Le Quach, Rachel Burns “Estimates of crisis-attributable mortality in South Sudan. December 2013-April 2018. A statistical analysis”, *London School of Hygiene and Tropical Medicine* (2018), 2.

³¹⁰ Lauren Ploch Blanchard, “South Sudan’s Civil War: Nearly 400,000 Estimated Dead”, *CRS Insight* (2018). (Available at: <https://fas.org/sgp/crs/row/IN10975.pdf>).

³¹¹ UNSC res. 2223 (2015), *Reports of the Secretary-General on the Sudan and South Sudan*, UN Doc. S/RES/2223 (2015), 28 May 2015.

³¹² UNSC Res. 2406 (2018), *Reports of the Secretary-General on the Sudan and South Sudan*, UN Doc. S/RES/2405 (2018), 15 March 2018.

environment in which it was deployed, the willingness of TCCs and the business as usual of the UNSC.

In spite of the mandate being authorized under Chapter VII and being able to protect civilians from imminent threats, when violence started to erupt UNMISS could not assimilate the happenings at the required speed as it very much understood its actions in line with state-capacity building. The mission was there to assist the government, and the closeness entrenched between the mission and the GoSS impaired the capacity of the mission to react as fast as expected. Becoming aware of this reality, the UNSC convened 9 days after the political turmoil started to increase the military and police capacity of the mission as a way to empower UNMISS' response.³¹³ After that the mandate was changed and become a primordially PoC mandate. This could lead to the assumption that PKOs with political predisposition can react to the pressing situations on the ground. Yet, the bureaucracy and political interests of the Member States to the UNSC slow down the capacity of PKOs to adapt to the situation in the field. It took 21 months for UNMISS to reach the level of deployment promised in December 2013.³¹⁴ The resolution extending the mandate of UNMISS and shifting its priorities in the face of a peace to keep and violations of human rights was passed in November 2014, almost a year after the escalations began. And the commitments in place between some western actors of the international community and the elites in the government pushed for a general unwillingness to directly confront local actors over mass atrocity crimes.³¹⁵

The fact that UNMISS has been operating in a difficult environment of persistent violence including humanitarian crises does not make things easier. It has faced constant limits to its ability to follow clear political conflict resolutions, it has lacked of credible partners, and the poor relationship with the host government has undermined its capacity to protect civilians.³¹⁶ When UNMISS was deployed the GoSS needed UNMISS to start a new country and build the required institutions to operationalize and as such the GoSS welcomed its presence. Yet, the relationship between them eroded rapidly when the crisis escalated. The UNSC changed the mandate entitling UNMISS to protect civilians "irrespective of the source of such violence".³¹⁷ UNMISS was not there anymore to protect the GoSS from Sudan or help them build a state, it was there to protect civilians from its threats. Making use of the prerogatives of the principles of consent and further incurring

³¹³ See, UNSC Res. 2132 (2013), *Sudan and South Sudan*, UN Doc. S/RES/2132 (2013), 24 December 2013.

³¹⁴ Ryan Rappa, "The Challenges of Full Deployment on UN Peace Operations", in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review*, Annual Compilation 2016, 55.

³¹⁵ Welsh, *supra note* 156, 225.

³¹⁶ Richard Gowan, "Peace Operations in 2017-18: Balancing Conflict Management and Political Approaches as an Era comes to a Close", *Global Peace Operations Review*, Peace Operations 2018, 10.

³¹⁷ UNSC Res. 2109, *Sudan/South Sudan*, UN Doc. S/RES/2109 (2013), 11 July 2013, para. 4.

SOFA violations, which had gone unnoticed since the beginning of the deployment, the GoSS started to widely obstruct the movement of the mission, diminishing the ability of UNMISS to effectively protect civilians and report human rights violations. It soon came to the realization that in UNMISS the consent of the host state was de-facto withdrawn. These tensions between the PKO and the GoSS in like manner resulted in NGOs and humanitarian agencies to fear been connected to UNMISS in the face of reprisals and that their work could become politicize.³¹⁸

Compared to other PKOs UNMISS was generously staffed and it had significant number of troops and police;³¹⁹ the problem appeared when matching resources to the protection requirements.³²⁰ UNMISS as for today it counts with over 200 tasks to fulfill falling into the problematic of “Christmas tree” mandates.³²¹ Although this has allegedly not impaired its capacity to protect civilians as resources are to be prioritized for PoC,³²² such immense amount of tasks makes it more difficult to allocate the resources in a way that all chores and expectations from the international community and the South Sudanese population are fulfilled. South Sudan is as big as France but only counts with few paved road, during rainy season there are areas that are inaccessible, and there is a general lack of communications infrastructure.³²³ On top of that, there is a mismatch between what the UNSC mandates and what TCCs are prepared to provide.³²⁴ As it is customary now, TCCS lacked the willingness to respond timely and strongly to threats;³²⁵ some peacekeepers withdrew from their posts and other waited for instructions from the capitals before protecting civilians in imminent danger.³²⁶

Not being able to accomplish its task, hence, has not being merely because of a direct consequence of UNMISS passiveness. It set a precedent by opening the gates of its bases and creating improvised PoC sites. When asked to the population about UNMISS many asserted that “without UNMISS, there could have been a genocide here.”³²⁷ In 2018, 203,723 civilians were

³¹⁸ Dönges, *supra note* 303, 81.

³¹⁹ UNMISS holds the second position for the most staffed mission when it comes to police and military personal. See, Gowan, *supra note* 317, 8.

³²⁰ Interview with Mr. Francois Grignon.

³²¹ Day, Hunt, Yin, and Kumalo, *supra note* 306, 95.

³²² UNSC Res. 2327 (2016), *supra note* 301, para. 11.

³²³ Centre for Civilians in Conflict, *Data-Driven Protection. Linking Threat Analysis to Planning in UN Peacekeeping Operations*, November 2018, 25.

³²⁴ Jim Della-Giacoma and Ryan Rappa, “UN Peace Operations by Numbers”, in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review*, Annual Compilation 2016, 31.

³²⁵ Day, Hunt, Yin, and Kumalo, *supra note* 307, 96.

³²⁶ Somini Sengupta, “What Can the United Nations Do When Its Troops Can’t, or Won’t, Protect Civilians?”, *The New York Times*, 13 July 2016. (Available at: <https://www.nytimes.com/2016/07/14/world/africa/un-peacekeepers-south-sudan-massacre.html>).

³²⁷ Day, Hunt, Yin, and Kumalo, *supra note* 305, 58.

seeking safety in six PoC sites located in UNMISS bases.³²⁸ It is when approaching the reality from a more rounded perspective that it becomes evident that UNMISS could not and cannot face alone the scale of magnitude of violence in the country.³²⁹ This shows that mission like UNMISS in many instances they do not protect civilians not because there is not a will to do so but because the real picture is bigger than what though about in New York and because there was not in mind a reaction plan in the face of scalation of human rights violations. It would thus only be fair not to solely ask whether UNMISS was successful, but was the UNSC successful too? The UNSC, as Anne Peters explains, “it is not a plenary organ, but an organ with restricted membership” as such “Members of the Security Council act as delegates of all other UN members, and as trustees of the international community.”³³⁰ When not mandating UNMISS with a clear tasks, not providing it with the required capabilities and not applying an atrocity prevention lens in its decisions the UNSC is not only failing to fulfill the responsibility of the international community to prevent mass atrocity crimes but it is also pushing PKOs, like UNMISS, towards failure. It is light of this reality that the UNSG has called out on the UNSC in UNMISS “to continue exerting increased political leverage on the parties, in coordination with regional organizations, and to address the restrictions placed on the Mission, as well as the repeated violations of the Status of Force Agreement.”³³¹

Would integrating R2P explicitly or implicitly in UN Peacekeeping Missions make a difference?

One of the reasons lying behind the decision to choose UNMISS was that, as Alison Giffen defends, UNMISS was the first mission that UNSC tasked to support the government to fulfill its responsibility to protect.³³² This is an interpretation made from the res. that established the PKOs in 2011, which authorized UNMISS to advise and assist the GoSS “in fulfilling its responsibility to protect civilians, in compliance with international humanitarian, human rights, and refugee law”.³³³ Certainly this is a legitimate interpretations as the language of R2P is clearly present in the operative clause of the resolution and the GCR2P has correspondingly included this resolution in its list of R2P references in UNSC.³³⁴ Not the least, based on the analysis done before and examining the way

³²⁸ReliefWeb, “UNMISS Protection of Civilians (PoC) Sites”, 22 May 2018. (Available at: <https://reliefweb.int/report/south-sudan/unmiss-poc-update-22-may-2018>).

