

CONSTRUCTING THE RESPONSIBILITY TO PROTECT

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Abstract

Debate about how populations can be protected from mass atrocities is well-established in international affairs. Beset with a raft of ethical, legal, political and normative questions, the rapid development of the 'responsibility to protect' has been held up as evidence of emerging, and even settled, consensus in this area. Indeed, from the perspective of well-established models of norm construction, notably the "Norm Life Cycle", R2P's institutionalization in the 2005 World Summit Outcome may signify momentum towards full acceptance. However, based upon a detailed tracing of R2P's path into the Summit Outcome, this thesis questions how R2P is increasingly characterized as well as the theoretical explanatory frames used by scholars to describe the development and impact of international norms. It challenges the twin problems of linearity and norm exogenization which distort our understanding, and which are evident in overly optimistic portrayals of R2P's development. With these in mind, the thesis adopts a framework constituted by a constructivist-inspired hypothesis and a process-tracing methodology defined by elite-level interviews and extensive documentary analysis. It shows how tracing the *micro*-processes of R2P's development generates a very different story to those derived from broader theoretical frames. Indeed, the empirical findings show how and why the agreement was possible, and – through an analysis of the complex political negotiations – in what form R2P was collectively defined. This leads to the introduction of the concept of the 'structured outcome' to describe how R2P was propelled towards agreement more by a series of factors relating to the design and effect of the negotiation process than by the progressive acceptance of states. Accordingly, R2P's formulation was purposefully limited to navigate pronounced dividing-lines and as a *political* agreement was more cosmetic than transformational. Resultantly its normative foundations were far shallower and far less significant than oft-rendered in mainstream perception.

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List of Abbreviations

AU	African Union
CCW	Convention on Conventional Weapons
ChVII	Chapter VII of the UN Charter
CIDA	Canadian International Development Agency
CW	Cold War
DFAIT	Department of Foreign Affairs and International Trade Canada
DOD	Department of Defense Canada
DPA	United Nations Department of Political Affairs
DPKO	United Nations Department of Peacekeeping Operations
EU	European Union
FCO	Foreign and Commonwealth Office
FT	The Financial Times
G8	The Group of Eight
G77	The Group of 77
GA	United Nations General Assembly
GSM	Global Social Movement
HLP	High-level Panel on Threats, Challenges and Change
HS	Human Security
HSN	Human Security Network
HSP	Human Security Program
ICBL	International Campaign to Ban Landmines
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Commission of Jurists
ILF	In Larger Freedom
IMF	International Monetary Fund
INGO	International nongovernmental organization
IO	International Organization
IPA	International Peace Academy
IR	International Relations
MDGs	Millennium Development Goals
NAM	Non-Aligned Movement

NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
NLC	Norm Life Cycle
NSC	United States National Security Council
NUPI	Norwegian Institute of International Affairs
OSCE	Organization for Security and Cooperation in Europe
P3	France, the United Kingdom and the United States
P5	Permanent Five Members of the UN Security Council
R2P	Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity
R2-Prevent	Responsibility to Prevent
R2-React	Responsibility to React
R2-Rebuild	Responsibility to Rebuild
PoC	Protection of Civilians
Post-CW	Post-Cold War
SC	United Nations Security Council
SG	United Nations Secretary General
SASG	Special Adviser to the Secretary-General
SITREP	Situation Report
SRSG	Special Representative of the Secretary-General
TAN	Transnational Advocacy Network
UK	United Kingdom of Great Britain and Northern Ireland
UNMIS NY	United Kingdom Mission to the United Nations New York
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNCLOS III	The Third United Nations Conference on the Law of the Sea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNTAET	United Nations Transitional Administration in East Timor
USA	United States of America
WS	World Summit
WW2	World War Two
WMD	Weapons of Mass Destruction

Introduction

For the first time, they will accept, clearly and unambiguously, that they have a collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. They will make clear their willingness to take timely and decisive action through the Security Council...They will be pledged to act if another Rwanda looms.¹

On the 14 September 2005, after months of long torturous, 'brutal' negotiations, leaders from 150 of the 191 member states descended upon the United Nations for a three-day Summit during which they would agree upon a broad reform package known as the *World Summit Outcome*. What had been intended *merely* as a follow-up to review progress made towards the Millennium Development Goals, the 2005 UN World Summit took on a far greater degree of significance, as states negotiated over almost every aspect of the UN's work, structure, role and responsibilities.² Kofi Annan's description, amidst the damaging Iraq debates of 2003, of an international system in 'crisis' led him to instigate one of the most far-reaching reform processes in the Organization.³ It is regularly said that great expectations often lead to great disappointments, and indeed this was the overriding perception of a Summit which for many had simply failed to deliver, and in the process had tested multilateralism to its limit.

Despite this disappointment, three paragraphs of the Outcome Document – some 300 words in length – were widely seen as a chink of light, provoking considerable attention and even greater praise. The 'Responsibility to protect' ("R2P"), claimed as an emerging international norm, developed out of the devastating series of humanitarian catastrophes which scarred the 1990 with the intention of helping to ensure the 'protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.⁴ Its agreement was, according to many, 'one of the few real achievements of the 2005 World Summit'.⁵ Gareth Evans, one of its key advocates, called it a 'ray of sunshine' in a 'desolate

¹ Kofi Annan 'Statement by the Secretary-General', A/60/PV.2, 14 September 2005

² The Summit was billed by the UN as the 'the largest gathering of world leaders in history' and 'a once in a generation opportunity', United Nations (2005) 'The 2005 World Summit: An overview', July 2005

³ See: 'Transcript of press conference by Secretary-General Kofi Annan at UNHQ', SG/SM/8803, 30 July 2003

⁴ United Nations (2005) *World Summit Outcome*, A/RES/60/1, 14 September 2005

⁵ Alex Bellamy (2009) *Responsibility to Protect*, Cambridge: Polity Press, p2

week'.⁶ Oxfam International described it as an 'historic measure to help prevent future genocides'.⁷ *Washington Times* journalist Tod Lindberg argued the agreement represented 'the *completion* of no less than a revolution in consciousness in international affairs',⁸ while Ramesh Thakur and Thomas Weiss – two high-profile academics associated with the development of R2P – argue it is 'possibly the most dramatic normative development of our time – comparable to...Nuremburg...and the 1948 Convention on Genocide'.⁹

Since 2005 interest in R2P has intensified, with a proliferation of R2P-related research, a number of challenging and troubling crises, and as a result of on-going efforts by a now well-developed advocacy coalition.¹⁰ Although academia has (and does) consider the pitfalls, weaknesses and contestation around the R2P agreement, there has been a significant merging of academia and advocacy as focus has shifted towards how an R2P-agenda can be 'operationalized' or 'implemented'. Key examples include the establishment of the NY-based Global Centre for the R2P, the complementary establishment of a series of geographically-focused 'Associated Centres'¹¹, and the launch of the journal *Global Responsibility Protect* edited by prominent R2P scholar Alex Bellamy. These developments share similar goals. The R2P Centre's 'mission' is to 'help transform the principle...into a cause for action'; the journal's to 'promote a universal understanding of R2P and efforts to realize it'.¹² This amalgamation has run parallel with the more significant effort to institutionally develop the agenda within the UN system. With R2P regarded as a 'signature legacy' issue¹³, Annan's successor as UN Secretary-General has led the way in this regard. Ban Ki-Moon's major report ahead of the first GA Plenary debates of R2P in 2009, set the

⁶ One World Trust (2005) 'Governments and NGOs: Their Responsibility to Protect', 15 September 2005, p1

⁷ Oxfam International (2005) 'Oxfam welcomes historic anti-genocide move at UN summit', 23 November 2005

⁸ Tod Lindberg (2005) 'Protect the people; United Nations takes bold stance', *The Washington Times*, 27 September 2005 (emphasis added). Aside from disputing this characterization it is important to note that revolutions can have extremely negative consequences. Future research should thus consider in greater detail the ethical implications of a normative development like R2P

⁹ Ramesh Thakur and Thomas Weiss (2009) 'R2P From Idea to Norm – and Action?', *Global Responsibility to Protect*, Vol. 1, No. 1, p23

¹⁰ The origins and development of international advocacy of R2P is analysed in Chapter 4

¹¹ Further details can be found at: <http://www.globalr2p.org/centres/index.php>

¹² Global Centre for the R2P, 'Who We Are': <http://www.globalr2p.org/whoweare/> and *Global Responsibility to Protect*, Martinus Nijhoff Publishers

¹³ The phrase 'signature legacy' was used in an internal Department of Foreign Affairs and International Trade Canada (DFAIT), dated 24 February 2009

tone for subsequent developments. Titled 'Implementing the R2P'¹⁴ it attempted to build consensus and clarity around the meaning of R2P, and to develop a coherent strategy for its practical implementation.¹⁵ It also sought to build-on, and further develop, his appointment of a Special Adviser on R2P and to strengthen the Office of the Special Adviser on the Prevention of Genocide.¹⁶

Of course, there is nothing inherently wrong, or unexpected, about this shift towards operationalization. The role of advocacy is to continue to build support for new norms (the benefits of which advocates are absolutely convinced of) and ultimately to see that states act upon them. It would also be foolish not to expect advocates to take the '05 agreement as the basis for moving...[R2P] forward'. As Bellamy states, 'for those interested in translating [R2P] into practice, the starting point needs to be the summit's Outcome Document'.¹⁷ However, this thesis fundamentally questions the extent to which current understandings, and associated expectations, accurately reflect the nature of the R2P agreement and the process leading to it. As such, the shift to operationalization is of particular interest, and a key motivating factor driving this research. What exactly is operationalization to be based on? And what kind of behaviour can we expect, and deem as compliant, as a result of the 2005 agreement? Indeed, while some will point to its *unanimous* adoption at the World Summit as an indication of its importance, unanimity of agreement does not necessarily equate to unanimity in terms meaning, significance or application. Despite claims of 'clear and unambiguous' acceptance¹⁸, evidence prior to, during, and since 2005 suggests there is reason to doubt such claims, and ample reason to question whether the oft-presented meaning of R2P not only fits with what states signed-up

¹⁴ Ban Ki-Moon (2009) 'Implementing the Responsibility to Protect', *Report of the Secretary-General, A/63/677*, 12 January 2009

¹⁵ The report was in some respects an impressive effort, but in other ways advanced some problematic ideas. Most problematic is the apparent desire to define R2P as broadly as possible – particularly to limit its association with the use of force. For a short, but well-crafted review see Jennifer Welsh (2009) 'Implementing the 'responsibility to protect'', *Policy Brief, 1/2009*, Oxford Institute for Ethics, Law and Armed Conflict

¹⁶ The SAR2P was announced 21 February 2008. See also 'Report of the Secretary-General on the implementation of the Five-Point Action Plan and the activities of the Special Adviser of the Secretary-General on the Prevention of Genocide', *A/HRC/7/37*, 18 March 2008

¹⁷ Bellamy (2009) *Responsibility to Protect*, p196: this was emphasized strongly by interviewees closely involved in the 2005 negotiation of R2P, see Chapter 5

¹⁸ Additionally Gareth Evans has recently argued that 'support for the general principles of R2P...is effectively complete' in (2012) 'R2P After Libya: The State of Play – And Next Steps', Notes of Presentation at the Group of Friends of R2P Lunch Meeting, Netherlands Mission, 19 January 2012

to, but the extent to which even the identifiably more limited core elements of the agreement commanded catalytic support of UN members states.¹⁹

The Secretary-General's effort to operationalize R2P was framed around the oft-deployed paraphrase 'an idea whose time has come'.²⁰ Yet every stage of R2P's development has been defined in some way by member state resistance. This was evident in the process leading to the *unexpected* agreement in 2005; in the negotiation and crafting of the specific language; and has been underpinned throughout by overstatements of its importance; normative and motive-driven contestation; fuelled by misguided/cynical misappropriations and by more fundamental ideational disagreement about the nature and direction of international society. And though this thesis is bound by an 'up to 2005' time-frame, these factors have remained prominent in period since.²¹ Contrary to the idea that R2P's time has come, or that it now commands settled support, the progression of R2P is by no means assured. Indeed, there is just as much possibility for regression as there is for normative strengthening as demonstrated by debates around recent events in Libya and Syria and as global power shifts.

That there is momentum around the phrase is, however, undeniable. R2P has become established in mainstream debate and, more importantly, part of diplomatic vocabulary. Considering the repeated efforts of advocates; the institutional toe-hold provided by the agreement; and the naturally self-evident ethos of the simple, catchy phrase, this momentum is perhaps unsurprising – particularly as internal crises precipitating mass atrocity crimes have remained an intractable feature of international politics. But conversely, the curious feature of this momentum is that it is despite continuing contestation, debate and confusion around the meaning, significance and impact of R2P. Thus, mirroring R2P's development into 2005, this subsequent momentum has developed out-of-sync with the underlying normative foundations of, and the politics around, R2P.²² To put it another way, this momentum – and the concomitant enhanced expectations for

¹⁹ See Chapters 4 and 5

²⁰ Ki-Moon (2009) 'Implementing the Responsibility to Protect', A/63/677, 12 January 2009, para.72

²¹ See: Jennifer Welsh (2010) 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', *Ethics & International Affairs*, Volume 24, Number 4 (online edition)

²² This argument is most clearly articulated in Chapters 4 and 5

dealing with mass atrocities – has occurred despite the adoption of an agreement which in many respects changed very little. As Ch5 shows, it did *prima facie* provide a political statement of individual state responsibility expressing clearer acceptance of a conception of sovereignty previously contested in international affairs.²³ This was certainly potentially significant. But beyond that, in terms of the events and crises which provided the impetus for its development, the agreement was fundamentally more cosmetic than it was transformational. It helped define the parameters and expected authority for responding to mass atrocities, but did so in accordance with a series of associated safeguards to limit R2P's international dimension and a series of frames designed to emphasize that R2P represented nothing new and was tied to, rather than altered, existing processes and provisions.

Indeed, though the logic of 'unpacking' is deployed repeatedly in later chapters for charting the negotiations, they also demonstrate why it is a mistake to prioritize the idea of an international responsibility to protect at the expense of understanding the significance of the idea that individual states have the primary responsibility. The primary state dimension was central not only to defining the sequencing of R2P, it was also key to the strength of the commitment to the doctrine that emanated from an overwhelming preference to define it as a pro-sovereignty agreement. In contrast to the main prevailing interpretations of the agreement, the emphasis on primary responsibility served to constrain the character of the international dimension. The subtle point is that although this meant affirming a conception of sovereignty based upon responsibility – rather than one based explicitly upon non-intervention – the motive for doing so was about limiting the scope and character of the international role in responding to mass atrocity crimes. This was the uneasy grand bargain at the heart of the agreement. Accepting primary responsibility would inevitably mean this would provide a future framework for justifying international engagement. But at the same time, because of this tension, the engagement of the international community would remain subject to resistance, contestation and debate about what it might say, and how it might impact upon, the development of international relations. Thus, while there are certainly practical considerations in terms of how we understand the potential impact of

²³ *Prima facie* because there is reason to doubt the extent to which many states accept this conception if it means increased oversight and interference by the international community, and because the nature of the negotiations meant this was, paradoxically, the best way of ensuring the agreement was defined as representing 'nothing new' in terms of the role of the international community

R2P – it is widely accepted, for instance, that R2P did not alter the fact that any form of international action would always require political agreement – these are underpinned by more fundamental questions relating to the normative *characteristics* of R2P. The described-momentum has created a sense of illusion whereby assumption has it states accepted an '*international-R2P*'. Had they done so, the agreement would indeed have been normatively transformational. This is not to deny state willingness to acknowledge a legitimate role and interest in trying to respond to extreme human rights abuses. But as Ch5 shows, this is very different from characterizing the agreement in a way which transposes upon the international community a responsibility which neither key SC members nor many states within the GA were, or still are, willing to accept.

This central proposition – one of many presented throughout this thesis – is likely to provoke hostility, even incredulity. But crucially this claim derives from a process-driven hypothesis dedicated to understanding how/why R2P was agreed in 2005, and in what form. This approach requires a commitment to detail, to methodology, to process, and a matched commitment by the reader. As stated above, the process here is time-specific. After a brief prehistory below, it tracks the detailed development of R2P through its entrepreneurial, advocacy and negotiation stages up to 2005. Underpinned by an important appreciation of political context, and of structure and agency, the story is vastly more detailed – and complex – than any current account of R2P. However, it is not detail for details sake. Rather the presentation of empirical research provides the foundations from which the central arguments about the nature and meaning of the agreement were crafted.

But before outlining the hypothesis it is important to recognise that the research logic and resulting arguments are not diminished by the time-frame. In fact, they have arguably never been more relevant. Current controversy and debates surely demand a more nuanced, exhaustive appreciation of the dynamics underpinning the development of R2P just as international theory surely requires a deeper, more developed understanding of the dynamics of normative change. Both are clearly linked. Indeed, a key finding of later chapters is that while R2P's development involved mechanisms of social construction one might expect, the underlying dynamics that propelled it towards agreement were distinct. It would be a mistake, for instance, to attempt to fit this development to Finnemore and

Sikkink's widely-cited 'norm life cycle' (NLC).²⁴ The NLC may package the relevant mechanisms, stages and dynamics in a useful, insightful way, but its emphasis on 'cascades' and 'institutionalization' would provide a misleading and inaccurate sense of the current status of R2P. Based upon the Outcome, and the subsequent efforts of the SG, the institutionalization of R2P would seem assured, widespread acceptance inevitable. This, however, would underestimate the contestation evident today and the extent to which much of it relates to how R2P emerged and was negotiated. Indeed, one question it was necessary to ask early in the research process was just how it was R2P went from minimal political traction even until the end of 2004, to its inclusion in a high-profile Summit resolution in 2005? This seemingly obvious question has never been sufficiently answered.

Thus, at the heart of the thesis is a simple but pivotal research question: how can we explain the high-level political agreement of R2P in 2005? The theoretical and methodological framework for exploring this question is outlined in Chapter 1. This chapter aligns the research question with a central hypothesis about the importance of understanding process and brings together a series of key conceptual and methodological elements necessary to make sense of the empirical chapters which dominate thereafter. But having referenced Finnemore and Sikkink's NLC so early on, it is necessary to emphasize that although the research question is explicitly about understanding the development of R2P, it is framed by the issue of how we understand the development of international norms. Indeed, the NLC provided the initial route for understanding the development of R2P and inspiration for the eventual articulation of the theoretical framework, hypothesis and research question. However, as the empirical research unfolded it quickly became apparent that the continued application of the NLC would render the development of R2P in an insufficient and limited way. Some of the mechanisms of social construction it identifies are certainly evident in the empirical story in Chapters 3-5, but the crux issue of how R2P rapidly transitioned from a lack of political traction to high-level political agreement required an altogether different explanation. The underlying dynamics were temporally and substantively distinct from those evident in, or implied by, the NLC. The specific problems with the application and rendering of the NLC are considered in Chapter 1, but of foremost concern was the implicit linearity

²⁴ Martha Finnemore and Kathryn Sikkink (1998) 'International Norm Dynamics and Political Change', *International Organization*, Vol. 52, No. 4 and herein "NLC"

associated with the model and its core concepts and core underlying dynamics. As mentioned above, the institutionalization of R2P in the form of the 2005 agreement is just one element of understanding its development. The crucial question is how and why that institutionalization was possible. In other words, what matters in this case is embedding the concepts which *are* relevant to understanding the development of R2P in their proper context. The emphasis of this research – with its detailed empirical tracing of the emergence and negotiation of R2P – provides this context without which the picture, as suggested by the NLC, would be distorted in an overly optimistic and unrealistic way. At the heart of the explanation provided in this thesis is the contention that the propulsion of R2P towards the 2005 agreement depended on a series of structural factors relating to the 2005 negotiating process and the lead-in processes thereto. Normative momentum relating to its desirability and acceptability as an international norm was a far less significant dynamic in explaining the path to 2005.

As a result, this thesis adopts its own constructivist-influenced theoretical framework for understanding the development of R2P. This framework is very much a supporting structure designed to ensure the empirical power of the thesis is fully revealed and best understood by the reader. Crucially it is not modelled as per the NLC. Rather, it draws together a series of relevant concepts to help make sense of the complex empirical processes which dominate the thesis. Indeed, it is important to recognise at this juncture that the issues which helped define the research question, and concomitant methodological approach, are not purely theoretical. Although the R2P literature is broad, and increasingly engaged in a critical sense, the need to address weaknesses in key mainstream portrayals of R2P's development and agreement emerged as an equally important necessity considering the nature of the empirical findings. Indeed, the two are linked in important ways. In particular, a central argument of this thesis challenges the association between R2P's rapid development and the resulting presupposed positive implications thereof for the debate about preventing and responding to mass atrocity crimes. Three key snapshots of overly optimistic renderings of R2P's development, laced with an implicit linear narrative, are considered in Chapter 1. But for the purposes of foresight, Gareth Evans' statement that R2P was agreed in the 'mere blink of an eye' symbolically captures a central problem with

how the development of R2P is too often presented²⁵. By contrast, the desire to understand the detailed processes of the social construction of R2P allows this thesis to unpack and reconstruct the chain of events which led to the 2005 outcome. In so doing it suggests that the underlying political dynamics surrounding the idea were largely unchanged during the period in question, and that its agreement depended in large part on factors relating to the structural characteristics of the negotiation processes.

Indeed, at the very heart of the empirical story of R2P is the assertion that the 'structuring' of the negotiation process was not only an *enabling* factor but a *causal* one in the agreement of R2P. This complex figuration is characterized as the 'structured outcome' logic.²⁶ It meant that rather than based on any catalytic bandwagoning momentum, R2P was propelled by a series of factors relating to the design and effect of the negotiation process. In many respects, states were compelled to take a position on R2P which they otherwise would not have been so willing to make. Because of the scale of the negotiation package; the way the process unfolded; and because of a well-mobilized advocacy coalition, the odds of some kind of agreement on R2P increased/narrowed dramatically.²⁷ These characteristics helped dampen-down R2P's contentiousness during 2005, but also meant that once the factors which helped propel it were removed, the resulting, heavily qualified, agreement would be subject to a reawakening of contestation and debate. Moreover, while post-agreement contestation should always be anticipated, the structured outcome argument also leads to the question of whether R2P's much heralded speed of development is the positive characteristic that is often implied, and whether in fact this rapid pace applies to the R2P agreement as a whole. The process points to a lack of synchronisation between its component parts, and consequently a lack of fit between normative foundations and associated expectations. Thus, Thakur's attempt to frame current problems with R2P in terms of 'the translation of norm to operation' and 'not a question of timing', underestimates the importance of the relationship between timing and norm and

²⁵ Gareth Evans, "The Responsibility to Protect: An Idea Whose Time Has Come . . . and Gone?" Lecture to the David Davies Memorial Institute, University of Aberystwyth, 23 April 2008

²⁶ See Chapters 4 and 5

²⁷ The structured outcome is theoretically introduced in Ch1, first empirically introduced in Ch4, and then explained and applied in significant detail in Ch5

operation.²⁸ Time matters because the temporality of normative change can be an indicator of potential compliance, and of norm legitimacy. In this case, the speed of development leading to the agreement is not necessarily matched by its corresponding normative foundations something which inevitably has implications for its significance and state-willingness to embrace implementation.²⁹ Thus, the structured outcome logic resides at the heart of the thesis's contribution to the R2P literature and debate. As stated later on, understanding the development of R2P in this way does not necessarily render the agreement invalid or insignificant, but it should necessarily qualify how we understand R2P's potential impact on the debate relating to mass atrocities. Indeed, in helping to explain how the agreement was possible the structured outcome (and the process-driven approach more generally) also helps understand why it is argued here that the status of R2P is less assured than might be expected.

The remainder of this introduction addresses some of the questions and concerns in this regard, particularly in the context of recent events. But beforehand it is important to briefly address the issue of causality and particularly its relationship with the structured outcome logic. In explaining how R2P transitioned from political stagnation (as most clearly revealed in Ch4) to political agreement in 2005 (Ch5) the structured outcome undoubtedly challenges the causal story implied by the NLC. The underlying behavioural and political dynamics in this case were distinct from the motivations and dominant mechanisms Finnemore and Sikkink identify (see Ch1). It is also true that the thesis makes the counterfactual claim that without the effects of the structured outcome the likelihood of political agreement would have been massively reduced. It does so by posing the question of whether R2P could or would have been agreed without the structural characteristics of the negotiation process. The implicit suggestion is that it would not. Clearly, therefore, the structured outcome logic offers a causal account of that key transition which is such a critical part of R2P's development. But this logic needs to be qualified in some important ways.

²⁸ Interview with Ramesh Thakur (Waterloo, 22 June 2009)

²⁹ The phrase 'embrace implementation' is from Welsh (2010) 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', online edition

First, the structured outcome is a conceptual label which packages a *series* of complex interconnected factors which help explain the path to the 2005 outcome. It is about the interplay and interaction of these factors in the context of understanding *why* R2P was agreed. Crucially the *why* question in respect to the structured outcome is significant because it speaks to the factors which operated (implicitly or explicitly) against agreement on R2P and which were overcome and mitigated by the structured outcome. Hence the reasoning that without the effects of the structured outcome these counteractive factors would have been more powerful in ensuing progress towards political agreement was not forthcoming.

Second, resulting from this point is the recognition that the structured outcome is not the only or singularly deterministic factor in the story of R2P. As the empirical chapters reveal, the factors relating to the structured outcome existed in a far broader context and set of conditions where other mechanisms and political dynamics shaped both the effects of the structured outcome and the formulation of R2P. Indeed, the consistent role of agency, the specific ways by which the textual formulation of the R2P paragraphs proceeded, and the underlying continuity of member state positions around the issue of humanitarian intervention (and subsequently R2P), are just some of the range of factors at play during the story of R2P's development. All contributed in some way to the eventual agreement of R2P, but not all were contributory in the sense of supporting the advancement of it. Moreover, with the sheer empirical force of the structured outcome revealed in great detail later on, what also becomes clear is that it should not be seen, understood or dismissed as simply a *structural* account of the agreement of R2P. Rather, the more appropriate description is that the effects it packages relate to the *structuring* of the process in recognition of the range of dynamics at play, the centrality of agency, and the need to embed the effect of the structural factors *within* the 2005 negotiation process. The structural factors certainly changed the prospects for the realisation of a political outcome on R2P in 2005, and by propelling R2P towards agreement they also inevitably influenced the eventual formulation. But these factors cannot singularly explain the overall outcome. They can address the lack of political momentum and catalytic state support for R2P pre-2005 and undoubtedly have very real implications for how we should understand the nature and significance of the agreement, but they need to be understood and contextualized within the complex,

multidimensional internal political machinations of the R2P – and broader reform agenda – negotiations.

Finally, some additional interrelated points about the structured outcome are worth emphasizing and reiterating here. First, the very notion of introducing such a concept to help explain how and why R2P was agreed was drawn both from a commitment to understanding the detailed processes leading to the 2005 World Summit Outcome and from the realisation that the initial theoretical starting-point of the NLC was unable to sufficiently render the complex dynamics evident in this case. As explained below, the need to understand the micro processes by which norms emerge is a central element of the research approach adopted throughout this thesis. Indeed, it was because of this emphasis that the insufficiency of the NLC and aspects of the mainstream rendering of the development of R2P became clear. On the former it is worth reiterating the point that although certain concepts evident in the NLC – like institutionalization – are also evident in the story of R2P, without a full understanding of the processes and context would distort the picture in terms of R2P's status and potential impact as an international norm. This is fully borne out by the empirical tracing which also raises significant questions about the portrayal of R2P by some of the leading R2P advocates and scholars. Crucially, the emphasis on detail enabled the identification, exploration and highlighting of specifically where the empirical story presented here offered new insights and/or departed from the established accounts of R2P's development. In so doing, the empirical story is able to demonstrate how, for instance, the constitutive dynamics of the structured outcome affected the development of R2P and why it should affect (and qualify) our understanding of its status, significance and potential impact. In this respect, this thesis does more than challenge existing theoretical models or certain accounts of R2P. It makes important claims about the importance of process, how scholars should adapt their understanding of normative change, and shows how the incorporation of a detailed understanding of process can provide a stronger basis for engaging with debates about the behavioural impact of norms and such offshoots as the political, ethical and normative implications of the agreement. Indeed, one of the resulting questions posed by the empirical findings is just how amenable a case like R2P is to theoretical modelling like the NLC or any individual causal theory for that matter. The empirical findings certainly do not support the reducibility of the process in such a way. It is

undeniable, however, that scholars wishing to understand normative developments need to continually refine the tools and concepts they use to explain such complex phenomena. The concept of the structured outcome is thus one small contribution to this endeavour. Indeed, the second additional point relates to the general applicability of the structured outcome. The claims in this regard are necessarily qualified. Although Ch1 suggests the concept might have explanatory power in other cases or scenarios beyond R2P, the conditions and constitutive mechanisms will be context specific and like R2P just one element of the explanation.

The most significant point, however, is that the structured outcome helps explain the agreement of R2P in a way which a theoretical model like the NLC cannot and in so doing has important implications for how we should view the 2005 agreement. Indeed, by understanding R2P in this way the structured outcome logic helps to explain why the agreement was actually formulated the way it was. The whole thrust of the negotiations was to define R2P as a political statement which did not fundamentally alter the scope or character of existing international commitments, was tightly and narrowly defined, implied no automaticity, and was tied to existing Charter processes and provisions. Specifying the language according to these core elements was thus central to the negotiation of R2P. But this also has major implications for potential implementation. Even with Ch5's explanation of the linguistic formulation helping to identify a meaning of R2P distinct from how it is often described, that the thrust was about defining R2P according to these elements meant any prospects for operationalization were always going to be heavily qualified. Each stage of addressing an R2P crisis, each caveat, and each of the series of safeguards introduced to mitigate member state concerns and dividing-lines would all be subject to, and ultimately require, *political agreement*. One can certainly respond to this in terms of the pragmatism it so obviously embraces. Each crisis is distinct and rightly demands individually-tailored responses. But with R2P neither as normatively expressive as assumption would have it, and less transformational than some would hope, the extent to which it might impact upon domestic and international responses to individual crises would always be open to question.

Contrary to the post-2005 tendency to exogenize R2P's *impact*,³⁰ questions around impact demand a more detailed appreciation of what was agreed in 2005 and what R2P reflected, changed or more appropriately, did not change. In particular, there is little reason to believe the 2005 agreement has/would fundamentally alter the way crises are dealt with by the international community. Indeed, long-standing concerns about the multilateral capacity and willingness of states to commit the resources necessary for responding to mass atrocities persist.³¹ The sheer complexity of individual crises means achieving consensus around the appropriate use and timing of international involvement remains highly complex and highly debatable – whether or not these factors are exploited for political motives. Sensitivity around coercive action (up to and including military force) is as acute as ever. More problematically, the vexed issue of non-authorized intervention is arguably more likely to erupt in the future because collective action was bound so tightly to a P5 which was not only adamant about ensuring R2P did not affect its existing prerogatives but which included (and still includes) key P5 states highly sceptical of R2P.³²

Indeed, such challenges to operationalization were predictable based upon the way the negotiations unfolded. Because of scepticism and limitations in terms of what states were willing to accept, the design of the agreement built-in a series of questions about how R2P might operate in practice. Unsurprisingly these predominately relate to the international dimension, or rather the transition to, and extent of, multilateral engagement beyond individual state responsibility. This debate is, of course, bound-up with more fundamental considerations relating to the kind of international system states wish to see develop. In this respect, the long-term place and progression of R2P is by no means assured. Contestation around sovereign equality, non-intervention, international responsibility is as animate today as it was during the negotiations of 2005. But more than that, the effort to specify the sequencing, parameters and safeguarding of R2P illuminated just how much contention multilateral agreement would have to overcome. This included debate about whether primary state responsibility has been exhausted; whether measures short of more coercive

³⁰ The issue of norm exogenization is addressed below and more specifically in Ch1

³¹ This is evident not only in relation to crises since 2005, but in relation to institutional developments described above, and by debates within the SC especially

³² It is worth pointing out that there was no alternative to tying R2P so closely to the SC. It was entirely reasonable, and the only realistically achievable political solution

action have been appropriately deployed; how one determines whether the threshold for international engagement under chapter VII has been met; and ethical issues relating to the desirability, appropriateness and consequences of the actions being considered/mooted.

Many of these, along with renewed fears about the potential misuse of R2P, have been evident in crises since 2005. Recent events in Libya and Syria have exposed the political fragility around R2P, and questioned the true extent of its meaning and purchase. Indeed, political decision-making at the international-level is arguably more challenging, less predictable and less organized than it ever has been. With global power increasingly diffuse and fragmented, the complex global changes taking place today – so impervious to any unifying theoretical explanatory framework – are not only adding new challenges into the policy mix but altering how they are likely to be addressed in the future. Variable differentiation characterizes this new context. How states respond to specific issues and crises, how they attempt to pursue their political and economic priorities and the relationships and alliances they seek to foster, will be highly and selectively dependent. One likely consequence of this unpredictable fluidity is that the processes and fora for decision-making will advance varied forms of adhocery/adhocracy as the default – and oft-exclusive – ‘go to’ approach. By contrast, the post-CW western-dominated narrative of globalized opportunities and risks demanding globalized solutions and concomitant normative and legal development will seem less appropriate; less relevant; less acceptable.

Such changes are only likely to complicate the picture for R2P, and compound longstanding unease about what it means and what it represents. Indeed, with no country immune from the complex and uncertain changes, ideas – particularly those relatively new and emerging – are no less vulnerable. This is especially true for an idea like R2P which, in attempting to deal with an old, longstanding problem, was about trying to capture some sense of global/collective responsibility and to further the development of multilateral response mechanisms through the UN. The problem, however, is that this new context does not necessarily lend itself to advancing the cause of an overarching global/systemic construct. If anything, the rising confidence of emerging powers to depart from seemingly routinized modalities of international governance and interaction – in order to advance political and economic interests – will lead to a system of international relations imbued with greater

lacunae, amorphous characteristics and a more pronounced emphasis on norms of sovereign equality and non-interference than international responsibility and accountability. Moreover, such political voids are, and will, provide greater scope for normative contestation about the meaning of the 2005 agreement and normative regression as its appropriateness is actively challenged.