³²⁹ Interview with Mr. Francois Grignon.

³³⁰ Anne Peters, *The Responsibility to Protect: Spelling out the Hard Legal Consequences of UN Security Council and its Members*, in: Ulrich Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer, and Christoph Vedder (eds.), *From Bilateralism to Community Interests: Essays in Honour of Bruno Simma*, 2011, 315.

³³¹ UNSC, res. 2018/143, *supra note* 305, para. 48.

³³² Alison Giffen, *South Sudan*, in: Alex J. Bellamy and Tim Dunne (eds.) *The Oxford Handbook of the Responsibility to Protect*, 2016, 867.

³³³ UNSC Res. 1996 (2011), *Reports of the Secretary-General on the Sudan*, UN Doc. S/RES/1996 (2011), 8 July 2011, para. 3 (b)(iv).

³³⁴ Global Centre for the Responsibility to Protect “R2P References in United Nations Security Council Resolutions and Presidential Statements”, 1 April 2019. (Available at: <http://www.globalr2p.org/publications/232>)

the mission faced the escalation of the conflict it shows the doubt of whether R2P was really in the minds of the Member States at the moment of authorizing UNMISS mandate.

As stated above, it was a moment of excitement; South Sudan had just won its independence and the Council's attention was in the creation of a new democratic state. Ergo, a plausibility is that while the mandate made references to the responsibility to protect and the elements for the commission of mass atrocity crimes were present, Member States' enthusiasm did not take into consideration the possibility that mass atrocity crimes could occur.³³⁵ In between the risk factors that could lead to mass atrocity crimes recognized by the UNSG in 2013 are: history of discrimination and other human rights violations against member of a particular group or population, "us versus them" narrative, presence of armed groups or militia and their capacity to commit atrocity crimes, and government's lack of capacity to prevent these crimes.³³⁶ All of these were elements present in South Sudan when the mission was deployed in 2011. South Sudan just won independence after a very violent war were Sudanese and South Sudanese civilians became victims of unimaginable horrors, the President and Vice President of the newly created country belonged to two different ethnic groups, the army of the country – the SPLA – was composed by former rebel soldiers that fought fiercely and merciless for the independence of South Sudan, and the newly established government of South Sudan did not need to reform its institutions but it actually had to build from scratch an entire system. Although it could be rightly argued that this report came out the same year that violence sparked, and it could not have prevented mass atrocity crimes from happening. The international community had 6 months from July when the report was published to December when the conflict sparked to look into the situation, analyze the appearing patterns, and prepare for a worst case scenario.

In any case, it was not a lack of mechanisms to analyze the risk of mass atrocity crimes that did not make possible for the international community to be aware of their possible commission. When the mandate was established the preamble already deplored "the persistence of conflict and violence and its effects of civilians" and foresaw the possibility that UNSC might have to "show flexibility in making necessary adjustment to the mission priorities (...) according to progress achieved, lessons learned, or *changing circumstances on the ground*".³³⁷ In the report of the UNSG in 2012, he already depicted his concern over the "vicious cycle of inter-communal violence" and was

³³⁵ Giffen, *supra note* 333, 886.

³³⁶ UNSC Res. 67/929, *supra note* 250, paras. 16-29.

³³⁷ UNSC res. 1996 (2011), *supra note* 334. Emphasis added.

worried about the “patterns of increased human rights violation in some areas”.³³⁸ This moved him to warn that there was an actual risk of resurgence of violence and to highlight on the critical gaps in resources and capabilities that were “constrained the implementation of UNMISS protection mandate.”³³⁹ In addition, the GCR2P already warned in its issue of July 2012 that “ethnic violence in the Republic of South Sudan leaves population at risk of recurrence of mass atrocity crimes” and that “UNMISS was unable to adequately fulfil its civilian protection mandate effectively due to a lack of resources” adding that “if the current disarmament campaign fails to address the root causes of the conflict, inter-communal violence could resume and result in further mass atrocity crimes.”³⁴⁰

Consequently, the problem was not that an analysis was not in place, it was actually done before and during the deployment and the mission was aware of the risk.³⁴¹ The problem is that early warning and prevention depends on the ability to act in the face of a hostile government and the willingness of the international community. Regardless of the existing legal obligations, *jus cogens* prohibitions, or *erga omnes* obligations, prevention remains largely a political issue. If the R2P lens required to authorize a mandate under the R2P and political predisposition to apply it would have been really there then the international community would have not been caught by surprise and would have actually paid attention to the signs. Thus, one could argue based on the resolution and actions that R2P presence in the mandates was in the language, but was not in the mentality of the Member States.

In any case, this does not render this case study useless for the purpose of this thesis, on the contrary it helps understand and set light in what is the truly relationship between R2P and PKOs at this point. First, it shows that there is a lack of common understanding of what R2P actually is; while scholars and academics have interpreted UNMISS’ mandate under the umbrella of R2P, policy-makers and decision makers were not thinking about it purely in R2P terms. Of course, it is not by chance that the language of R2P appeared in that paragraph of the operative clause of Res. 1996, but it appears difficult to defend that a full R2P mentality was there.³⁴² At no point was the responsibility to protect mentioned during the meeting passing the res. establishing UNMISS.³⁴³ Second, it proves the reality discussed in the previous chapter: peacekeeping operations, even if not aware of it, are de-facto advancing R2P. This means that even if not calling it R2P and not being in

³³⁸ UNSC, Res. 2012/486, *Report of the Secretary General to the Security Council on South Sudan*, UN Doc. S/2012/486, 26 June 2012, para. 98.

³³⁹ *Ibid.*

³⁴⁰ GCR2P, “R2P Monitor”, *Global Centre for the Responsibility to Protect*, Issue 4, 15 July 2012, 13.

³⁴¹ Interview with Mr. Francois Grignon.

³⁴² Interview with Anonymous Expert Z.

³⁴³ UNSC Doc. S/PV.6579, 6579th meeting, 11 July 2011.

the mentality of Member States, with the activities that the mission envisioned was helping advance R2P, even if not entirely successful because of the way that the happenings evolved.³⁴⁴ UNMISS was, indeed, tasked in 2016 after the escalation of human rights violations in the country to “monitor, investigate and report incidents of hate speech and incitement of violence in cooperation with the UN Special Advisor on the Prevention of Genocide”. Third, it was eventually when the political situation started to worsened in the country and the humanitarian situation started to dire that the international community started to look into the issue through an R2P lens. The UNSC in the 2015 mandate included direct R2P language in the preamble of the resolution when stressing the primary responsibility of the GoSS to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing.³⁴⁵ This reality further reinforces the previous point of lack of understanding of what R2P really is: it was not until the situation had really scaled to a point of no return and the international community started to see the effects of mass atrocity crimes that R2P started to win more attention in the conversation. This demonstrates that R2P is mainly understood by the wider international community as a reactive mechanism, neglecting that the nature of R2P resides in effectively preventing genocide, war crimes, crimes against humanity and ethnic cleansing, and cooperating for this purpose. Finally, it proves that for effectively preventing and halting mass atrocity crimes, PKOs need to be not only de-facto doing R2P, but need to be consciously aware of the responsibility to protect of the international community and use an atrocity prevention lens.

Hence, would integrating R2P explicitly or implicitly in UN Peacekeeping Missions make a difference? This a complex question to answer in a very direct way. Every peacekeeping operation is different, the interests of the international community diverge and the political momentums change shiftily. But as for today and based in what seen in UNMISS and through the analysis of this thesis, one could argue that including explicitly R2P today in PKOs would not make much of a difference. Firstly, because there is a general reluctance to include explicitly R2P in PKO after the happenings in Libya; the doctrine is perceived to have been instrumentalization for the purpose of regime change.³⁴⁶ Secondly, because the doctrine lacks the required understanding to be entirely successful. Here the international community faces a difficult scenario, while including R2P in the mandates would have an important effect in the evolution of the political community and in mainstreaming its application with the potential of one day being embraced for the way it is and maybe even of becoming a norm, this will only be done once all States – or at least the Members of

³⁴⁴ Interview with Mr. Francois Grignon.

³⁴⁵ UNSC Res. 2241 (2015), *supra note* 263.