Resultantly these dynamics have practical consequences for the application and impact of R2P – consequences most acute in relation to the coercive end of the response spectrum. These have been brutally exposed since the Libya crisis of 2011. In this case, aside from recognising that it is by no means definitive that R2P was a key driving factor behind the NATO response, Libya demonstrated the risks to, and continued questions about, the place of R2P and humanitarian intervention in general. Considering the position of the BRIC countries, the highly limited invocation of R2P, and subsequent controversy about NATO's implementation of the mandate,³³ it is hard to understand how Gareth Evans could arrive at the conclusion that the 'End of the Argument' had arrived, that 2011 was when R2P 'really came of age',³⁴ or be so sure that R2P has 'made a difference' and was 'here to stay'.³⁵ Though aware of what he describes as 'serious' 'issues...about the proper scope and limits of implementation strategies' Evans' argument conveniently detaches implementation from the constitutive principles of R2P. This allows him to repeat the idea that 'support for the general principles of R2P...is effectively complete'³⁶ even if, in the case of Libya, the way it

³³ Based upon the nature of the agreement as explained in Chapter 5, and the specific politics of the Libya case, it is highly questionable it was R2P which propelled states to act in Libya. These kinds of debates do, however, require a more detailed exploration and accounts which are not possible to achieve here. But considering how the SC operates, with its consistent unwillingness to tie itself to doctrines or codification, and the fact that the international dimension of R2P was not invoked by states in Resolution 1973, one should be very careful to assume R2P made any difference to how states decided to act in this case. This is not to say concerns about human rights abuses were not part of the mix, and justification, but that it is more likely other more dominant priorities were driving the response. See Security Council 'Resolution 1973 – The Situation in Libya', S/RES/1973, 17 March 2011

³⁴ Gareth Evans (2011) 'End of the Argument: How we won the debate over stopping genocide', *Foreign Affairs*, December 2011

³⁵ Evans (2012) 'R2P After Libya: The State of Play – And Next Steps'. Jennifer Welsh's position is much more carefully crafted: 'it would be too rash to conclude that the Libyan case ends the debate over RtoP's status, meaning, and strength in contemporary international society' in (2011) 'Civilian Protection in Libya: Putting Coercion and Controversy back into RtoP', *Ethics & International Affairs*, Vol. 25, Issue 3, p255

³⁶ Evans (2012) 'R2P After Libya: The State of Play – And Next Steps' (note for Evans the general principles means the 'four crimes and three pillars'). See also: Evans (2011) 'End of the Argument' and Ban Ki-Moon who has suggested 'Our debates are about how, not whether, to implement the R2P' in 'Effective prevention requires early, active, sustained engagement', SG/SM/13838, 23 September 2011

was implemented risked ‘backlash’ and threatened to make future coercive action ‘impossible’.³⁷

These warnings have become reality considering the response to Syria. In this respect, Evans’ arguments have merit. By identifying some of the contentious elements of NATO strategy which ran counter to what Resolution 1973 specified it is possible to understand very real factors which have fuelled controversy and subsequently filtered-into/hardened the positions of states like China and Russia over this issue. But beyond accepting the reality of acute variable complexities associated with any effort at implementation, his argument is essentially one-dimensional. It is limited by an unwillingness to consider the possibility that the real problem with R2P, and why achieving political SC agreement over the issue of Syria has proved almost impossible, is that R2P simply does not command the *kind* of support Evans takes as given and nor is it as significant a factor in terms of *mobilizing* international action as he would have us believe. These latter points are crucial. The Summit Outcome was defined as it was largely to satisfy not just a cluster of hard-core opponents, but a broader middle-ground of states sceptical about assigning a responsibility to protect to the international community. There was very good reason why the phrase “international/collective R2P” was not included in the outcome: there was no consensus that this should be the basis of future international action. Indeed, one principal framing strategy was designed to emphasize that R2P was not about capturing anything new, but was rather about trying to capture what already existed in terms of Charter processes, provisions and in customary international practice. Clearly this is very different from advancing any codified notion of a hierarchical international system based upon international scrutiny, attention and external intervention. Here the logic of unpacking the agreement is especially useful, because an alternative argument will point to the strong acceptance of individual state responsibility and the acceptance of a legitimate international role first in helping states to protect, and in exceptional cases, a preparedness to act under ChVII. But as Ch5 shows, the agreement was crafted within the context of negotiating positions defined by a complex web of dividing lines, normative preferences and motivations.

³⁷ Evans (2012) ‘R2P After Libya: The State of Play – And Next Steps’

One of the most prominent of all was concern about the implications for sovereignty bound-up with fears about selectivity, abuse, rash decision-making based upon questionable motives and with insufficient regard for the consequences for international stability. For many states, including China and Russia, the acceptance of primary state responsibility was one – seemingly paradoxical – way of limiting/curtailing both the implications for state sovereignty and the development of sweeping normative claims about the responsibility and role of the international community. Hence both consistently argued that the Charter already provided a sufficient basis for dealing with crises and for determining questions relating to the use of force.

Of course this is not to say the statement of primary responsibility was not potentially significant. It has provided a high-level ‘go-to’ political statement which can be used to frame the accountability and responsibility of an individual state. But it can also be used to avoid international action, and beyond that it illuminates just how distinct the character of the individual state and international community dimensions of R2P really are. Indeed, central to China and Russia’s acceptance of R2P (and the US, UK and France for that matter) was that the agreement did not change the responsibilities of the SC (in fact it strengthened the role of the SC), did not cut-across or alter any existing P5 prerogatives, and thus did not fundamentally change the decision-making processes at the international-level. Resultantly, how the SC reacted to a specific crisis would remain dependent upon political agreement between the P5 based upon operational responses rather than acting (as the SC is loath to) for the purposes of implementing a normative doctrine like R2P. And thus, with China and Russia remaining highly sceptical of the motivation and consequences of R2P, and committed to ensuring norms of sovereignty and non-intervention are not eroded by a march towards an international system of anathematic character, one should not be surprised by the controversy around the Libya and Syria cases. The detailed basis for this argument is outlined in Ch4, but is nevertheless highly relevant to the current context considering the grand claims particularly made on the back of the Libya action.³⁸ There is a

³⁸ See, for instance, Ramesh Thakur quite remarkable claim that ‘In poignant testament to its tragic origins and normative power, R2P is the dominant discourse around the world – from Asia and Africa to Australia, Europe and North America – in debating what must, should and can be done in Libya. R2P is the mobiliser of last

very strong counter argument to these claims and one which is increasingly strengthened by the polarized debate over Syria. Here, efforts to reassert sovereignty in order to limit international engagement have seemingly gained ground. These have been fuelled not only by the above-mentioned inherent qualifications relating to the international scope of R2P, but by renewed concerns about the motivation driving the effort to increase pressure on the Assad regime. As later chapters show, concerns about regime change and the possible expansion of R2P fed directly into its negotiation. But even with considerable emphasis on conceptually insulating R2P by delineating its parameters, these concerns have lingered.³⁹ The NATO action in Libya has fuelled concerns about regime change, and concern that SC resolutions may result in military action. Unsurprisingly, this has subsequently impacted upon the ability to agree resolutions relating to the situation in Syria.⁴⁰

Understanding the complex politics of these two cases demand a research project of their own, but nevertheless they provide yet another reminder of just how challenging and changeable, international political agreement really is. There have, of course, been many other examples of crises whereby R2P has been applied or invoked either by states, Civil Society or by advocates. But situations like Burma, Georgia, Darfur, Zimbabwe, Kyrgyzstan, Kenya, Sri Lanka, and Cote d'Ivoire have only added to the sense of confusion and doubt about what R2P really means and what kind of impact it is having, and can have.⁴¹ All have revealed problems and questions of their own, and even if they speak to the above-described sense of momentum, there is no inherent progress relating to these invocations and nor is understanding whether R2P made any real difference to how states responded as

resort of the world's will to act to prevent and halt mass atrocities and mitigate the effects of sovereignty as organised hypocrisy, as Stephen Krasner famously put it. It is the normative instrument of choice to convert a shocked international conscience into timely and decisive collective action. It navigates the treacherous shoals between the Scylla of callous indifference to the plight of victims and the Charybdis of self-righteous interference in others' internal affairs' in 'Libya: The First Stand or The Last Post for the Responsibility to Protect?', *e-IR*, 13 March 2011

³⁹ Since 2005 successive efforts have been made to broaden or reinterpret the scope and application of R2P. Prominent examples include thematic/event-driven invocations in relation to Burma, North Korea, Iraq, Georgia, the environment/climate change, disease, terrorism, WMD, and preventive war. These debates are relevant to Chapter 4's discussion of the impact of 9/11 and ensuing development of the 'Bush Doctrine'

⁴⁰ Even if this may be for some an all too convenient argument, however, see Security Council (2012) 'Middle East situation – Syria', S/PV.6710, 31 January 2012, BBC News (2012) 'Russia and China veto resolution on Syria at the UN', 4 February 2012. Note the proposed draft resolution of January 2012 on the situation in Syria did *not* invoke the R2P phrase, see *The Guardian* (2012) 'UN draft resolution on Syria', 31 January 2012

⁴¹ For a more focused, and detailed, account of post-2005 contestation see Alex Bellamy (2010) 'The Responsibility to Protect—Five Years On', *Ethics & International Affairs*, Vol. 24, No. 2, pp.143–169

easy as oft-implied.⁴² In R2P's case a major part of the problem stems from a propensity to assume its meaning and status is commonly understood; to dismiss those with alternative preferences as either guilty of misunderstanding or merely concerned with self-interest/protection;⁴³ and to believe that mere invocation must mean R2P is, in some way, driving state behaviour (particularly at the international level). This 'norm exogenization' is highly problematic, but also a key motivator behind the design and thrust of this research. There is a general need to develop and apply methodological tools directed at arriving at a deeper understanding of normative change and the complex politics of international-level decision-making. Indeed, these two points are fundamentally interlinked as best captured by the process-driven approach adopted throughout. The process-driven approach developed here not only helps us understand the 2005 agreement but sheds new light on the politics of subsequent developments and of individual cases. Hence for this reason, the only logical starting point for this thesis is to develop a better understanding of R2P's development into the 2005 outcome.

Clearly, in suggesting we need a better understanding of R2P's development, this research takes issue with the positive hype that has associated with the concept since 2005. As Aidan Hehir remarks 'effusive appraisals of R2P abound'.⁴⁴ Some key examples of this hype have already been identified above, but a central problem for the debate has been the powerful influence of advocacy voices (including academics straddling an advocacy position) in contributing to a distorted picture of the progression and status of R2P. Indeed, this distortion relates both to the process up to 2005 and the post-2005 trends, which, rather than clarifying or solidifying the concept, have only served to emphasize the weaknesses and questions always evident in the processes leading to 2005 and in the consistent underlying politics since the end of the Cold War. Foremost among these voices has been Gareth Evans. Although an undeniably committed and impressive advocate, it is self-evident that this thesis's critical arguments take profound issue with Evans's claims, characterization

⁴² By contrast Evans refers to 'textbook examples of the invocation and application of R2P – all the way through to the sharp end – with [UNSC] Resolutions on Cote d'Ivoire and Libya. Lives have been saved; the doctrine has made a difference; and it's here to stay' in (2012) 'R2P After Libya: The State of Play – And Next Steps'

⁴³ Welsh (2010) 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', online edition

⁴⁴ Aidan Hehir (2012) *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, Basingstoke: Palgrave Macmillan, p4

and defence of the concept. The present-day context, allied to the insights yielded by the process-tracing in Chapters 3-5, expose his claims about the 'end of the argument' and suggestions that R2P was/is a 'brand new international norm of really quite fundamental ethical importance and novelty' and 'unquestionably a major breakthrough' as premature, ill-conceived and anything but unquestionable⁴⁵. Such claims – however well-intentioned – have contributed to the disproportionate hype which has led R2P to an unhelpful position of dominance in the debate about international responses to mass atrocities and intra-state crises.

There is, of course, a broad and increasingly critical set of voices engaged with R2P and associated debates⁴⁶. It would be quite wrong to portray the literature unfairly in this regard. But the reason for emphasizing the role of advocacy and the positive rendering R2P seems to attract, is that such effusive appraisals are more prominent and ubiquitous – despite their disconnect from the empirical findings presented throughout – and because the sheer weight of emphasis on R2P – despite fundamental questions about its status and utility – threatens to overwhelm the central issues of the debate R2P has ultimately failed to address. Its mere linguistic existence is not a sufficient reason to believe it has had any significant impact upon state behaviour/practice. Nor is it sufficient reason to believe R2P is the only possible approach to overcoming the obstacles associated with civilian protection and mass atrocity crimes. As later chapters reveal, and pinpoint, a series of (continuing) ethical, moral, normative and legal issues ensured the agreement of R2P was not merely qualified but was decidedly un-transformational in its constitution. The agreement reiterated and reaffirmed existing processes and provisions. It was an expression of the prevailing imperfections inherent to the international system albeit bound-up with a long-standing normative plea about how states *should* treat citizens in peril. The arc of the debate – even with the increasing number of critical voices – is, therefore, problematic. Indeed, the problem is now such that the R2P lobby (or 'industry' as Hehir describes it)

⁴⁵ Gareth Evans (2006) 'The Responsibility to Protect: From an Idea to an International Norm', Keynote Opening Address to the Chicago Council on Global Affairs et al Conference on The Responsibility to Protect: Engaging America, 15 November 2006

⁴⁶ For instance, Philip Cunliffe edited a volume with critical contributions by Noam Chomsky, David Chandler, Mary Ellen O'Connell and Aidan Hehir in (2011) *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, London: Routledge

increasingly appears to act for its own protection of a concept which sits so uneasily in an international system which yields most painfully to change.⁴⁷

In this regard, defensive reflexes and all-too-convenient (oft post-hoc) justifications designed to insulate the existence, relevance and persistence of the concept from the painful realities of global politics, equally abound. As Hehir convincingly argues, those cases where R2P 'demonstrably failed to effect change...are downplayed [by the R2P industry] in favour of those cases where R2P ostensibly played a role'.⁴⁸ But taking this line of argument even further, such an insight is even more problematic because a) the likelihood that R2P would effect change was always open to question considering the way it was agreed and b) because Hehir's use of the word 'ostensibly' rightly speaks to the need to understand in a much deeper and more neutral way how, if, and to what effect R2P has played a part in shaping or conditioning international responses to specific cases.⁴⁹ There is a very significant difference between the existence, or even invocation, of R2P, and impact. There is also a stark contrast between the enormous overhyped expectations surrounding R2P and the realities of how and why R2P was agreed in the form it was in 2005. Such claims are out-of-kilter with what states were willing to accept then or now, and fail to consider the additional effects of the structured outcome on propelling R2P into the Summit Outcome. Indeed, these effects merely exacerbate the concerns expressed here when considered in relation to the detailed explanation of the agreements formulation because they emphasize just how normatively shallow, as well as operationally contingent, it was. But considering these criticisms and observations – and those evident throughout the thesis – it is necessary to situate the research question (of how we can explain the high-level political agreement of 2005) within the broad scope of R2P literature. Here the simple explanation is that while the thesis clearly covers critical and analytical terrain embraced (in different ways) by the likes of Aidan Hehir, Jennifer Welsh, David Chandler, Alex Bellamy, James Pattison, David Rieff

⁴⁷ My words are influenced by Robert F. Kennedy's 'Day of Affirmation' speech at the University of Capetown, South Africa, 6 June 1996

⁴⁸ Hehir (2012) *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, p11

⁴⁹ Serena Sharma's forthcoming book on R2P and Kenya may provide an interesting and detailed case-specific exploration of this issue, due to be published in 2013 as *Prevention and the Responsibility to Protect: The Case of Kenya*, London: Routledge

and others, it is distinct in what it sets out to do.⁵⁰ Indeed, scholars like Hehir and Welsh themselves make explicitly similar arguments to those presented here; most notably Hehir's assessment that the 2005 agreement was effectively an appeal to and affirmation of the status quo is clearly concordant with the explanation proffered in Chapter 5.⁵¹ Similarly, David Chandler's strident critique around the politicisation of human rights finds some sympathy – albeit from a different perspective – in Chapter 4⁵². The distinction is that the emphasis here is directed at understanding the processes leading to the 2005 agreement in order to provide a stronger basis for making claims about the potential significance, status and impact of R2P. In other words, while the empirical chapters incorporate analysis and critique evident in the works of the abovementioned scholars, it does so in relation to the specific processes leading to the 2005 agreement.

To further situate this approach some additional comparison with key R2P thinking is necessary. For instance, while Aidan Hehir's impressive study considers the evolution of R2P his approach is concerned much more by what he calls the 'theory and practice' of R2P and, in so doing, with outlining some significant institutional reforms consistent with a defence of humanitarian intervention and international law (rather than necessarily R2P). Although there is much to be admired with this approach, and especially his damning critique of the presentation and substance of R2P, this research is much more time specific and more tentative in its consideration of alternative proposals. David Chandler's contributions to the debate, meanwhile, are much more overtly driven by critique, from emphasizing, on the one hand, the potential relationship between R2P and the negative implications associated with human rights politicisation to the equally problematic (and not necessarily mutually exclusive) issue of the extent to which R2P can enable the avoidance of international

⁵⁰ Hehir (2012) *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, Welsh (2010) 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', David Chandler (2002) *From Kosovo to Kabul: Human Rights and International Intervention*, London: Pluto Press, Bellamy (2009) *Responsibility to Protect*, James Pattison (2010) *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, Oxford: Oxford University Press, David Rieff (2002) *A Bed for the Night: Humanitarianism in Crisis*, London: Vintage

⁵¹ See, for instance, Hehir's statement that the agreement on R2P 'in effect constituted no more than a restatement of existing international law' in (2012) *The Responsibility to Protect: Rhetoric*, p20, Jennifer Welsh also makes a number of arguments which find sympathy throughout, see especially (2010) 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', *Ethics & International Affairs*

⁵² Chandler (2002) *From Kosovo to Kabul: Human Rights and International Intervention*, London: Pluto Press

action⁵³. Indeed, *similar* arguments have a prominent place in later empirical chapters, speaking as they do to key stages in the negotiation and development of R2P. The very formulation was loaded so heavily in favour of primary state responsibility that rather than clarifying the problems associated with international action actually served to complicate the political processes which would define possible responses. Finally, to take perhaps the leading account of the development of R2P, Alex Bellamy's *Responsibility to Protect* is undeniably well-crafted but is both different and problematic by comparison to the approach and findings on display here. The first distinction is that Bellamy's starting-point leads him into an analysis of an R2P agenda and related ways to refine it. This starting-point is predicated on the belief that 'more needs to be done to protect civilians from genocide and mass atrocities'. Although clearly unproblematic as a belief, the contrast with the approach here is significant because of the way it filters into his subsequent analysis. Crucially, Bellamy describes R2P as 'the single most important recent development' in the effort to 'prevent and stem the tide of genocide and mass atrocities'.⁵⁴ Putting aside the advocacy tendencies which increasingly define his output on R2P, the significant point is that the findings of this thesis call such a statement into question. If anything, the significance of the development of R2P is that despite so much bluster and positive rhetoric the agreement has changed very little in how the international community responds to intrastate conflicts and crises. Thus, by its very nature Bellamy's book is very different. However, more problematically a central feature of the work is Bellamy's own telling of the story of R2P's emergence. Though sophisticated and influential (for instance the *Journal of Intervention and Statebuilding* described it as '*the* resource for a detailed account of how R2P came to be'⁵⁵) the detailed empirical tracing offered here questions aspects of Bellamy's account and introduces additional insights which provide the basis for the significant doubts about R2P expressed in this introduction. The simple point is that the detailed processes matter to a much greater extent than evident in any of the leading accounts of R2P. Understanding much more fully how and why R2P was agreed in the context of its international negotiation is a vital part of ensuring the claims we make about

⁵³ On the latter see for instance Chandler (2010) 'The Paradox of the 'Responsibility to Protect'', *Cooperation and Conflict*, Vol. 45, No.1, pp.128-134, and (2010) 'R2P or Not R2P? More Statebuilding, Less Responsibility', *Global Responsibility to Protect*, Vol. 2, pp.161-166

⁵⁴ Bellamy (2009) *Responsibility to Protect*, p2

⁵⁵ This quote is used on the book details page by the publishers Polity Press, see: <http://www.polity.co.uk/book.asp?ref=9780745643489>

international norms and agreements rest on more solid analytical foundations. The detail matters in this case because it guards against the rendering of R2P according to theoretical models ill-equipped to explain the central research question and because it directly challenges those overly optimistic appraisals of its status and development. Indeed, the empirical findings – allied to the recent failures of the international community in responding to internal crises – illuminates why the need for an enhanced critical edge to the R2P debate has perhaps never been more important. They represent a powerful counterpoise to the trajectory and momentum of mainstream R2P discourse. Moreover, although they are time-specific in focusing on the path to 2005, the insights they yield are powerfully relevant to the present day. They not only provide the basis to engage with the panoply of ethnical, moral and political debates associated with the concept, but they allow one to fully explain and pinpoint the limitations in the agreement, the lack of normative momentum, the on-going persistent political obstacles and resistance, the tensions which define the debate around international responses, and ultimately the lack of transformational change despite the 2005 agreement.

Thus, the persistent continuity in how the international community attempts (or not) to address the issue of intra-state humanitarian crises should not be met with any surprise. But to return to the driving focus of this research, the arguments and insights presented in this introduction derive from the emphasis on understanding the processes underpinning R2P's development. Central to the thesis in this regard is a process-driven approach which derives in significant part from a constructivist view of understanding R2P as a potential norm of international behaviour. The underlying research logic is *that in order to understand compliance with, and to hypothesize about, the potential impact of international norms and agreements, we need to understand the detailed processes of social construction by which they emerge*. Although research in this area is advancing, compliance and constructivist norm research has often been preoccupied with demonstrating that norms and agreements actually impact upon state behaviour. This often manifests itself in the form of norm exogenization whereby behavioural changes are traced back to the norm in order to convince us of their behavioural effects. This is a problem inherent to the study of R2P considering the tendency of advocates to assume its collective meaning. I go on to show that this tendency is reinforced by the way that constructivist norm tracing models macro

rather than micro processes. The implications of exogenization are profound, as it requires us to assume, among other things, that states understand the meaning and applicability of norms in the same way and results in the diminishment of emphasis on the processes by which they emerged as a source of valid information for analysis. This is evident in aspects of the current debates and efforts increasingly motivated by 'operationalization'. However, resulting insights have tended to advance from the starting point of an assumed understanding of the R2P agreement rather than one which adequately incorporates the negotiation of R2P as part of understanding potential compliance with it. Such understanding is therefore an interpretative one which has the potential to be defined excessively according to one's own personal, political and ideational imperatives. Thus, we should heed Edward Luck's warning that it is important that people do not conflate a version of R2P they wish to see with what it actually is.⁵⁶

As well as drawing upon constructivist thinking the logic and approach adopted here is also inspired by Robert Friedheim's hugely impressive *Negotiating the New Ocean Regime* and by Dyson and Featherstone's seminal *The Road to Maastricht: Negotiating Economic and Monetary Union*.⁵⁷ Although both are in key ways very different to what is presented here there are some important similarities. Friedheim's 'underlying premise...that the meaning of UNCLOS III cannot be truly understood without linking process...to substance – that the law of the sea negotiations have to be viewed in their totality to understand how the international community has addressed and will be likely to deal with ocean law and policy problems'⁵⁸ is clearly concordant with the emphasis on process and compliance here. The extent to which R2P can be said to contribute to addressing the problems associated with humanitarian intervention and help protect civilians, and its potential impact on future behaviour and policy choices, depends in large part on accounting for the processes leading to the agreement. Of course, such an approach cannot be detached from an awareness of the post-agreement phase and subsequent debates. Indeed, this phase is central to legitimating some of the claims regarding the 2005 agreement, and for identifying the more

⁵⁶ Ed Luck (2008) 'The Responsible Sovereign and the Responsibility to protect', *Annual Review of United Nations Affairs 2006/2007*, New York: Oxford University Press, pp.xxxiii-xliv

⁵⁷ Robert Friedheim (1993) *Negotiating the New Ocean Regime*, Columbia: University of South Carolina Press; Kenneth Dyson and Kevin Featherstone (1999) *The Road to Maastricht: Negotiating Economic and Monetary Union*, Oxford: Oxford University Press

⁵⁸ Friedheim (1993) *Negotiating the New Ocean Regime*, p. ix

‘solid’ elements of it.⁵⁹ In the case of Dyson and Featherstone, a key lesson they identify, as Amy Verdun explains, is that ‘...agency matters. It matters *who* the person was holding the position: personalities matter, social relationships (connections and networks of individuals) are crucial, and the personal experiences of key players are certainly not negligible’.⁶⁰

This is borne out by the story of R2P. For instance, the importance of Lloyd Axworthy’s personality and approach as Canadian Foreign Minister was strongly evident in the processes leading to the establishment of the Commission which proposed the R2P idea⁶¹. Likewise individuals such as Kofi Annan, Tony Blair, Gareth Evans, George Bush, Allan Rock and many others repeatedly demonstrate the central importance of individuals in shaping and responding to events, defining problems and for realising outcomes – for good or bad. Inevitably this thesis has also been influenced, to varying degrees, by the ever-expanding volume of R2P-specific academic work, in addition to a vast associated literature.⁶² This thesis makes its contribution to this literature both in its specific argument relating to the development of R2P in the World Summit outcome document and in its development of a constructivist approach to micro-process tracing. In the next chapter we turn immediately to the questions of theory and method that frame my arguments about the meaning and significance of R2P. My central claim is that a focus on the social construction of international norms requires detailed empirical analysis of the way norms are negotiated and agreements structured. This claim is intended to complement rather than challenge existing constructivist theory, but nevertheless has significant implications for an understanding of R2P.

⁵⁹ A similar point is made by Dyson and Featherstone who argue, albeit in a different context, that the ‘importance of the Maastricht agreement can only be properly gauged by consideration of what followed it. Many of the problems of implementation stemmed, to a significant degree, from the ambiguities and unanswered questions bequeathed by the IGC negotiations’, (1999) *The Road to Maastricht*, p5. Clearly an expanded version of this thesis would take this line further than possible within current constraints

⁶⁰ Verdun (2000) ‘Symposium: The Road to Maastricht’, *Journal of European Public Policy*, Vol.7, Issue 5, p827

⁶¹ This was the International Commission on Intervention and State Sovereignty, herein “ICISS”. It was established in 2000 and published its report *The Responsibility to Protect* in late 2001. Ch3 provides a detailed account of its establishment and a critical analysis of its report

⁶² This becomes very clear in the context of the Summit negotiations in Ch5. Two are particularly worth mentioning. James Traub’s insider account of Annan’s tenure as SG is inspirational for its unrelenting focus on politics and personality (2006) *The Best Intentions: Kofi Annan and the UN in an Era of American Power*, London: Bloomsbury while Alex Bellamy’s (2009) *The Responsibility to Protect*, is a thoughtful explanation of the politics and process leading to the 2005 agreement despite issues with his findings and approach

Chapter 1: Theory and Methods

For constructivists, understanding how things are put together and how they occur is not mere description. Understanding the constitution of things is essential in explaining how they behave and what causes political outcomes...an understanding of how sovereignty, human rights, laws of war...are constituted socially allows us to hypothesize about their effects in world politics.⁶³

This project's origins flow from a simple, but pivotal question. How can we explain the high-level political agreement of R2P in 2005? For such a seemingly obvious starting-point, this question has yielded insufficient attention or explanation within the mainstream context of R2P debate and literature. In isolation, the empirical findings of this thesis directly challenge the optimistic, oft-advocacy infused, portrayal of R2P's development evident in the more widely-cited accounts. Indeed, for those driven by a desire to understand the politics of R2P Chapters 3-5 provide ample stand-alone revelation and analysis. But though the empirical findings provide the indispensable lifeblood to the story of R2P that is the essential focus of this research, the beating heart and catalytic creator of the overall R2P-related arguments derives from a constructivist-inspired, process-driven hypothesis crafted to address the overarching first-order question. From this perspective, the research design is more than a means to an end. Why? Because inherent to the process-driven logic is a set of claims about the nature of norm formation, and the causal patterns of policy formation, which go beyond the story of R2P alone. The empirical information not only exposes those weaknesses in how R2P is characterised and defined, but also challenges how the ontological assumptions of constructivism –the dominant theory of normative development – are applied in practice.

An early priority was to develop an appropriate conceptual framework. From the outset, this was defined by a distinct appreciation of process and a bold proposition about how we should understand potential compliance with international norms/agreements.⁶⁴ At its heart is a process-driven hypothesis constituted by an acceptance of the core ontology of

⁶³ Martha Finnemore and Kathryn Sikkink (2001) 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics', *Annual Review of Political Science*, Vol. 4, p394

⁶⁴ From a constructivist perspective norms can be best understood as 'collective expectations about proper behaviour for a given identity', in Ronald Jepperson et al. (1996) 'Norms, Identity, and Culture in National Security', in Peter Katzenstein (Ed.) *The Culture of National Security: Norms and Identity in World Politics*, New York: Columbia University Press, p54

constructivism and complemented by a highly-intensive methodological agenda based upon ‘process-tracing’, elite-level interviewing and extensive documentary analysis. This combination of theory and methods required enormous commitment. Not only did it yield reams of usable information – which thus required difficult choices about what could realistically be included within the constraints of a PhD – but the more the research unfolded more pressing was the need to develop alternative analytical explanations and concepts relating to R2P’s development and to consider how the explanatory power of these impacted upon the research framework and the future development/application of it. Although not without weakness, the empirical findings strengthened the research logic and its significance and evolved the potential to extrapolate it to alternative normative and multilateral contexts – a point particularly relevant in relation to the criticisms of constructivism below.

Indeed, a crucial factor behind these knowledge-based theoretical and methodological developments is that the acceptance of constructivism as an approach to the study of IR was applied in such a way to allow this natural evolution to take place. The research framework was designed to test the hypothesis that a more detailed understanding of process yields better information about the likelihood of prospective compliance with R2P, or rather its influence upon policy decisions and decision-making. Crucially, this approach was never about tracing or portraying the development of R2P through the prism of a preconceived, pre-determined model of normative development. Such an approach would have been wholly mistaken, and, based upon the empirical findings presented in subsequent chapters, would have required considerable effort to mould what are undeniably complex multi-dimensional dynamics into essentially abstract, artificial frames of the kind which have gained considerable traction in the study of international norms. This is not to say, however, that the development of theoretical models and frameworks is unnecessary, or that constructivist insights are not highly relevant to our understanding of R2P and normative developments more broadly. In fact, mechanisms of social construction identified by constructivists are prevalent in the story of R2P. But because of weaknesses in pre-existing models – most notably the “norm life cycle” (NLC) (see below) – it is essential constructivists refine how they conceptually package the mechanisms and insights they have already identified.

Significantly, while the explanatory power of this thesis derives primarily from what it says about the development of R2P – not least in how it challenges the accounts of Bellamy and Evans and the tendency to characterise R2P with excessive optimism, it is also underpinned by a secondary premise which suggests that the process-driven approach generates analytical insights potentially more useful than orthodox forms of constructivist analysis. And though these two premises are distinct in terms of the core focus of the research they nevertheless both necessitate attention because they are united by, and emerge from, the same central hypothesis and were extracted from the empirical tracing evident in Chapters 3-5. To unpack these interlinked premises more directly, the detailed findings expose weaknesses in the theoretical models and insights developed by constructivists. In particular, the NLC projects a more positive, progressive, linear, unidirectional trajectory onto normative development than is borne out by the empirical testing of the research hypothesis in respect of R2P. This recognition led to the development of a more detailed (albeit case-specific) process-driven account of normative development than would have been possible had it been based up *a priori* assumptions relating to ‘norm emergence’, ‘cascade’, ‘internalization’ and ‘institutionalization’.⁶⁵ These concepts certainly have relevance to how we understand the development of international norms, and, in the case of the latter, is relevant to the story of R2P. Nevertheless, they oversimplify the complexity of *international*-level normative development and its resulting impact upon state behaviour and choices. As later chapters show, the analytical insight offered by these concepts is inherently limited.

Thus, in response to the inability of the NLC to render the complex dynamics evident in the case of R2P, the latter part of this chapter outlines a considerably less rigid conceptual framework designed to facilitate the reader’s understanding of its development. The significance of this framework is that it was developed in response to the awareness that the original intention of deploying the NLC as the theoretical framework was an unsatisfactory way of explaining the development of R2P. Specific criticisms of the NLC are weaved throughout this chapter, but suffice to say its continued use would have provided a

⁶⁵ These concepts are explained in the section on the norm life cycle model below

distorted picture of how R2P was agreed and what the process reveals about its status and significance. To borrow a phrase, rendering the complex multi-dimensional and multi-actor processes according to such a model would have risked 'forcing reality into a straitjacket'.⁶⁶ That said, it is important to recognise that this does not mean the NLC should be completely disregarded. The conceptual framework below draws upon the explanatory power of some of the motives, mechanisms and dynamics of social construction clearly evident in the NLC. The crucial distinction, however, is that this alternative framework is not defined or packaged in any modelled or patterned way. It is more of a guide to help the reader make sense of aspects of the empirical narrative that follows. In this respect, the conviction that it would be a mistake to attempt to render the development of R2P according to the NLC also raises a more difficult set of questions about the extent to which it is possible to provide convincing theoretical models of normative change. Theoretical insights and concepts designed to aid our understanding of a specific case are one thing, but packaging them in a model designed to explain international norm change more generally is quite another. The danger is that the pursuit of the latter would privilege parsimony over complexity, generality over specificity. Thus, by contrast to the former approach, the bias of this research is directed at specificity through its detailed account of the processes leading to the 2005 agreement. As the introduction made clear, it is contended that a more detailed understanding of process has generalizable power as does – albeit in a considerably more qualified way – the concept of the structured outcome. But beyond this, the extent to which one could, or would want to model such complex processes, is left very much in doubt. Indeed, the introduction of the structured outcome was driven by the need to craft an alternative less formulaic, less linear and a less inevitably progressive framework to understand the development of R2P, and which, in so doing, was able to address the overarching research question in a way the NLC could not. The critical element in all of this was the question of what underpinned the rapid, unexpected transition from a lack of political traction in the period 2001-2004 to high-level political agreement in 2005. With the empirical chapters arguing that there was underlying continuity of state positions following on from the post-Cold War humanitarian intervention debate, it was clear the answer could not rely upon explanations centred on normative momentum, socialization or acculturation.

⁶⁶ Kenneth Dyson and Kevin Featherstone (1999) *The Road to Maastricht: Negotiating Economic and Monetary Union*, Oxford: Oxford University Press, p13

Such mechanisms are necessarily part of the constructivist tool box but are wholly insufficient in this case. Likewise, the concept of institutionalization – though clearly evident and important – is relevant only insofar as it is embedded in the explanation of how it was realised. Singularly it would provide a false picture of the status of R2P. The utility of institutionalization derives from understanding what it was that propelled R2P towards this wholly unexpected point. This is where the structured outcome concept enters the fray, packaging the structural factors which were so crucial to the eventual outcome.