³⁴⁶ Interview with Mr. Francois Grignon.

the UNSC – are in the same page. Per contra, this will most presumably not happen until a successful event in the name of R2P overshadows the case in Libya, which at the same time is a rather challenging task, because failures have a greater echo than successes among the international community, politicians and scholars. Hence, R2P supporters need to keep on pushing even if the face of indifference towards the commitment to prevent and halt mass atrocity crimes.

Adversely, including R2P implicitly and doing R2P without calling it R2P might be a good tactic for the purpose of mainstreaming R2P and making a difference. That is what PKOs currently do without really being aware of it. But again, they are deemed to stay on their way of reaching the levels of success and protection expected by the commitment of the R2P and the international community until they genuinely do R2P, or at least they genuinely use a prevention and halt of mass atrocity crimes lens.

In any case, it is vital to recall that as UNSG Antonio Guterres has put it down a “peacekeeping operation is not an army (...)It is a tool to create the space for a nationally-owned political solution” and when required protect civilians from violence.³⁴⁷ That means, that while they can undertake the responsibility to protect of the international community because their architecture allows them to do so, the international community cannot expect them to undertake the responsibility of States and act like States, because PKOs are not States.³⁴⁸ It should also be stressed that, as the case of UNMISS show, it is a difficult task for PKOs to change the behavior of government. If government and non-state actors are determinant to commit mass atrocity crimes they most probably will.

CONCLUSION – THE WAY FORWARD

Throughout the analysis done in the pages of this thesis one could conclude that while R2P and PKOs have a strong conceptual relationship since they virtually have the same objective in mind and PKOs have silently advanced the R2P, the relationship between them deteriorates at the operational level when it comes to put R2P into practice. As argued above, this is not exceptional to the relationship between R2P and PKOs, it is a common feature of international law and politics. It is part of the engineering of international relations in which 193 Member States with different priorities and interests need to concur on a common ground. Although R2P has aimed at bringing all those together under the label of humanity, so far it has not achieved its goal. On the one hand, because there is a general lack of understanding of what R2P is. R2P has wrongfully been interpreted

³⁴⁷ UNGA, Remarks to the Security Council High-Level Debate on Collective Action to Improve UN Peacekeeping Operations, 28 March 2018. (Available at: <https://www.un.org/sg/en/content/sg/speeches/2018-03-28/collective-action-improve-un-peacekeeping-operations-remarks>)

³⁴⁸ Interview with Anonymous Experts X and Y.

as a commitment that opens the door to a new panacea of interventions, in which the sovereignty of States is rendered worthless. On the other hand, because it does not envision an easy task. R2P directly aims at redefining the pillar in which this international anarchic system lays: sovereignty. Sovereignty is what ensures nations a place in the international arena, what makes them what they are and it is the cheque that has ensured their independence from outsiders. This conception has been reinforced by the rules that set the foundations of the contemporary international system, the UN Charter, which seems to be fighting an internal battle. While it provides the protection of perennial principles of international law it also recognizes the necessity that “we the peoples of the United Nations (...) reaffirm faith in fundamental human rights, in the dignity and worth of human person”. The fact that the only one time the UNSC presumably acted in the name of R2P, it did it so to shape and achieve its ultimate political interests failing to protect Libyan civilians. The customary lack of inaction by the UNSC was reinforced after this case and R2P has not yet been able to overcome this deadlock. This has turned in a partial defeat of R2P in spite of its aspirations and governments, like in Syria, Myanmar, or South Sudan, still grasp at straws on sovereignty taking advantage of their prerogatives to advance their political agendas in within their territories at any cost and with few reprisals.

It is on this scenario, and based on the veracity that the legitimacy of PKOs depends on their capacity to protect civilians, that the relationship between R2P and PKOs becomes vivid. Thereupon, coming back to the question that put in motion this thesis, it appears to be that there is no simple way to answer it. While the aim was to find ways in which R2P could marshal and presenting ways to overcome the stalemate of the international community when it comes to protecting people from mass atrocity crimes, the right answer to this question reflects the most complex current debates that are happening within international law and politics. Including the perennial discussion between sovereignty and protection of human rights, action and inaction in the face of legal obligation to protect, and brings light on the convoluted reality on how accommodating human security and the protection of human beings in a system that is first and foremost state-centric. Nevertheless, oversimplifying, one could venture to say that their relationship does not only emanates from the realization of their similarities and their capacity to cooperate, but also because PKOs appear as the solution to the desperate attempt of the international community to “do something”, which comes at a price.

Linking R2P and PKOs could help overcome the misunderstanding on R2P and depict R2P for what it really is when missions engage in indirect protection and capacity-building. In the meantime it could help peacekeeping operations to come closer to the expectations of the international

community. In this regard, the success of PKOs should be treated the same ways as the failures. Not without a reasoning – the death of thousands of hundreds of innocent people – the failures have found more echo than the successes among scholars and the international community. Yet, it would be beneficial for the relationship between PKOs and R2P to bring attention to their success and clearly point out *when* the UNSC acted jointly and *which* were the areas in where they were prosperous. Similarly, PKOs, in opposition to R2P, present certain benefits: they are well established in the international community, are easier to agree upon and they are under the command of the UN.³⁴⁹ This takes uncertainty and possible incursion of the political interests of the most powerful states out of the equation. However, the to “do something” can also be a problematic narrative and an idea that the international community should approach carefully. Firstly, PKOs are no states, so when asking them to put forward the R2P it is important to be aware that there are limits to their actions. Secondly, as the case of UNMISS rightly points, when the host government is the one perpetrating mass atrocity crimes it might be very difficult for the PKOs to actually face the threat and will be under the same pressures that action under Pillar III of the R2P. Thirdly, this mentality can lead PKOs to end up becoming the scapegoat of the Security Council to avoid and delegate a responsibility accepted in the 2005 World Summit and imposed by the UN Charter over a different body.

So, what is the way forward? What can potentially be done to make prevention and halt of mass atrocity crimes a reality? There have been echoes around scholars and the international community of the possibility of creating a UN standing army that could be deployed in the face of risk of commission of mass atrocity crimes. Yet, this does not sound very promising. This army would need to be authorized by the UNSC, would face the same problematic as any other coercive action in the name of R2P, and would focus mainly in reactive measures and not in the *prevention* and *cooperation* measures that R2P foresees in its first pillars. Hence, following the lines of what analyzed in this thesis, the relationship between R2P and PKOs should be further reinforced. Even if it does not appear as the superb solution to guarantee the protection of civilians because of the barriers and challenges it faces, it can certainly be a step forward normalizing R2P and has the potential of forcing the international community to steadily accept their responsibility to protect civilians from mass atrocity crimes. By pushing on their relationship PKOs could ultimately adopt a prevention of mass atrocity crimes lens reinforcing the capacity of the relationship to protect vulnerable people. Again, this needs to be done bearing in mind the limits of R2P, what PKOs can

³⁴⁹ Interview with Ms. Aditi Gorur.

realistically do, realizing that maybe the prevention and protection of civilians from mass atrocity crimes cannot be done under the name of R2P because of the negative connotations with which it is assimilated by some members of the international community and comprehending that this still does not solve what is probably the most fundamental and imperative challenge on the protection of civilians from mass atrocity crimes: political unwillingness. In spite of the many initiatives, instruments and plans that appear on the way to protect humanity from genocide, war crimes, crimes against humanity and ethnic cleans, their feasibility will always rest on the readiness of the UNSC to accept its responsibilities and the compromises that its members are willing to undertake for this purpose. That today children, women and men are still victims of horrendous crimes is nothing but the result of the domino effect that the Security Council decisions have, when putting their individual political interests before their obligations with for the international community and the neglecting their responsibility to protect humanity.

BIBLIOGRAPHY

Books and journal articles

- Baranovsky, Vladimir, and Anatoly Mateiko, "Responsibility to Protect: Russia's Approaches", *The International Spectator*, Vol. 51, No. 2, 49-69.
- Bellamy, Alex J. , and Ruben Reike, "The Responsibility to Protect and International Law", *Global Responsibility to Protect*, n. 2 (2010), 287-286
- Bellamy, Alex J., "Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications of the Responsibility to Prevent", *The Stanley Foundation*, February 2011, 1-20.
- Bellamy, Alex J., "Realizing the Responsibility to Protect", *International Studies Perspectives*, Volume 10, no. 2 (2009) 111-128.
- Bellamy, Alex J., "The "next stage" in peace operations Theory?", *International Peacekeeping*, Vol. 11, No. 1, 2004, 17-38
- Bellamy, Alex J., "The Responsibility to Protect and the problem of military intervention", *International Affairs*, Vol. 84 No.4, June 2008, 615-639;
- Bellamy, Alex J., and Adam Lupel, "Why We Fail: Obstacles to the Effective Prevention of Mass Atrocities", *International Peace Institute* (2015).
- Bellamy, Alex J., and Paul D. Williams,, *Understanding Peacekeeping*, 2010, Second Edition.
- Breakey, Hugh, Angus Francis, Vesselin Popovski, Charles Sampford, Michael G. Smith and Ramesh Thakur, *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflicts*, Institute for Ethics, Governance and Law, 2012.
- Breau, Susan C., "The Impact of the Responsibility to Protect on Peacekeeping", *Journal of Conflict & Security Law*, 11:3 (2007), 429-464.
- Brett R. O'Bannon, *Reassessing the Responsibility to Protect: Conceptual and operational challenges*, 2016.
- Briggs, Caelin, "Protection of Civilians (PoC) sites and their impact on the broader protection environment in South Sudan" in *Special Feature: The crisis in South Sudan*, Humanitarian Exchange, no. 68 (2017), 17-20.
- Bruce Oswald, "The Security Council and the Intervention Brigade: Some Legal Issues", *Insight*, Vol. 17 No. 15 (2013).

Chandler, David, “Unravelling the Paradox of “The Responsibility to Protect”, *Irish Studies in International Affairs*, Vol. 20, 2009, 27-39

Checchi, Francesco, Adrienne Testa, Abdihamid Warsame, Le Quach, and Rachel Burns “Estimates of crisis-attributable mortality in South Sudan. December 2013-April 2018. A statistical analysis”, *London School of Hygiene and Tropical Medicine* (2018), 1-45.

Cohen, Roberta and Francis M. Deng., *Sovereignty as a Responsibility: Building Block for R2P*, in: Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect*, 2016.

Cohen, Roberta, *From Sovereign Responsibility to R2P*, in: W. Andy Knight and Frazer Egerton (Eds.) *The Routledge Handbook of the Responsibility to Protect*, 2012.

Day, Adam, Charles T. Hunt, He Yin, and Liezelle Kumalo, “Assessing the Effectiveness of the United Nations Mission in South Sudan/UNMISS”, *Effectiveness of Peace Operations Network (EPON) Norwegian Institute of International Affairs* (2019).

De Wet, Erika, “The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law”, *EJIL* Vol. 15 No. 1 (2004), 97-121.

Della-Giacoma, Jim, and Ryan Rappa, “UN Peace Operations by Numbers”, in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review, Annual Compilation 2016*.

DeRouen Jr, Karl R., and Shaun Goldfinch, ” Putting the Numbers to Work: Implications for Violence Prevention”, *Journal of Peace Research*, Vol. 42, No. 1, 2005, 27-45.

Diehl, Paul F., and Daniel Druckman, *Peace Operations Success: The Evaluation Framework*, in: Daniel Druckman and Paul F. Diehl (eds.), *Peace Operations Success: A Comparative Analysis*, 2013, 11-27

Diehl, Paul F., and Daniel Druckman, *Evaluating Peace Operations*, in: Joachim A. Koops, Thierry Tardy, Norrie MacQueen, and Paul D. Williams (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, 2015, 94-107

Dönges, Hannah, “Protection of Civilians needs to be understood as a Collaborative Strategy and not a Campsite” in: Jim Della-Giacoma, Alexandra Novosseloff, and Alexis Guidotti (eds.), *Global Peace Operations Review*, 2017.

Druckman, Daniel, and Paul Stern, “Evaluating Peacekeeping Missions”, *Mershon International Studies Review*, Vol. 41 No. 1, 1997, 151-165

Ellis, Mark, "Breaking the Silence: Rape as an International Crime", *Case Western Reserve Journal of International Law*, Vol. 38 Issue 2 (2006), 234.

Erthal Abdenur, Adriana, *UN Peacekeeping in a Multipolar World Order: Norms, Role, Expectations, and Leadership*, in: Cedric De Coning and Mateja Peter (eds.), *United Nations Peace Operations in a Changing Global Order*, 2019.

Evans, Gareth, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, 2008, 11-13

Focarelli, Carlo, "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine", *Journal of Conflict & Security Law*, Vol. 13, No. 2, 2008, 191-213

Foley, Conor, *UN Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations*, 2017.

Fung, Courtney J., "China and the Responsibility to Protect. From Opposition to Advocacy", *United States Institute of Peace*, Peace Brief 2015.

Gallagher, Adrian, "The promise of pillar II: analysing international assistance under the Responsibility to Protect", *International Affairs*, 91:6, (2015), and Alex J. Bellamy *Responsibility to Protect: a defense*, 2014, 1259-1275

Gilmour, Andrew, "The Future of Human Rights: A view from the United Nations", *Ethics & International Affairs*, vol. 28 no.2 (2014), 239-250.

Gilmour, Andrew, "The Future of Human Rights: A view from the United Nations", *Ethics & International Affairs*, 28, n.2, 239-250

Gorur, Aditi, and Lisa Sharland, "Prioritizing the Protection of Civilians in UN Peace Operations. Analyzing the Recommendations of the HIPPO Report", *Stimson Center*, 2016.

Gowan, Richard, "Peace Operations in 2017-18: Balancing Conflict Management and Political Approaches as an Era comes to a Close", *Global Peace Operations Review*, Peace Operations 2018.

Gowan, Richard, and Ian Johnstone, "New Challenges for Peacekeeping: Protection, Peacebuilding and the "War on Terror"", *International Peace Academy*, *Coping with Crisis Working Paper Series* (2007).

Gray, Christine, *International Law and the Use of Force*, 2008, Third Edition.

Gray, Christine, *The Use of Force and the International Legal Order*, in: Malcolm D. Evans (ed.), *International Law*, 2018, Third Edition.

He, Yin, *China Rising and Its Changing Policy on the UN Peacekeeping*, in: Cedric De Coning and Mateja Peter (eds.), *United Nations Peace Operations in a Changing Global Order*, 2019.

Hetto, Ronald, “From peacekeeping to peacebuilding: the evolution of the role of the United Nations in peace operations”, *International Review of the Red Cross*, 95 (891/892) (2013), 495-515.

Holt, Victoria K., and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, The Responsibility to Protect and Modern Peace Operations*, The Henry L. Stimson Center, 2006.

Holt, Victoria, and Glyn Taylor with Max Kelly, “Protecting Civilians in the Context of UN Peacekeeping Operations. Success, Setbacks, and Remaining Challenges”, *Independent study jointly commissioned by the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs*, 2009.

Hultman, Lisa, “Keeping Peace or Spurring Violence? Unintended Effects of Peace Operations on Violence against Civilians”, *Civil Wars*, Vol. 12 Nos. 1-2 (2010), 29-46.

Hunt, Charles, and Alex J. Bellamy, “Mainstreaming the Responsibility to Protect in Peace Operations”, *Civil Wars*, Vol. 13, No. 1 (2011), 1-20.

Jett, Dennis, “Why Peacekeeping Fails”, *Middle East Policy*, Vol. XXVI, No. 1 (2019), 89-96.

Johansen, Robert C., “U.N. Peacekeeping: How Should We Measure Success? Review of International Peacekeeping by Paul F. Diehl”, *Mershon International Studies Review*, Vol. 38 No. 2, October 1994, 307-310

K. Holt, Victoria, “The Responsibility to Protect: Considering the Operational Capacity for Civilian Protection”, *Discussion Paper Stimson Center*, 2005, 46-56.

K. Sharma, Serena, and Jennifer M. Welsh, *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015.

Karlsrud, John, “The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali”, *Third World quarterly*, Vol. 36, No.1 (2015) 40-54.

Krause, Dan, “It is Changing After All: India’s Stance on Responsibility to Protect”, *Observer Research Foundation*, Occasional Paper #90, April (2016)

Lotze, Walter, and Alexandra Martins, , *The Responsibility to Prevent Atrocity Crimes*, in: Serena K. Sharma and Jennifer M. Welsh, *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015.

Maley, William, *Introduction: Peace Operations and their Evaluation*, in: Daniel Druckman and Paul F. Diehl (eds.), *Peace Operations Success: A Comparative Analysis*, 2013, 2-9.