Indeed, the introduction of the structured outcome to account for how R2P rapidly and unexpectedly transitioned from an idea with minimal political traction to high-level international agreement, strongly suggests that understanding international norm development depends upon a detailed understanding of process. An awareness of this is necessary to ensure constructivism meets its own goals and thus requires the use of appropriate methodological tools. In this regard, the structured outcome was one of a series of revelatory insights about the development of R2P which leads to the argument that R2P has neither had the effect that many suggest, nor does it appear to have the kind of identity or behavioural-changing transformational potential often ascribed to it. The basis for these propositions are revealed in later chapters which show *inter alia* how unchanged political responses to R2P were post-ICISS, how the post-9/11 context shaped its prospects, how the core planks of R2P were defined in accordance with framing strategies designed to project it as ‘nothing new’, and how continued post-2005 contestation around the meaning, significance and status of R2P should have been expected considering the nature of the agreement and the evident ‘pull’ of alternative and complementary norms of sovereignty and non-intervention. All of these insights are significant to our understanding of R2P, and were drawn from the process-driven hypothesis and the application of process-tracing. This method has the potential to go beyond the singular unique case of R2P. On the one hand it provides a lesson about the importance of process for understanding norm development and prospective compliance with general applicability, but on the other may offer an additional force as a theoretical construct relevant to understanding normative developments and agreements at the international level. The force of the structured outcome may be unique to this case, but it is also possible that it may represent an

identifiable feature of other multilateral and omnilateral⁶⁷ international negotiations. It may offer particular utility for understanding normative development specifically in relation to the structuring effect of negotiation contexts.

The structured outcome argument has the potential to capture – and conceptually package – the core characteristics of negotiation processes in order to determine their effect on the propulsion and form of international agreements, and within that, the effect upon those agents negotiating. In the specific case of R2P, the structured outcome captures a vital link in the transmission of R2P towards the Summit agreement and demonstrates how the factors constituting it shaped how the negotiations unfolded. The implication is that this insight may have broader explanatory power as a tool/paradigm for understanding norm development at the *international* level where it is more vulnerable to effects like the structured outcome. This power maybe especially strong in the case of controversial norms including those with acute moral, ethical and justice implications, and those at an earlier point in their development (than would be implied by the NLC for instance). This was especially true in the case of R2P where, although a series of mechanisms of social construction were evident (thus representing some important conceptual elements of our understanding, see below), the dynamics underpinning its development were less straightforward than models like the NLC would imply. Specifically, its development was not *progressive* in terms of an entrepreneurial phase, institutionalization and normative cascade which might lead to internalisation and implementation processes but rather was underpinned by considerably more complex dynamics. Entrepreneurialism and institutionalization were evident, but the dynamics which helped propel it towards the latter were not about a progressive gathering of momentum as the acceptability of R2P as a norm of international behaviour gained traction. Its path into the negotiations was more dependent upon a distinct set of structuring factors in order to help overcome a *lack* of political traction and momentum. Resultantly, once the negotiations began the prospects for R2P's inclusion were inevitably influenced by these factors as was its ultimate definition.

⁶⁷ Adam Watson (1982) *Diplomacy: the dialogue between states*, London: Methuen

Ch5, in particular, exposes how the structured outcome manifested itself and why it matters for understanding the status and potential impact of R2P. It demonstrates that our understanding of normative development and its impact upon international affairs requires a detailed understanding of process. As explained previously, in testing the core hypothesis that a detailed understanding of the process yields better information about the likelihood of compliance, the detailed findings – particularly in relation to the multilateral negotiations of 2005 – exposed issues with the characterisation of R2P’s development and status as well as weaknesses in constructivist accounts of norm development. These findings provided a feedback-loop which led to the formulation of the idea that the approach adopted here should influence how constructivists seek to understand norm construction and evolution. Prior to outlining my research methods (the process-tracing approach and the associated interviewing and documentary methods) it is necessary to first consider some of the challenges that are found in existing in R2P research and in constructivism more generally.

The research hypothesis was fundamentally driven by the question which opened this chapter. It was a concern for understanding the development of R2P in order to consider its status and potential impact in international affairs. But although defined in terms of constructivism, the hypothesis and associated methodology was also shaped by an awareness of documented criticisms of constructivism and – as the research unfolded – by an increasing concern at the portrayal of R2P in mainstream debate. The combination of these factors strengthened the commitment to detail and reinforced the importance of tracing the micro-processes of R2P’s development. Unsurprisingly, aspects of the criticisms reside on the same terrain. In particular, the problems of norm exogenization and of linearity in the portrayal of normative development are issues of general concern but have more specific relevance to the case of R2P. In other words both have distinct theoretical and empirical relevance for understanding the approach adopted here.

Taking these in turn, the concern with norm exogenization stems from the criticism that some constructivist research falls into a trap whereby norms are taken as ‘given’ in order to demonstrate their effects.⁶⁸ This places norms outside the social processes that necessarily

⁶⁸ See for example Paul Kowert and Jeffrey Legro (1996) ‘Norms, Identity and Their Limits: A Theoretical Reprise’ in Katzenstein (Ed.) *The Culture of National Security*, p469

constitute them; in particular it obscures the on-going relationship between normative meaning and agency. This fed directly into the explicit process-oriented approach. Rather than framing the research in terms of determining the impact of R2P as the primary outset goal, this approach was about the 'social construction of meanings and significance from the ground up'.⁶⁹ A vital constitutive element of this approach was the contention that the construction and negotiation processes which underpin international agreements and normative developments can and should be seen as an 'integral aspect of the compliance process'.⁷⁰ However work intensive, this more positive constructivist approach was influenced by the seed of an idea expressed by Beth Simmons in her influential 1998 article 'Compliance with International Agreements'. This related to a research agenda based upon the incorporation of the 'discursive elements' of negotiation into a 'fuller story of the compliance process':

Governments persuade and become convinced of the value or appropriateness of particular standards of behavior over the months, years, and even decades they spend in their formulation. This research agenda might even call for an examination of the discourse used by participants as such negotiations unfold; attitudes towards compliance are shaped by and reflected in this discourse. This strategy uses the negotiation process as data on attitudes towards compliance, rather than viewing it as a source of bias in decision-making.⁷¹

The extensive explanation of R2P's path through the Summit negotiations in Ch5 demonstrates the practical influence of this idea upon the overall research hypothesis and associated methods. Moreover, although this thesis is delineated by time parameters in tracing R2P up to 2005, the findings not only provide a better understanding of the underlying normative and political foundations of R2P but also lay the foundation for further complementary empirical and theoretical research. Beneficially, by emphasizing process the research approach helps mitigate the associated issues with the abovementioned exogenization problem. For instance, the approach helps ensure the processes by which norms emerge and change are not omitted or defined by diminished prominence in order to prioritize impact, guards against the assumption that norms are clearly, commonly

⁶⁹ John Ruggie (1998) 'What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge', *International Organization*, Vol. 52, No.4, p885

⁷⁰ Simmons (1998) 'Compliance with International Agreements', *Annual Review of Political Science*, Vol.1, p90

⁷¹ Simmons (1998) 'Compliance with International Agreements', p90-1

understood by actors,⁷² and remains cognizant of the possibility that other behavioural logics are at play rather than 'spuriously crediting international norms with consequences...that are better explained by other types of factors'⁷³. Indeed, equally relevant is the need to explain violations of international norms as well as compliance with them. As Vaughn Shannon points out in constructivist research 'the power of norms can seem sweeping' with scholars, in a desire to demonstrate the importance of international structures and institutions, tending to homogenize the effects of international norms thus leaving variations unexplained and under-theorized.⁷⁴

The detailed process tracing approach helps to guard against such issues/pitfalls and crucially ensures the meaning and status of R2P is not taken for granted. The problem of norm exogenization is, however, more than a theoretical weakness relating to the application of constructivism alone. It also has utility as a concept for explaining the tendency (generally amongst advocates) to overstate what the 2005 agreement represented and the extent to which it altered the underlying politics of the intervention debate, and to gloss over the detailed processes underpinning its development – a factor which inevitably alters our understanding of its status as an international norm. Here the problem is bound-up with a propensity to view normative development in linear terms, with an insufficient appreciation of the processes leading to the outcome, and advocacy-infused biases which bestow an assumed meaning and teleological progressivity upon R2P. This latter point is particularly problematic in this case because of the possible implications of coercive forms of international action taken for the purposes of protecting people within the borders of an individual State.⁷⁵ There is no guarantee that seemingly well-intentioned norms might precipitate positive outcomes either in terms of a specific crisis-situation or more broadly in terms of the development of international society. However, more directly

⁷² Vaughn Shannon similarly argues that 'it is taken as unproblematic that "shared expectations" are literally clear, common understandings of what the prescriptions and parameters of norms are' in (2000) 'Norms Are What States Make of Them: The Political Psychology of Norm Violation', *International Studies Quarterly*, Vol. 44, No. 2, p298

⁷³ Jeffrey Legro (1997) 'Which norms matter? Revisiting the "failure" of Institutionalism', *International Organization*, Vol. 51, No. 1, p34, see also Shannon (2000) 'Norms Are What States Make of Them', p297

⁷⁴ Shannon (2000) 'Norms Are What States Make of Them', p298, Finnemore and Sikkink (2001) 'Taking Stock: The Constructivist Research Program', p397

⁷⁵ These apply not purely to the internal situation but to the impact of action on the structures of international relations more broadly

significant is the combination of two biases: a *theoretical* bias which has tended to couch normative development in linear terms,⁷⁶ and an *advocacy* bias which not only overstates the development and significance of R2P but which leads to the diminution and attempted discrediting of continued contestation or opposition. Superficially, this is often characterised as a product, for instance, of misunderstanding, misguided invocations, or intransigence and hostility by so-called 'spoilers'.⁷⁷ The theoretical dimension of linearity is most explicitly evident in the brief outline description of the NLC below. But it is also evident, albeit implicitly, in overly progressive portrayals of R2P. Three examples of such depictions by Gareth Evans, Ramesh Thakur and Thomas Weiss and Anne Marie-Slaughter – all prominent scholars of international relations – are especially revealing:

Within just four years of the first articulation of the concept—a mere blink of an eye in the history of ideas—consensus seemed to have been reached on how to resolve one of the most difficult and divisive international relations issues of our, or any other, time.⁷⁸

[R2P is] Possibly the most dramatic normative development of our time – comparable to the Nuremberg trials and the 1948 Convention on Genocide in the immediate aftermath of World War II.⁷⁹

In 2006 the Security Council passed a resolution, which was also endorsed by the...General Assembly, accepting that all governments have a responsibility to protect their populations...and that if they fail in that responsibility the international community has the right to intervene. This was an enormous normative step forward, akin to an international Magna Carta, even if it will take decades to elaborate and implement.⁸⁰

⁷⁶ On this point see Welsh (2010) 'Implementing the Responsibility to Protect', online edition

⁷⁷ The phrase 'buyer's remorse' is also often used to describe post-agreement contestation, and was used by the then UK Foreign Secretary David Miliband at an event attended by the author in 2008. Based on the tracing of R2P's development from Chapters 3-5 such phrases, and the tendency to dismiss on-going contestation, are particularly unfortunate. As these chapters reveal contestation and controversy was a feature throughout. However, to get a further sense of the problem see Gareth Evans' book in which he expends considerable energy tackling what he describes as the 'major misunderstandings' about what R2P is about and for. Aside from the continuing pull of alternative norms – which themselves were prevalent during the negotiations – Evans' argument overstates the development of R2P and the depth of normative commitment to the limited 2005 political agreement, see especially Ch3 in (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington: Brookings Institution Press, pp.55-76

⁷⁸ Gareth Evans (2008) "The Responsibility to Protect: An Idea Whose Time Has Come...and Gone?", *International Relations* Vol. 22, No. 3, p284

⁷⁹ Thakur and Weiss (2009) 'R2P: From Idea to Norm - and Action?', p23

⁸⁰ Anne Marie-Slaughter (2011) 'A Day to Celebrate, But Hard Work Ahead', *Foreign Policy*, 18 March 2011

A simple reading of these three positions reveals telling commonalities. They share a proclivity for grand claims about the nature and significance of the R2P agreement. And, in the case of the latter two, are unafraid to invoke momentous events/documents (Nuremberg and the Magna Carta) as historical comparators. Certainly, as the introduction acknowledged, there is a distinct momentum around the R2P phrase which is significant. But this is arguably more significant because a central feature of it is that it is despite continuing contestation, debate and confusion around the meaning, significance and impact of R2P. In such circumstances, and more importantly based on the empirical findings here, all three are gross overstatements which belie the multi-layered and multi-dimensional complexity of the detailed processes necessary to understand the collective meaning and potential behavioural impact of R2P. Framing the argument in this way is important because the tendency to portray normative development in linear terms, as the three above do in differing ways, bestows upon R2P a superficial gloss uncomfortably detached from the detailed processes leading to the agreement exposed in later chapters. Without the appreciation of detail so central to the approach adopted here it is far easier to present the 2005 agreement, and subsequent institutional developments, as evidence of progression towards broad member state acceptance. Moreover, because R2P was articulated in the '05 agreement its status as an international norm – essentially because it *exists* – is too often taken for granted. Advocacy preferences, and a general lack of appreciation for the negotiating dynamics, have led to numerous assumptions about what that agreement meant in terms of the long-standing intervention debate and what it means for the future of international relations. Some of these assumptions are evident in the three quotes above, from Evans' claims about 'consensus' and resolution, to Slaughter's obvious misunderstanding about the nature of the international role in R2P and the more generally implicit assumption that the place of R2P in international society is effectively assured. This leads to the abovementioned description of 'spoilers' portrayed as blocking the apparently inevitable path and implementation of R2P.

However, as later chapters demonstrate these kinds of claims appear considerably less viable under the heat of critical analysis. Indeed, by contrast to these and the overly simplistic and all too convenient linear accounts of normative development it is the detailed understanding of process which reveals just how multi-layered and multi-dimensional the

path to 2005 really was. Crucially, the findings demonstrate the sheer unsustainability of separating the existence of the norm of R2P from the processes leading to its construction or, moreover, to linearize their character. However obvious this point may appear, it is arguably one of the most pressing issues facing the presentation of R2P today. As Chapters 3-5 show, considering the evident contestation leading to the limited negotiated agreement of R2P and the impact of the structured outcome on its propulsion, there is insufficient basis to assume the place or impact of R2P is assured. The scope for normative regress – especially in such a highly controversial area of international politics – remains a very real, yet underappreciated dynamic.

Indeed, by unpacking the (proposed post-2001) constitutive elements of R2P, regress is certainly evident in relation to its surrounding expectations and normative scope. This was shaped by a changing political context, but also by continuities in state reactions to the idea of defining an international norm/doctrine to enable action to protect civilians within the borders of an individual state. Nowhere was this more apparent than in how the nature of international responsibility was eventually defined. A curious paradox of the negotiations was that the meaning of R2P was more tightly crafted than one might expect. The relative contentiousness of R2P was certainly diminished in context of the broader negotiation package but even then a central factor behind its inclusion was that its definition was tightly crafted to ensure multitudinous policy-lines brought out during the multilateral negotiations were broadly upheld and not crossed. Accordingly, the political statement of R2P was delineated to capture essentially what already existed in Charter provisions and processes. The agreement was specifically *not* intended to transform how the international community dealt with internal crises and as such was repeatedly framed as representing nothing new. Such points may seem pre-emptory but in actuality they demonstrate the importance of understanding detailed micro-level processes not least because they highlight the tendency to overstate R2P's development and its potential significance. The combination of the more nuanced understanding of R2P's meaning in Ch5 and the structured outcome argument introduced from Ch4 onwards raises questions about the nature, meaning and significance of the R2P agreement. More specifically, the detailed process provides vital insight relating to attitudes towards R2P, including how and why it was negotiated in the form it was and

thus what impact it might have on how the international community attempts to deal with gross violations of human rights.

Alternative normative positions, preferences and practical concerns evident in the positions of states fed into the R2P's formulation. These meant it was more likely that future decision-making would remain subject to the same issues, same politics and same dilemmas that had long defined the intervention debate. Indeed, even though the statement of individual state responsibility provided a potentially useful go-to political statement for framing domestic and international accountability, the way the process impacted upon the path of R2P meant subsequent post-agreement contestation (which should always be expected) would likely be exacerbated in this case once the structuring factors which helped propel it towards agreement were no longer in play.⁸¹

Self-evidently these arguments suggest the positive gloss bestowed upon the status of R2P fails to capture a considerably more complex picture. But returning more directly to the theoretical significance of these arguments what should be clear is that the linear tendencies of pre-existing models of normative change have little utility in this case. The progression of R2P into 2005 was considerably more staggered and distinct. Indeed, the case of R2P required the introduction of a distinct explanatory construct (the structured outcome) in order to more satisfactorily answer questions that the NLC could not. This is where the process-driven hypothesis meets with methodology. In order to avoid making assumed or sweeping statements about R2P, to avoid modelling R2P according to a pre-determined or pre-conceived notion of what its specific development looked like, and ultimately to provide a more advanced account of the processes in this case, a variant of 'process-tracing' was aligned with elite-level interviewing and extensive documentary analysis. As stated above, detailed process-tracing helps alleviate the identified weakness in constructivist norm research, and in presentation of R2P. It enables us to better understand the development of international norms and the associated modalities of political negotiation. Here the application of this approach yields empirical findings which reinforces

⁸¹ On the argument that contestation should always be expected post-agreement see Antje Wiener (2009) 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations', *Review of International Studies* Vol. 35, Issue 1, p176

the importance of detail and rigour which flows from the initial research starting point. The main issue in this regard is the approach adopted here focuses on the micro-processes of social construction rather than a (generally) broader historical approach to normative shifts over longer periods of time. The results yielded from this approach clearly contrast with aspects of Bellamy's leading account of the emergence and adoption of R2P. Although his starting-point was very different⁸² later chapters reveal weaknesses with his portrayal that in large respect relate to weaknesses in his adopted approach. Certainly this thesis does not claim to be the exhaustive account of R2P's path to 2005 – undoubtedly there are many new findings to unearth, and perspectives to consider. That said, because of its commitment to detail, and because it is not driven by advocacy or any desire to map out a policy agenda to ensure implementation by policy-makers, the account is theoretically, methodologically and empirically powerful in what it says about how we should understand the agreement of R2P. In essence, this thesis rests on the extent of the detail extracted by the applied methodology.

Before briefly outlining some relevant points relating to the combination of deployed methods it is worth returning to the issue and place of the NLC in the context of the adopted research approach. As already stated, the NLC was the original starting-point to try and address the overarching research question. However, as the research process unfolded, its limitations as a theoretical model quickly became apparent. The empirical tracing of R2P's development required an altogether different explanation to the causal story of norm change implied by the NLC. Its fundamental limitations mean it can be no substitute for the form of process-tracing utilised here. Indeed, an important by-product of the thesis findings is that the alternative explanation in the case of R2P – particularly in relation to the structured outcome – exposes the NLC's fragilities as a generalizable model. This in turn raises questions about how constructivists develop appropriate tools and conceptual frameworks which match-up to the core social ontology which unite all. But prior to setting out the alternative looser and unmodelled conceptual framework, it is necessary to provide a sense of why the NLC has been so influential but why it is so problematic. Arguably the two are closely related. Undoubtedly the NLC is a model which has its own significant power

⁸² As Bellamy explains his starting point was 'the conviction that more needs to be done to protect civilians from genocide and mass atrocities' in (2009) *Responsibility to Protect*, p2

– it is the classic account of normative change. The NLC has a usability and utility which partly explains its influence on scholars since its introduction by Finnemore and Sikkink in 1998. It neatly and effectively packages key mechanisms and dynamics identified by constructivists in the social construction of international norms and which are admittedly also evident in the construction of R2P. It emphasizes, among other things, agency and entrepreneurship, discursive practices, framing, agenda-setting, socialization, and organizational platforms. Such conceptual elements are, to varying degrees, relevant and necessary to how we make sense of the process-oriented analytical narrative that follows in later chapters.⁸³ Moreover, as Helen Yanacopulos suggests, the life cycle *can* be ‘a useful tool in explaining how attention to an issue can gain momentum and become important to...policy makers, organizations and the general public’.⁸⁴ However, the NLC’s greatest virtue of neatly packaging a multitude of differing processes, logics, dynamics and mechanisms identified by constructivists into a patterned model, is ultimately its greatest weakness.

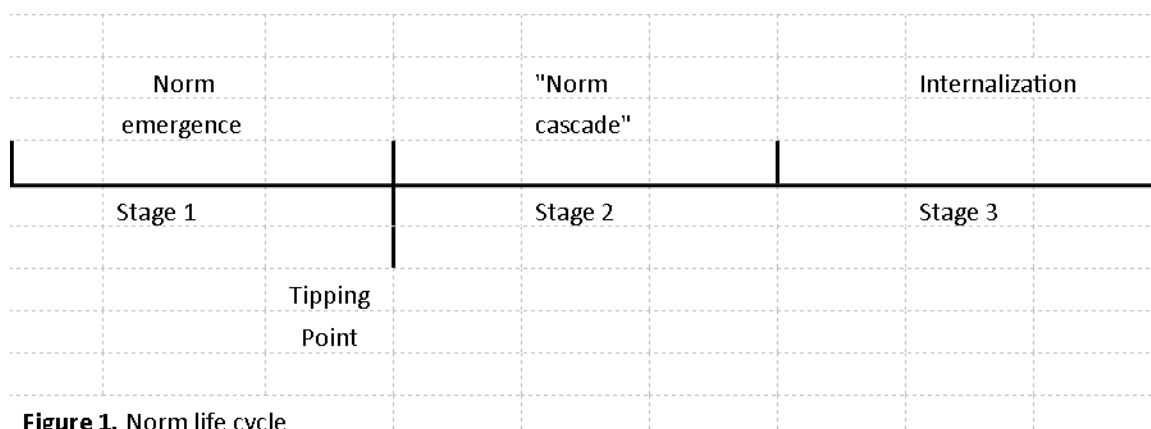


Figure 1. Norm life cycle

Finnemore and Sikkink’s central argument is that ‘norms evolve in a patterned “life cycle” and that different behavioural logics dominate different segments of the life cycle’.⁸⁵ Accordingly, norm development can be understood as a three-stage process of 1) norm emergence 2) norm cascade and 3) internalization (Figure 1.1) with each of the three stages

⁸³ For a useful overview of the mechanisms and processes of social construction emphasised by constructivists see Finnemore and Sikkink (2001) ‘Taking Stock: The Constructivist Research Program’

⁸⁴ My *emphasis*, Yanacopulos (2004) ‘The Public Face of Debt’, *Journal of International Development*, Vol.16, Issue 5, p720

⁸⁵ Martha Finnemore and Kathryn Sikkink (1998) ‘International Norm Dynamics and Political Change’, *International Organization*, Vol. 52, No. 4, p888

characterised by distinct actors, motives and dominant mechanisms (Table 1.1). More directly they argue:

The pattern is important...because different social processes and logics of action may be involved at different stages in a norm’s “life cycle”. Thus, theoretical debates about the degree to which norm-based behaviour[sic] is driven by choice or habit, specification issues about the costs of non-violation or benefits from norm adherence, and related issues often turn out to hinge on the stage of the norms evolution one examines.⁸⁶

Table 1.1 *Stages of norms*

	Stage 1	Stage 2	Stage 3
	<i>Norm emergence</i>	<i>Norm cascade</i>	<i>Internalization</i>
<i>Actors</i>	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
<i>Motives</i>	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
<i>Dominant mechanisms</i>	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

However, while the NLC has real virtues and is based upon serious scholarship which has undoubtedly contributed to advancement of knowledge in the study of international norms, it suffers from some critical weaknesses. These relate particularly to its patterned model, its linearity, and direct inability to explain the obvious disconnect between stages 1 and 2 of the NLC if it were applied in the case of R2P. As the empirical work progressed it became clear that trying to describe the process in terms of the NLC led to a distortion of that process. In particular, it became clear that the institutionalized agreement of R2P – which would situate it on the path towards cascade – in fact lacked many of the characteristics that would be associated with much earlier stages of the NLC. A concern here was that the model itself led to overstating normative progress and it was the linearity of the model that was the root cause. Thus, if the NLC was adopted as the research framework it would only

⁸⁶ Finnemore and Sikkink (1998) ‘International Norm Dynamics’, p895

serve to constrain the process-driven hypothesis which resides at the heart of the entire project.

Put simply, the application of this hypothesis speaks to the aim of taking our understanding of R2P's development much further and deeper than has previously been the case, or which the application of such pre-existing models of normative development would currently allow. The NLC offers an overly simplistic and a progressive linear characterisation which belies the true complexity of normative change. Indeed, the sequencing of R2P's development was out-of-kilter by comparison and anything but linear. The path towards its institutionalization was wholly unexpected not merely because the idea provoked such longstanding divisions but precisely because its impact upon these divisions was so limited. Institutionalization was achieved despite the lack of underlying dynamics which the NLC would attribute to propelling R2P towards that point. There was no evident momentum or bandwagoning effect, no clearly identifiable tipping point and nor was there any significantly impactful domestic pressure pushing upwards into the international context for R2P's political realisation. There were states supportive of the idea and willing to mobilize in accordance with that support, but the influence and activism of this small cluster was anything but catalytic. Indeed, even with the institutionalization of R2P, the concept of a 'tipping point' lacks utility because it speaks more to the dynamics which precede that point but which were so lacking in this case. Even within the negotiating context it would difficult to describe the acceptance of R2P's inclusion in the World Summit Outcome in such terms. This inclusion derived from the combination of the structural effects of the negotiating process and the way the language was formulated within that context. But the process towards the end-point was not about momentum if described, for instance, in terms of the momentum of supportive states exerting pressure on the ability and willingness of others to avoid following suit. Rather, the complex and curious factor in the story of R2P's path to agreement was that its negotiation was far less problematic, far less contentious than anyone might have expected. As later empirical chapters show, the structuring of the process to a large degree mitigated the potential blocking or removal of R2P from the Summit negotiations (including by so-called 'critical' states). A central reason for this was that there were simply bigger issues in play which relegated R2P's relative place in the list of

member state concerns. Greater prominence to R2P within the negotiations would have unleashed a considerably more pronounced and problematic backlash.

Additionally, complicating the picture is that the institutionalization of R2P was less controversial because its negotiation was decidedly un-transformational in its constitution. R2P was framed, and crafted, as a statement of what already existed rather than anything new or novel. Indeed, post-05 obstacles, contestation, and divisions, are of no surprise considering this point. Institutionalization neither clarified nor answered the multitude of problems which provided the initial impetus for R2P's development partly because states were unable or unwilling to do so in that context, partly because the characteristics of the central problems are less amenable to normative solution than oft-implied, and partly because of how the process arrived at the point of institutionalization. Crucially, the latter of these explanations relates directly to the status of the 2005 agreement. According to the NLC, because of its institutionalization R2P would be situated in Stage 2 with other dynamics kicking into effect towards its continued progression and influence. However, this thesis directly challenges the implication that institutionalization was such a pivotally significant step. In so doing, it questions the depth of the normative foundations which underpin the agreement, suggests the agreement is far less significant than oft-implied, and that post-05 contestation was actually more likely because of how institutionalization was achieved. It is certainly true, and important to note, that not all norms are or have to be institutionalized or negotiated. But because R2P was subject to such processes, it is even more necessary to ensure our understanding sufficiently addresses the central research question of how and why this was achieved.

Thus, with the NLC insufficient to address such questions, to help make sense of the complex empirical narrative in Chapters 3-5 an alternative conceptual framework is required. What follows is a looser and un-modelled framework designed to complement the process-tracing methodological approach described below. Resultantly, it represents a brief guide specifically aimed at understanding the processes of R2P's developments rather than packaged for more general application. As such it is more about facilitating the transition into the analysis by drawing out the key concepts evident in the empirical, intensely political processes. It is also important to note that the framework is not exhaustive, is purposefully

selective in its definition and is not temporally defined according to any notion of 'stages' in the R2P process. There is inevitable cross-over with elements of the NLC but such elements reside differently in this context. Accordingly the 'framework' is defined by the following components: **Entrepreneurship/Agency, Framing, Policy Windows and Agenda-Setting, Advocacy and 'Critical States'** and **Institutionalization and the concept of the Structured Outcome.**

Entrepreneurship/Agency: State-driven and individual entrepreneurship and agency was a constant factor in the story of R2P's promotion and development. The identification of such entrepreneurship by constructivists across a multitude of cases is thus appropriate and important (fn examples). But rather than purely focusing on the efforts of entrepreneurs to build awareness and support for normative change around the idea of R2P, the efforts of alternative agents in explicitly or implicitly impacting upon the development of R2P in a less direct, or less positive sense, also revealed itself as a central factor in the political processes. In this regard, beyond the headline efforts of, inter alia, Kofi Annan, Lloyd Axworthy, Gareth Evans, Allan Rock, Paul Martin and the Canadian and EU governments in support of the idea, the counter-efforts of what can loosely be described as 'non-supportive' actors were also revealed. How this non-support manifested itself varied according to specific time and context-relevant factors. For instance, after the publication of the initial ICISS R2P report subsequent processes revealed numerous examples of political resistance, opposition and mere indifference to the idea. These elements were then most clearly exposed during the 2005 negotiation process where – even with the effect of the structural factors on the negotiations – R2P's leading state and individual advocates had to operate in a context defined by alternative ideas, preferences and interests much more specifically relevant to the potential outcome of R2P⁸⁷. Indeed, this point also speaks to the efforts of alternative entrepreneurs to redefine policy options or acceptable behaviour in seemingly distinct policy areas but which invoke similar normative questions or which reside on shared underlying foundations. Such problems were inescapable with the pro-R2P entrepreneurial efforts complicated by the sheer interconnectedness of the normative web R2P related to. In this regard, the subsequent empirical analysis shows how the formulation of the post-

⁸⁷ Finnemore and Sikkink (1998) 'International Norm Dynamics', p897

9/11 Bush Doctrine involved political and normative framing derived from shared foundational terrain. The political implications of the policy decisions of the Bush administration had the effect of calling into question R2P's appropriateness and relevance as a proposed solution to the issue of mass atrocity crimes. Thus, in order to understand the micro-processes of R2P's development it was clearly necessary to ensure the emphasis on entrepreneurialism was not narrowly defined, but more broadly situated.

An additional factor evident in the empirical analysis was the limited impact of the persuasive strategies employed by entrepreneurs and pro-R2P advocates more generally. Although the framing of R2P was highly significant within the context of the 2005 Summit negotiations, the traditional emphasis on persuasion as the principal method by which entrepreneurs attempt to achieve their aim of convincing states to 'embrace new norms'⁸⁸ is not entirely helpful. It was certainly the intention of key entrepreneurs – at various stages of the process – to successfully persuade states to embrace a specific aspect of the agenda. For instance, in establishing ICISS Lloyd Axworthy and his Department engaged in an extensive bilateral process designed to bind the initiative to broad-based international support. Similarly, the utilization of persuasive tools was at the heart of the Canadian Government's post-ICISS effort to build awareness, and ultimately, support for the idea. However, as later chapters show, the effectiveness of these approaches was continually outweighed by the level of resistance evident in the international system. Indeed, this was most clearly manifest in the inability of advocates (most notably Canada) to elevate R2P onto the international agenda prior to the point at which the structured outcome began to kick-in. That said, the lack of political traction or momentum leading into the World Summit process does not negate the importance of entrepreneurial leadership and individual agency. Arguably it actually amplifies it. At each stage, commitment to the idea, to leadership, to addressing the set of problems associated with civilian protection, to providing resources to support the agenda, and to adapting to difficult circumstances were – for better or worse – continually on display. Lloyd Axworthy's commitment led him to establish ICISS *despite* the overwhelming lack of significant supplementary state support and *despite* momentum draining away from the intervention debate which had dominated the

⁸⁸ For instance, Finnemore and Sikkink describe persuasion as the 'mission of norm entrepreneurs' (1998) 'International Norm Dynamics', p895, 897, 914

1990s international agenda. Moreover, the support structures he left in place on his departure from politics were essential assets in the Canadian Government's subsequent political sponsorship of R2P. There may have been differentiation in the degree of Ministerial support, but without Axworthy's initial entrepreneurial efforts there would have been nothing to sponsor. Indeed, the Canadian Government committed resources and personnel to a twin-track diplomatic strategy fully aware of the obstacles and complexities which lay ahead⁸⁹. A significant effect of this was to ensure Canada was able to mobilize its leadership of the idea once the unexpected opportunity of the World Summit opened-up. Canada's initial strategy was intended, and expected, to be a long-term endeavour, but once the chance to accelerate the agenda within the institutional context so previously resistant emerged the Canadian government's association with R2P enhanced both its ability to react and its relative influence within the Summit negotiations. The proceeding empirical chapters illuminate these elements of the explanation in significant detail. In so doing they reveal a range of skills and qualities on display during the process, and within the context of a hugely difficult normative environment. Aside from persistence, a willingness to commit resources (a factor closely related to institutional or governmental platforms) and to making the most of available opportunities, more direct personal skills are also strongly on display. Within the context of the World Summit negotiations the deft, instinctive political abilities of Canadian Ambassador Allan Rock ensured the platform of his position was most effectively exploited. His charisma, energy and skilful framing of R2P was instrumental in alleviating concerns, in framing and presenting it to states, and to keeping the idea alive and situated in each and every draft outcome document. Thus, even though the structured outcome resides at the heart of the explanation of how R2P was agreed in 2005, individual agency and entrepreneurship was a constant throughout each and every stage of the empirical narrative.

⁸⁹ This is consistent with John Kingdon's argument that entrepreneurs are willing to 'invest their resources – time, energy, reputation, and sometimes money – in hope of a future return', in other words they are willing to 'incur significant costs' without any guarantee they will be successful, Kingdon (2003) *Agendas, Alternatives and Public Policies*, p122, Margaret Keck and Kathryn Sikkink (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*, New York: Cornell University Press, p14

Framing⁹⁰: The construction and use of cognitive frames was a consistent factor in the story of R2P's development. Their explicit use was most closely associated with pro-R2P entrepreneurship and advocacy but was also evident in the use of counter-frames by those less supportive or opposed to the idea. The most significant use of framing was on display during the 2005 negotiations. Even with the powerful effects of the structured outcome, realising the agreement depended upon the successful framing of R2P to win acceptance or acquiescence of member states. In some respects this framing varied according to the actor(s) presenting the specific framing, and the actor(s) the frame was designed to move towards acceptance. But such variations were often subtle nuances of emphasis designed to motivate key actors. For instance, Allan Rock's political engagement with African states would invoke the importance of their ownership of problems on their continent, which was in their interest to address collectively and which R2P was a part of the tool box for doing so (see Ch5). But at the heart of the framing of R2P was a set of core claims designed to provide a clear sense of what R2P was, and should be, about, and, more importantly what R2P was not (meant) to be or about. In simple terms, these frames were designed to convince states that R2P represented nothing new, did not expand or alter existing provisions or processes, was a 'pro-sovereignty' idea, kept the international dimension of R2P narrowly curtailed and related only to a narrow set of specific cases/crimes. From this perspective, the framing of R2P as 'nothing new' also shows how understanding the constitution and application of frames can reveal important insights relating to the level of resistance and limitations on what states are willing to accept. Aside from the Summit negotiations the use of framing was also prevalent in the processes preceding them. Here a range of strategies and tactics – documented in Ch4 – were utilised by post-ICISS R2P advocates led by the Canadian government. But framing R2P during this pre-Summit period was considerably more difficult. An unreceptive political climate and disinterest in the idea

⁹⁰ According to David Snow, framing is the 'conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action', Snow quoted in Keck and Sikkink (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*, p3 (fn4). Benford and Snow provide an excellent review of the framing-associated literature and the dynamics of framing. Three *core framing tasks* they identify are particularly relevant here: 1) diagnostic framing: 'problem identification and attributions'; 2) prognostic framing: 'the articulation of a proposed solution to the problem'; and 3) motivational framing: where appropriate 'vocabulary's of motive' are socially constructed in order to provide 'adherents with compelling accounts for engaging in collective action and for sustaining their participation' in (2000) 'Framing Processes and Social Movements', p615-618

meant advocates were unable to achieve any significant momentum or traction despite evident evolution in the way they sought to present the idea.

Advocacy and Critical States: Though two distinct concepts, significant cross-over between advocacy and 'critical state' status was evident in the story of R2P's development. As already stated, the Canadian government was the leading state entrepreneur which mobilized behind R2P and which was most responsible for crafting framing strategies designed to build support for it. Indeed, in a broader sense the advocacy of R2P – including by ICISS Commissioners and Civil Society – flowed from the strategies and resources applied by the Canadian government. The various elements of post-ICISS advocacy strategy were either resourced, mobilized, or defined, by Canadian government input. The specifics of follow-up changed over time and often in response to political feedback. But throughout the process advocacy was defined by constant repetition, widespread dissemination, political persuasion, 'ground-up' regional advocacy, and responding to political obstacles, opposition and opportunities. Considering the scope of the advocacy objectives the recognition by Canadian officials that 'collective help'⁹¹ was required was pragmatic and necessary. Accordingly, Canada engaged Civil Society actors and mobilized key ICISS 'assets' to take on aspects of the agenda which would have unnecessarily drawn upon its own limited resources. Although it by no means neglected any of these activities – as already stated, Canada was the key orchestrator behind the advocacy of R2P – it did allow officials to drive forward an intergovernmental advocacy track to complement the Civil Society one. As Ch4 shows, this bilateral and multilateral effort was beset with obstacles and set-backs. Minimal progress was made until the unexpected opportunity of the World Summit process opened-up. But without Canadian leadership the World Summit would have been far less of an opportunity than what eventually transpired. Indeed, because of Canada's centrality to the whole pro-R2P effort its status as a 'critical state' is undeniable. This concept is prominent in Finnemore and Sikkink's NLC, and evident in specific case studies such as Richard Price's study of the path to the International Campaign to Ban Landmines (ICBL)⁹². In simple terms,

⁹¹ On collective help in relation to norm building see Cass Sunstein (1995) 'Social Norms and Social Rules', p47

⁹² Finnemore and Sikkink (1998) 'International Norm Dynamics', p901, Price (1998) 'Reversing the gun sights: transnational civil society targets landmines', p634, as Finnemore and Sikkink comment, states may be crucial because they have a certain moral stature citing the support of Nelson Mandela's government for the introduction of the ban in 'International Norm Dynamics', p901

a critical state is a state which, by virtue of its support or non-support, can potentially swing the balance either towards the adoption of a new norm or towards its failure. In this case continuous Canadian leadership was critical to keeping the idea alive and moving towards agreement – particularly within the context of the 2005 negotiations and the structured outcome. Additionally, however, the concept also has real utility in relation to a negotiating context. Aside from Canada’s vital role during the 2005 negotiations a number of other states were also critical to the final inclusion of R2P. A number of EU states – notably the UK – and key African states – notably Rwanda and South Africa – were also critical actors in mobilizing behind the idea. Indeed, the latter were particularly important for allaying concerns and to some extent legitimizing the idea in the key African region. Considering its own history Rwanda’s powerful moral weight was particularly significant. However, critical states also relate to those who could have made the path to agreement considerably more difficult than transpired. In this regard, the effect of the structured outcome and the way R2P was formulated helped mitigate the extent and willingness of certain states unenamoured by the idea to make the path that much more difficult. While on the one hand states like China and Russia (and indeed the US) were convinced that R2P was non-transformational, the sheer scale and complexity of the agenda also impacted upon their negotiating priorities. Once convinced the agreement was sufficiently limited, the need to commit more considerable effort to its elimination or further weakening was less of a priority. Indeed, as Ch5 clearly shows, the structured outcome impacted across the board on the priorities and profile of R2P to the considerable benefit of its propulsion towards agreement.

Policy Windows and Agenda-Setting: Elevating R2P onto the international political agenda proved to be one of the most difficult aspects of the entire process. Continuity in terms of international attitudes towards the issue of humanitarian intervention ensured the ICISS process was embedded in what is described as the ‘fading out’ of momentum around the effort to achieve political solutions and consensus (see especially Ch2 and Ch3). R2P would eventually find its place on the reform agenda leading to the 2005 World Summit, but the path towards this point would be complex and unpredictable with important policy windows playing major roles in the explanation. While we can accept the definition of agenda setting as the ‘process in which state actors, international organizations, and non-

state actors struggle to decide whether an issue deserves a prominent place on the political agenda⁹³ understanding the practical mechanisms and effect of this process requires close attention to detail. As a general point this process is undoubtedly competitive and unpredictable. The number of issues which can be actively considered at any one time is limited, and highly contingent. Thus, entrepreneurs will have to be prepared to compete with other issues, entrepreneurs and interests to gain a place on the international agenda.⁹⁴ Moreover, agenda-setting is bound-up with predictable and unpredictable policy windows and the preparedness of actors to exploit or react to them. Indeed, as John Kingdon points out, policy windows can provide entrepreneurs greater opportunity to 'push their pet solutions, or to push attention to their special problems' onto the international political agenda.⁹⁵

Elevating R2P onto the international agenda was a primary objective of Canadian official's post-ICISS but proved highly problematic to achieve. The opening of an unexpected policy window due to the shock of the 9/11 terrorist attacks exacerbated the fading out of interest in state willingness to discuss an idea related to humanitarian intervention. It also provided an opportunity for the formulation of policies and policy doctrines which challenged R2P's relevance, utility and potential impact. That said, the development of such alternative policies – most notably by the US administration – led to the invasion of Iraq and a profound crisis of the international system. The significant fractures to multilateral relationships gave rise to an additional policy window which Kofi Annan fully exploited. This initial policy window was entirely unpredictable, opening as a result of a chain of events and a crisis which engulfed the international agenda. The upside in terms of R2P's path towards agreement was that the crisis provided the backdrop and platform from which Annan was able to project his call for an assessment of the nature of the threats facing the world, and the UN's place within it⁹⁶. It was from this that the crucial institutionalized response

⁹³ Oran Young quoted in Yanacopoulos (2004) 'The Public Face of Debt', p720

⁹⁴ Paradoxically, in the case of R2P the scale of the agenda for the World Summit process was advantageous to its prospects. To see how this agenda was defined, and the effects it had, see Ch5

⁹⁵ John Kingdon (2003) *Agendas, Alternatives and Public Policies*, 2nd ed., London: Longman, p165 and Ch8

⁹⁶ Unpredictable windows open due to a random unexpected event, change or crisis, which then provide entrepreneurs with a platform 'to which they can attach their ideas or from which they can launch their arguments'. As Joshua Busby remarks, such events can also 'enhance the prominence of certain frames' in (2003) 'Framing Truths for Power: The Strategic Character of Persuasion', *Paper prepared for the International*

emerged. Annan's establishment of the High-level Panel on Threats, Challenges and Change (HLP) provided the vehicle to propel the R2P agenda stagnating under considerable pressure. Additionally, however, the HLP would also become a key 'linking mechanism' in the process towards the 2005 World Summit. In this respect, Annan's agenda-setting role would be crucial in exploiting a further predictable policy-window in the form of the follow-up conference to the Millennium Summit (which became known as the 2005 World Summit)⁹⁷. Two initially distinct processes would merge into one process defined by a broad, ambitious reform agenda to be negotiated in the six months prior to the September World Summit. Annan's comprehensive report *In Larger Freedom* – which drew from the work of the HLP – would provide the initial agenda for the Summit negotiations thus ensuring that the initial planned agenda for the Summit was dramatically expanded. Most importantly, Annan's report included a clear endorsement of R2P and called upon states to do likewise. This endorsement helped lock R2P into the subsequent negotiating agenda. The processes around these developments are important factors in the structured outcome logic outlined below. But they also emphasize the crucial role of individual agency in altering the dynamics around elevating R2P onto the international agenda in a radically accelerated timeframe. Finally, within the context of the negotiations the scale and complexity of the reform agenda provided an additional boost to R2P's prospects. Though a central task had been accomplished in elevating R2P onto the negotiating agenda it was to R2P's benefit that the agenda was so vast. Its vastness helped to relegate R2P's relative importance vis-à-vis other priorities and proposals. These beneficial pressures – which stemmed from the exploitation of policy windows and successful agenda-setting – are essential explanatory factors for addressing the central research question of how R2P was agreed in 2005.

Institutionalization and the Structured Outcome: The Canadian government's aim of elevating R2P onto the international agenda post-ICISS was directed specifically at the United Nations. Aside from seeking to achieve a place for discussion of R2P on the formal General Assembly (GA) agenda, the *long-term* objective was to realize institutionalization in

Studies Association conference, Portland, Oregon, p18. Ch4 deals specifically with the impact of 9/11 in terms of the policy positions of states and the international political agenda

⁹⁷ Predictable windows open because of expected or anticipated occurrences such as planned meetings, the publication of regular or expected reports, the end of a budget cycle, or the need to renew a recently expired program or policy. On predictable policy windows see Kingdon (2003) *Agendas, Alternatives and Public Policies*, p186

the form of a GA resolution complemented by a more operationally focused SC resolution. Considering the lack of political progress made in the period 2001-2004, the institutionalization of R2P by September 2005 was an undeniably surprising development. As the previous facets of this conceptual framework have explained, exploiting the opportunity of the World Summit certainly depended upon the skilful mobilization of individual agency. But explaining how R2P transitioned from a lack of political traction to institutionalization in such a rapid period of time is arguably more significant considering the lack of normative momentum underpinning this development. The ability of agency to exploit the opportunity was possible because the dynamics leading to that point were so distinct. In this respect, the utility of institutionalization – described as the process ‘whereby new norms, values and structures become incorporated within the framework of existing patterns of norms, values, and structures’⁹⁸ – is limited on its own terms. Our explanation needs to embed this concept within the context of the detailed processes leading to that point. It needs to acknowledge the causally significant effects of the structural characteristics of the process and the way they interacted with agency most notably during the intense multilateral negotiations. Indeed, this combination is necessary not only to show how and why R2P was agreed but because from a more general perspective not all norms are negotiated and not all norms are institutionalized. Hence, the concept of the structured outcome provides a powerful tool for addressing the surprising, rapid, unexpected and not necessarily positive development of R2P from political stagnation to political agreement. More specifically, its analytical power derives from two key elements. First, the structured outcome explains what changed R2P’s political prospects. It shows how and why the agreement was possible despite the lack of traction and preceding momentum, doing so by packaging the mechanisms and dynamics which explain the propulsion of R2P in the way that frameworks like the NLC cannot. This is crucial because there was no preceding evidence of any “bandwagon effect” nor was there any catalytic ‘coalition-building’ which might lead to such a dynamic.⁹⁹ As revealed in the section on framing, this manifested itself in a complete lack of desire for any significant or meaningful departure from existing processes and provisions in relation to the role of the international community vis-à-vis

⁹⁸ John Kimberly (1979) ‘Issues in the Creation of Organizations: Initiation, Innovation, and Institutionalization’, *The Academy of Management Journal*, Vol. 22, No. 3, p447

⁹⁹ Kingdon (2003) *Agendas, Alternatives and Public Policies*, p161-2

mass atrocities. Second, because the structured outcome emphasizes the effects of the structural factors on realising the outcome it inevitably has consequences for how we understand the significance and status of R2P. The empirical findings raise questions about the speed of R2P's development, and suggest that once the structural factors which propelled it towards agreement were removed a reopening of contestation and debate would be even more likely. More significantly, even with these factors facilitating the path to agreement, the sheer limited nature of it suggested very little was likely to change in how the international community seeks to address mass atrocity crimes.

Explaining the factors which constitute the structured outcome logic and showing how they interact and interrelate is a complex affair. The concept is first introduced in Ch4 and is then traced more specifically – along with the multilateral negotiations – in Ch5. The crucial point about the structured outcome is that it shows how R2P was propelled from late 2003 by a series of structuring factors rather than by normative momentum or acculturative dynamics. With an advocacy process stalling in the face of multilateral resistance the High-level Panel was *the* change which most dramatically altered R2P's political prospects. Once it had endorsed R2P in its report, subsequent factors locked R2P into the Summit process in a way which dramatically *reduced* the possibility that it might be *removed* from the 2005 negotiating package. Viewing it in this way also helps ensure that there is no artificial separation between structure and agency. Indeed, in explaining how and why R2P was agreed structure helps us understand how the agreement was possible, while the micro-processes of R2P's emergence and negotiation enable us to better understand its 2005 formulation. The emphasis the High-level Panel is particularly significant, however, because its establishment was the first stage in R2P's structured outcome. It is also significant because it was born out of the Iraq war – an event oft-attributed as a negative in R2P's development but which actually represented the principle exogenous shock which enhanced R2P's political prospects. Iraq provided the impetus for an assessment – through the High-Level Panel – of how existing international structures dealt with threats to international peace and security, and how they might be changed to address a raft of long-standing and emergent policy issues. In terms of the overall process, this institutional innovation was arguably the high point of Annan's ability to indirectly shape R2P's political prospects.

Defining the HLP as Stage 1 of R2P's structured outcome also speaks directly to understanding how and why R2P was agreed. This is what the structured outcome is about. It identifies and packages the structural factors *within/of* the process which enabled the agreement of R2P. In this respect, it identifies a wide range of endogenous factors including the HLP (for its agenda-setting vehicular role and endorsement of R2P); Annan's subsequent report *In Larger Freedom* (for reiterating and amending the HLP's endorsement of R2P, thus locking R2P into the World Summit process); and, the design and structure of the member state negotiations (including the 'piggy-backing' of the HLP/ILF agenda onto previously agreed Millennium Review Conference processes, the adoption of a 'package'-driven approach to reform, the introduction of a smaller 'core group' of states, and resource constraints relating to time and scale). Uniting these is the idea that the structural characteristics of the negotiation process were causally significant for realising the outcome. The extent to which the outcome was possible depended upon the possibilities the structure provided: the way it locked R2P into the GA negotiations; the way it narrowed the odds for its inclusion and limited the resources of states and their capacity to maintain pre-existing policy lines/positions in the context of the processes characteristics.

Having defined the approach in theoretical terms the final element relates to the methodological combination of a process-tracing variant and the use of elite-level interviewing and extensive documentary analysis backed-up by equally extensive knowledge of existing primary and secondary literature. Such qualitative methodological tools were selected for what they offer in terms of ensuring the *micro*-processes of R2P's development were explored and explained in a sufficiently detailed way. It is important to recognise that process-tracing is a method, a tool researchers (and increasingly constructivists) use for the conduct of research. As Bennett and George explain, it has numerous variants and its use can be for the purposes of theory testing or theory development.¹⁰⁰ In this case the use of process-tracing is designed to test the hypothesis that a more detailed understanding of process yields better information about the likelihood of prospective compliance with R2P. Thus, an analytical variant of process-tracing based upon the 'use of hypotheses and

¹⁰⁰ Alexander George and Andrew Bennett (2005) *Case Studies and Theory Development in the Social Sciences*, London: MIT Press, p208-12

generalizations' is adopted here as the approach best placed to overcome the weaknesses of the NLC and extract a more detailed analytical narrative of the development of R2P.¹⁰¹ It is certainly a demanding, time-consuming, resource-intensive and highly complex approach. But the benefits are more than worthwhile as demonstrated by the empirical chapters which challenge many of the dominant perspectives found in the current literature.

Nowhere is this combination of enormous complexity but rewarding pay-off more evident than in the vast chapter which reconstructs the negotiation of R2P into the 2005 Summit Outcome.¹⁰² It captures the essence of the methodological approach which defines Chapters 3-5. The benefits reveal themselves later on, but relevant here is that the process of developing the empirical account was dependent upon process-tracing using the complementary tools of interviewing and documentary research. Indeed, developing the narrative was the final stage of the process. Previous stages involved the complete deconstruction of the process in order to reconstruct it into an appropriate explanatory format for addressing how/why R2P was agreed, and in what form. Indeed, this process defined each of the empirical chapters.¹⁰³ To achieve this, elite-level, semi-structured interviews were utilised as a primary research method. The selection of interview participants was inevitably targeted due to the costs involved, but nevertheless an impressive range of individuals were involved successfully in the research process. The modalities of such interviewing was generally either face-to-face or via telephone, and – if ethical permissions were forthcoming – also digitally recorded. That said, because of the scale of the project and the need to deepen understanding of existing or new avenues of research (e.g. to uncover new information, address contestation/inconsistencies or to enhance detailed precision) the use of email was a constant invaluable mechanism for

¹⁰¹ As Bennett and George explain, in this 'more analytical form...at least parts of the narrative are accompanied with explicit causal hypotheses highly specific to the case without, however, employing the theoretical variables for this purpose or attempting to extrapolate the case's explanation into a generalization. A still stronger form of explanation employs some generalisations – laws either of a deterministic or probabilistic character – in support of the explanation for the outcome; or it suggests that the specific historical explanation falls under a generalization or exemplifies a general pattern', (2005) *Case Studies and Theory Development in the Social Sciences*, p211

¹⁰² See Chapter 5

¹⁰³ And, indeed, those chapters removed due to word constraints, for example a chapter on Annan's entrepreneurial efforts, which included a narrative of the drafting of his famous 'legitimate in the pursuit of peace' Kosovo statement, was removed due to the need to focus on other, less well understood elements of the R2P process. These would be reworked in an expanded edition of this thesis

discovery. Such emails were pursued with individuals not formally interviewed or with those who were interviewed and who were happy to remain involved in the process.¹⁰⁴

Aside from developing the empirical base of the research, the continual effort to engage elites in the research process helped build and reinforce relationships and contributed to an evident 'snowball' in the interviewee sample. From the outset, a range of key elites were targeted for contact – the majority of which were successful – but as the process unfolded a bandwagon dynamic positively impacted upon the availability and willingness of additional individual participation.¹⁰⁵ This was especially important when trying to get to the heart of governmental processes like the development of the ICISS proposal documented in Chapter 3. Indeed, a primary advantage of interviewing is that it allows one to delve into the more 'inner workings' of political process in a way that other methods do not.¹⁰⁶ But this requires considerable organization, patience and preparation. For instance, semi-structured interviews combine pre-planned questions designed to focus discussion but with in-built flexibility. It enables the interviewer to 'think on their feet' in order to adapt the schedule based upon its real-time progress. But this is ultimately dependent upon detailed planning and sufficient confidence as an interviewer.¹⁰⁷ This was evident during the first interview conducted in November 2008 with former Canadian foreign minister Lloyd Axworthy. Preparation for such an elite interview involved enormous secondary reading, extensive formulation of interview questions in addition to technical, logistical and ethical arrangements. The subsequent outcome was a free-flowing interview of significant

¹⁰⁴ I should especially thank all those people who regularly answered numerous questions by email. These included very busy current government officials, ambassadors, academics and UN officials. Indeed, it should also be noted that multiple-interviewing was a feature of this research. Some individuals were interviewed up to four times, often reflecting the extent of their involvement across the process

¹⁰⁵ As the process unfolded more and more contacts were pursued via telephone or written means. The enormous costs involved in interviewing merely exacerbate the costs of doing a PhD. Taking this further, the interviewee sample consisted of a range of notable individuals and positions. These included centrally-placed current and former government officials, policy-makers, diplomats/ambassadors, UN officials, prominent academics and so-called 'public intellectuals'. Interviews relevant to all stages of the process were conducted from Annan's entrepreneurial challenge, to Axworthy's human security agenda and establishment of ICISS, the contrasting UK post-Kosovo efforts to develop SC-based guidelines for the use of force, the work of ICISS and the post-2001 development of R2P advocacy within a dramatically changed political context, and the multilateral processes leading to the negotiation and agreement of R2P at the 2005 World Summit. A list of named interview participants is included in the bibliography, but it is vital to note that a significant number of contacts and sources of information have been kept completely anonymous as per ethical agreements

¹⁰⁶ Darren Lilleker (2003) 'Interviewing the Political Elite: Navigating a Potential Minefield', *Politics*, Vol. 23, No.3, p208

¹⁰⁷ On this latter point interviewing, like any other skill, requires considerable practice and development

empirical benefit but which then required additional processes relating to transcription and analysis.¹⁰⁸ The whole method is unquestionably resource-intensive.¹⁰⁹

Piecing together the empirical analytical narrative which follows thus depended upon structured planning, exhaustive effort and a willingness to embrace opportunities as they arose. But it also required critical awareness. Interviews of any ilk yield specific problems.¹¹⁰ For instance, access constraints, resource-limitations and ethical issues are always factors which can complicate an interviewing process. But even more significant is how to navigate the management, presentation and interpretation of reams of empirical information yielded. It was apparent during the early stages that the formulation of the written analysis would have to be wary of some important factors. First, because of the complexity, scale and time-frame of the R2P development processes documented here it was evident that there were inescapable limitations to an individual interviewee's knowledge of the detailed developments occurring elsewhere in the process. They, quite reasonably, spoke to what they knew best. This is, of course, advantageous to the extent that it can produce accounts of greater specificity and detail, but it can also impose a bias upon one's understanding if this is ignored and other methods are not utilised. Second, related to this was the self-evident tendency of some to elevate their own involvement and importance. 'Principled trumpeting' and self-aggrandizement were sometimes particularly overt. Finally, there were inevitable constraints upon the extent of information interviewees could recall from events which took place years previously. Although not as problematic as it might have been, the need to cross-check details and chronology was continually necessary.

¹⁰⁸ In this case the interview transcript was in excess of 17k words

¹⁰⁹ Over thirty-five formal interviews were conducted during the course of the research in addition to many dozens of email communications

¹¹⁰ On the use of interviewing, including in relation to the semi-structured approach adopted to supplement the process tracing methodology, see Stroh, Matt (2000) 'Qualitative Interviewing' in Burton, Dawn (Ed.) *Research Training for Social Scientists*, London: Sage, Burnham, Peter, Gilland Lutz, Karen, Grant, Wyn and Layton-Henry, Zig (2008) *Research Methods in Politics 2nd Edition*, Basingstoke: Palgrave Macmillan, Tansey, Oisín (2007) 'Process Tracing and Elite Interviewing: A Case for Non-probability Sampling', *Political Science & Politics*, Vol. 40, Issue 4, pp.765-772, Goldstein, Kenneth (2002) 'Symposium: Getting in the Door: Sampling and Completing Elite Interviews', *Political Science and Politics*, Vol. 25, Issue 4, pp.669-972, Leech, Beth L. (2002) 'Symposium: Asking Questions: Techniques for Semistructured Interviews', *Political Science and Politics*, Vol. 35, Issue 4, pp.665-668, Aberbach, Joel D. and Rockman, Bert A. (2002) 'Symposium: Conducting and Coding Elite Interviews', *Political Science and Politics*, Vol. 35, Issue 4, pp.673-676, Foddy, William (1993) *Constructing Questions for Interviews and Questionnaires: Theory and Practice in Social Research*, Cambridge: Cambridge University Press, Holstein, James, Gubrium, Jaber F. (2003) *Inside Interviewing: New Lenses, New Concerns*, London: Sage, Kvale, Steiner and Brinkmann, Svend (2009) *InterViews: Learning the Craft of Qualitative Research Interviewing Second Edition*, London: Sage

Indeed, the benefits of interviewing outweigh the negatives if the researcher is sensitized to the potential pitfalls. This means ensuring individual accounts are not taken at face-value, that the interview sample is sufficiently broad, and most importantly they are used in combination with other methods and empirical information. In this case, extensive documentary data was used to construct the analytical narrative but also to carefully cross-check the interview material. This was supplemented with secondary literature and first-hand accounts by individuals involved in the process. It is important to note, however, that the use of secondary literature varies considerably. Because of the underlying process-driven hypothesis a central point was to yield more detailed information than has previously been evident in the study of R2P. In some cases this meant the secondary literature was less well-developed and therefore offered less benefit.¹¹¹ In others, a combination of interview material and documentary analysis exposed weaknesses in secondary accounts which actually became a necessary part of the empirical narrative. But to show how documents were used, the development of the World Summit chapter (Ch5) was based upon seventy-thousand words of primary documentary extracts and over seventy-thousand words of interview *extracts*.¹¹² Such documentary extracts included the rolling draft negotiating texts, policy documents/proposals, press releases, government and diplomatic statements, and documents made available under Freedom of Information requests.¹¹³

Subsequent chapters provide a much clearer picture of how these methods – designed to realise the central hypothesis – worked in practice. They each emphasise just how important process is for understanding the development and potential impact of international norms. They highlight both the theoretical limitations of the NLC and the tendency to overstate the eventual of agreement of R2P in 2005. This thesis does not,

¹¹¹ This is particularly noticeable in the ten thousand word account of Axworthy's establishment of ICISS. Although widely written about, including by Axworthy himself, the approach adopted here was purposefully directed at going much further and deeper

¹¹² The extracts were captured in a separate file titled 'Journey of the R2P: 2004-2005'. A similar document was produced to help trace the development of R2P from 2001-2004. It should also be noted that this does not include many specific email communications with numerous individuals relating to individual elements of the overall process

¹¹³ FOI requests were pursued throughout the project. Although often very complex some extremely interesting documents were released, including, for instance, extracts posted from the UK Mission to the UN to keep the FCO in London informed of progress of the R2P negotiations during 2005, see Ch5

however, take up the broader theoretical question of whether the NLC is the appropriate way to model normative development; in relation to the development of R2P it demonstrates the power of the micro-process approach. However, prior to beginning this account it is necessary to embed the detailed processes in broader context. The next chapter on the prehistory of R2P deals with this necessity.

Chapter 2: From Macro to Micro

The story of “Constructing the Responsibility to Protect” emerges from the empirical tracing in Chapters 3-5. Beginning with Axworthy’s establishment of ICISS and culminating with a deconstruction of the Summit negotiations, the story is one of enormous complexity defined by non-classic, non-linear, normative development. Although the time-span is short (1998-2005) particularly revealing was just how surprising and unexpected the eventual agreement was. This in itself warrants close examination. No-one could have predicted the transformation in political prospects which took place once the structured outcome kicked into effect in 2005. Before this, the political momentum around R2P was *regressive* rather than *progressive* despite the considerable efforts of individual and state-sponsored advocacy. In many respects, the reaction R2P provoked post-2001 mirrored the humanitarian intervention debates of the 1990s. The dividing-lines were inherently similar, albeit conditioned and exacerbated by the post-9/11 context. Ironically, however, it was this changed context which provided the catalyst for the unexpected changed prospects. The divisions exposed by the invasion of Iraq precipitated a crisis which engulfed the international system and mobilized Annan’s Summit-focused response. This helped redefine the international agenda, locking R2P into the subsequent negotiations and provided R2P with something it had so far failed to muster: political traction.

This triumvirate of chapters carries through these arguments with exhaustive commitment to detail and a matched commitment to asking the questions necessary to deepen our understanding of R2P’s development. But with the limited time-frame embedding them within a brief historical context is necessary. How one defines this context is dependent upon the tools one applies. For instance, a macro-analysis of the historical conception of sovereignty, or a genealogy of protection, would provide distinct explanations of the development of R2P.¹¹⁴ But even with this pre-history more qualified in scope – focusing on

¹¹⁴ Such approaches would enable one to consider different applications and meanings of international norms over a much greater period of time – an approach which may also bestow a different degree of significance on the R2P

the post-Cold War era¹¹⁵ – historical perspective is necessary to make sense of the process-driven empirical chapters. The research logic and constructivist ontology demands it.

Axworthy's establishment of ICISS was a seminal catalyst in the development of R2P, but as Ch3 shows, his response was motivated by a series of events and changes which dominated the post-CW decade. The crux issue was humanitarian intervention with intra-state crises dominating international politics in the 1990s. The question of how the international community could (or should) be mobilized to respond to gross violations of human rights was – at its most fundamental – about the very nature and purpose of the international system. This was especially acute with humanitarian intervention essentially focused upon the legitimate *use of force* to provide outside protection for populations within the borders of an individual State. The polarized extremes of this debate were captured by contrasting responses to two epoch-making events. First, effective *inaction* during the 1994 Rwandan genocide had conscious-shocking implications and personally impacted upon the responses of key actors thereafter. The question this event led many to ask was: how could the international system *not* react to uphold basic human rights in such an extreme scenario? Second, by contrast the equally influential intervention in Kosovo exposed the consequences of *action*. NATO air strikes against Yugoslavia to prevent ethnic cleaning divided the international community. The lack of UN authorization proved especially controversial, fracturing the international community as the consequences of the illegality¹¹⁶ were played-out in heated debates across numerous fora.¹¹⁷ Concern centred on the potential precedential effect of the intervention and the apparent weakening of an international system predicated upon sovereignty and non-intervention. China, Russia, India

¹¹⁵ Cold War, herein "CW"

¹¹⁶ The Independent International Commission on Kosovo would controversially describe the action as 'illegal but legitimate', see (2000) *Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford: Oxford University Press

¹¹⁷ The debates were especially prominent during the autumn of 1999 after Kofi Annan's famous speech to the UN General Assembly, see especially the UN plenary records for the period 20 September – 2 October 1999 (see bibliography). As Canadian and UK officials described, the Kosovo intervention also led to a period of 'internal reflection' by governments across the global, but especially within the West as policy options were actively considered. In the case of Canada and the UK this led to policy proposals directly relevant to the development of R2P. Additionally Kosovo provoked considerable internal debate within the UN System – especially in the SG's office on the 38th floor, see Traub (2006) *The Best Intentions*, pp.91-109

and the NAM were especially inflamed by what transpired in this case – an important point considering their positions in relation to the negotiation of R2P in 2005.¹¹⁸

Although the challenge of humanitarian intervention has multiplicitous dimensions,¹¹⁹ these examples captured a stark dilemma at the heart of the debate and demonstrated just how difficult realising a political solution would be.¹²⁰ This is not to dismiss, however, equally problematic events in *inter alia* Somalia (1993-1995) and Srebrenica (1995). These contributed to the sense of challenge and momentum around the issue of protection and impacted upon the international community's willingness to act subsequently.¹²¹ Indeed, Kosovo may represent the apex-point of the debate which triggered more concerted efforts to respond, but it can only be fully understood in relation to the wider context of the 1990s. Key features of this context are briefly explored below, but particularly significant was the rapid decline in the SC's capacity to act in the way it had done in the early years of the decade. The UN's response to Iraq's invasion of Kuwait, and the 1992 SC Summit were undoubted high-points.¹²² But as the decade progressed P5 enthusiasm to act 'ebbed away'.¹²³ This was especially acute post-Somalia. Certainly the 1990s saw some important changes relevant to the development of R2P including an expanded understanding of what constituted a threat to international peace and security, a significant reduction in the use of

¹¹⁸ See Chapter 5

¹¹⁹ For more dedicated discussion of humanitarian intervention, see J.L. Holzgrefe and Robert Keohane (Eds.) (2003) *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press; Jennifer Welsh (Ed) (2006) *Humanitarian Intervention and International Relations*, Oxford: Oxford University Press; Mats Berdal and Spyros Economides (Eds.) (2007) *United Nations Interventionism 1991-2004*, Cambridge: Cambridge University Press; Simon Chesterman (2001) *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford: Oxford University Press; Fernando Tesón (1988) *Humanitarian Intervention: An Inquiry into Law and Morality*, New York: Transnational Publishers; ICISS (2001) *The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, Ottawa: IDRC; Michael Walzer (2006) *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Books; Nicholas Wheeler (2000) *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press

¹²⁰ Ramesh Thakur's 'triple policy dilemma' is a useful way of framing the difficulties in this regard, see (2006) *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge: Cambridge University Press, p203

¹²¹ This is especially true in the case of Somalia. As David Hannay remarks, it helped instil a 'general sense of risk aversion in the [SC] and among the potential pool of troop contributors, which made itself felt with extremely damaging consequences in the cases of Haiti and Rwanda', in (2008) *New World Disorder: The UN after the Cold War – An Insider's View*, London: I.B. Taurus, p138

¹²² The first ever SC Summit was held on 31 January 1992 and is regarded as a landmark moment in the history of the SC see 'Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting', S/PV.3046

¹²³ Interview with David Hannay (London, 9 March 2010), see also Kofi Annan quoted in Department of Foreign Affairs and International Trade (DFAIT) (2000) 'Canada on the United Nations Security Council: First Year Report', 27 January 2000

the veto, greater elements of thematic engagement, and an evolution in aspects of its working-practices.¹²⁴ But even so, collective P5 appetite for action, especially in hard-end cases, declined dramatically.