Marrone, Andrea *The Governance of Complementary Global Regimes and the Pursuit of Human Security*, 2016

Mayersen, Deborah, “Current Potential Capacity for the Prevention of Genocide and Mass Atrocity through the UN” *Research Paper of University of Wollongong*, 2010.

Megret, Frederic, “Between R2P and The ICC: “Robust Peacekeeping” And the Quest for Civilian Protection”, *Criminal Law Forum*, 26 (2015), 101-151.

Melander, Erik, ““Organized Violence in the World 2015: an assessment by the Uppsala Conflict Data Program”, Uppsala 2015.

Melander, Erik, “Selected To go Where Murderers Lurk? The Preventive Effect of Peacekeeping on Mass Killings of Civilians”, *Conflict Management and Peace Science*, Vol. 26 No. 4, (2009), 389-406.

Miles, Matthew B., and Michael A. Huberman, , *An Expanded Sourcebook: Qualitative Data Analysis*, Second Edition, 1994.

Mills, Albert J., Gabrielle Eurepos, and Elden Wiebe, *Encyclopedia of Case Study Research*, 2010.

Mir, Wasim, “Financing UN Peacekeeping: Avoiding another Crisis”, *International Peace Institute*, Issue Brief April 2019.

Morris, Justin, “The Responsibility to Protect and the use of force: Remaking the Procrustean bed?”, *Cooperation and Conflict* 51, n.2, 2016, 200-215.

Nasu, Hitoshi, “Operationalizing the Responsibility to Protect in the context of Civilian Protection by UN Peacekeepers”, *International Peacekeeping*, Vol. 18 No. 4, 2010, 364-378.

Nganje, Fritz, “The Rhetoric and Practice of the International Responsibility to Prevent Mass Atrocities: Reflections on South Africa’s peacebuilding role in South Sudan (2005-2013)”, *African Security Review*, 26:3 (2017) 271-287.

Novosseloff, Alexandra, “No Caveats, Please?: Breaking a myth in UN Peace Operations”, in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review*, Global Peace Review, *Annual Compilation 2016*.

Paddon Rhoads, Emily, and Jennifer Welsh, “Close cousins in protection: the evolution of two norms”, *International Affairs*, Vol. 95 No. 3 (2019), 597 – 561.

Peter, Mateja, “Measuring the Success of Peace Operations: Directions in Academic Literature”, *Norwegian Institute of International Affairs*, Paper 862, 2016.

Peters, Anne, *The Responsibility to Protect: Spelling out the Hard Legal Consequences of UN Security Council and its Members*, in: Ulrich Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer, and Christoph Vedder (eds.), *From Bilateralism to Community Interests: Essays in Honour of Bruno Simma*, 2011.

Ploch Blanchard, Lauren, “South Sudan’s Civil War: Nearly 400,000 Estimated Dead”, *CRS Insight* (2018).

Pushkina, Darya, “A recipe for Success? Ingredients of a successful peacekeeping mission”, *International Peacekeeping*, 13:2, 2006, 133-149.

Rappa, Ryan, “The Challenges of Full Deployment on UN Peace Operations”, in: Jim Della-Giacoma, Alexandra Novosseloff, Alexis Guidotti (eds.), *Global Peace Operations Review*, Annual Compilation 2016.

Renn, Duu, and Paul F. Diehl, “Déjà vu All Over Again and Peacekeeping Reform?. The HIPPO Report and Barriers to Implementation”, *Journal of International Peacekeeping*, 19 (2015), 211-226.

Scheffer, David, “Toward a Modern doctrine of Humanitarian Intervention”, *University of Toledo Law Review*, Vol. 23 (1992).

Schütte, Robert, *Civilian Protection in Armed Conflicts. Evolution, Challenges and Implementations*, 2013.

Sebastián, Sofia, and Aditi Gorur, *UN Peacekeeping & Host-State Consent. How Missions Navigate Relationships with Government*, Stimson Center, 2018.

Simma, Bruno, Daniel-Erasmus Khan, George Nolte and Andreas Paulus, *The Charter of the United Nations: A Commentary Volume I*, Third Edition, 2012.

Simon, Kristina, , *Practitioner’s Guide: Qualitative and Quantitative Approaches to Rule of Law Research*, International Network to Promote the Rule of Law, July 2016.

Straus, Scott, “Identifying Genocide and Related Forms of Mass Atrocity”, *United Nations Holocaust Memorial Museum*, October 2011.

Tardy, Thierry, “Protecting Civilians in Africa: The risks of Issue-Linkage between RtoP and Peacekeeping”, *Journal of International Peacekeeping*, n. 17 (2013). 201-221.

Thakur, Ramesh, and Thomas G. Weiss, “R2P: From Idea to Norm – and Action?”, *Global Responsibility to Protect*, 1 (2009), 22-53.

Welsh, Jennifer, “The Responsibility to Prevent: Assessing the gap between rhetoric and reality”, *Cooperation and Conflict*, Vol. 51 No. 2 (216), 216-232.

Welsh, Jennifer, Patrick Quinton-Brown and Victor MacDiarmid, “Brazil’s “Responsibility While Protecting” Proposal: A Canadian Perspective”, *Canadian Center for the Responsibility to Protect*, 2013.

Wheeler, Nicholas, *Saving Strangers: Humanitarian Intervention in International Society*, 2002.

White, Nigel D., *Peacekeeping and International Law*, in: Joachima A. Koops, Norrie MacQueen, Thierry Tardy and Paul D. William (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*.

Will, Siobhán, *Protecting Civilians: The Obligations of Peacekeepers*, 2009.

Williams, Abiodun, *The Possibilities for Preventive Deployment*, in: Serena K. Sharma and Jennifer M. Welsh (eds.), *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, 2015.

Williams, Paul D., *The R2P, Protection of Civilians, and UN Peacekeeping Operations*, in: Alex Bellamy and Time Dunne (eds.), *The Oxford Handbook of the Responsibility to Protect*, 2016.

Woocher, Lawrence, *The Responsibility to Prevent: toward a strategy*, in: W. Andy Knight and Frazer Egerton, *The Routledge Handbook of the Responsibility to Protect2P*, 2012.

Zifcak, Spencer, *The Responsibility to Protect*, in: Malcolm Evans (ed.) *International Law*, Fifth Edition, 2018.

News articles, blog entries and websites (Web sources)

Africa News, “UNMISS and partners aim to de-militarize civilian facilities; improve conditions for returns in Upper Nile”, 24 May 2019. Available at: <https://www.africanews.com/2019/05/24/unmiss-and-partners-aim-to-de-militarize-civilian-facilities-improve-conditions-for-returns-in-upper-nile/>

Doctors without Borders, “South Sudan: MSF report on massacre in Malakal Protection of Civilian site shows UN failure”, *Doctors without Borders*, 21 June 2016. Available at: <https://www.doctorswithoutborders.ca/article/south-sudan-msf-report-massacre-malakal-protection-civilians-site-shows-un-failure>

Emma McClean, “Hard Evidence: who uses veto in the UN Security Council most often – and for what?” *The Conversation*, 31 July 2014. Available at: <https://theconversation.com/hard-evidence-who-uses-veto-in-the-un-security-council-most-often-and-for-what-29907>

Freedom House, *Freedom in the World Map 2019*. Available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2019/map>

Giffen, Alison, *South Sudan*, in: Alex J. Bellamy and Tim Dunne (eds.) *The Oxford Handbook of the Responsibility to Protect*, 2016, 867.