A central problem was that the heightened post-CW expectations rapidly ran into trouble. After some initial successes, the dramatic increase in the number and scale of external 'multidimensional' UN-mandated interventions began to take their toll upon the Organization's credibility.¹²⁵ Expectations moved well ahead of the UN's capacity curve. The 'shattering failures' in Somalia, former Yugoslavia and in Rwanda were symbolic of an Organization grossly overstretched, and of a marked decline in the willingness of the P5 to act.¹²⁶ That said, however, an important factor was that the SC continued to authorize peacekeeping/peacebuilding missions even after these failures, and that humanitarian concerns were an increasingly evident part of the justification mix invoked by the SC (and the UN more generally) throughout the 1990s. These matter because they are also relevant to understanding the evolution of expectations and the entrepreneurial responses provoked by those above-mentioned failures. The first spoke to a continuing willingness to engage the UN in highly complex, ambitious and ultimately intrusive interventions to help build peace and to support the establishment of State structures for self-governance.¹²⁷ These actions, even with host state consent,¹²⁸ both reflected, and contributed, to an expansion in what forms of international engagement might be acceptable/possible.¹²⁹ Second, the integration

¹²⁴ See especially David Malone (Ed.) (2004) *The UN Security Council from the Cold War to the 21st Century*, London: Lynne Rienner Publishers

¹²⁵ As Mats Berdal comments 'common to the post-Cold War interventions...is a level of ambition that is qualitatively different from that of UN field operations during the Cold War' in (2009) *Building Peace After War*, Abingdon: Routledge, p13. To give a sense of the vast increase in peacekeeping operations from 1989-1994 the SC authorized 20 new operations, with the number of peacekeepers rising from 11,000 to 75,000, source: DPKO

¹²⁶ Interview with David Hannay (London, 9 March 2010)

¹²⁷ See Mats Berdal (2009) *Building Peace After War*. Two particularly ambitious and hugely complex examples are the UN missions in Kosovo (UNMIK) and East Timor (UNTAET) respectively. In both cases the UN served as an 'administrator' tasked with an extraordinary range of responsibilities and functions. For UNMIK see UN Security Council 'Resolution 1244', S/RES/1244 (1999), 10 June 1999; for UNTAET see UN Security Council 'Resolution 1272', S/RES/1272 (1999), 25 October 1999

¹²⁸ Or in some cases there lacks any internal State and administrative structure/capacity for consent to be as significant a factor in the decision to intervene

¹²⁹ This is not to say however that the propensity for the UN to take on ever greater tasks and responsibilities in the name of the international community has not provoked very real hostility in relation to its impact upon state sovereignty. During the World Summit negotiations the proposed Peacebuilding Commission drew considerable opposition and resulted in significant changes to the language adopted by states, see Ch5

of human rights and associated provisions into UN mandates, and the explicit or implied use of humanitarian justifications for the use of force, helped frame the development of policy frameworks designed to mobilize better responses to humanitarian crises through the SC but also to determine what to do should SC authorization not be forthcoming. Here the notion of 'sovereign responsibility' would inform the efforts of Annan, Axworthy, Blair and ultimately ICISS.

Thus, this broader context is clearly important even if it necessarily complicates the picture of R2P's development. Indeed, these factors may have fed into the subsequent development of R2P, but they also exposed some of the central obstacles and risks to achieving better, more consistent responses to crises like Rwanda in 1994. Accordingly, one should be guarded in how these dynamics are characterized for a number of reasons. First, by definition humanitarian intervention is a significantly more coercive enterprise. It is often non-consensual, and requires a commitment of resources and political will not easy to muster. Resultantly it is regarded as a more direct affront to sovereignty than international action permitted by consent or conducted in the effective absence of internal institutions. Second, action authorized by the SC during the 1990s was not doctrinally-driven but was based upon case-by-case assessments of the specific circumstances. This does not negate possible precedential effects, but is nevertheless a vital distinction relevant to any discussion of selective inconsistency and the entrepreneurial responses considered herein. Despite considerable effort (see below) there was no desire to codify or systematize the SC's role in relation to humanitarian crisis however broadly or narrowly defined.¹³⁰

This point is equally relevant to concerns relating to the complicating use of humanitarian justification and the extent to which attempting to alter the pre-existing normative framework might impact upon the decision to intervene. Indeed, there is worthiness in Simon Chesterman's observation that 'interventions do not take place because states do not want them to take place' and his argument that the 'suggestion that the present normative order is preventing interventions that should take place' is 'simply not true'.¹³¹ Though somewhat overstated, Chesterman's argument points to the fact the SC has within its

¹³⁰ As later chapters show this did not change at any stage during the development and negotiation of R2P

¹³¹ Chesterman (2001) *Just War or Just Peace?*, p231

authority the ability to act – something which was recognised and reflected in the 2005 agreement. A more subtle distinction, however, is that the 2005 reaffirmation of existing Charter processes/provisions was designed to limit the development and scope of the international normative context.¹³² From a P5 perspective this was certainly about protecting existing prerogatives and freedom to manoeuvre, but equally significant were concerns about the implications R2P might have on state sovereignty. Many states, including China and Russia sought to limit its international dimension precisely because they wanted to guard against fundamentally altering the balance between individual sovereignty and the international community – hence the lack of agreement on an international R2P. This also meant that considerations relating to responses to future crises would continue to be *partly*-shaped by the sensitivity of the sovereignty issue.

But this is more about looking at the debate from a slightly different perspective because Chesterman's position also speaks to a broader set of issues. Foremost among these is the issue of what drives state responses, bound-up with that undeniable '90s trend favouring the deployment of the language of humanitarianism as legitimizing discourse.¹³³ Despite this trend, the inconsistency of responses and the potential misappropriation of such language to cover or complicate alternative, including less pure, motives revealed an underlying continuity: namely that political interest and political power remained predominant.¹³⁴ Resultantly, the extent to which one could rely upon humanitarian justification to mobilize international responses was/is considerably more qualified, not least because as this discourse developed it became more difficult to untangle the complex web of motivations driving case-specific responses. Thus, determining what lies behind state positions is more challenging, more likely to provoke concerns about the true purpose of proposed interventions,¹³⁵ but ultimately increasingly central to determining both the legitimacy of individual cases and the likelihood of developing improved responses to humanitarian crises. But speaking more directly to the process leading to apex of the intervention debates

¹³² This is picked up very strongly in Chapter 5

¹³³ See Nicholas Wheeler (2000) *Saving Strangers*

¹³⁴ Berdal (2009) *Building Peace After War*, p13-15

¹³⁵ This was especially born-out by the path of R2P's development in the post-9/11 context. As an example the relationship between R2P and preventive war/regime change after Afghanistan and Iraq is considered in Ch4 which lays the foundations for understanding the broader context for the negotiation of R2P in 2005

around Kosovo, after the Somalia debacle¹³⁶ the relationship between interest, power and humanitarianism was brought into much sharper relief. There was an evident regression in the willingness to commit to missions based purely upon State-breakdown or humanitarian crisis within the confines of a distant land. The US administration's response was most telling, developing a Presidential Directive that 'implied sharp curtailment of American involvement in future armed humanitarian intervention'.¹³⁷ This Directive placed 'American interests' at the heart of a new framework for 'decision-making on issues of peacekeeping and peace enforcement' in the post-CW context.¹³⁸ This was the prime example of a documented policy response reflecting rapidly changeable attitudes towards issue of intervention. But the most practical implementation of this regression was the impact it had upon decision-making in response to the situation in Rwanda. Though the UN Secretariat had to face its share of the burden of accountability, the lack of direct 'interest' in the situation was surely a telling factor behind the lack of concerted response to the slaughter.¹³⁹

The cumulative effect of Somalia, and the tragedies in Rwanda and a year later in Srebrenica was to have an enormous negative impact upon the organizational credibility and reputation of the UN. Even with undoubted internal failings, it was apparent just how beholden the UN was to its member states, and how challenging (impossible even) it was to

¹³⁶ I speak here mainly to the rapid US withdrawal after the death of 18 American soldiers in Mogadishu. The overall story of the Somalia intervention is considerably more complex, and impossible to consider here. But for the purposes of this prehistory, the most important factor was the impact it had upon the humanitarian intervention debate and the development of US foreign policy under Clinton. For well-argued accounts of the Somalia case see: Walter Clarke and Jeffrey Herbst (1996) 'Somalia and the future of humanitarian intervention', *Foreign Affairs*, Vol. 75, No.2, pp.70-85; Chester A. Crocker (1995) 'The lessons of Somalia: Not everything went wrong', *Foreign Affairs*, Vol. 74, No. 3, pp.2-8; Jarat Chopra (1996) 'Achilles' Heel in Somalia: Learning from a Conceptual Failure', *Texas International Law Journal*, Vol. 31, pp.495-525

¹³⁷ Quoted in Clarke and Herbst (1996) 'Somalia and the future of humanitarian intervention', p70-1

¹³⁸ The directive was Presidential Decision Directive 25, signed by President Clinton on 3 May 1994, US Department of State (1994) 'Clinton Administration Policy on Reforming Multilateral Peace Operations (PDD 25)', Bureau of International Organizational Affairs, 22 February 1996

¹³⁹ As Secretary-General, Kofi Annan would have to face consistent questions about his and the UN Secretariat's role in responding to the situation in Rwanda. Unfortunately, because of word constraints a more dedicated chapter on Annan's entrepreneurial response to the intervention debate around the time of Kosovo was removed during final editing. But to gain a better understanding of the debate see Roméo Dallaire (2004) *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, London: Arrow Books; Michael Barnett's (2003) superb *Eyewitness to a Genocide: The United Nations and Rwanda*, London: Cornell University Press; Linda R Melvern (2000) *A People Betrayed: The role of the West in Rwanda's genocide*, London: Zed Books. For a powerful account of the US response to the Rwandan genocide see Samantha Power (2003) *A Problem from Hell: America and the Age of Genocide*, especially p377-80 on what she describes as 'PDD-25 in action'

manage perception and expectation. Nevertheless, these failings would provide the basis and backdrop for how the debate around Kosovo would be framed by key actors. With the need to protect civilians a primary narrative used to justify NATO's unilateral action, the debate reached a critical point. Though united by similar concern for human rights, the challenge of Kosovo was markedly different to the challenges posed by Rwanda and Srebrenica. Whereas the latter posed questions about how to mobilize international responses to mass atrocities, Kosovo was about how its unilateral nature might affect the 'imperfect, yet resilient, [post-WW2] security system'.¹⁴⁰ This was the 'challenge of humanitarian intervention'.

Inevitably, considering the fractures Kosovo opened-up, the intervention debate drew polarized responses and reaction. Particularly significant was the sheer hostility expressed by China, Russia, the NAM and G77 to the idea of humanitarian intervention.¹⁴¹ The underlying positions of states are of course central to understanding the development of R2P in later chapters. But at this stage more significant was that the question of when coercive intervention might be justified provoked key entrepreneurial responses designed to find a solution to the political impasse. Most significant were the responses of Tony Blair,¹⁴² Lloyd Axworthy, and Kofi Annan.¹⁴³ Though very different in their focus and temporal development, all were united by important commonalities.

First, all shared a sense of the challenges, but also the opportunities of the post-CW era including well-rehearsed arguments about how the forces of globalisation were redefining

¹⁴⁰ Kofi Annan (1999) 'Two Concepts of Sovereignty: Address to the 54th session of the UNGA', in *The Question of Intervention*, New York: United Nations, p39

¹⁴¹ See Syros Economides (2007) 'Kosovo' in Mats Berdal and Spyros Economides (Eds.) *United Nations Interventionism 1991-2004*, Cambridge: Cambridge University Press pp.217-245, Albrecht Schabel and Ramesh Thakur (Eds.) (2000) *Kosovo and the Challenge of Humanitarian Intervention*, Tokyo: United Nations University, Non-Aligned Movement, 'Final Document', XIII Ministerial Conference, Cartagena, 8-9 April 2000, paras.11, 263, Group of 77, 'Ministerial Declaration', 24 September 1999, para.69; Group of 77, 'Declaration of the South Summit', Havana, Cuba, 10-14 April 2000, paras.4, 54

¹⁴² The UK's effort to develop a doctrine/framework for intervention was based upon Blair's 'Doctrine of international community' speech to the Economic Club of Chicago, Hilton Hotel, Chicago, 22 April 1999, on the politics of this speech see John Kampfner (2004) *Blair's Wars*, London: Free Press

¹⁴³ Much has already been written about Annan's headline challenge to the international community; see especially Traub (2006) *The Best Intentions* and Ian Johnstone (2007) 'The Secretary-General as norm entrepreneur' in Chesterman, Simon (Ed.) *Secretary or General? The UN Secretary-General in World Politics*, Cambridge: Cambridge University Press, pp.123-138

the interests and security concerns of all nation states.¹⁴⁴ New threats required new focus and new solutions. In this context, the human rights of civilians should be protected and command international action predicated upon global responsibilities and collective values. Second, in accordance with this, each articulated conceptions of 'sovereignty as responsibility', tapping into a discourse which had been gaining traction since the end of CW¹⁴⁵. Third, all at some point in their entrepreneurial responses reflected a general dynamic in the intervention debate – particularly post-Srebrenica – of seeking to find ways of codifying or systematising decision-making in relation the use of force to protect.¹⁴⁶ This dynamic was a product of the cumulative impact of the above-described policy failures which led to a 'challenge to the idea that ad hoc was the right approach'.¹⁴⁷ Thus, there was a marked shift in emphasis from *ad hocery* to *codification*, and while there were certainly differing degrees to which they pursued this approach, all considered forms of criteria/policy-frameworks to improve multilateral decision-making processes. Finally, each exposed key lessons and obstacles relating to the prospects of political agreement. The UK's efforts tested the limits of multilateralism in exposing the lack of political prospects for any doctrine-based P5 agreement. Annan's public challenge helped provoke the negative reactions referenced above¹⁴⁸ while his private efforts revealed numerous issues with developing – let alone agreeing – use of force criteria; exposed the limited extent to which the UN could take the issue forward; and highlighted the need to develop alternative language to frame the intervention debate.¹⁴⁹ Similarly, Axworthy's ultimate initiative in

¹⁴⁴ Annan (1999) 'Two concepts of sovereignty', *The Economist*, 18 September 1999, and 'Doctrine of the international community', speech to the Economic Club of Chicago, Hilton Hotel, Chicago, 22 April 1999

¹⁴⁵ Annan and Axworthy were especially explicit in this regard. On the latter see Ch3, on Annan see the collection of his key speeches on intervention in (1999) *The Question of Intervention*, New York: UN

¹⁴⁶ Aside from the efforts of Annan and the UK touched on below, and Axworthy's consideration of criteria in Ch3, other example around this time included Danish Institute of International Affairs (1999) *Humanitarian Intervention: Legal and Political Aspects*, Copenhagen: Danish Institute of International Affairs, Frye, Alton (2000) *Humanitarian Intervention: Crafting a Workable Doctrine: Three Options Presented as Memoranda to the President*, New York: Council on Foreign Relations and the Independent International Commission on Kosovo (2000) *Kosovo Report: Conflict, International Response, Lessons Learned*

¹⁴⁷ Interview with David Hannay (London, 9 March 2010)

¹⁴⁸ As Kieran Prendergast remarks, Annan's efforts provoked an 'instant' negative response, interview (London, 6 October 2009)

¹⁴⁹ On the internal machinations relating to Annan's intervention challenge, and his position vis-à-vis Kosovo - particularly in relation to the 'Working Group on Post-Cold War Security Framework' which discussed the issue of intervention - see Traub (2006) *The Best Intentions*, p98-100 Annan's role in influencing Axworthy's response is touched on in Ch3, while the issue of language appears in Ch4 in relation to Annan's advocacy of R2P

establishing ICISS demonstrated a fading out of interest in the issue and a lack of support for his proposed response.¹⁵⁰

The lessons exposed by these responses are relevant to the overall development of R2P, and in the case of Annan and the UK demand greater attention than possible here. But before outlining additional points relevant to this prehistory, it is necessary to briefly zone-in on the second of the identified commonalities. Though ICISS's conception of R2P more explicitly adopted a 'sovereignty as responsibility' framework based upon the work of Francis Deng,¹⁵¹ Blair, Annan (and indeed Axworthy) also adopted and appropriated arguments which tapped into the sense that sovereignty was changing.¹⁵² For instance, Annan drew inspiration from former French President François Mitterrand¹⁵³ who had argued the 1991 agreement of SC Resolution 688 condemning the repression of the Iraqi Kurdish population¹⁵⁴ was the 'first time, non-interference has stopped at the point where it was becoming failure to assist a people in danger'.¹⁵⁵ Mitterrand had emerged as an early articulate advocate for the 'duty of humanitarian assistance' by arguing 'international conscience will no longer tolerate certain situations which may exist here or there, in the name of non-interference in the internal affairs of a State. [W]hen we see flagrant and massive violations of human rights, we cannot remain passive. Our duty is to put a stop to

¹⁵⁰ This is detailed in Ch3

¹⁵¹ Gareth Evans was certainly influenced by Deng's formulation which became a 'central conceptual underpinning of the responsibility to protect norm as it finally emerged' in (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington: Brookings Institution Press, p37

¹⁵² In Axworthy's case this was more clearly expressed by the development of his 'human security' policy agenda, see Ch3

¹⁵³ Interview with Edward Mortimer (Oxford, 8 July 2009), see also Annan's 'Reflections on Intervention', *The thirty-fifth annual Ditchley Foundation Lecture*, 26 June 1998 in Annan (1999) *The Question of Intervention*, p15

¹⁵⁴ 'Security Council Resolution 688', S/RES/688, 5 April 1991: see especially para.4 requesting the SG to 'pursue his humanitarian efforts in Iraq and to report forthwith...on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities' and para.1 condemning the 'repression of the Iraqi civilian population...the consequences of which threaten international peace and security'. It is important to note, however, that the 'consequences' qualification is important. The resolution did not, as David Malone points out, 'condemn the repression itself as a threat to international peace and security – only its transboundary effects – nor take steps under Chapter VII to put a stop to it' in (2006) *The International Struggle Over Iraq*, Oxford: Oxford University Press, p86

¹⁵⁵ Quoted in: Edward Mortimer 'West takes up the burden', *Financial Times*, 20 April 1991. Mitterrand's comments came just a few days after he had criticized the failure to include language referring to the plight of the Kurds in SC 'Resolution 687', 3 April 1991. Mitterrand argued that if the Kurdish population was not protected the UN's 'political and moral authority' would suffer see Malone (2006) *The International Struggle Over Iraq*, p86. It is interesting to note that Mitterrand's formulation was based upon extrapolating French criminal law 'failure to assist a person in danger' (*non-assistance à personne en danger*) to the international context (*non-assistance à **peuple** en danger*)

these situations'.¹⁵⁶ Similarly, Annan was not the first SG to argue that sovereignty was being 'redefined' with Pérez de Cuellar and Boutros-Ghali both outlining important arguments about the nature of sovereignty. De Cuellar in particular picked-up on key themes evident in the later formulation of ICISS, including the idea that responsibility was inherent to sovereignty and was reinforcing, not weakening, and that international responses were not about any 'right' but about collective responsibility.¹⁵⁷

The intellectual foundations of the ICISS report were, however, more directly influenced by Francis Deng and Roberta Cohen's formulation of 'sovereignty as responsibility'. Like many of the examples cited here, the CW end was instrumental in how this framework was conceived. Though taken-on and developed as a response to the emerging problem of "Internally Displaced Persons"¹⁵⁸ it was initially driven by concern for 'the effect of the end of the cold war on the African continent'.¹⁵⁹ Of particular concern were the consequences of internal conflicts – 'within the domestic jurisdiction and...national sovereignty of the country concerned' – on civilian populations.¹⁶⁰ The framework Deng helped develop was an attempt to overcome the obstacles associated with state sovereignty and would latterly become the 'centerpiece of his mandate as representative of the Secretary-General on IDPs'.¹⁶¹ At its heart was a very simple, but potentially transformational idea which Cohen best-captured in a 1991 paper, writing that sovereignty carried with it 'a responsibility on the part of governments to protect their citizens'.¹⁶² Both the language and the emphasis on

¹⁵⁶ Mitterrand remarked, this 'is what is meant by the duty of humanitarian assistance. It seeks above all to protect those who are suffering', 'Interview with President Mitterrand', *Press Agency of UAE*, 7 September 1991. I am grateful to the *Institut François Mitterrand* for locating this interview and to Edward Mortimer for this translation, email (24 August 2009)

¹⁵⁷ Boutros-Ghali challenged the idea of 'absolute and exclusive sovereignty' in *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, Report of the Secretary-General*, 31 January 1992. But particularly striking was Pérez de Cuellar's remarkable argument expressed in (1991) *Report of the Secretary-General on the Work of the Organization*, New York: United Nations, see p12-13. De Cuellar's arguments deserve closer scrutiny in the context of R2P's development

¹⁵⁸ On IDPs see Thomas Weiss and David Korn (2006) *Internal Displacement: Conceptualization and its Consequences*, London: Routledge

¹⁵⁹ As Jennifer Welsh points out, Deng's development of the idea began with the Brookings Institution's Africa Project from 1989 onwards, see (2010) 'Implementing the Responsibility to Protect', online edition. This led to the publication of the most articulate and detailed explanation of the framework in Francis Deng et al. (1996) *Sovereignty as Responsibility: Conflict Management in Africa*, Washington DC: The Brookings Institution

¹⁶⁰ Deng et al. (1996) *Sovereignty as Responsibility*, p1

¹⁶¹ Weiss and Korn (2006) *Internal Displacement*, p25: Deng was Special Representative of the UN Secretary-General for Internally Displaced Persons (1994-2004)

¹⁶² Roberta Cohen (1991) *Human Rights Protection for Internally Displaced Persons*, Refugee Policy Group

primary state responsibility would become central planks of R2P as it subsequently developed. Moreover, even though it was not designed to legitimise humanitarian intervention as such, it nevertheless embraced a conception of international responsibility (and accountability) inherent to ICISS's R2P.¹⁶³ Additionally, Deng's emphasis on cooperation, assistance and capacity-building would also be central to the 2005 agreement of R2P, as would the implicit idea that these, and defined mechanisms for international protection, would help strengthen, not weaken, state sovereignty.¹⁶⁴

Of the three main entrepreneurial responses ICISS was the one which explicitly sought to alter the language of the intervention debate. But even though it introduced the R2P phrase, its proposals would still be subject to the same underlying politics, questions, concerns, and obstacles that dominated the debates of the '90s and the efforts of Annan and the UK. Indeed, though Annan's efforts reflected his desire to 'bring the UN closer to the people',¹⁶⁵ they fuelled a response centred on the less well-packaged concept of 'individual sovereignty'.¹⁶⁶ However, even though he was unable to develop language of a more positive/benign disposition, or a solution to the impasse, Annan did provide the *stimulus* for alternative responses. He encouraged Axworthy to establish an independent commission, and encouraged the UK to develop its SC-focused, criteria-based response. These efforts, based upon Blair's 1999 Chicago speech, involved the development of a set of 'policy guidelines' in an 'attempt to develop the underlying policy for [SC] action'.¹⁶⁷ But after a difficult period of cogitation within the FCO to map-out a relevant strategy, and efforts by the UK Mission to informally discuss circulated iterations of a 'Paper on

¹⁶³ Deng et al. argued: 'to the extent that the int'l community is the ultimate guarantor of the universal standards that safeguard the rights of all human beings, it has a corresponding responsibility to provide innocent victims of internal conflicts and gross violations of human rights with essential protection and assistance' in (1996) *Sovereignty as Responsibility*, pxiii

¹⁶⁴ These are themes evident throughout *Sovereignty as Responsibility*, see also Cohen's argument about enhancing the state-system in (1991) *Human Rights Protection for Internally Displaced Persons*, p19

¹⁶⁵ As Nader Mousavizadeh eloquently explained, Annan believed the UN 'had grown in directions too far from the interests of the peoples of the world. The peoples of the countries represented. It had become too much of a house for their representatives, and for states and for the agents of the states, and one way in which the UN could come closer to the people was to be seen as an Organization far more dedicated and concerned with the lives of individual men and women in countries of conflict or under siege', interview (London, 13 October 2009)

¹⁶⁶ This was most fully expressed in 'Two Concepts of Sovereignty: Address to the 54th session of the United Nations General Assembly', in *The Question of Intervention*, pp.37-44

¹⁶⁷ Michael Wood (2007) 'The Law on the Use of Force: Current Challenges', *Singapore Year Book of International Law*, Vol. 11, p12

International Action in Response to Humanitarian Crises', the period 1999-2000 ultimately represented a 'fading out of the political discussion between member states on the subject of trying to create a doctrine'.¹⁶⁸ Ultimately, however, the UK's efforts were not overcommitted because officials recognised early on that securing agreement was a 'hopeless task'. Thus, despite high-level prominence given to the UK position, the political capital deployed within the SC was more qualified.¹⁶⁹ Nevertheless, because this was not doctrine/normative work 'from the side-lines' it exposed the limits of multilateralism evident in, and relevant to, the overall story of R2P.¹⁷⁰

Similarly, Annan's consideration of criteria exposed the difficulty of developing proposals with realistic prospects of success.¹⁷¹ This was problematic because Annan's consideration of criteria was partly the result of an attempt to reassert the centrality of the SC in decision-making relating to the use of force. His efforts to 'complicate' his reaction to NATO's unilateral intervention in Kosovo via the line 'there are times when the use of force may be legitimate in the pursuit of peace' had only exacerbated internal tensions within the Secretariat between those who regarded the action as an unacceptable violation of the

¹⁶⁸ FCO (2001) *UK Paper on International Action in Response to Humanitarian Crises*, deposited in the House of Commons Library, 8 May 2001, interview with Jeremy Greenstock (Chipping Norton, 8 June 2009): the UK's proposals were submitted to SC members and the SG

¹⁶⁹ Private emails (14 July 2009, 9 August 2010): the high-level profile came from public comments by Tony Blair and Robin Cook, aside from the Chicago speech these included: 'Speech by Robin Cook to the UN General Assembly', 20 September 1999, Blair 'Speech at the Lord Mayor's Banquet', Guildhall, 22 November 1999, Cook 'Written Parliamentary Question – Humanitarian Crises', Column 459W, 31 January 2000 and Cook & Campbell 'Revised Role in Humanitarian Tragedies', *Global Policy Forum*, 3 September 2000

¹⁷⁰ As one official remarked 'trying to define a set of conditions in the abstract would always have been extremely difficult. That, and Russian and Chinese hostility to the whole idea of intervention, meant that this was never going to be practical politics in UN terms', private emails (19 July 2009, 9 August 2010) and interview with Jeremy Greenstock (Chipping Norton, 8 June 2009)

¹⁷¹ For instance, under his own initiative, Annan turned to David Malone at the IPA to see whether 'criteria could be identified and advanced among member states that might secure broad adhesion'. In response, the IPA established a small Working/Advisory Group consisting of eight prominent lawyers/academics. The group – funded by Canada's Department of Foreign Affairs under Lloyd Axworthy – met on the 8-9 March 2000, including on the first day with the SG himself. However, despite wide discussions of issues were 'ultimately' unable to agree a clear way forward. That said, while there was little in the way of substantial follow-up, the group may have helped to reinforce the view in the eyes of the SG – who participated very much in 'listening mode' – that the debates needed to move away from the controversial term 'humanitarian intervention', with Adam Roberts one of those expressing this viewpoint. Participants included David Malone, Thomas Franck, Robert Badinter, Alain Pellet, Adam Roberts, Claude de Ville de Goyet, Calestous Juma, Mats Berdal. Information sources: Emails from David Malone (15 September 2009), Adam Roberts (8 October 2009) and telephone conversation with Mats Berdal (21 January 2010)

Charter and those who believed the action was justified.¹⁷² Certainly post-Kosovo Annan's position would become more 'wedded to the importance of SC authorisation'.¹⁷³ But nevertheless the tensions demonstrated the risks of becoming too closely associated with a western-dominated idea and which ultimately would require member state solution.¹⁷⁴ DPA head Kieran Prendergast, for instance, was a particularly powerful critic of Annan's approach. Accusing Annan's speechwriters of 'zigging and zagging', Prendergast believed Annan's arguments would lurch 'depending on the audience' between 'robust diplomacy backed by force' (the 'zigging') on the one hand and 'robust internationalism and legality' (the 'zagging') on the other. As far as Prendergast was concerned this was unsteady and undignified, and wholly unhelpful.¹⁷⁵ It was important, therefore, that after the apex of his 1999 GA challenge Annan changed tack in recognition that he had done all he could publically and that it was time to pass on the 'talking stick'.¹⁷⁶ Fortunately for Annan, this was taken-on by Lloyd Axworthy who, demonstrating that entrepreneurship rarely gets far 'without sponsorship'¹⁷⁷, brought with him the political sponsorship of his Government, and the hope of an alternative, positive way forward. In this thesis the empirical story of R2P, as a distinctive or novel approach for addressing all the issues explored in this brief background chapter, begins with the Axworthy response.

¹⁷² Kofi Annan, 'Secretary-General deeply regrets Yugoslav rejection of political settlement; says Security Council should be involved in any decision to use force', SG/SM/6938, 24 March 1999, 'complicate': interview with Nader Mousavizadeh (London, 13 October 2009). An account of the drafting of this speech was originally part of the removed chapter on Annan's entrepreneurial challenge. It was based upon interviews with Kieran Prendergast (London, 6 October 2009), Nader Mousavizadeh (London, 13 October 2009) and Edward Mortimer (Oxford, 8 July 2009) including the latter's diary extracts from the time. For an existing account see Traub (2006) *The Best Intentions*, pp.95-100

¹⁷³ Interview with Nader Mousavizadeh (London, 13 October 2009): this trend is evident in Chapters 4-5

¹⁷⁴ For instance, Annan was cautioned against become too closely associated with the issue by Lakhdar Brahimi and Ibrahim Gambari, see Traub (2006) *The Best Intentions*, p99: Brahimi confirmed his concerns with humanitarian intervention in emails to author (6 November 2009, 5 October 2010)

¹⁷⁵ Interview with Kieran Prendergast (London, 6 October 2009)

¹⁷⁶ 'He also uses the phrase that you know he had 'passed on the talking stick'. I think his feeling was I have held on to it long enough. I think he saw his role as much as a catalyst of debate, and I think he felt that constructively for a Secretary-General he would be better off if hopefully there was now a strong and interesting and productive debate on this topic', Interview with Nader Mousavizadeh (London, 13 October 2009)

¹⁷⁷ Dyson and Featherstone (1999) *The Road to Maastricht*, p60

Chapter 3: Axworthy and ICISS

Lloyd Axworthy, in my opinion, was one of the great Canadian Foreign Affairs Ministers.¹⁷⁸

Lloyd Axworthy was one of the most prominent and controversial Foreign Ministers of the 1990s. During this period Axworthy personally defined Canada's foreign policy agenda, elevated his country's influence in the world, and instigated and supported a series of initiatives which impacted upon the development of international relations, and will forever define his legacy. One of his final acts was to oversee the announcement of the 'International Commission on Intervention and State Sovereignty'.¹⁷⁹ It was Axworthy's response to the intervention debates, but also a symbolically appropriate culmination of the development of a 'human security' agenda he had been developing since assuming office in 1996. Established to find 'new ways of reconciling seemingly irreconcilable notions of intervention and state sovereignty' Axworthy hoped ICISS would act as a 'tipping agent' towards the development of new shared understandings and, ultimately, state practice, in the name of protecting civilians.¹⁸⁰ The Commission's establishment was catalytic. Its Report, published in December 2001, articulated the admittedly ingenious R2P phrase, setting in motion advocacy for an idea which would eventually lead into the 2005 Summit Outcome.¹⁸¹

Axworthy's status as a pivotal R2P entrepreneur is widely acknowledged. However, a tendency to narrowly characterize his decision to establish ICISS as a direct response to Annan's challenge has limited our understanding of his entrepreneurial response. By contrast, this chapter argues Axworthy's contribution should be understood in a broader context which embeds ICISS within his human security ("HS") agenda, considers the impact

¹⁷⁸ Interview with Paul Martin (telephone, 27 January 2010), see also Richard Gwyn (2000) 'Axworthy made a difference', *The Toronto Star*, 20 September 2000

¹⁷⁹ Herein "ICISS": ICISS was announced in September 2000 and was one of Axworthy's last decisions before retiring in October 2000. For his account of the initiative he regards as one of his most important see Lloyd Axworthy (2004) *Navigating a New World: Canada's Global Future*, Toronto: Vintage Canada

¹⁸⁰ ICISS Mandate in (2001) *The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, Ottawa: IDRC, p341 and Axworthy quoted in Barbara Crossette 'Canada Tries to Define Line Between Human and National Rights', *The New York Times*, 14 September 2000

¹⁸¹ ICISS (2001) *The Responsibility to Protect*, Ottawa: IDRC and email from Lakhdar Brahimi (6 November 2009): Brahimi described the phrase as a 'wonderful euphemism'

of Rwanda and Kosovo on its development, and the importance of Axworthy the person, Axworthy the politician. Thinking of it in this way is how we can best understand the decision to respond; how we understand the decision to respond is how we can best understand the intended contribution. This chapter analyses these factors, in addition to critically reviewing the widely cited ICISS proposals. The need for a more detailed and holistic account of these processes is in contrast to authoritative accounts of R2P. Bellamy's respective chapter provides an illuminating case in point:

In early 2000, Canadian officials...began advocating an 'International Commission on Humanitarian Intervention'...Lloyd Axworthy recognised that, to be effective, any such commission would need 'serious political sponsorship'. Axworthy persuaded Annan to endorse the commission and to accept its report, but the Secretary-General maintained that it should sit outside the UN for obvious political reasons. At Annan's encouragement, Axworthy agreed Canada would sponsor the new commission.¹⁸²

Aside from some brief additional information, this quote effectively captures Bellamy's explanation of how ICISS was born. Although factually correct, it omits a wealth of interesting, relevant, and new information which can provide us a more solid foundation for analysing the Canadian response, and subsequent development of R2P. In particular it fails to capture the lack of consensus that characterised the development of the ICISS proposal. Unfortunately it is symptomatic of the broader problem identified in Ch1, namely it is an account based upon the application of methodological approaches neither designed, nor intended, to ask the questions which might yield answers that go beyond surface-level (or now received wisdom) explanations. Drawing on interviews with those directly involved in the process this chapter has three main parts.¹⁸³ First, it argues ICISS emerged out of dual-processes of temporal *narrowing* and *deepening* of the HS agenda. Second, taking this further, these political developments merge with the more specific processes leading to ICISS. This merging identifies Kosovo as the most decisive influencing factor behind Axworthy's decision to respond. Here the focus on micro-processes sheds new light on the politics of the decision, contributing to the formation of a more complete, vivid narrative. It shows how Kosovo contributed to the above-mentioned narrowing as hard and soft power

¹⁸² Bellamy (2009) *Responsibility to Protect*, p35

¹⁸³ This includes an extensive interview conducted with Lloyd Axworthy in November 2008 in Winnipeg, Canada and numerous additional interviews and communications with individuals involved in the process

tools became increasingly aligned, how it focused attention onto moving ‘discussions and action on [humanitarian intervention] forward’ and, crucially, how the policy options lining the path to ICISS’s establishment were beset with obstacles and complexities.¹⁸⁴ As the ‘norm broker’ ICISS warrants this kind of closer attention.¹⁸⁵ Finally, part three focuses on the production of its report and critically assesses its content.