Kuperman, Allan J. , “Obama’s Libya Debacle: How a Well-Meaning Intervention Ended in Failure”, *Foreign Affairs*, March/April 2015 Issues. Available at: <https://www.foreignaffairs.com/articles/libya/2019-02-18/obamas-libya-debacle>

Milanovic, Marko, “The Syria Strike: Still Clearly Illegal”, *EJIL: Talk!*, 15 April 2018. Available at: <https://www.ejiltalk.org/the-syria-strikes-still-clearly-illegal/>

Press Release SG/382, Address by Secretary-General Dag Hammarskjöld at University of California Convocation, Berkeley, California, 13 May 1954. Available at: <https://ask.un.org/loader.php?fid=11125&type=1&key=6bf400a0db526933d8577cce49f39ad2>

ReliefWeb, “UNMISS Protection of Civilians (PoC) Sites”, 22 May 2018. Available at: <https://reliefweb.int/report/south-sudan/unmiss-poc-update-22-may-2018>

Sengupta, Somini, “What Can the United Nations Do When Its Troops Can’t, or Won’t, Protect Civilians?”, *The New York Times*, 13 July 2016. Available at: <https://www.nytimes.com/2016/07/14/world/africa/un-peacekeepers-south-sudan-massacre.html>

Tanzan, John, and Carol Van Dam Falk, UN Peacekeepers Accept Responsibility for Massacre at Malakal, *VOA News*, 24 June 2016. Available at: <https://www.voanews.com/a/un-peacekeepers-accept-responsibility-for-massacre-in-malakal/3390321.html>

The Global Centre for the Responsibility to Protect “R2P References in United Nations Security Council Resolutions and Presidential Statements”, 1 April 2019. Available at: <http://www.globalr2p.org/publications/232>

The Global Centre for the Responsibility to Protect, “Peacekeeping and Civilian Protection”. Available at: http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection

The Global Centre for the Responsibility to Protect, “Peacekeeping and Civilian Protection”. Available at: http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection

The Global Centre for the Responsibility to Protect, *Informal Interactive Dialogue of the General Assembly held on 9 August 2010*. Available at: http://www.globalr2p.org/media/files/gcr2p-report_informal-interactive-dailogue-2010.pdf

The Global Centre for the Responsibility to Protect, *Summary of the UN General Assembly Plenary Meeting on the Responsibility to Protect*, July 2018. Available at: <http://www.globalr2p.org/media/files/2018-summary-of-unga-plenary-on-r2p.pdf>

The Global Centre for the Responsibility to Protect, *The Relationship between the Responsibility to Protect and the Protection of Civilians in UN Peacekeeping*, 2018. Available at: <http://www.globalr2p.org/media/files/relationship-between-r2p-and-poc.pdf> .

The Global Centre for the Responsibility to Protect, *UN Security Council Code of Conduct*. Available at: http://www.globalr2p.org/our_work/un_security_council_code_of_conduct

The Global Centre on the Responsibility to Protect, “The Georgia-Russia Crisis and the Responsibility to Protect: Background Note”, 19 August 2008. Available at: <http://www.globalr2p.org/media/files/the-georgia-russia-crisis-and-the-r2p-background-note.pdf>

The International Coalition for the Responsibility to Protect – Clarifying Pillar II. Available at: [http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two\(1\).pdf](http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two(1).pdf)

The International Coalition for the Responsibility to Protect, “At a Glance: Clarifying the Second Pillar of the Responsibility to Protect: Building State Capacity to Protect Populations from Atrocity Crimes”. Available at: [http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two\(1\).pdf](http://responsibilitytoprotect.org/Clarifying%20Pillar%20Two(1).pdf)

The Netherlands at the International Organizations, *Government aims to use Security Council 2018 term to contribute to peace and security*, 1 November 2017. Available at: <https://www.permanentrepresentations.nl/latest/news/2017/11/01/government-aims-to-use-security-council-term-to-contribute-to-peace-and-security>

UN Human Rights Office of the High Commissioner, “Ratification Status for South Sudan”. Available at:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en

UN Meetings Coverage and Press Releases, “Sexual Violence Persist in South Sudan Despite Recent Political Strides, Top United Nations Official Says while Briefing Security Council”, 8 March 2019. UN Document SC/13732. Available at: <https://www.un.org/press/en/2019/sc13732.doc.htm>

United Nations Peacekeeping “MINUSCA takes action on reports of sexual abuse by peacekeepers”, 5 October 2018. Available at: <https://peacekeeping.un.org/en/minusca-takes-action-reports-of-sexual-abuse-peacekeepers>

United Nations Peacekeeping, “Action For Peacekeeping (A4P)” Available at: <https://peacekeeping.un.org/en/action-for-peacekeeping-a4p>

United Nations Peacekeeping, “Our History”. Available at: <https://peacekeeping.un.org/en/our-history>

United Nations Peacekeeping, “Protecting Civilians”. Available at: <https://peacekeeping.un.org/en/protecting-civilians>

United Nations Peacekeeping, “Ranking of Military and Police Contribution”, *United Nations Peacekeeping*. Available at: https://peacekeeping.un.org/en/ranking-of-military-and-police-contributions?date_filter%5Bvalue%5D%5Bmonth%5D=&date_filter_1%5Bvalue%5D%5Byear%5D=2017

United Nations Peacekeeping, “Under-Secretary-General for Peacekeeping Operations at the UN Security Council Thematic Debate on Peacekeeping Reform and Performance”, 8349th Meeting, 12 September 2018. Available at: <https://peacekeeping.un.org/en/under-secretary-general-peacekeeping-operations-un-security-council-thematic-debate-peacekeeping>

Legal materials, court decisions and reports

African Union Commission of Inquiry in South Sudan, *Final Report of the African Union Commission of Inquiry on South Sudan*, 15 October 2014.

African Union, *Constitute Act of the African Union*, 1 July 2000.

Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report*, Carnegie Commission of New York, 1997.

Centre for Civilians in Conflict, *Data-Driven Protection. Linking Threat Analysis to Planning in UN Peacekeeping Operations*, November 2018.

Certain Expenses of the United Nations, Advisory Opinion, International Court of Justice, 20 July 1962.

Draft Proposal, UNSGA res. CN.4/L.892, *Crimes against humanity*, UN Doc. A/CN.4/L.892, 26 May 2017.

GCR2P, “R2P Monitor”, *Global Centre for the Responsibility to Protect*, Issue 4, 15 July 2012.

International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, Volume I: Rules, 2005, rule 33.

International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001.

Kofi Annan, “Millennium Report: We the Peoples: The Role of the United Nations in the 21st Century”, 2000, 68.

Reservations to the Convention on the Prevention and Punishment of Crime of Genocide, Advisory Opinion, International Court of Justice, 28 May 1951.

Rome Statue of the International Criminal Court, 17 July 1998

Security Council Report, “Is Christmas Really Over? Improving the Mandating of Peace Operations”, *Research Report* (2019).

The International Commission on the Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, 2001.

United Nations Documents

UN Department of Peacekeeping Operations (UNDPKO), *United Nations Peacekeeping Operations: Principles and Guidelines*, March 2008.

UN Department of Peacekeeping Operations/Department of Field Support, *The Protection of Civilians in United Nations Peacekeeping*, April 2015

UN Framework of Analysis for Atrocity Crimes – A tool for prevention, 2014.

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

UN General Assembly and UN Security Council, UN Doc. A/70/95-S/2015-446, 17 June 2017. (“*Report of the High Level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people*”)

UN General Assembly, Remarks to the Security Council High-Level Debate on Collective Action to Improve UN Peacekeeping Operations, 28 March 2018. Available at: <https://www.un.org/sg/en/content/sg/speeches/2018-03-28/collective-action-improve-un-peacekeeping-operations-remarks>

UN General Assembly, UN Doc. A/47/277-S/24111, 17 June 1992 (*“An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping”*)

UN General Assembly, UN Doc. A/59/565, 2 December 2004 (*“Report of the High-Level Panel on Threats, Challenges and Change”*)

UN General Assembly, UN Doc. A/65/877, 28 June 2011 (*“The role of regional and sub-regional arrangements in implementing the responsibility to protect: Report of the Secretary General”*)

UN General Assembly, UN Doc. A/66/551, 11 November 2011 (*“Follow-up to the outcome of the Millennium Summit”*)

UN General Assembly, UN Doc. A/66/874, 25 July 2012, (*Responsibility to protect: timely and decisive response. Report of the Secretary-General*)

UN General Assembly, UN Doc. A/67/929, 9 July 2013. (*“Responsibility to protect: State responsibility and prevention. Report of the Secretary General”*)

UN General Assembly, UN Doc. A/68/974, 28 June 2011, (*“Fulfilling our collective responsibility: international assistance and the responsibility to protect”*).

UN General Assembly, UN Doc. A/71/1016, 10 August 2017 (*“Implementing the Responsibility to Protect: Accountability for Prevention. Report of the Secretary-General”*)

UN General Assembly, UN Doc. A/72/884, 1 June 2018 (*“Responsibility to Protect: from early warning to early action, Report of the Secretary General”*)

UN General Assembly, UN Doc. A/79/99, 22 July 2016 (*“Mobilizing collective action: the next decade of the responsibility to protect: Report of the Secretary General”*)

UN General Assembly, UN Doc. A/HRC/39/64, 12 September 2018 (*Report of the Independent International Fact-Finding Mission on Myanmar*).

UN General Assembly, UN Doc. A/HRC/39/65, 9 August 2018 (*“Report of the Independent International Commission of Inquiry on the Syrian Arab Republic”*).