Policies and Policy-Development: The Human Security Agenda

In 2005 Axworthy was identified as one of only two Canadian leaders who ‘made a difference on the world stage’ in a period generally defined by Canadian ‘decline’.¹⁸⁶ Central to this was the emergence and development of a policy agenda which yielded some of the ‘signature initiatives’ of the Liberal government from 1996-2000¹⁸⁷ and proved to be a ‘source of pride’ for Liberals and the public alike.¹⁸⁸ The agenda was thematic and initiative-based, but also ‘niche’ in its approach – with the oft-expressed accusation of ‘foreign policy on the cheap’ – in the view of one senior Canadian official – at least ‘partly true’.¹⁸⁹ Ideationally driven, it was a way of projecting influence to make a difference internationally. Indeed, the fit between policy and platform was logical and mutually constitutive. As, former Canadian Prime Minister, and a former Cabinet colleague of Axworthy, Paul Martin suggests, the development of a ‘soft power’ approach was about Axworthy charting out ‘what he felt was the dominant role the Department of Foreign Affairs should play’ in

¹⁸⁴ DFAIT (2000) ‘Canada on the United Nations Security Council: First Year Report’, 27 January 2000

¹⁸⁵ Ramesh Thakur, and Thomas Weiss (2009) ‘R2P: From Idea to Norm – and Action’, *Global Responsibility to Protect*, Vol. 1, No. 1, p35

¹⁸⁶ Robert Greenhill (2005) ‘The decline of Canada’s influence in the world – what is to be done for it?’, *Policy Options*, February 2005, p34

¹⁸⁷ Private interview with Canadian official (31 March 2010)

¹⁸⁸ Interview with Paul Martin (telephone, 27 January 2010): public support for his agenda was also something Axworthy liked to emphasize, see ‘Notes for an Address to the Atlantic Forum’, 5 November 1999

¹⁸⁹ Private interview (31 March 2010), see also Lloyd Axworthy ‘The University of Ottawa Gordon Henderson Distinguished Lecture’, 6 November 1997, on niche diplomacy see Andrew Cooper (1997) *Niche Diplomacy: Middle Powers after the Cold War*, Basingstoke: Macmillan. On the accusation of foreign policy on the cheap see Kim Richard Nossal ‘Foreign Policy for Wimps’, *Ottawa Citizen*, 23 April 1998, ‘Pinchpenny Diplomacy’, *International Journal*, winter 1998-1999 and Fen Osler Hampson and Dean F. Oliver (1998) ‘Pulpit diplomacy: A critical assessment of the Axworthy doctrine’, *International Journal*, summer 1998, Paul Heinbecker ‘Notes for an Address: Human Security: What is it; Why it’s so important’, The Hague, April 2000. Other interviewees offered differing perspectives on this debate but all were aware of the considerable budgetary restraints on DFAIT during the 1990s. On which, DFAIT’s own history writes that ‘For many Canadians Axworthy’s success obscured the severe impact of the government’s budget cuts on Canada’s diplomatic effectiveness’ in “Punching Above Our Weight” A History of [DFAIT]: The integrated Department: 1984 to the present’

recognition of the changing roles of various government departments expanding their scope into areas of international policy.¹⁹⁰ DFAIT was thus the vehicle and platform Axworthy's used to drive his distinct policy agenda forward. Axworthy understood that the position of foreign minister provided an invaluable platform from which to project his new vision and policy ideas. As Axworthy commented 'if you wanted to make a difference as a Canadian there could be no better place to do it'.¹⁹¹ Axworthy regarded the position as 'a central figure' of 'strategic' significance that 'can make a difference in shifting the weight or balance between the two contending pressures' of Canada becoming a 'compliant satellite' or, as he clearly preferred a Canada 'maintaining an independent stance...making a distinctive contribution to the global common weal'.¹⁹² It was certainly clear that Axworthy was never going to be a 'typical' foreign minister, as Pearlstein remarked in late-1999 he 'seemed not to understand that Canada's foreign minister is supposed to walk softly and carry a little stick'.¹⁹³

Like many concepts the meaning of HS is contested. Broader developmental conceptions (often captured as 'freedom from want') compete with narrower articulations focused upon greater emphasis on the protection of civilians (under the alternative moniker 'freedom from fear').¹⁹⁴ At the heart of all, however, is a central concern for individuals and human rights and their place in international affairs. It was this which influenced Axworthy's packaging of Canadian policy. Indeed, the extent of the agenda was such that by 2000 Axworthy had established HS as the 'cornerstone of Canada's foreign policy'.¹⁹⁵ By this point its definition was purposely 'narrow', and intensely focused upon the 'physical protection of

¹⁹⁰ Interview with Paul Martin (telephone, 27 January 2010)

¹⁹¹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008) and (2004) *Navigating a New World*, p54

¹⁹² Axworthy (2004) *Navigating a New World*, p51

¹⁹³ Steven Pearlstein 'Canada's New Age of Diplomacy; Foreign Minister Unafraid to Give Americans Occasional Poke in the Eye', *The Washington Post*, 20 February 1999, for an understanding of how Axworthy sought to define his role as Foreign Minister see Axworthy (2004) *Navigating a New World*, especially Ch3 and the essays in Fen Osler Hampson, Norman Hillmer, Maureen Appel Molot (2001) *The Axworthy Legacy*, Oxford: Oxford University Press

¹⁹⁴ See Fen Osler Hampson (et al.) (2002) *Human Security and World Disorder*, Oxford: Oxford University Press, p17-18 and S. Neil MacFarlane and Yuen Foong Khong (2006) *Human Security and the UN: A Critical History*, Bloomington: Indiana University Press, p142

¹⁹⁵ Lloyd Axworthy 'Notes for an Address to the UN Human Rights Commission', Geneva, 13 April 2000. This was most clearly captured by the 2002 DFAIT policy document *Freedom from Fear: Canada's Foreign Policy for Human Security*, Ottawa: DFAIT

people'.¹⁹⁶ Arriving at this conception was a product of four-years of policy-learning, of momentum and practical initiatives, and an increasingly strong sense that new approaches were needed to address the difficulties around protection evident during the post-CW period.¹⁹⁷ By definition, HS emerged partly in response to challenges to traditionally dominant state-centred conceptions of 'national security' deemed an obstacle to civilian protection. ICISS emerged out of the temporal development of Axworthy's conception of HS and its practical agenda which increasingly challenged such traditional paradigms. As the agenda *narrowed* and *deepened* the Kosovo intervention led to the recognition that the intervention issue was a 'glaring gap' in the protection 'jigsaw' and an issue for the credibility of an agenda apparently directed at protecting civilians.¹⁹⁸

From the outset HS 'aligned perfectly with Axworthy's natural instincts'.¹⁹⁹ It resonated with his Liberal disposition and religious background and provided a prospective framework for realising his aspiration to increase public participation in the processes of policy-making.²⁰⁰ Axworthy's long-standing interest in international affairs was well-known, but early experiences as Foreign Minister were critical to Canada's appropriation of the idea. First, his ministerial mandate letter emphasized his responsibility to protect Canadian citizen's abroad which would be challenged early-on by a sense of vulnerability that this could be achieved alone:

I received a mandate letter from the PM on going to Foreign Affairs; on which one of my jobs as Foreign Minister was to protect Canadians abroad. Normally that is interpreted by making sure they got passports, if they lost them we would find them...all that kind of stuff. But I had this experience in the first couple of months where Canadians were kidnapped; a young nurse from Alberta was hacked to death in Chechnya, a young couple killed in Paris in a terrorist attack. I think it fit my own

¹⁹⁶ Paul Heinbecker (2008) 'Lecture on Human Security: Protecting People', Laurier University, 14 January 2008

¹⁹⁷ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008) and private interviews (15 July 2009, 31 March 2010)

¹⁹⁸ Private interviews (15 July 2009, 31 March 2010)

¹⁹⁹ Private interview (31 March 2010)

²⁰⁰ The importance of Axworthy's liberalism and religious background came across in numerous interviews on his personal role in defining the agenda, including his own. But on these elements see John English 'In the Liberal Tradition: Lloyd Axworthy and Canadian Foreign Policy' in Hampson et al. (2001) *The Axworthy Legacy*, p92, and for an example of his religious faith influencing his policy-making see his account of the Kosovo dilemma in (2004) *Navigating a New World*, p182-3

attitude that...I cannot protect Canadians by myself, we need international agreements, international norms, standards, and enforcement mechanisms.²⁰¹

Axworthy believed a new paradigm was needed at the *international*-level to ensure the protection of Canadians and which incorporated the protection of people everywhere²⁰². The second formative experience – on a flight to Minneapolis – was his introduction to a UNDP Report which incorporated the HS concept.²⁰³ It captured the essence of what Axworthy believed: ‘Why’ he wondered, after reading the report, ‘is protecting people less important than (protecting) boundaries?’ HS was, in his own words, a ‘comfortable fit’.²⁰⁴ This was a seminal moment in the history of Canada’s HS agenda. But equally significant was Axworthy’s early recognition of its utility. As one of his senior officials remarked, Axworthy’s instinctive ‘ingenious’ ability to recognise a ‘powerful idea’ and to ‘run with it’ was central to its appropriation.²⁰⁵ Strategic political awareness combined with personal drive and ideational commitment translated an idea into a ‘serious policy agenda at the international level’²⁰⁶. Axworthy recognised the strength of its language and core message and therefore its potential utility as an ‘instrument of advocacy in international society’.²⁰⁷ Axworthy personally gave the agenda a sense of direction, impetus, serious of political weight.²⁰⁸

By contrast to Japan’s developmental conception, Canada’s would arrive at a narrow protection-based formulation. The belief was protecting people from ‘threats of violence’ was where the ‘concept’ offered the ‘greatest value-added’. Canada’s position was that the

²⁰¹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²⁰² See for instance the introduction to DFAIT (2002) *Freedom from fear*, p1. Indeed, the need for new thinking in the post-Cold War era was a theme of many Axworthy speeches from 1996 onwards, see ‘Notes for an Address to the 51st General Assembly’, New York, 24 September 1996, ‘Notes for an Address at McGill University: “Human Rights and Canadian Foreign Policy: Principled Pragmatism”, 16 October 1997

²⁰³ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008): the concept of human security was first introduced in the 1994 UN Human Development Report

²⁰⁴ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²⁰⁵ This was despite internal unease during the development of the agenda: private interviews (15 July 2009, 31 March 2010)

²⁰⁶ Private interview (31 March 2010)

²⁰⁷ MacFarlane and Khong (2006) *Human Security and the UN*, p140

²⁰⁸ This point is particularly important considering the recognition that the idea itself was not an original idea to Canada as Axworthy openly acknowledged. See Axworthy ‘Introduction’ in Rob McRae and Don Hubert (Eds.) (2001) *Human Security and the New Diplomacy*, London: McGill-Queen’s University Press, p3-4, DFAIT (2001) ‘Freedom from Fear’, p1, 4

broader the concept the less weight and ‘value’ it would carry.²⁰⁹ As Paul Heinbecker – a key architect of the agenda – would explain, while ‘more encompassing economic and social definitions’ of HS were ‘entirely laudable’ they risked ‘meaning all things to all people and end up meaning nothing to anyone, at least nothing new and “actionable” by governments’. Canada’s approach was instead designed to establish a ‘norm of behaviour which would encourage the protection of people’.²¹⁰ It was norm-building which sought to prioritize specificity over generality.

While by no means the principal intellectual driver Axworthy’s activism and belief in Canadian leadership was at the heart of the agenda.²¹¹ Arriving at the narrower conception of HS however took time. The Ottawa Treaty in this regard was politically symbolic.²¹² Post-1998, the agenda was accelerated and redefined, becoming more obviously focused upon protecting people from conflict and forms of violence.²¹³ Pre-1998 the emphasis vaguely talked about the need for a ‘broader definition’ of security’.²¹⁴ Human security was fleetingly evident in early 1996, but the language was notably generic and fluctuated between rather diffuse priorities.²¹⁵ Individualism and human rights was evident throughout, but there was little indication as to just how fundamental and all-encompassing

²⁰⁹ Not that Canada could have adopted a broader conception. At the time heavy budget cuts were imposed on all departments across government as Paul Martin explained in interview. DFAIT (2001) *Freedom from Fear*, p3, see also Axworthy ‘Notes for an Address to the Organization of American States Conference of the Americas’, Washington DC, 6 March 1998

²¹⁰ Paul Heinbecker (2008) ‘Lecture On Human Security: Protecting People’, 14 January 2008

²¹¹ According to DFAIT insiders the main intellectual heavy-lifting and development was done by Don Hubert and Rob McRae, interview with Christopher Cushing (9 June 2010) and private interviews (15 July 2009, 31 March 2010). On leadership and the agenda see Lloyd Axworthy (1997) ‘Canada and human security: the need for leadership’, *International Journal*, Vol. 52, No. 2, pp.183-196

²¹² Interview with Christopher Cushing (9 June 2010) and private interviews (15 July 2009, 31 March 2010) on the Ottawa process see Don Hubert (2000) ‘The Landmine Ban: A Case Study in Humanitarian Advocacy’, Occasional Paper No. 42, Thomas J. Watson Jr. Institute for International Studies, Lloyd Axworthy & Sarah Taylor (1998) ‘A ban for all seasons: The landmines convention and its implications for Canadian diplomacy’, *International Journal*, Vol. 53, No. 2, pp.189-203, Mark Gwozdecky & Jill Sinclair (2001) ‘Case Study: Landmines and Human Security’, in McRae, Rob and Hubert, Don (Eds.) *Human Security and the New Diplomacy*, London: McGill-Queen’s University Press, pp.28-40

²¹³ See Axworthy ‘Notes for an Address on the Occasion of the Launch of the Final Report of the Carnegie Commission on Preventing Deadly Conflict’, 17 February 1998

²¹⁴ This was how the Liberal Party ‘Red Book’ described a future Liberal agenda. Axworthy contributed to the chapter ‘An Independent Foreign Policy’ in a publication designed to set-out the Party’s policy platform for the 1993 election, *Creating Opportunity: The Liberal Plan for Canada*, p106

²¹⁵ See for example, ‘Notes for an Address at the Consultations with Non-Governmental Organizations in Preparation for the 52nd Session of the UN Commission on Human Rights’, Ottawa, 13 February 1996. For a good summary of the fluctuations in the terminology used by Axworthy during the first two years see Norman Hillmer and Adam Chapnick ‘The Axworthy Revolution’ in Hampson et al. (2001) *The Axworthy Legacy*, especially p72-3

HS would eventually become²¹⁶. Indeed, early conceptions were couched in the language of ‘sustainable development’ or ‘sustainable human security’ – an articulation of one of the ‘most expansive definition[s] of human security’.²¹⁷ Thus, while the idea had early resonance its practical application was not yet understood, nor its scope and parameters coherently defined.²¹⁸

Over time the agenda would markedly shift towards a concept focused on protection thematically-linked by violence and conflict. This *narrowing* of Canada’s agenda – while also explained by specific domestic factors – was consistent with increasing challenges to developmental understandings of HS precipitated by ‘the discussion of physical protection during the 1990s’.²¹⁹ It was evident in Axworthy’s speeches, in policy-documents, in the initiatives pursued, and by a notable *deepening* of the agenda demonstrated by Canada’s efforts to advance and embed its protection of civilians’ initiative during its 1999-2000 membership of the UNSC. These factors contributed to a momentum which was subsequently shaped by, and merged with, the more specific momentum created by the intervention debates. In this process, ICISS was a development which flowed logically and ‘naturally’ out of the Canadian agenda.²²⁰

Indeed, the initiative-based thematic approach DFAIT adopted was central to the intellectual definition of the agenda. As DFAIT’s concept-paper ‘Human Security: Safety for People in Changing World’ explained: ‘practice’ led the ‘theory’.²²¹ The initiative approach was driven by a number of factors. First, the approach was driven by Axworthy’s personality.

²¹⁶ For instance in an April 1996 speech Axworthy described ‘support for human rights’ as number four of eight ‘priorities or central missions that could form the basis of our foreign policy’ in ‘An Address to the Standing Committee on Foreign Affairs and International Trade “Foreign Policy at a Crossroads”, Ottawa, 16 April 1996

²¹⁷ Hampson et al (2001) *Madness in the Multitude: Human Security and World Disorder*, Oxford: Oxford University Press, p18: Axworthy fleetingly used this phrase until September 1997, see ‘Notes for an Address to the 51st General Assembly’, 24 September 1996, ‘Notes for an Address at York University ‘Building Peace to Last: Establishing a Canadian Peacebuilding Initiative’, 30 October 1996, ‘Notes for an Address to the 52nd Session of the United Nations General Assembly’, 25 September 1997

²¹⁸ But as Hillmer and Chapnick suggest, to argue Axworthy ‘spoke or acted inconsistently in these early years is to ignore the innovation in his approach to foreign policy development. Axworthy himself had yet to determine how his vision could be translated into action’ in ‘The Axworthy Revolution’ in Hampson et al. (2001) *The Axworthy Legacy*, p73. Indeed, Axworthy had a unique style of policy-making which wasn’t afraid to engage in the formulation of his ideas in public forums

²¹⁹ MacFarlane and Khong (2006) *Human Security and the UN*, p157

²²⁰ Don Hubert, ‘Interview’, *America Abroad Media*, March 2009

²²¹ DFAIT (1999) ‘Human Security: Safety for People in a Changing World’, April 1999, Ottawa: DFAIT, p6

He would, as one of his former senior officials remarked ‘get up in the morning thinking about what to do next’.²²² Although Axworthy’s approach would provoke the accusation he was like a ‘flint that produced dazzling sparks’ but ‘too often died and failed to ignite’ it nevertheless was the very approach which underpinned the establishment of ICISS.²²³ Second, despite recognition that the multitude of different interpretations and visions of HS meant the concept was particularly difficult to define officials sought to drive the agenda in order to ‘mainstream’ it into the ‘language of international diplomacy’.²²⁴ This meant pursuing progress on a ‘global human security agenda’ in the various ‘councils of the world’.²²⁵ A strategy defined by numerous differentiated organisational platforms, including bilateral and multilateral relationships and networks. Third, the collective effect of the initiatives pursued facilitated the formulation of the ‘freedom from fear’ conception because each specific initiative meant focusing on the ‘identification of a problem to identify a potential solution-set’.²²⁶ If Canada could achieve – through results-oriented diplomatic processes – practical results to real-world problems, and demonstrate positive impact on civilian protection so they could demonstrate HS’s utility as a way of shaping and redefining the landscape of international relations where the needs of civilians were not secondary to the interests and security of states.²²⁷

Prima facie the initiatives pursued appear ad hoc, but were in actuality logically united by shared concern for protecting individuals from forms of violence and conflict. The Ottawa Treaty was again a key catalyst. Unique decision-making processes combined with the superimposition of a HS framework ‘over what had traditionally been treated as an arms control and disarmament issue’ yielded a significant political success which subsequently shaped future Canadian approaches to international protection issues.²²⁸ Axworthy became explicit about its utility for addressing other human protection problems.²²⁹ Significantly,

²²² Private interview (31 March 2010)

²²³ John English quoting an unnamed senior DFAIT official ‘In the Liberal Tradition’ in Hampson et al. (2001) *The Axworthy Legacy*, p100

²²⁴ Private interview with DFAIT official (15 July 2009)

²²⁵ DFAIT (2000) *Evaluation of the Peacebuilding and Human Security Program: Evaluation Report*, June 2000, p19

²²⁶ Private interview with DFAIT official (15 July 2009)

²²⁷ Private interview with DFAIT official (15 July 2009)

²²⁸ Gwozdecky and Sinclair ‘Case Study: Landmines and Human Security’, p28

²²⁹ For Axworthy, the process represented a ‘turning point in the development of a new humane governance’ because, he argued, it was driven primarily by ‘humanitarian values, not by traditional military security

that the process incorporated a follow-up track designed to realise its practical implementation impacted upon the constitution of future initiatives including the conceptual development of ICISS. Additionally, Canada's involvement in the successful negotiation of the 1998 Rome Statute was also informative. After supporting it with high-level political championship and active Canadian diplomatic engagement Axworthy believed it captured the 'ultimate essence of a human security philosophy'²³⁰ and was a fundamental step towards qualifying sovereignty in a way consistent with HS:

It began to wear away the national sovereignty argument, once again as we did in the land-mines we were challenging national sovereignty, saying that it's not inviolable, it's not something that is given from heaven. The classic statement of the ICC which is if the national court and judicial system takes care of the crime wonderful, but if they won't do it then the international court steps in. That to me was a way of finally putting the brakes on the late twentieth century extreme abuses of national sovereignty we saw in Rwanda and in the Balkans.²³¹

The ICC Statute was thus part of an accumulation of developments which for many were eroding and qualifying sovereign barriers to civilian protection. HS depended upon effective accountability and individual and collective responsibility. The logic was one of deterrence, but also about seeking to shift the parameters of acceptable international behaviour away from the 'indifference and inaction' that had often defined responses to mass atrocities and international humanitarian law.²³²

Associated with this was the agenda's focus on improving the prospects for good governance, lasting peace, and reconciliation in conflict-torn countries. Indeed, if anything captured the complex multitude of factors affecting the prospects for HS in the post-CW period it was the idea of 'peacebuilding' defined by the *Canadian Peacebuilding Initiative* as

interests', 'Notes for an Address on the Occasion of the Launch of the Final Report of the Carnegie Commission on Preventing Deadly Conflict', 17 February 1998, see also Axworthy 'Notes for an Address to the Symposium "Civilians in War": 100 years after the Hague Peace Conference', New York, 24 September 1999

²³⁰ United Nations (1998) *Rome Statute of the International Criminal Court*, A/CONF.183/9, 17 July 1998: On the processes leading to the establishment of the ICC see Benjamin Schiff (2008) *Building the International Criminal Court*, Cambridge: Cambridge University Press, on Axworthy's role see Darryl Robinson 'Case Study: The International Criminal Court' in McRae and Hubert (Eds.) (2001) *Human Security and the New Diplomacy*, pp.170-177, for an understanding of how Axworthy explained the ICC campaign in relation to his HS program see 'Notes for an address to a conference on UN reform at the Kennedy School, Harvard University "The New Diplomacy: the UN, the International Criminal Court and the Human Security Agenda"', 25 April 1998

²³¹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²³² Axworthy (2000) 'Address at the Second Reading of the Crimes against Humanity Act', 6 April 2000

‘the effort to strengthen the prospects for internal peace and decrease the likelihood of violent conflict’.²³³ Established in 1996 this initiative was personally-driven by Axworthy in response to the Report of the multi-donor Joint Evaluation of Emergency Assistance to Rwanda.²³⁴ Its principal recommendation that ‘humanitarian action cannot be a substitute for political action’ spurred the development of policy proposals within DFAIT around the question of ‘what Western governments might do to arrest the repeated cycles of violence which were generating the need for humanitarian assistance’ and led to the establishment of the Initiative and a dedicated DFAIT Peacebuilding Program from late 1997 onwards.²³⁵ The emphasis on peacebuilding is interesting for many reasons. It incorporated core principles of Axworthy’s preferred policy-making approach including NGO consultations and strong direct Ministerial involvement and resonated with the objectives of HS.²³⁶ Moreover, the evolution of the Program highlighted the development and increasing importance of HS in Canadian foreign policy. From 1999, the Peacebuilding Program would become the *Peacebuilding and Human Security Program* as part of a renewed effort to ensure Canada remained at the ‘forefront of international policy development and advocacy on peacebuilding and human security’.²³⁷ Embedding it into the broader agenda was logical as DFAIT officials sought to build on the ‘momentum’ of practical policy successes in order to increase its ‘prominence’, to clarify its meaning and organize the agenda in to an encapsulating ‘policy framework’.²³⁸ This internal restructuring confirmed the narrower conception of HS, with the associated intellectual arguments becoming increasingly explicit as a result. These would be best captured in the appropriately-titled *Safety for People in a Changing World* which offered the most coherent explanation of the concept, its historical

²³³ DFAIT (2000) *Evaluation of the Peacebuilding and Human Security Program*: June 2000, p14, on peacebuilding see Mats Berdal (2009) *Building Peace After War*, Abingdon: Routledge

²³⁴ It was a joint initiative of DFAIT and the Canadian International Development Agency (CIDA): see Axworthy (1996) ‘Notes for an Address at York University “Building Peace to Last: Establishing a Canadian Peacebuilding Initiative”’, 30 October 1996, Joint Evaluation of Emergency Assistance to Rwanda (1996) ‘The International Response to Conflict and Genocide: Lessons from the Rwanda Experience’, *Synthesis Report*, March 1996, on the ‘deep impact’ of this report see Michael Small (2001) ‘Peacebuilding in Postconflict Societies’ in McRae and Hubert (Eds.) *Human Security and New Diplomacy*, p77

²³⁵ ‘The International Response to Conflict and Genocide: Lessons from the Rwanda Experience’, p46 and DFAIT (2000) *Evaluation of the Peacebuilding and Human Security Program*, June 2000, p11

²³⁶ For a revealing insight into Axworthy’s input into the initiatives of his department see DFAIT (2000) *Evaluation of the Peacebuilding and Human Security Program: Evaluation Report*, June 2000, p33 see also Small ‘Peacebuilding in Postconflict Societies’, p77

²³⁷ DFAIT (2000) *Evaluation of the Peacebuilding and Human Security Program*, June 2000, p19

²³⁸ DFAIT (1999) ‘Safety for People in a Changing World’, p6, interview with Christopher Cushing (Bradford, 9 June 2010)

roots and the post-CW conditions which had seen a ‘decline’ in security for ‘many of the world’s people’ because of ‘transnational threats’ and the proliferation of intra-state conflict. Significantly it sought to allay fears HS was intended to ‘supplant’ national security by suggesting it was complementary and articulated a clearer integration of hard power tools for HS purposes:

...when conditions warrant, vigorous action in defence of HS objectives will be necessary [and] can involve the use of coercive measures, including sanctions and military force.²³⁹

This process of developing the meaning of HS and of establishing relevant programs and structures to advance it would also lead to the creation of a dedicated HS Program (HSP) instigated in December 2000. Although post-Axworthy’s, its mandated emphasis on ‘freedom from fear’ emerged from the above-described process of ‘definitional narrowing’. From the outset, the Program’s focus was directed at violence and conflict, or rather ‘to contribute to the creation of a sustainable environment for human security, by supporting initiatives and activities that promote human security in societies in *conflict*, potential *conflict* and *post-conflict*’.²⁴⁰ The program was significant for its annual funding (\$10m per year, 2000-2005) and its contribution to ICISS follow-up efforts – both in terms of committed financial resources and its core objectives and priority issues expressed in the policy management framework (tables 3.1 and 3.2).

Issue Areas	Objectives
1. Protection of Civilians	To build international will, norms and capacity to reduce the human costs of conflict.
2. Peace Support Operations	To address the rapidly changing requirements for deployment of skilled personnel, including Canadians, in multi-disciplinary peace support operations.
3. Conflict Prevention and Resolution	To strengthen the capacities of the international community at global and regional levels to prevent or resolve conflict. To build local indigenous capacity to manage conflict without violence.
4. Governance and Accountability	To foster improved accountability of public and private sector institutions in terms of established norms of democracy and human rights.
5. Public Safety	To build international expertise, capacities and instruments to counter the growing threat to the safety of people posed by the rise of transnational organized criminal activity (including the rise of illicit drug production and trafficking, substance abuse and international terrorism).

²³⁹ DFAIT (1999) ‘Safety for People in a Changing World’, p5

²⁴⁰ Axworthy submitted this request in April 1999: DFAIT (2004) *Summative Evaluation of the Human Security Program: Final Report*, November 2004, p10

Component	Priority Issues
Protection of Civilians (AGP/AGH)	War-affected children Internally displaced people Legal and physical protection Human rights field operations Humanitarian intervention
Peace Support Operations (IDC)	Expert deployment Police in peace support operations Strengthening peacekeeping capacity
Conflict Prevention and Resolution (AGP)	Targeted sanctions Small arms Cooperative conflict resolution Post conflict peacebuilding
Governance and Governance and Accountability (JLHA/AGH/IDC/AGP)	International Criminal Court Security sector reform Corruption and transparency Freedom of opinion and expression Democratic governance Corporate social responsibility
Public Safety (AGC)	Illicit drugs Transnational crime Terrorism

This framework's development was driven by a combination of events, initiatives, and policy-learning. It began in preparation for the HSP and Canada's two-year SC term (January 1999-December 2000) dominated during its Presidential terms (February 1999; April 2000) by Canada's thematic pursuit of the Protection of Civilians (PoC) Issue Area. Here the aim was to 'demonstrate [its] practical relevance'²⁴¹ in the context of a forum which despite expanding its remit, responsibilities, and engagement in humanitarian situations/issues continued to display apathy and tensions between international humanitarian action and sovereignty and non-interference. This contributed to selectivity, inconsistency, and a lack of political commitment in its decision-making, with protecting the security of civilians not yet an established priority for international action.²⁴² Canada's efforts aimed to redress the balance by recasting the way SC members viewed the plight of civilians in conflict. In this regard, NATO's Kosovo campaign provided impetus to these efforts and was a pivotal event in the above-described definitional narrowing. Kosovo demonstrated a pressing and current real-world dilemma which challenged the SC and Canada's commitment to HS. Its importance to understanding Canada's response is largely self-evident. However, interviews with officials involved at the time – including the principal political officer for the

²⁴¹ Elissa Golberg and Don Hubert 'Case Study: The Security Council and the Protection of Civilians' in McRae and Hubert (2001) *Human Security and the New Diplomacy*, p223

²⁴² Golberg and Hubert 'Case Study: The Security Council and the Protection of Civilians', p223-4

establishment of ICISS – consistently referred to the development of the PoC within the SC as a key contextual factor leading to its creation.²⁴³ The dedicated ICISS track emerged from – and merged into – the *combination* of parallel processes: the *deepening* of the PoC agenda on the one hand, the Kosovo crisis on the other. It emerged out of these interwoven, overlapping and simultaneous processes which thus warrant closer attention.