UN General Assembly, UN Doc. A/RES/5/377, 3 November 1950 (*“Uniting for Peace”*)

UN General Assembly, UN Doc. A/RES/60/1, 24 October 2005 (“*2005 World Summit Outcome*”)

UN General Assembly, UN Doc. A/RES/63/308, 7 October 2009 (“*The Responsibility to Protect*”)

UN Human Rights Committee, General Comment No. 31[80]: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev. 1/Add.13, 26 May 2004

UN Human Rights Council, UN Doc. A/HRC/40/69, 21 February 2019. (“*Report of Commission on Human Rights in South Sudan*”)

UN Human Rights Council, UN. Doc. A/HRC/40/69, 12 March 2019 (“*Report of the Commission on Human Rights in South Sudan*”)

UN Press Release, SG/SM/4560, 24 April 1991

UN Security Council , UN Doc. S/2012/486, 26 June 2012 (“*Report of the Secretary General to the Security Council on South Sudan*”)

UN Security Council ,UN Doc. S/RES/1528 (2004) 27 February 2007 (“*The Situation in Côte d’Ivoire*”)

UN Security Council, UN Doc. S/2015/899, 23 November 2015 (“*Special Report of the UNSG on the review of the mandate of the United Nations Mission in South Sudan*”)

UN Security Council, UN Doc. S/RES/1336 (2001), 23 January 2001 (“*The situation in Angola*”)

UN Security Council, UN Doc. S/RES/1674 (2006), 28 April 2006 (“*On the protection of civilians*”)

UN Security Council, UN Doc. S/RES/2132 (2013), 24 December 2013. (“*Sudan and South Sudan*”)

UN Security Council, UN Doc. S/RES/2223 (2015), 28 May 2015. (“*Reports of the Secretary-General on the Sudan and South Sudan*”)

UN Security Council, UN Doc. S/RES/2363 (2017), 29 June 2017 (“*Report of the Secretary-General on the Sudan and South Sudan*”)

UN Security Council, Doc. S/PV.6579, 6579th meeting, 11 July 2011.

UN Security Council, *Protection of civilians in armed conflicts*, S/PV.5577 (Resumption 1)

UN Security Council, UN Doc. S/1994/674, 27 May 1992. (*Final Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*)

UN Security Council, UN Doc. S/1999/1257, 16 December 1999 (“*Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*”)

UN Security Council, UN Doc. S/2000/809, 21 August 2000 (“*Report of the Panel on United Nations Peace Operations*”)

UN Security Council, UN Doc. S/2001/331, 30 March 2001 (“*Report of the Secretary-General to the Security Council on the protection of civilians in armed conflicts*”)

UN Security Council, UN Doc. S/2018/143, 20 February 2018. (“*Special Report of the Secretary-General on the renewal of the mandate of the United Nations Mission in South Sudan*”)

UN Security Council, UN Doc. S/25274, 26 January 1993. (*Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*)

UN Security Council, UN Doc. S/RES/ 1996, 8 July 2011.

UN Security Council, UN Doc. S/RES/1270 (1999, 22 October 1999 (“*On the situation of Sierra Leone*”)

UN Security Council, UN Doc. S/RES/1291 (2000), 24 February 2000 (“*The situation concerning the Democratic Republic of Congo*”)

UN Security Council, UN Doc. S/RES/1542 (2004), 30 April 2004 (“*The Question Concerning Haiti*”)

UN Security Council, UN Doc. S/RES/1674 (2006), 28 April 2006 (“*The Protection of civilians in Armed Conflict*”)

UN Security Council, UN Doc. S/RES/1756 (2007), 15 May 2007 (“*The Situation concerning the Democratic Republic of the Congo*”)

UN Security Council, UN Doc. S/RES/1894 (2009), 11 November 2009 (“*Resolution on the Protection of Civilians*”)

UN Security Council, UN Doc. S/Res/1925 (2010) (“*The Situation concerning the Democratic Republic of the Congo*”)

UN Security Council, UN Doc. S/RES/1973 (2011), 17 March 2011 (“*On the situation of Libya*”)

UN Security Council, UN Doc. S/RES/1996 (2011), 8 July 2011. (“*Reports of the Secretary-General on the Sudan*”)

UN Security Council, UN Doc. S/RES/2109 (2013), 11 July 2013. (“*Sudan/South Sudan*”).

UN Security Council, UN Doc. S/RES/2241 (2015), 9 October 2015, (“*On the situation of South Sudan*”)

UN Security Council, UN Doc. S/RES/2295, 29 June 2016 (“*The situation in Mali*”)

UN Security Council, UN Doc. S/RES/2301, 26 July 2016 (“*The situation in the Central African Republic*”)

UN Security Council, UN Doc. S/RES/2327 (2016), 16 December 2016. (“*Reports of the Secretary-General on the Sudan and South Sudan*”)

UN Security Council, UN Doc. S/RES/2348 (2017), 31 March 2017 (“*The situation concerning the Democratic Republic of Congo*”)

UN Security Council, UN Doc. S/RES/2364 (2017), 29 June 2017 (“*The situation of Mali*”)

UN Security Council, UN Doc. S/RES/2405 (2018), 15 March 2018 (“*On the situation of South Sudan*”)

UN Security Council, UN Doc. S/RES/2405 (2018), 15 March 2018. (“*Reports of the Secretary-General on the Sudan and South Sudan*”)

UN Security Council, UN Doc. S/RES/688 (1991), 5 April 1991.

UN Security Council, UN Doc. S/RES/794 (1992), 3 December 1992.

UN Security Council, UN Doc. S/RES/814 (1993), 26 March 1993, (“*Somalia*”)

Statements and Press Releases

Statement by Australia in the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/150908-r2p-informal-dialogue-australian-statement-final.pdf>

Statement by China at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/china-1.pdf>

Statement by China at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-china.pdf>

Statement by Cuba at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2016. Available at: <http://www.globalr2p.org/media/files/cuba-eng.pdf>

Statement by Cuba at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-cuba.pdf>

Statement by Ghana at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-ghana.pdf>

Statement by Ghana at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/ghana.pdf>

Statement by India at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/india-1.pdf>

Statement by India at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-india.pdf>

Statement by India at the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2014. Available at: <https://www.pminewyork.gov.in/pdf/uploadpdf/97077ind09.pdf>

Statement by India at the UNSC Open Debate on the Protection of Civilians in Armed Conflicts, 2009. Available at: <https://www.pminewyork.gov.in/pdf/uploadpdf/18901ind1642.pdf>

Statement by Iran at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-iran.pdf>

Statement by Iran at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2016. Available at: <http://www.globalr2p.org/media/files/iran-2.pdf>

Statement by Pakistan at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2014. Available at: <http://statements.unmeetings.org/media2/4493826/pakistan.pdf>

Statement by Pakistan at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2013. Available at: <http://responsibilitytoprotect.org/Pakistan%2013.pdf>

Statement by Pakistan at the UNSC Open Debate on the Protection of Civilians in Armed Conflicts, 2013. Available at: http://www.pakun.org/statements/Security_Council/2013/08192013-01.php

Statement by Russia at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2012. Available at: <http://www.globalr2p.org/resources/228>

Statement by Russia at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-russian-federation.pdf>

Statement by Russia at the UNSC Open Debate on the Protection of Civilians in Armed conflicts, 2012. Available at: <http://www.globalr2p.org/media/files/r2psummaryjune2012pocdebate.pdf>

Statement by Rwanda in the UNGA Formal Interactive Dialogue on the Responsibility to Protect, 2018. Available at: <http://statements.unmeetings.org/media2/19407370/rwanda.pdf>

Statement by Rwanda in the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-rwanda.pdf>

Statement by the Netherlands at the SC Debate on the Protection of Civilians in Armed Conflicts, 2011. Available at: http://www.globalr2p.org/media/files/rtop-statements_docs-poc-may-2011.pdf

Statement by the Netherlands at UNSC Open Debate on the Protection of Civilians in Armed Conflicts in The Global Centre for the Responsibility to Protect, *The Protection of Civilians in Armed Conflict UN Security Council Debate 12 February 2014*, Meeting Summary, 4 March 2014. Available at: <http://www.globalr2p.org/media/files/poc-debate-2014-2.pdf>

Statement by the Netherlands in the UNGA Formal Interactive Dialogue on the Responsibility to Protect, 2018. Available at: <http://statements.unmeetings.org/media2/19407287/statement-by-netherlands.pdf>