The SC and the Protection of Civilians

A key strategy for advancing HS involved seeking to maximise opportunities for its bilateral and multilateral promotion. Tailored strategies were developed to increase the prospects for policy advancement within specific fora in recognition that some issues ‘would have [greater] resonance than others’.²⁴⁴ No fora was more important, however, than the UN, and specifically the SC. Though aware of its weaknesses, Axworthy considered the UN a ‘vital instrument for developing and implementing human security policies’.²⁴⁵ Unsurprisingly, Axworthy would seek to grasp the political opportunities potentially afforded by non-permanent SC membership, including the guarantee of two monthly-terms as SC President – a position with an invaluable ‘procedural authority’.²⁴⁶ The path to achieving SC membership was typically unique. Despite some internal unease Canada’s bid was pursued with a policy agenda akin to a domestic election campaign.²⁴⁷ Canada’s agenda was defined by three interconnected themes: to enhance the Council’s ‘credibility and effectiveness’; to open-up its working methods; and to apply ‘concrete elements of human security in Council debates and decisions’.²⁴⁸ This was a calculated risk but perfectly concordant with Axworthy’s ideational and policy-making preferences. Axworthy believed a

²⁴³ Private interviews (15 July 2009, 31 March 2010) interviews with Christopher Cushing (Bradford, 9 June 2010), Lloyd Axworthy (Winnipeg, 27 November 2008): see also table 3.2

²⁴⁴ Prominent examples for the multi-level pursuit of HS included the G7 and G8, the dedicated Human Security Network, the EU, the OECD-DAC, the OAS and the OSCE. Interview with Christopher Cushing (Bradford, 9 June 2010), see also Roman Waschuk ‘The New Multilateralism’ in McRae and Hubert (2001) *Human Security and the New Diplomacy*, p221

²⁴⁵ Michael Pearson ‘Humanizing the UN Security Council’ in Hampson et al. (2001) *The Axworthy Legacy*, p134, 133, see also Golberg and Hubert ‘Case Study: The Security Council and the Protection of Civilians’, p223-230

²⁴⁶ Pearson ‘Humanizing the UN Security Council’, p129

²⁴⁷ Interview with Lloyd Axworthy: Axworthy recalled suggestions Canada would get ‘clobbered’ as a result of his decision but that he received ‘good loyalty’ because ‘the senior mandarins in foreign affairs had taken the fact that they were going to do what I asked, they weren’t going to oppose it and realised if they did oppose it I was going to go around them anyway’ (Winnipeg, 27 November 2008)

²⁴⁸ Pearson ‘Humanizing the UN Security Council’, p135

successful result would provide a weight of expectation, credibility and 'legitimacy' to Canada's efforts once on the Council.²⁴⁹

Canada immediately began to advance its agenda as President in February 1999 during which some crucial PoC seeds would be sewn. The objective from the outset was to 'provide a holistic framework for protection related efforts'.²⁵⁰ It was also, however, about seeking to instigate and embed changes to the very culture of the SC and broadening its 'definition of security to [include] new [HS] challenges'.²⁵¹ This involved trying to 'consolidate' and build on current or past SC work in order to establish concordance between them and the PoC-theme.²⁵² But this would require 'an important departure from past Council practice' not least because it was likely to provoke pre-existing normative tensions and challenge the SC's capacity to agree appropriate mandates and commit to protect civilians in situations of armed conflict.²⁵³ Although distinct from humanitarian intervention, the PoC was similarly influenced by the trends and events of the post-CW era. Conflicts in Rwanda, the Balkans, Somalia, and DRC had focused minds on policy responses. In this respect, Canada's efforts yielded early success. Thematic open debates moved the effort to consolidate 'the council's commitment on a range of protection issues' forward.²⁵⁴ The resulting Presidential Statement expressed the Council's 'willingness to respond, in accordance with the Charter...to situations in which civilians, as such, have been targeted or humanitarian assistance to civilians has been deliberately obstructed'. This breakthrough statement was doubly significant. It requested a SG report recommending ways the Council could 'improve the...physical and legal protection of civilians' and articulated a broad understanding of how this work might be defined.²⁵⁵ This was followed, in September 1999, by the adoption of the

²⁴⁹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008) and Pearson 'Humanizing the UN Security Council', p135

²⁵⁰ Golberg and Hubert 'Case Study: The Security Council and the Protection of Civilians', p225

²⁵¹ Jean Chrétien, 'Address to the UN General Assembly', A/55/PV.6, 7 September 2000, Axworthy 'Notes for an Address to the Symposium "Civilians in War"', 24 September 1999

²⁵² See Golberg and Hubert 'Case Study: The Security Council and the Protection of Civilians', p223-5

²⁵³ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008), Golberg and Hubert 'Case Study: The Security Council and the Protection of Civilians', p225

²⁵⁴ These debates were held on the 12 and 22 February 1999; see Security Council 3977th Meeting, S/PV.3977, and 3978th Meeting, S/PV.3978, 12 February 1999 and 3980th Meeting S/PV.3980, 22 February 1999. Axworthy personally chaired the first meeting, emphasizing the issues importance to Canada's policy agenda

²⁵⁵ Security Council (1999) 'Statement by the President of the Security Council', S/PRST/1999/6, 12 February 1999, this was a request Annan fully embraced, his report proposed a broad spectrum of forty

‘watershed’ Resolution 1265 which formally embedded the language of the initial Presidential Statement.²⁵⁶ The SC then reinforced this in April 2000, with Resolution 1296 affirming its ‘intention to ensure, where appropriate and feasible, that peacekeeping missions are given suitable mandates and adequate resources to protect civilians under imminent threat of physical danger’.²⁵⁷

Axworthy regarded the embedding of the PoC into the SC’s ‘protocol’ as a ‘huge turning point’, and an important step in the development towards R2P.²⁵⁸ Indeed, it was normatively and practically significant. Nevertheless, the processes behind these developments exposed continuing controversy and resistance. The principal area of contention was the potential use of coercive action where alternative protection measures proved inadequate – the ‘hard end’ of the protection spectrum. Even without this element both resolutions required months of negotiation, with China and Russia apparently particularly infuriated.²⁵⁹ But Annan’s recommendation the SC consider intervention ‘as a last resort’ only exacerbated controversy – as did debates on humanitarian assistance in March 2000.²⁶⁰ States concerns centred around norms of sovereignty, territorial integrity and non-interference, as revealed by the emphasis on state consent, and of upholding the SC’s primary role for maintaining peace and security.²⁶¹ Additionally, the depth of state commitment to protection would be challenged in practice. For instance, Canada’s efforts to

recommendations, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/1999/957, 8 September 1999

²⁵⁶ Watershed because it was the first resolution on PoC ever adopted by the SC, private interview with Canadian official (31 March 2010). Resolution 1265 was adopted just over a week after Annan’s report, Security Council ‘Resolution 1265 - on the Protection of civilians in armed conflict’, S/1999/1265, 17 September 1999, see especially para.10, see also Victoria Holt and Glyn Taylor (2009) *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*, New York: United Nations, p53

²⁵⁷ Security Council ‘Resolution 1296 - on the Protection of civilians in armed conflict’, S/2000/1296, 19 April 2000, para.13: an informal Working Group on the PoC was also established post-1265 which Canada used to submit a draft of 1296 which apparently provided the ‘basis’ for the final resolution, Holt and Taylor (2009) *Protecting Civilians in the Context of UN Peacekeeping Operations*, p53

²⁵⁸ Interview with Lloyd Axworthy: ‘That was a huge turning point, so people say R2P doesn’t mean anything, we were twenty-five percent there anyway’ (Winnipeg, 27 November 2008)

²⁵⁹ Private interview (31 March 2010)

²⁶⁰ *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/1999/957, 8 September 1999, Recommendation K, para.67, p21, on the humanitarian assistance debates see SC 4109th Meeting (and resumption 1), S/PV.4109, 9 March 2000

²⁶¹ See Security Council ‘Protection of civilians in armed conflict’, 4130th Meeting, S/PV.4130 (and resumption 1), 19 April 2000

hold debates on Chechnya and Sudan proved unsuccessful due to opposition within the SC.²⁶²

Despite this, Axworthy's desire to operationally mandate protection was revealed during the case of Sierra Leone and negotiations leading to Resolution 1270 establishing UNAMSIL in October 1999.²⁶³ In this case, Axworthy reportedly pushed 'hard to place UNAMSIL under Chapter VII and to mandate it to protect civilians, saying that he would not allow another Rwanda "on his watch".²⁶⁴ This was an important test-case and revealing insight of Axworthy's mind-set. However, though notable for its inclusion of civilian protection, UNAMSIL was not an example of forcible intervention but a Mission deployed with host government consent.²⁶⁵ Although humanitarian intervention was a 'priority issue' of civilian protection (Table 3.2) with the deepening of its SC work Canadian officials identified a fundamental gap in the protection jigsaw which it was neither designed, nor able, to address.²⁶⁶ The most critical factor behind this – which ultimately spurred the development of ICISS – was NATO's 1999 intervention in Kosovo. This event marked the apex of the 1990s humanitarian intervention debates, provoking questions around the so-called 'right to intervene'. More significantly, this intervention, and Canada's participation in it, had a profound impact on Axworthy's policy agenda, testing his commitment to HS but also stimulating an entrepreneurial desire to respond.²⁶⁷

The Road to the Commission

*The 'big test case'*²⁶⁸

²⁶² Golberg and Hubert 'Case Study: The Security Council and the Protection of Civilians', p229

²⁶³ The United Nations Assistance Mission in Sierra Leone was established by the SC in Resolution 1270 (1999), S/RES/1270, 22 October 1999. Its primary function was to aid the implementation of the Lomé Peace Agreement, but was also mandated to act under Chapter VII to 'afford protection to civilians under imminent threat of physical violence', para.14, see also Holt and Taylor (2009) *Protecting Civilians in the Context of UN Peacekeeping Operations*, on how mandates changed from 1999 onwards, p42

²⁶⁴ Holt and Taylor (2009) *Protecting Civilians in the Context of UN Peacekeeping Operations*, p37 fn10

²⁶⁵ Non-state consent is at the heart of the meaning of humanitarian intervention, see J. L. Holzgrefe (2003) 'The Humanitarian Intervention Debate' in Holzgrefe and Robert Keohane (Eds.) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, p18

²⁶⁶ Private interviews with Canadian officials (15 July 2009, 31 March 2010), Axworthy 'Notes for an Address to the Symposium "Civilians in War", New York, 24 September 1999

²⁶⁷ Private interviews (19 July 2009, 31 March 2010)

²⁶⁸ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

The Kosovo crisis precipitated the opening of a policy window which led to a sustained period of public and private debate. This was certainly no different in the case of Canada. From the months prior to Operation Allied Force, until long after the end of major combat operations, Axworthy and his officials would be exercised by all aspects of the decision to intervene²⁶⁹. It was *the* event, which Axworthy describes as the ‘genesis of the Commission’ and ‘where the R2P really got born’.²⁷⁰ That ICISS was not launched until some fifteen months later, however, was demonstrative of a long and difficult process.

Axworthy’s involvement in the decision to actively and operationally support military action against Milosevic was – in his words – ‘the toughest decision I ever made’.²⁷¹ One official described him as ‘tormented’ by the decision but once committed convinced it was correct and justified.²⁷² Although not a pacifist, Axworthy’s discomfort with military force was well-known and led to a period of personal introspection conditioned by his religious beliefs which led him to focus upon the meaning and applicability of ‘just war’ in this context.²⁷³ Unease with the option to use force apparently extended to Cabinet, with Axworthy describing it as neither an ‘easy sell’ nor a ‘clean process’.²⁷⁴ Nevertheless, the subsequent government line was couched in the language of HS with Axworthy’s voice the strongest in arguing NATO’s action was a ‘response’ to Milosevic’s ethnic cleaning, and designed to ‘restore human security to the Kosovars’.²⁷⁵ It was, he argued, this ‘humanitarian imperative’ which had ‘galvanized the Alliance to act’ and thus a ‘landmark’ for HS because

²⁶⁹ Operation Allied Force was the NATO code-name for the Kosovo mission from 23 March-10 June 1999

²⁷⁰ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008), reinforced by private interviews (15 July 2009, 31 March 2010)

²⁷¹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²⁷² Private interview (15 July 2009)

²⁷³ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008), see also *Navigating a New World*, p182-3

²⁷⁴ The extent of debate within Cabinet around this decision would require more extensive interviewing, not least because there were some alternative viewpoints on how the Canadian Government arrived at the decision to participate in the NATO campaign

²⁷⁵ Axworthy ‘Notes for an Address to the Woodrow Wilson School: “Kosovo and the Human Security Agenda”, Princeton, 7 April 1999, ‘Notes for an Address to a Joint Meeting of the Standing Committee on Foreign Affairs and International Trade and the Standing Committee on National Defence and Veterans Affairs: “Canada and Kosovo”, 31 March 1999

had NATO 'backed down' after all the 'negotiation and diplomatic efforts', and in the face of 'an affront' to its 'values', it would have been undermined as a 'force for global action'.²⁷⁶

Indeed, seeing Kosovo in terms of HS drove Axworthy's decision to support the intervention. It was based on the recognition that the rhetoric he had espoused in the years previous would mean little without action to back it up.²⁷⁷ Axworthy, however, went further. Aside from packaging the intervention in this way he also explicitly incorporated the action into the development of his policy agenda.²⁷⁸ This was a significant shift in thinking. Kosovo represented the point when Axworthy began to integrate hard power tools, into his previously soft power dominated toolbox.²⁷⁹ It had the dual effect of further defining/narrowing his conception of HS whilst simultaneously broadening its range of application. Furthermore, it was out of this transition that ICISS and more explicit R2P-related language would emerge. Axworthy, and his officials, turned their attention to questions of how HS could be 'translated' into hard power.²⁸⁰ As this was best captured in a major speech at Princeton University:

Sometimes...hard power – in this case military force – is needed to achieve human security goals. NATO's air campaign should serve to dispel the misconception that military force and the human security agenda are mutually exclusive. Clearly, they are not. Pursuing human security involves using a variety of tools.²⁸¹

Although the potential use of force was fleetingly evident in earlier speeches,²⁸² this evolution (including to the point where NATO would be described as a 'vehicle' for HS) was

²⁷⁶ Axworthy "'Kosovo and the Human Security Agenda', 7 April 1999 and interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²⁷⁷ This is based up by Axworthy's assertion that 'Kosovo proved an opportunity to substantially advance the *credibility* of the concept of human security', my emphasis, *Navigating a New World*, p183, 186

²⁷⁸ This was made clear in his statement on the day NATO action began, Axworthy 'Notes for a Statement on the Conflict in Kosovo', 24 March 1999

²⁷⁹ A point Axworthy accepted in interview: see also Vincent Rigby who describes Kosovo as a 'turning point', 'The Canadian Forces and Human Security: A Redundant or Relevant Military?', in Hampson et al. (2001) *The Axworthy Legacy*, p48 and Joe Jockel and Joel Sokolsky (2000) who suggest it was the point where Axworthy 'rediscovered hard power in the pursuit of HS' in 'Lloyd Axworthy's Legacy: Human security and the rescue of Canadian defence policy', *International Journal*, winter 2000-2001, p6

²⁸⁰ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

²⁸¹ Axworthy 'Notes for an Address to the Woodrow Wilson School: "Kosovo and the Human Security Agenda', 7 April 1999

²⁸² For example see Axworthy 'Notes for an Address to the Permanent Council of the Organization for Security and Co-operation in Europe', 22 October 1998 and 'Notes for an Address: "Human Security and Canada's Security Council Agenda', 25 February 1999

neither straightforward nor without weakness.²⁸³ Criticisms of Axworthy's agenda would often focus upon a noticeable disconnect between hard and soft power, and the agendas of the DFAIT and the Department of National Defence (DND).²⁸⁴ This was partly the product of Axworthy's military aversion, but was also accentuated by the significant budgetary cuts which affected all government departments.²⁸⁵ Nevertheless, it is hard to escape the substantive criticism that the previously described conceptual narrowing of the HS agenda was not sufficiently matched by a concomitant narrowing in the 'commitment-capability' gap long identified in Canadian defence policy.²⁸⁶ Indeed, this problem was only exacerbated by the foreign policy context. Post-Kosovo, the idea that robust applications of military force may be required to protect civilians was increasingly prevalent in Axworthy's public speeches.²⁸⁷ Resultantly, a 'rhetoric-resources' gap was source of constant criticism across the HS policy spectrum and, in the military's case, would lead to the accusation that Canada's 'foreign policy was writing cheques our defence policy can't cash'.²⁸⁸ This gap was particularly problematic for Axworthy as questions were asked about the credibility of such an agenda when its most identifiable state sponsor was itself unable, or unwilling to materially back it up. As David Malone argued in mid-2000:

Foreign and defence policy cannot be conducted on the cheap indefinitely. Canada's international credibility rests not only on imaginative policy initiatives...but also on our ability to help implement them and to share financially the burdens of international action.²⁸⁹

²⁸³ Heinbecker 'Notes for an Address: Human Security: What is it; Why it's so important', The Hague, April 2000, p9, see also Axworthy (1999) 'NATO's new security vocation', *NATO Review*, Vol. 47, No.4, p8-11

²⁸⁴ See Rigby 'The Canadian Forces and Human Security: A Redundant or Relevant Military?', in Hampson et al. (2001) *The Axworthy Legacy*, p39-63

²⁸⁵ For instance, the DND had seen its budget cut by 30 per cent between 1993-4 and 1998-9, with a reversal of this trend only evident from 2000 onwards with an increased in funding allocation of \$2.3b over four years, Rigby 'The Canadian Forces and Human Security: A Redundant or Relevant Military?', in Hampson et al. (2001) *The Axworthy Legacy*, p52

²⁸⁶ Louis Nastro and Kim Richard Nossal (1997) 'The Commitment-Capability Gap: Implications for Canadian Foreign Policy in the Post-Cold War Era', *Canadian Defence Quarterly*, Autumn 1997, pp.19-22

²⁸⁷ Similarly the relationship between hard and soft power was explicitly made by Defence Minister Art Eggleton, see Rigby 'The Canadian Forces and Human Security: A Redundant or Relevant Military?', in Hampson et al. (2001) *The Axworthy Legacy*, p51

²⁸⁸ Louis A. Delvoie (2000) 'Curious Ambiguities: Reflections on Canada's International Security Policy', p14, and Chair of the House of Commons Defence Committee (and future Liberal Defence Minister) David Pratt speaking in 2002 quoted in Andrew Cohen (2004) *While Canada Slept: How we lost our place in the world*, Toronto: McClelland & Stewart, p47

²⁸⁹ In Delvoie (2000) 'Curious Ambiguities: Reflections on Canada's International Security Policy', p14-15

One could also describe this as a 'rhetoric-reality' gap. While Canada's contribution to Operational Allied Force should not be dismissed, Canada's willingness and capacity to contribute peacekeepers and other military tools declined significantly during the 1990s, with the trend continuing thereafter.²⁹⁰ Moreover, aside from NATO's operational reliance upon the US, Kosovo was – for other reasons – arguably less significant in terms of future Canadian (and NATO) participation in future military deployments than Axworthy might have believed or hoped. Putting aside the usual complexities associated with the potential use of force, a more fundamental issue was that the extent of state support for Axworthy's vision for HS – including the significance of the Kosovo intervention and the idea of international responsibility he would increasingly articulate – would prove to be highly contested. In other words, its normative significance was open to question.²⁹¹ Indeed, this related to Canada as much as it did to other states. Axworthy's own commitment to HS was unquestioned, but how this manifested itself in broader governmental terms was less assured – something which thus accentuated questions relating to the capacity and willingness to commit military resources. While not immune from the numerous complexities relating to any decision to intervene, one might have expected the Government which so prominently and boldly espoused HS as a 'rationale for concerted action' to have more credibly supported it with concomitant levels of resources and commitment. Yet in the two *post*-Kosovo cases of Sierra Leone and East Timor bold words were hardly matched with operational commitment. In the former, during a January 2000 SC debate Axworthy would refer specifically to Council considerations on whether UNAMSIL should be expanded with an argument that it was 'now up to the Council members to

²⁹⁰ For details of Canada's contribution to the NATO action see Department of National Defence (DND) (2000) 'Canadian Forces Contribution to Operations in Kosovo', *Backgrounder*, 12 May 2000. On the issue of declining Canadian contributions see Denis Stairs (2001) 'Canada in the 1990s: Speak Loudly and Carry a Bent Twig', *Policy Options*, January-February 2001, p49 pointing out that as of October 2000 Canada had just 216 military personnel serving in UN peace support operations, a contribution which 'was spread over a total of 10 UN missions'. This is particularly relevant as this was data from the very end of Axworthy's term and thus symbolic for the abovementioned gap. This, however, has largely been a continuing problem ever since. For instance, as of April 2012 Canada was ranked 55th in the DPKO Ranking of Military and Police Contributions to UN Operation

²⁹¹ Indeed, the lack of state support for the vision Axworthy so powerfully articulated was revealed in the ICISS establishment processes

demonstrate their willingness to match our professed concern with resources'. This call however, for whatever reason, seemingly did not apply to Canada in this context.²⁹²

Similarly, Canada's (lack of) involvement in the 1999 crisis in East Timor provoked sharp questions regarding governmental commitment to HS in action. Such questions extend beyond issues of capacity into the terrain of political will, asking to what extent HS was widely shared, or internalised outside Axworthy's office. While some attributed (what they saw) as an inadequate Canadian response to economic ties to Indonesia, Hataley and Nossal argue East Timor exposed a 'gap between Axworthy's human security rhetoric and the policy behaviour of the Canadian government' because the latter had not 'bought into' the HS agenda.²⁹³ Resultantly, they argue the limited military contribution and the lack of available capacity was symptomatic of Chretien's 'aversion to the use of force' which 'may explain why the rhetoric of [Axworthy] was never connected in a serious way to the capabilities of the Canadian Forces'.²⁹⁴ Such cases offer specific insights into the development of Axworthy's agenda during the period officials began considering responses to the intervention issue. Aside from accusations of moral selectivism and inconsistency, a more stinging critique suggests Canada was more comfortable with 'doctrine work from the touchline' rather than 'getting dirty in the mud of the field'.²⁹⁵ Thus, one has to consider the credibility of the expansion of the HS agenda into the intervention issue when its most critical state sponsor was seen in such a critical light.²⁹⁶

²⁹² Axworthy quoted in SC 4092th Meeting, S/PV.4092 24 January 2000, p10. Despite such words the Canadian contribution was extremely limited despite UN authorisation for a peacekeeping force of 6,000, as evident in the DND (2000) 'Canadian Forces Contribution to the UN Effort in Sierra Leone', *Backgrounder*, 4 July 2000, 'Canadian Forces to Deploy Four UN Military Observers to Sierra Leone', *News Release*, 21 June 2000. On the weaknesses with UNAMSIL in this context see John Hirsch 'Sierra Leone' in David Malone (Ed.) (2004) *The UN Security Council from the Cold War to the 21st Century*, pp.521-536, 'Badly trained, ill-defined and underfunded – UN peacekeepers endure humiliations', *The Guardian*, 11 May 2000, Adekeye Adebajo and David Keen 'Sierra Leone' in Mats Berdal and Spyros Economides (Eds.) (2007) *United Nations Interventionism 1991-2004*, Cambridge: Cambridge University Press, pp.246-273

²⁹³ T.S. Hataley and Kim Richard Nossal (2004) 'The Limits of the Human Security Agenda: The Case of Canada's Response to the Timor Crisis', *Global Change, Peace & Security*, Vol. 16, No. 1, p15, p8

²⁹⁴ Hataley and Nossal (2004) 'The Limits of the Human Security Agenda', p15-16, see also Jutta Brunnée and Stephen Toope (2004) 'Canada and the use of force: Reclaiming human security', *International Journal*, Vol. 59, No. 2, pp.247-260

²⁹⁵ Private interview with a P5 diplomat, but considering Canada's involvement and losses since 2001 in Afghanistan one should be very careful in how this point is taken

²⁹⁶ One could argue that normative leadership is only sustainable so long it is matched with (at least some) credible behaviour in pursuit of it, if not the realisation of the normative agenda may be placed in the hands of those states who may have the necessary operational power, but not the required conviction or commitment to deploy it

That said, the changes Axworthy's policy agenda and public rhetoric underwent as a result of Kosovo were most significant for the entrepreneurial response it led to. Indeed, Kosovo was catalytic for the very reason that it, in combination with the UN-commissioned Rwanda and Srebrenica reports, brought to a head the intervention debates.²⁹⁷ As Axworthy remarked, the latter two 'raised the question...Kosovo sparked the debate'.²⁹⁸ But in so doing, Kosovo would test the nature of international support for the idea of sovereignty as responsibility, the extent to which this applied collectively – not just individually – and how it could be operationalized in practice. In this regard, it was a key event which exposed an apparent disconnect between individual state responsibility and international responsibility, or more specifically when, and in what form, the latter 'kicks-in'.²⁹⁹

How to respond?

The lack of SC authorisation – or state consent – for the NATO action, and questions relating to the timing and form of military means used, were the two most prominent areas of contention and debate. Both would shape Canadian thinking about how to respond, and would frame the associated justifying arguments. Post-Kosovo DFAIT officials were left with no doubt that Axworthy wanted the issue of intervention 'explored further' and specifically focused upon humanitarian *military* intervention.³⁰⁰ Subsequent consideration was framed around an exploration of the 'rules of the road' with much internal debate relating to the potential utility of criteria or policy framework to facilitate/guide decision-making processes.³⁰¹ ICISS emerged out of this period of reflection, and particularly two key intellectual thoughts: 1) that states had to reconcile intervention (in pursuit of HS) and state

²⁹⁷ Kofi Annan (1999) *Report of the Secretary-General pursuant to General Assembly resolution 53/35: the fall of Srebrenica*, A/54/549, 15 November 1999, *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, S/1999/1257, 15 December 1999

²⁹⁸ Axworthy 'Notes for an Address at the New York University School of Law: The Hauser Lecture on International Humanitarian Law: Humanitarian Interventions and Humanitarian Constraints', 10 February 2000

²⁹⁹ 'Kicks-in' was a phrase used by a senior former P5 ambassador, Ch5 traces how the R2P agreement was crafted in relation to these twin dimensions which maintained a clear normative disconnect between the two dimensions, particularly compared to the ICISS formulation outlined below

³⁰⁰ Private interview (15 July 2009), this addition of the word military was partly as a result of unease by some staff with the use of the word 'humanitarian' who saw the value of clarifying the terminology

³⁰¹ Private interview (15 July 2009)

sovereignty; and 2) that ad hocery had proved to be an unsatisfactory approach to ensuring the protection of people in cases of extreme violations of human rights.

The first of these was consistent with the above-described narrowing of HS.³⁰² The distinction, however, was that post-Kosovo Axworthy's discourse would be increasingly shaped by attempts to more explicitly qualify sovereignty *in the context of humanitarian intervention*. Accordingly, Axworthy would argue HS:

...is going to have to be reconciled with the principle of non-intervention in the internal affairs of states. Kosovo illustrates this particular contradiction well...non-interference remains basic to international peace and security...Kosovo must not be held up as a precedent to justify intervention anywhere, any time for any reason. However, in cases of extreme abuse, the concept of national sovereignty cannot be absolute... The [UNSC] cannot stand aside in the face of outrages we have seen in the variety of violent disputes.³⁰³

Axworthy would purposely reiterate his argument that HS did not weaken sovereignty, but strengthened it 'by reinforcing democratic, tolerant, open institutions and behaviour' – the state was anything but 'obsolete' but remained 'the most powerful instrument for collective action'.³⁰⁴ As Bellamy points out, this represented an endorsement of Deng's positive approach to sovereignty.³⁰⁵ It was a strategy designed with pragmatism in recognition that post-Kosovo attempts to reinterpret sovereignty would prove particularly controversial. As such, it was also directed at trying to alleviate fears of abuse and – as far as possible – to guard against any precedent-setting involving action without SC authority. Nevertheless, Axworthy maintained that (despite the controversy) NATO's action 'bolster[ed] the contention that legitimacy derives from the sanction of the governed and sovereignty comes with certain irrefutable responsibilities' and would resultantly avoid ruling out completely the possibility of future action in extreme cases where the Council was

³⁰² As expressed in DFAIT (1999) 'Safety for People in a Changing World'

³⁰³ Axworthy 'Notes for an Address to the G8 Foreign Ministers' Meeting', Cologne, 9 June 1999

³⁰⁴ Axworthy 'The Hauser Lecture on International Humanitarian Law', 10 February 2000, see also the argument that it was 'increasingly accepted that [HS] and national sovereignty are two sides of the same coin. They are mutually reinforcing and complementary' in 'Canada on the United Nations Security Council: First Year Report', 27 January 2000

³⁰⁵ Bellamy (2009) *Responsibility to Protect*, p36

‘paralysed’ arguing that ‘in the face of deliberate, systematic, large-scale perpetration of atrocities against innocent people’ there remained an ‘obligation to act’.³⁰⁶

The legacy of the Rwandan genocide was one of the most important events which influenced this position. Although one official believes Rwanda was increasingly seen as an aberration which would not be repeated, and therefore not particularly helpful for moving the debates forward, it nevertheless shaped Axworthy’s thinking and motivation – both in terms of the specific decision to support the Kosovo intervention, and how subsequent policies and arguments were framed.³⁰⁷ The Carlsson Report into the Rwandan genocide, with Annan’s Srebrenica Report, reawakened memories of two humanitarian crises which, whilst mirroring the lack of consensus evident over Kosovo, starkly differed in terms of the action mobilised by states in response. The contrast between unilateral action on the one hand, and inaction on the other, united by controversy and dissatisfaction, captured the central dilemma. It was certainly true the unilateral Kosovo intervention more directly instigated the period of debate and processes leading to ICISS. But as Don Hubert has revealed, part of the logic behind the initiative was the thought that ‘if you wanted to articulate a doctrine of human security you had to have an answer to what to do in the case of Rwanda.’³⁰⁸ It was a disaster of such scale it was inevitably going to be part of any discussions around humanitarian intervention.

Accordingly, Canada would pursue a strategy designed to advance debate and to ‘further redefine the concept of humanitarian intervention’ across numerous platforms.³⁰⁹ In addition to his public speeches/statements, Axworthy would Chair a SC open debate on the findings of the Carlsson report;³¹⁰ Canada and Norway would combine to ‘promote increased capacity for rapid reaction for UN peacekeeping missions’;³¹¹ within the G8

³⁰⁶ DFAIT ‘Canada on the United Nations Security Council: First Year Report’, 27 January 2000 and Axworthy ‘The Hauser Lecture on International Humanitarian Law’, 10 February 2000

³⁰⁷ Private interview with Canadian official (31 March 2010): nevertheless the Rwanda tragedy was clearly an influence upon Axworthy’s thinking and agenda as already demonstrated in relation to the development of the HS agenda, but more specifically Rwanda as led him ‘inexorably’ to the ‘decision to support military intervention in Kosovo’ in *Navigating a New World*, p162

³⁰⁸ Hubert, ‘Interview’, *America Abroad Media*, March 2009

³⁰⁹ DFAIT (2000) ‘Canada on the United Nations Security Council: First Year Report’, 27 January 2000

³¹⁰ See UN Security Council (2000) ‘The situation concerning Rwanda’, S/PV.4127, 14 April 2000

³¹¹ DFAIT (2000) ‘Canada and Norway to Promote Increased Capacity for Rapid Reaction for UN Peacekeeping Missions’, *News Release No. 102*, 12 May 2000

Canada would present a paper outlining its position on humanitarian intervention and proposed criteria for further discussion;³¹² and DFAIT would also provide the funding for Annan's March 2000 IPA working group.³¹³ The latter two were consistent with the efforts of numerous actors to consider the potential value and viability of formulating criteria or guidelines to aid the decision-making processes for the use of force.³¹⁴ This dynamic – of shifting from ad hocery to forms of codification – was clear evidence of policy reflection and learning provoked by the 'very unsatisfactory' Kosovo process³¹⁵:

The UN was not involved...we were kind of making it up as we went along. Isn't it time for some rules? Isn't it time for some standards? Isn't it time for some way of putting a framework in place to determine when, if, and how?³¹⁶

This shift reflected an increasing understanding that there would be occasions where the international community had no choice but to act, that such action should be embedded within a 'cascading scale of mobilization up to and including military intervention if other interventions were not working', but that determining the point at which this may be required, remained highly contested.³¹⁷ Thus, based on the identification of three key areas which demanded a response by the international community (*strengthening norms relating to the PoC; mobilizing the political will to act, and; developing military and civilian capacity to succeed*), Canada would propose a set of eight considerations developed to help ensure that where the use of force was concerned people were 'asking the right questions'.³¹⁸ Additionally, Axworthy would articulate a high-test threshold – with intervention an option

³¹² Presented to G8 Foreign Ministers Meeting in Berlin, 16/17 December 1999: the chapter by Michael Bonser and Don Hubert 'Humanitarian Military Intervention' in McRae and Hubert (2001) *Human Security and the New Diplomacy*, pp.111-121 is essentially the paper presented to the G8 meeting

³¹³ Email from David Malone (11 June 2010)

³¹⁴ As one official commented, they were aware they were covering ground many other actors had been/were examining after the policy failures of the early-mid 1990s

³¹⁵ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008): post-Kosovo Axworthy would repeatedly argue 'tests', 'standards' or 'criteria' were required, see for example: 'Notes for an Address to the G8 Foreign Ministers' Meeting', 9 June 1999, 'Notes for an Address to the Empire Club', Toronto, 28 June 1999

³¹⁶ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

³¹⁷ Private interviews (15 July 2009)

³¹⁸ Private interview (15 July 2009): the three key areas and the criteria were included initially in the G8 paper and articulated subsequently in a lecture on the 10 February 2000. They were: urgency, prevention, consistency, corroboration, practicability, scale, support, and sustainability. In interview, Axworthy described the theme of this key Lecture as 'how do you translate human security into hard power? When, and how, or what are the criteria you use ultimately to intervene militarily. It was a very tough speech, I'm not sure it was a great speech, but at least it was an attempt to intellectually wrestle with the issue', 'The Hauser Lecture on International Humanitarian Law', 10 February 2000

reserved for the most ‘severe cases’ of ‘genocide, war crimes, crimes against humanity and massive and systematic violations of human rights and humanitarian law’.³¹⁹ Overall, this framework was developed to be ‘demanding’ (to help guard against potential abuse) and to help foster the requisite political will (particularly within the SC whose ‘credibility’ was increasing endangered³²⁰) by seeking to define the conditions under which force may be used even if it was pragmatically accepted that any decision-making/responsibility to deploy one’s own forces to protect civilians elsewhere would ultimately remain in the hands of political leaders.³²¹

These efforts were also directed at two particularly contentious difficulties exposed by Kosovo, namely whether the use of force represented the last resort option, and what form of military means was most appropriate for realising humanitarian objectives. Both were sources of considerable tension within NATO, and subject to major external criticism. Axworthy’s unease with military action was evident throughout. While arguing NATO had ‘no option’ but to take the action it did, there were clear limitations on how far Axworthy was willing to go, both in terms of demonstrating unease with the use of bombing – and specifically what constituted a legitimate military target – but also in terms of how much risk to Canadian forces was he was willing to accept in pursuit of humanitarian objectives.³²² These are inevitable and understandable democratic constraints. However, they aptly demonstrate that even where a decision is made, consensus can be fluid, limited and shaky, and that the appropriateness of means can be qualified by the need to maintain political unity and support. Indeed, Axworthy’s call to find ‘ways to overcome the reluctance of some to take risks on behalf of victims of war in far-flung places’ applied just as much to Canada,

³¹⁹ Axworthy ‘The Hauser Lecture on International Humanitarian Law’, 10 February 2000

³²⁰ Axworthy ‘Notes for an Address to the Symposium “Civilians in War”, 24 September 1999

³²¹ Private interview (15 July 2009)

³²² Axworthy described himself as one of the more ‘obstreperous’ ministers within the G8 Ministers Monitoring Group, interview, indeed as John English writes Axworthy during the foreign ministers meetings was a critic of those who wished to ‘expand’ the war in ‘In the Liberal Tradition’ in Hampson et al. (2001) *The Axworthy Legacy*, p93. Additionally asked about the acceptable level of risk for Canadian soldiers in this context Axworthy stated that ‘we had done our due diligence, we thought the risks were certainly there...we weren’t going into...Sarajevo...it was an air-war primarily. We had F-18s, we were shooting from thirty thousand feet’, interview. Although Axworthy’s intentions were good, this exposed one of the key issues with the intervention debate and the NATO intervention in particular. The issue was not only about risk but also about whether an air campaign was appropriate and compatible with the espoused humanitarian objectives. The Kosovo intervention would be particularly questioned because of the means used to address the ethnic cleansing. On such issues see Axworthy’s correspondence with Robert Cox in (2000) ‘Correspondence: The Crisis in Kosovo’, *Studies in Political Economy*, Vol. 63, pp.133-152

as it did to anyone else.³²³ Thus, Kosovo illuminated the complexities of reconciling humanitarian principles with practical action, and considering Axworthy's difficulties with the decision and conduct of the campaign in the context of his efforts to develop a framework in response, provided evidence of just how difficult decisions to intervene would continue to be, even if states were able to agree *in principle* on the utility of codification.