Statement by the Netherlands in the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2014. Available at: <http://www.globalr2p.org/media/files/poc-debate-2015.pdf>

Statement by the United Kingdom at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/united-kingdom.pdf>

Statement by the United States of America at UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/resources/835>

Statement by Venezuela at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2015. Available at: <http://www.globalr2p.org/media/files/venezuela.pdf>

Statement by Venezuela at the UNGA Informal Interactive Dialogue on the Responsibility to Protect, 2017. Available at: <http://www.globalr2p.org/media/files/2017-iid-venezuela-english.pdf>

Statement by Venezuela at the UNSC Open Debate on the Protection of Civilians in Armed Conflict, 2015. (Available at: <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/5695-statement-by-venezuela-at-the-security-council-open-debate-on-the-protection-of-civilians->)

UN, Department of Public Information, UN Doc. SG/SM/7136, GA/9596, 20 September 1999
 (“*Secretary-General Presents His Annual Report to General Assembly*”) Available at:
<https://www.un.org/press/en/1999/19990920.sgsm7136.html>

ANNEX I – INTERVIEWS

Mr. Francois Grignon

Affiliation: Deputy Director for East African Division and Team Leader for UNMISS IOT at the United Nations

Date and place of the interview: 30 April 2019, New York via *Facetime*

Questions asked during the interview:

- What do you think has been the biggest challenge for UNMISS when it comes to protect civilians from mass atrocity crimes? Is it a lack of resources, a lack of trained peacekeepers, or is it a problem of the SC and the political interests of its members?
- UNMISS too many tasks (currently 207) Could this be a problem in the implementation of the mandate?
- Do you think that the atrocities that took place and are taking place in South Sudan could have been preventable?
- Do you think that peacekeeping mission are overtasked?
- Do you think that mandates could benefit from a more explicit inclusion of R2P?
- Why is the UNSC skeptical of talking about MAC in its mandates?

Ms. Aditi Gorur

Affiliation: Senior Fellow and Director of Protection of Civilians in Conflict Program and a Senior Associate at the Stimson Centre

Date and place of the interview: 26 April 2019, Japan via *Skype*

Questions asked during the interview:

- One of your latest reports is on the role of host state consent in PKOs; what do you think that the UN should do in the instances when the government is the one responsible for crimes against civilians?
- Do you think that the inclusion of R2P explicitly in UNMISS mandate was a step forward in reinforcing the relationship between R2P and PKO? In other words, do you think that R2P had any actual effect in UNMISS mandate or in its implementation? Why or why not?
- It is quite astonishing that 2011 mandate did not include any specific references to PoC in mass atrocities, since environment for them to happen was short of there. Did the UN Secretariat know what was going to come?
- Regarding SOFA violations – SOFA violations started quite early on the mandate, why that? Are they agreed before or after deployment?

- If the violation started early on the deployment, why South Sudan accepted the peacekeeping operations?
- Do you think it is UNMISS to be blamed the lack of protection or is it actually a symptom of a real need to revise peacekeeping operations at the UN level and the entire UN system itself?
- Do you think that traditional peacekeeping principles need or can be revised at this time?
- Do you think that the international community is actually using Peacekeeping Operations as a sort of getaway from collective actions under Pillar III of R2P? (Better than nothing argument)
- Reluctance to include R2P in PKO language is because of Libya or why?
- Why would states consent PKO if they are not willing?

Ms. Juliette Paauwe

Affiliation: Senior Research Analyst at the Global Centre for the Responsibility to Protect

Date and place of the interview: 7 May 2019, New York via *Skype*

Questions asked during the interview:

- Do you think that the traditional principles of peacekeeping operations are sometimes a barrier in protecting civilians from mass atrocity crimes? Do you think these principles will be redefined?
- Do you think that if there was a West contribution, a difference could be made?
- What are the challenges that peacekeepers face on the field when preventing mass atrocity crimes?
- Do you think that peacekeepers are lacking specific training on how to prevent mass atrocity crimes?
- Do you think R2P will ever be part of peacekeeping mandates?
- Do you think that the relationship between R2P and Peacekeeping Operations is something that should be reinforced at the UN level? What do you think are the positive and negative effects of such a link?
- Do you think R2P has risen the expectations of PKO?
- Do you think the mass atrocity crimes committed in UNMISS since the start of the civil war in 2013 could have been preventable?

Mr. Frank Okyre

Affiliation: Researcher at the Faculty of Academic Affairs and at the Kofi Annan International Peacekeeping Training Centre.

Date and place of the interview: 8 May 2019, Accra via *Skype*

Questions asked during the interview:

- Do you think that traditional principles of peacekeeping operations are sometimes a barrier in protecting civilians from mass atrocity crimes?
- Do you think that the case of Libya brought skepticism?
- What do you think are the challenges that peacekeepers face in the field when crimes that may amount to mass atrocities start to appear?
- Do you think that the UNSC is also partly responsible of this situation?
- How can we then solve this problem? [Referring to action/inaction based purely on the political willingness of the P5]
- Do you think that the link between R2P and Peacekeeping Operations should be reinforced?
- Do you think that including the R2P element, understood as the prevention and halt of genocide, war crimes, crimes against humanity and ethnic cleansing, would be beneficial for the mandates and the protection of people?

Mr. Eugene Ruizindana

Affiliation: Head of Research Department at the Rwanda Peace Academy

Date and place of the interview: 21 May 2019, Kigali via *WhatsApp Call*

Questions asked during the interview:

- Do you think that peacekeepers are lacking specific training on how to prevent mass atrocity crimes?
- What do you think are the challenges that peacekeepers face in the field when crimes that may amount to mass atrocities start to appear?
- What do you think is the main barrier in applying a prevention lens in peacekeeping operations so far?
- Do you think that including R2P language in peacekeeping mandates would lead to political disagreement due to past failures on the name of R2P?
- Do you think the Security Council is to blame for the inefficiency of peacekeeping missions in some instances?
- Do you think at the time being the traditional principles of peacekeeping operations will be able to change to adapt better to the current necessities?

Anonymous Expert Z and Y

Affiliation: the interviewees wished to stay anonymous

Date and place of the interview: 1 May 2019, New York via *Facetime*

Questions asked during the interview:

- On the use of force, in the International Law Weekend [New York, October 2018] you talked about the use of force in peacekeeping missions and you mentioned that peacekeeping operations are not just about PoC usually. Yet, it seems to be that due to the past failures of the UN to protect civilians, the success of peacekeeping operations is measured on the number of lives that peacekeepers are able to save. Hence, do you believe that the understanding of the use of force in peacekeeping mandates should be reshaped for this aim?
- Are we expecting too much from peacekeeping operations when it comes to PoC mandates? Can they actually protect everyone from everything?
- In which other ways could the PKOs assist in the protection of civilians? Is it all about the use of force or is there also room for state-capacity building?
- Do you think that R2P could be included more explicitly in PKOs?
- What is the role of civilians in all of these? [Referring to Peacekeeping Operations with a PoC mandate]
- What do you think can be practical solutions to the situations in which peacekeeping operations are not in the position to protect civilians as envisioned? Are there any alternative ways, maybe through cooperation with other agencies, that could help them in protect civilians from mass atrocity crimes?

Anonymous Expert X

Affiliation: the interviewee wished to stay anonymous

Date and place of the interview: 22 May 2019, Juba via *Facetime*

Questions asked during the interview:

- The mandate of UNMISS of 2011 was tasked to: support the government of the Republic of South Sudan by “advising and assisting the Government of the Republic of South Sudan, including military and police at national and local levels as appropriate, in fulfilling its responsibility to protect civilians, in compliance with international humanitarian, human rights and refugee law”. Was this done with an R2P/prevention and halt of mass atrocity crimes in mind?
- What do you think are the biggest challenges that peacekeepers in UNMISS are facing to protect civilians?
- Do you think that in the case of UNMISS, the Security Council has used the peacekeeping operation as an scapegoat to its actual responsibility to maintain international peace and security?

- Do you think that UNMISS could have benefited from a peacekeeping mandate with an R2P/prevention of mass atrocities lens?
- Do you think that the Security Council is using peacekeeping operations as a short to “scapegoat” to their responsibility to maintain international peace and security?
- Do you think that we are expecting too much from the peacekeeping missions? In other words, do you think that we are asking peacekeeping missions to take over the responsibilities of states/governments when that should not be their task?