*'An education in political reality...'*³²⁴

As it was, codification proved to be a highly optimistic objective. The G8 paper received almost no direct discussion, and certainly did not lead to any kind of resulting commitment or agreed way forward.³²⁵ Similarly, the IPA consultation reinforced a sense of political gridlock. The enabling context out of which the Commission idea emerged was thus defined by no consensus between states on the issue of humanitarian intervention and an international political environment one can only describe as hostile. During this period, however, alternative entrepreneurial efforts – in terms of what they sought to do, and the evident lack of progress they yielded – inspired Canadian thinking. First, Tony Blair's Chicago speech was viewed as a 'watershed moment' and a 'call to action' for those who believed in the cause of humanitarian intervention.³²⁶ That a high-profile leader of a P5 country positioned on the same side of the debate was attempting to grapple with the problem gave Canadian officials an early kick-start, and continued impetus, to their own efforts. While Canadian officials were ultimately unclear how much political capital the UK government expended in its subsequent efforts through 1999 and 2000, the inability to achieve political consensus within the SC impacted upon Canadian thinking in important ways. In particular, the directness of the UK's strategy and the baggage associated with P5 membership, helped instil the view that the political context demanded an alternative approach.³²⁷ Officials increasingly believed that advocating for a new approach in such a sensitive area might be

³²³ Axworthy 'Notes for an Address to the Symposium "Civilians in War"', 24 September 1999

³²⁴ Interview with Christopher Cushing (Bradford, 9 June 2010)

³²⁵ Private interview (15 July 2009)

³²⁶ Private interviews (15 July 2009, 31 March 2010)

³²⁷ Private interview (31 March 2010); see also the brief discussion of these efforts in the prehistory

better suited to a country like Canada with less responsibilities and a more neutral posture.³²⁸

The second more decisive push was provided by Annan. After the deepening of PoC work and the Kosovo intervention Annan's challenge was the third critical factor leading to the establishment of ICISS. As a senior Canadian official stated in 2004, ICISS was a 'direct response to [Annan's] challenge'.³²⁹ Indeed, Annan's famous *We the Peoples* question that 'Surely no legal principle – not even sovereignty – can ever shield crimes against humanity' would be directly-referenced in a letter from Axworthy to Robin Cook requesting UK support for a commission and described as offering the 'first elements of an answer'.³³⁰ The relationship between Annan and Axworthy was known to be a good one, with shared political and ideational preferences.³³¹ While very different personalities, mutual respect was an important lubricating factor in motivating and facilitating the Canadian response. Specifically, the nature and substance of Annan's challenge, including the highly negative reactions it provoked, provided the key push. Rather than following the lead laid down by Annan's 'vision' state responses had instead remained 'driven by rigid notions of sovereignty and narrow conceptions of national interest'.³³² That said, Axworthy's criticism was not exclusively reserved for states, accusing the UN Secretariat of 'timidity' in failing to 'push the envelope'.³³³

While Axworthy's identification of a 'loss of momentum' in the debate underpinned Canada's subsequent advocacy of an international commission, the processes to establish such an initiative would come up against on-going state opposition, general

³²⁸ Private interview (31 March 2010)

³²⁹ Marie Gervais-Vidricaire in 'Evidence of Mr. Ferry de Kerckhove (Director-General, International Organizations Bureau, DFAIT) and Mrs. Marie Gervais-Vidricaire (Director-General, Global Issues Bureau, DFAIT) to the Standing Committee on Foreign Affairs and International Trade, *Evidence*, 17 November 2004, see also Axworthy (2000) 'Address to the UN General Assembly', A/55/PV.15, 14 September 2000

³³⁰ Axworthy (2000) *Letter to The Right Honourable Robin Cook*, dated 27 June 2000

³³¹ Interviews with Nader Mousavizadeh (London, 13 October 2009) and Lloyd Axworthy (Winnipeg, 27 November 2008)

³³² Axworthy (2000) 'Address to the UN General Assembly', A/55/PV.15, 14 September 2000, p1

³³³ Axworthy 'Notes for an Address on "Human Rights and Humanitarian Intervention"', Washington, 16 June 2000. This criticism is an indication of Axworthy's frustration with the lack of response. However, the Secretariat was itself immensely torn, and, not for want of trying, had rightly determined that the efforts it had made, had gone as far as they reasonably could considering their own differences and the sheer hostility of reactions that ensued. More fundamentally, the framing of Annan's challenge sought to emphasize the responsibility of states *themselves* to deal with a problem which, ultimately, only they could address

apathy/disinterest, and issues of political ownership which resulted in minimal state reciprocation to Canada's proposals. Axworthy's vision for the development of HS, along with his conviction that states needed to determine a way forward would – much like Annan's – come crashing into a realpolitik roadblock. Moreover, Axworthy's acceptance of the SG's private counsel that a UN-mandated Commission would prove to be too politically fraught, makes his criticism of the UN Secretariat seem rather unfair and misdirected. From this perspective, seeking to understand in greater detail the political realities behind the emergence of ICISS enables us to identify key elements or analysis lacking in current accounts of the R2P. Most notably, the HS *vision* which so clearly inspired, motivated and framed Axworthy's entrepreneurial response, would ultimately have limited resonance or state support – in this specific issue-area – beyond acceptance of the basic principles of sovereignty as responsibility.³³⁴ It did not define, in any serious way, the development of the R2P from 2001 onwards which conceptually was progressively narrowed, and negotiated down. Even Canadian governmental support for HS would be considerably more qualified post-2000. However, although the political dynamics of this are most prominently evident in the post-entrepreneurial phase which reveals how R2P filtered into and fared in the international policy stream, a number of key obstacles which help explain the limited agreement of 2005 were already identifiable during this entrepreneurial phase. Thus, pinpointing them here establishes key contrast points for later chapters and shows that what survived this latter phase bore little resemblance to ICISS's elaboration of R2P, and why this should come as little surprise.³³⁵

Axworthy formally launched ICISS at the UN on the 14 September 2000 – a week after Jean Chrétien had revealed Canada's intention to do so in his speech to the Millennium Summit³³⁶. Announcing it at the UN was no coincidence. It was designed to give profile to the initiative and to embed the Commission report within the UN system by revealing Canada's intention to present the findings to the 56th GA Session in 2001.³³⁷ This was in

³³⁴ There was no coherent vision which defined the development of the R2P

³³⁵ As a result the need to recognise the R2P agreement in the form that it actually exists, and not as some would wish it to be, is ever more important

³³⁶ Axworthy (2000) 'Address to the UN General Assembly', 14 September 2000, Jean Chrétien (2000) 'Address to the UN General Assembly', A/55/PV.6, 7 September 2000, DFAIT (2000) 'Axworthy launches International Commission on Intervention and State Sovereignty', *News Release*, 14 September 2000

³³⁷ Axworthy outlined these details in *Letter to The Right Honourable Robin Cook*, 27 June 2000

recognition that the UN would remain the most important venue for realising any future progress in this area. However, the association was only indirect. ICISS received no formal UN-authority or backing beyond the personal support of Annan. Indeed, by design, emphasis was placed on ICISS's 'independence' in contributing 'to building a broader understanding of the issue, and to foster a global political consensus on how to move forward'.³³⁸ Nevertheless, though promoting 'debate' was a primary objective, ICISS's mandating – including its structures and links to Axworthy – contributed to a perception of an *implied direction* for the Commission's work from the outset, and one which officials and Commissioners would work hard to counter.³³⁹ The foreword to the ICISS report would explain its work was about 'the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action against another state for the purpose of protecting people at risk in that other state'.³⁴⁰ But at its press conference launch, Axworthy explained ICISS was established to 'ensure that...indifference and inaction' by the international community when faced by the likes of Rwanda and Srebrenica were 'no longer an option'.³⁴¹ Accordingly, 'where states are unable, or unwilling to protect their citizens, the UN – and in particular the SC – has a special responsibility to act'.³⁴² Clearly this language was striking for its normative character.³⁴³ There was little doubt in Axworthy's mind that humanitarian intervention was a legitimate tool and that this had to be the basis for any subsequent normative advance. As Axworthy wrote to Cook, he wanted a Commission with a 'strong political mandate and orientation' which would 'prepare [a] political-legal framework for international action'.³⁴⁴

³³⁸ Axworthy (2000) 'Address to the UN General Assembly', 14 September 2000

³³⁹ At the launch conference Evans remarked there was 'nothing precooked' about ICISS, quoted in 'Canada launches UN commission', *The Star Phoenix*, 15 September 2000, see also Ramesh Thakur 'Intervention, sovereignty and the responsibility to protect' in Thakur et al. (Eds.) (2005) *International Commissions and the Power of Ideas*, Tokyo: United Nations Press, p183

³⁴⁰ ICISS (2001) *The Responsibility to Protect*, pvii

³⁴¹ Axworthy quoted in 'Canada launches UN commission', *The Star Phoenix*, 15 September 2000

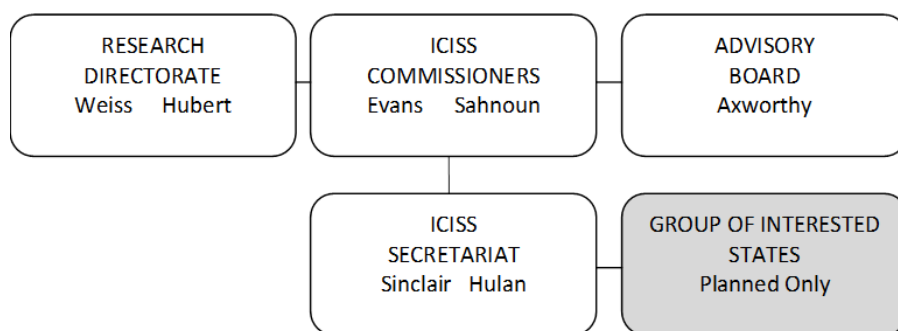
³⁴² Axworthy quoted in Joe Lauria (2000) 'Axworthy urges UN to put people before state: Committee to study sovereignty versus intervention issue', *Edmonton Journal*, 15 September 2000

³⁴³ And for its similarities to what ICISS would propose

³⁴⁴ This was how Axworthy initially sold the idea for a 'Commission on Humanitarian Intervention' in *Letter to The Right Honourable Robin Cook*, dated 27 June 2000. Gareth Evans at the ICISS launch was also keen to emphasize the kind of report he hoped to see, commenting 'this is not just an intellectual exercise; it was conceived as something that had to fly with people involved in the real business of government' in Robert Holloway (2000) 'International panel to redraw limits of national sovereignty', *Agence France Presse*, 15 September 2000

It was clear that inspiration for the Commission, and indeed aspiration for its work, was provided by the 1987 Brundtland World Commission on Environment and Development.³⁴⁵ Brundtland provided the intellectual blueprints for ICISS based upon its immensely successful concept of ‘sustainable development’ which fused concern for increasing environmental pressures with the need for continued human economic development.³⁴⁶ This reconciliation – which Axworthy described as having ‘changed the way we think and do business’ – demonstrated the importance of language and evidence of what might be possible in this case.³⁴⁷ Indeed, the narrowing of Axworthy’s HS agenda had indicated pre-ICISS this kind of thinking.³⁴⁸

Figure 3.1 – ICISS Organogram



ICISS consisted of twelve Commissioners, co-chaired by Gareth Evans and Mohammed Sahnoun, an Advisory Board chaired by Axworthy, a Research Directorate based at the CUNY Graduate Center and a Secretariat based in DFAIT led by Jill Sinclair and Heidi Hulan.³⁴⁹ The Commission’s structural form remained largely consistent throughout a conceptual and establishment phase which lasted upwards of nine months, with the last few months

³⁴⁵ World Commission on Environment and Development (1987) *Our Common Future*, Oxford: Oxford University Press

³⁴⁶ ICISS Mandate in (2001) *The Responsibility to Protect: Research, Bibliography, Background*, p34, Don Hubert, ‘Interview’ *America Abroad Media*, March 2009, interview with Gareth Evans (London, 25 May 2010), private interview (31 March 2010), and Paul Heinbecker (2000) ‘Remarks given before the UN General Assembly’, New York, 17 October 2000

³⁴⁷ Quoted in Holloway (2000) ‘International panel to redraw limits of national sovereignty’, 15 September 2000

³⁴⁸ See for instance, Axworthy’s comments on reconciling HS with sovereignty and non-intervention in ‘Notes for an Address to the G8 Foreign Ministers’ Meeting’, 9 June 1999, ‘Notes for an Address: “Human Security and Canada’s Security Council Agenda’, 25 February 1999

³⁴⁹ For further details of the constitution and approach of ICISS see (2001) *The Responsibility to Protect: Research, Bibliography, Background*, p341-398

particularly intense.³⁵⁰ However, while there was little derogation in terms of what a Commission should look like, Canadian ambitions were progressively eroded by political obstacles. According to Christopher Cushing, that it was a *Canadian-sponsored* initiative was effectively the least desirable option.³⁵¹ *International* was meant to imply state support and buy-in beyond Canada and the regional representation of its individual participants.

Canada's advocacy of an 'International Commission on Humanitarian Intervention' was revealed publically in June 2000.³⁵² This initial idea was proposed in early 2000 by DFAIT officials Don Hubert and Jill Sinclair based on the logic that the more 'abstract' issue of humanitarian intervention posed a problem which needed 'intellectual work'.³⁵³ According to Hubert, 'there was a problem of how the issue was framed, how it was talked about, what our language was'.³⁵⁴ The potential benefits of a Commission included external and independent consideration of an international issue; enabling specificity of mandate; the opportunity to carefully select its composition; and the ability to put in place a set timetable defining a future outcome.³⁵⁵ With Axworthy's support and direction, Canadian officials (particularly Sinclair, Hulan and Cushing) would begin the process of trying to put in place the strongest option, or 'angle' they could. During this phase officials would show admirable persistence and flexibility, adapting as 'events unfolded and preferred options fell to the wayside'.³⁵⁶ From the outset, it was agreed that its potential effectiveness would depend upon political leadership and 'serious political sponsorship'.³⁵⁷ However, the key tenets of the policy-making approach which had served Axworthy so well on other initiatives would prove to be considerably less amenable to the contentiousness of humanitarian intervention.

³⁵⁰ Interviews with Lloyd Axworthy (Winnipeg, 27 November 2008), Christopher Cushing (Bradford, 9 June 2010): there was some contestation about the timeframe, with another closely involved official recalling the process lasted 'approximately four months' (31 March 2010)

³⁵¹ Cushing was the principal political officer for the establishment of ICISS, interview with Christopher Cushing (Bradford, 9 June 2010): one senior official stated that, from their perspective, Cushing was '*the* key figure at the working level and did much of the heavy lifting during the conceptual stage', private email (20 April 2010)

³⁵² Axworthy 'Notes for an Address on "Human Rights and Humanitarian Intervention"', 16 June 2000

³⁵³ Private interview (31 March 2010)

³⁵⁴ Hubert 'Interview', *America Abroad Radio*, March 2009

³⁵⁵ Private interview (31 March 2010), and interview with Ramesh Thakur (Waterloo, 22 June 2009)

³⁵⁶ Email from Christopher Cushing (23 August 2010)

³⁵⁷ Axworthy (2003) *Navigating a New World*, p191 see also Dyson and Featherstone (1999) *The Road to Maastricht*, p60; Axworthy *Letter to The Right Honourable Robin Cook*, and Axworthy 'The Hauser Lecture on International Humanitarian Law', 10 February 2000

Although ICISS represented a continuation of the HS agenda from the Canadian perspective, it did not command widespread State support, or reflect any shared imperative to respond. State responses to the Canadian proposal admittedly varied, but there was an almost universal lack of political support. This was evidenced by the difficulties officials faced in trying to realise their preferred options, of which there were broadly three. Option 1 was for a major International Commission which would carry the support or endorsement of a broad coalition of governments'.³⁵⁸ Option 2 was for a UN Commission established under the initiative of the SG. Option 3 was for a Canadian-sponsored Commission. The establishment process was not, however, a simple case of moving from one option to the other as obstacles got in the way. It was much more fluid. Officials identified a series of options early-on followed by constant diplomacy/dialoguing as they worked towards achieving the most politically viable formulation they could. As such, consistent with this effort to realise a genuinely 'international' initiative, a number of hybrid options were also considered. One such example included a core group of sponsoring governments joining together akin to a 'like-minded' coalition.³⁵⁹

The process was defined by extensive bilateral consultations, the feedback from which ruled out either of the first two options, or any other associated hybrid options. Cushing's recollection of this bilateral process, which involved a very large number of states, reveals a highly unreceptive political context: reactions ranged from outright opposition, general scepticism and disinterest in the taking on such a difficult issue, to politically vain responses relating to political ownership of the idea.³⁶⁰ Annan's rejection of a full UN Commission was entirely understandable. Nevertheless, the interweaving of two of the most important R2P entrepreneurs at a meeting in Atlanta at the 20th anniversary celebrations of CNN would prove particularly important. Although in one sense providing a knock to Axworthy's efforts, Annan's willingness to support a Canadian-sponsored Commission provided an additional

³⁵⁸ Thus, as Cushing remarks, would have carried more political weight (Bradford, 9 June 2010 and email (23 August 2010)

³⁵⁹ Interview with Christopher Cushing (Bradford, 9 June 2010), confirmed in *Letter to The Right Honourable Robin Cook*

³⁶⁰ Interview with Christopher Cushing (Bradford, 9 June 2010): the issue of ownership was also raised separately by a senior UK official recalling the Robin Cook's response to Axworthy's proposals (private interview, 25 June 2010 and email 27 August 2010)

impetus to act.³⁶¹ Annan's advice reflected his deep understanding of the UN system, and, as it turned out, would prove to be fully justified having already exposed the limitations inherent within his own system.³⁶² Indeed, his subsequent public and private support for R2P was essential to its development, and while based predominantly on the essence of an idea which resonated strongly, this early prior commitment to follow-up was unquestionably important.³⁶³

Despite such political difficulties Axworthy remained committed to respond, demonstrating his willingness to take an alternative path regardless of the obstacles. Canada continually sought additional political sponsorship and support, but from mid-summer onwards the Canadian-sponsored option became the reality.³⁶⁴ It is certainly likely that Canada's proposal was a more difficult sell because of its association with Axworthy's uniquely strong normative agenda. However, this would paradoxically be less important when it became clear Canada would have to effectively assume complete ownership of all aspects of it. Officials would seek to emphasise independence and balance, but the most pressing focus shifted from attempting to win additional state support to trying to put in place the best Commission they could. Moreover, whilst considerable emphasis has been placed here on seeking to embed our understanding of ICISS within the political context of the time, particularly in terms of how this context conditioned the possibilities for a collective response, successful entrepreneurship more often than not depends upon the demonstration of qualities which go beyond such constraints. As Cushing points out, you rarely get your preferred option; diplomacy 'is about getting what you can from the real

³⁶¹ Interview with Lloyd Axworthy, whose recollection of the meeting was: '[I] said to Kofi look would you like to form a commission on intervention? We'll pay for it, we'll staff it, we'll support it? And he said no. He said I love the idea, but if I set it up through the UN it's going to be caught up in UN politics... but if the Canadians set one up I will ensure that you get full and proper cooperation from the UN and when the report is ready I will give it prominence and I will take it seriously and put it into my system' (Winnipeg, 27 November 2008). Annan and Axworthy discussed the Commission-route during a scheduled meeting in Atlanta on 1 June 2000, 'United Nations Daily Highlights', 1 June 2000, see also Crossette 'Canada Tries to Define Line Between Human and National Rights', *The New York Times*, 14 September 2000

³⁶² Annan would give a fuller and insightful explanation of his thinking in Thomas Weiss at al. (2005) *UN Voices: The Struggle for Development and Social Justice*, Bloomington: Indiana University Press, p378

³⁶³ Annan expressed his support in a letter to Axworthy: 'I warmly congratulate you on this timely and insightful initiative... you can be assured of my enthusiastic backing for what you are seeking to achieve', quoted in 'Putting People Before Politics Canada Backs Intervention', *Calgary Sun*, 15 September 2000

³⁶⁴ According to Axworthy after the Annan meeting 'I went back to my team and said we can do it on our own' (interview, Winnipeg, 27 November 2008)

world'.³⁶⁵ The relationship between the 'real world' and this entrepreneurial phase is undoubtedly crucial to our understanding of the political development of the R2P. But equally important is recognising that in face of opposition and indifference Axworthy's commitment to act did not waiver. It is for this reason that his leadership, underpinned by the persistence and professionalism of his department, deserves considerable credit. His initiative set the R2P ball rolling and established the key institutional structures – notably the ICISS Secretariat within DFAIT – which helped lock-in future Canadian advocacy and sponsorship.

Axworthy would assume personal responsibility for acquiring funding for the initiative, realising a \$1m commitment from Cabinet, and additional significant contributions from a number of US-based private foundations.³⁶⁶ Additional state contributions arrived from Switzerland and the UK, with the latter providing just £10k towards the London roundtable – a commitment agreed *after* the launch of ICISS.³⁶⁷ Indeed, finalising the arrangements went on very late in the day. The most important aspect of this was determining its composition. Selecting the two co-chair positions to give North-South balance was particularly crucial. Although described by one official as 'never a serious option' Axworthy expressed a desire to Chair ICISS but was persuaded against doing so by 'two or three' of his staff.³⁶⁸ Accusations of a pre-cooked agenda would only have been further fuelled had Axworthy effectively appointed himself to such a position. However, an attempt to keep

³⁶⁵ Email from Christopher Cushing (27 August 2010)

³⁶⁶ Private interview (31 March 2010) and with Christopher Cushing (Bradford, 9 June 2010) and Lloyd Axworthy (Winnipeg, 27 November 2008): Axworthy personally raised the additional private funding from major US foundations after visits to New York and Chicago, for a list of those who contributed funds see ICISS (2001) *The Responsibility to Protect*, p85

³⁶⁷ Despite a shared interest in the issue the UK position under Cook, according to a senior official closely involved, was that while wanting to be seen as supportive, issues of 'ownership' were clearly at play, as was the 'credit' which would be directed elsewhere for such an initiative. This is briefly touched on in Ch4 but consistent with the lack of state support for the initiative non-Canadian governmental funding was also minimal. Switzerland contributed \$100(US) towards the Maputo roundtable in March 2001 as confirmed in a letter to the author. The UK situation was more complex however, and warrants further closer examination. The UK was explicitly asked to contribute 'core funding' to ICISS but only decided to contribute £10k towards the cost of the London roundtable in February 2001. This was certainly a product of financial restraints, but also because 'credit' for the initiative would reside elsewhere and because of questions about the extent to which the initiative would be followed-through. The UK was supportive of the Commission and considered this support in terms of signalling its support for the 'concept of humanitarian intervention' but ultimately the UK was unwilling to support beyond a 'personal' position (so not representative of government) on the Advisory Board and involvement in the 'Group of Interested States' (see below). Relevant FCO documents are listed in the bibliography dated from 2000-2001

³⁶⁸ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008), private interview (31 March 2010)

Axworthy involvement did lead to his appointment as Chair of the Advisory Board, which although genuinely designed to further build-in political follow-up, had limited impact on the report, and was subsequently described as a 'mistake' by one official close to the process.³⁶⁹ As it was, former Australian Foreign Minister Evans was formally appointed with Sahnoun in August 2000.³⁷⁰ Algerian Sahnoun was selected not only because he was from the global south, but because of his UN experience.³⁷¹ He was not, however, the first choice. In fact, fellow countryman Lakhdar Brahimi was initially approached by DFAIT and Evans – an invitation which Brahimi 'firmly refused'.³⁷² A highly esteemed UN figure, Brahimi rejected the offer for two principal reasons. First, he was in the process of completing the Report on UN Peace Operations which militated against taking on another major commitment, and second, because of unease with the subject matter:

The marvellous phrase "Responsibility to Protect" was not coined yet. The issue was "intervention", generally qualified as "humanitarian", and on that I shared the common view of countries from the South.³⁷³

Brahimi's viewpoint was widely shared. Indeed, after Evans' appointment, recognition the term 'humanitarian intervention' was too 'politically loaded' led officials to change the name to "ICISS" in what was a strategically necessary development.³⁷⁴ The name change did not alter the fact that, at its heart, the Commission was about this, but did seek to package it in a more palatable way to avoid creating 'panic' amongst key constituencies which would ultimately need to be brought onside.³⁷⁵

³⁶⁹ See Chapter 4 for more details, private interviews

³⁷⁰ Private interview (31 March 2010)

³⁷¹ Among other things Sahnoun was Special Representative of the SG to Somalia in 1992, and was Joint Representative of the UN and the OAU in the Great Lakes Region and Central Africa from 1997-1998

³⁷² Email from Lakhdar Brahimi (21 October 2009)

³⁷³ Email from Lakhdar Brahimi (6 November 2009)

³⁷⁴ Interview with Christopher Cushing (Bradford, 9 June 2010), private interview (31 March 2010)

³⁷⁵ Table 3.3 breaks-down the name profile of ICISS based upon private interviews (15 July 2009, 31 March 2010) and with Christopher Cushing (Bradford, 9 June 2010)

Component	Meaning
1. International	To give a sense that this was not just a Canadian initiative, being identified as a Canadian mandated or sponsored initiative was inevitable but the need to embed with international context was particularly crucial in view of the challenges Canadian officials faced (see above)
2. Commission	To state clearly what the structural form of the initiative was.
3. Intervention	To be clear that the dilemma was about when intervention might be necessary and under what conditions. There was no intention to sugar-coat this as the central challenge.
4. State Sovereignty	To make clear that this was not an attempt to circumvent state sovereignty. It remained the primary ordering fundamental principle of international relations.

Both co-chairs were regarded as successful appointments, with a comparatively good balance between them.³⁷⁶ Sahnoun’s ‘revered’ reputation in Africa was deemed an important asset, as was his ‘strategically smarter’ personality which complemented the undoubtedly brilliant but more ‘exposed’ Evans.³⁷⁷ The appointment of the remaining ten Commissioners – completed in a ‘chaotic’ short space of time – was based upon a combination of factors to balance an identified skill-set, but was also constrained by individual availability.³⁷⁸ This skill-set included: regional representation (to bring to the table different perspectives and backgrounds)³⁷⁹; a balance of experience and expertise (political, NGO/CS, military expertise, international law and academic background); and individuals with a capacity to write well. Personal reputation and connections were also important, as was their ability and credibility in dealing with a complex set of issues/debates.³⁸⁰

ICISS’s credibility was part-dependent upon getting these selections right. Nevertheless, while achieving fair balance was always going to be difficult, ICISS was left vulnerable to accusations of Western-dominance with five Commissioners from this region, including two Canadians.³⁸¹ The combined P5 representation of Russia and the US was seen as important; officials believed that if these could agree then this would show that common ground

³⁷⁶ Interview with Gareth Evans (London, 25 May 2010)

³⁷⁷ Private interview (31 March 2010)

³⁷⁸ Private interview (31 March 2010): The ten were appointed in September and were: Gisèle Côté-Harper (Canada), Lee Hamilton (US), Michael Ignatieff (Canada), Vladimir Lukin (Russia), Klaus Naumann (Germany), Cyril Ramaphosa (South Africa), Fidel V. Ramos (Philippines), Cornelio Sommaruga (Switzerland), Eduardo Stein Barillas (Guatemala), Ramesh Thakur (India)

³⁷⁹ Regional representation was described by one official as an ‘early priority’, private interview, on reasons for it see ICISS (2001) *The Responsibility to Protect: Research, Bibliography, Background*, p341

³⁸⁰ Private interview (31 March 2010) and interview with Christopher Cushing (Bradford, 9 June 2010)

³⁸¹ Bellamy (2009) *The Responsibility to Protect*, p37. There was also two Canadians on the Advisory Board

existed to move forward.³⁸² On the other hand, Asian representation was moderate and indeed questionable, considering it included none of the region's most important powers. Equally, questions of balance extended to the lack of female participation.³⁸³ Despite approaching Louise Arbour and Sadako Ogata both were unable to commit, leaving this valid criticism a source of regret for Canadian officials.³⁸⁴ Before outlining the R2P proposals, it is important to note that all Commissioners were asked prior to appointment whether they bought into the central premise that the current international state of play was unacceptable – in other words whether they agreed that a problem existed. This was entirely consistent with the ICISS mandate but an important condition nevertheless.

The 'Responsibility to Protect'

ICISS met on five occasions, once with the Advisory Board, and was supported in its work by eleven regional roundtables and national consultations.³⁸⁵ Its report *The Responsibility to Protect* was published in December 2001.³⁸⁶ It reflected the consensus of all the Commissioners, and was drafted – in a 'genuinely cooperative approach' – by Evans, Ignatieff and Thakur.³⁸⁷ Consistent with the politically-oriented mandate, the report was short and accessible.³⁸⁸ The ICISS working process has been covered in detail elsewhere, and

³⁸² Private interview (31 March 2010): the establishment of ICISS was, however, a subject of Russian concern, see James Baxter (2000) 'Russian leader to visit Ottawa in December', *The Ottawa Citizen*, 13 September 2000

³⁸³ Gisèle Côté-Harper was the single female commissioner: Bellamy (2009) *Responsibility to Protect*, p37, Jennifer Bond, Laurel Sherret (2006) *A Sight for Sore Eyes: Bringing Gender Vision to the Responsibility to Protect Framework*, United Nations International Research and Training Institute for the Advancement of Women

³⁸⁴ Private interview (31 March 2010)

³⁸⁵ As Figure 3.1 shows ICISS was originally meant to be supported by a 'Group of Interested States (GIS)' convened 'at the level of senior officials'. Its purpose was to allow officials from those states constituting this group to feed in governmental views and consult on the Commission's work. One meeting of the GIS was held in New York in November 2000 but thereafter did not continue as a serious element of the ICISS process. Based on private interviews, DFAIT (2000) 'Axworthy launches International Commission on Intervention and State Sovereignty', *News Release*, 14 September 2000 and FCO (2000) 'International Commission on Intervention and State Sovereignty: UK Contribution to London Round-table', submission to the Secretary of State from United Nations Department, 1 December 2000. The GIS is picked up again briefly in Ch4

³⁸⁶ Along with a supplementary research volume, ICISS (2001) *The Responsibility to Protect: Research, Bibliography, Background*

³⁸⁷ Interviews with Gareth Evans (London, 25 May 2010), Ramesh Thakur (Waterloo, 22 June 2009), and private interview (31 March 2010), Evans was, however, the final editor of the report

³⁸⁸ Thakur explains that this was a conscious choice to produce a 'political report...speaking to a political constituency, not the academic constituency', interview (Waterloo, 22 June 2009)

will be referenced here where necessary to illuminate the proposals.³⁸⁹ However, some points are worth mentioning. First, the roundtable consultations helped shape the positions of Commissioners on some issues, provided a cross-regional testing ground for ideas and proposals, and identified areas where progress might be possible or where compromise would prove more difficult to achieve.³⁹⁰ Second, the DFAIT-based Secretariat purposely adopted a 'light touch' posture towards the Commission's intellectual work, mainly to avoid being seen as influencing rather than facilitating the outcome but also to incorporate some flexibility if the outcome proved undesirable.³⁹¹ This was perhaps unlikely, however. The ICISS report was generally a comfortable fit for those who had been involved in shaping and defining Axworthy's agenda. As Welsh et al point out 'a great deal of the Commission's language and concepts' reflect the HS agenda that was so prominent a part of Canadian foreign policy in the 1990s'.³⁹²

Intellectually underpinned by sovereignty as responsibility and the logic of the Brundtland formulation, ICISS would articulate in three words a simple, but beautifully packaged idea. Consistent with Axworthy's argument that intervention and sovereignty had to be reconciled, ICISS argued the solution rested in sovereignty itself, and in language which moved away from a 'right to intervene' towards a 'responsibility to protect':

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- B. Where a population is suffering serious harm, as a result of internal war insurgency, repression or state failure and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.³⁹³

³⁸⁹ For details of the ICISS Roundtables see ICISS (2001) *The Responsibility to Protect: Research, Bibliography, Background*, pp349-398, Neil Macfarlane, Carolin Thielking and Thomas Weiss (2004) 'The responsibility to protect: is anyone interested in humanitarian intervention', *Third World Quarterly*, Vol. 25, No. 5, pp.977-992

³⁹⁰ Thakur argues 'the report would have been a substantially different one if we had not made ourselves open to advice, consultations, feedback, input from a whole range of sources from around the world', interview (Waterloo, 22 June 2009)

³⁹¹ This was 'light-touch' only after a 'ruthless' mandate had been established, private interview. This was sensible from a political perspective, but considering some of the strong personalities involved (especially Evans) it is questionable how realistic the alternative would have been anyway. Thakur was very clear that there was 'no advance agenda', interview (Waterloo, 22 June 2009)

³⁹² Jennifer Welsh, Carolin Thielking and Neil Macfarlane (2002) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', *International Journal*, Vol. 57, No.4, p491

³⁹³ ICISS (2001) *The Responsibility to Protect*, pxi

This formulation proposed a new and distinctive solution to the impasse which had defined the intervention debates. Rather than talking of rights, or dual concepts of sovereignty – which often illuminated polarisation rather than a path for reconciliation – R2P sought to reframe how sovereignty was perceived and understood. Emphasising *primary* responsibility was designed to positively reinforce state sovereignty. The mantra was *responsibility* the objective *protection*. There was more to ICISS's proposals than the development of new language. Nevertheless, its linguistic contribution was immensely important to its development – albeit with positive and negative implications. Construction of the phrase was driven by the indelible contribution of Evans who aimed to develop a 'conceptual toehold' which people could 'get hold of', hopefully changing the way they think.³⁹⁴ That Evans presented the idea to his fellow Commissioners early in the process was certainly, as he acknowledges, somewhat 'presumptuous'.³⁹⁵ Despite describing them as initially 'profoundly resistant' ICISS's proposals would ultimately centre on this powerful phrase.³⁹⁶

It did so for a number of reasons. R2P directed the focus of attention onto people, capturing the essence of a 'moral imperative' to act in certain 'exceptional' cases which in so doing implied direct accountability for those with primary responsibility. Thus, at its core R2P articulated a notion of protection extremely difficult to oppose in principle.³⁹⁷ Additionally R2P responded to oft-expressed concerns regarding the association between 'humanitarian' and 'intervention'. This concern was expressed during the ICISS roundtables, and particularly strongly by ICISS Commissioner and former President of the ICRC Cornelio Sommaruga.³⁹⁸ Finally, R2P offered some originality, particularly in its conceptual application, but at the same time appeared both 'self-evident' and 'obvious'.³⁹⁹ It did not fundamentally depart from the development of international discourse but rather

³⁹⁴ Evans was concerned with the issue of language from the very outset, interview with Gareth Evans (London, 25 May 2010), see also Evans (2008) *The Responsibility to Protect*, p5

³⁹⁵ Gareth Evans (2008) *The Responsibility to Protect*, p5

³⁹⁶ Interview with Gareth Evans (London, 25 May 2010) and (2008) *The Responsibility to Protect*, p5

³⁹⁷ Email from Lakhdar Brahimi (6 November 2009)

³⁹⁸ Interview with Gareth Evans (London, 25 May 2010)

³⁹⁹ Interview with Gareth Evans (London, 25 May 2010)

represented a comfortable normative fit which flowed ‘naturally out of the discourse that [had] been around’.⁴⁰⁰

Of course, ICISS recognised the humanitarian intervention debates were more complex and deep-rooted than to be addressed simply by language – however clever. ICISS would thus outline a broad series of proposals designed to address the most pressing and difficult issues. First among these was to embed R2P within a continuum of responsibilities composed of a responsibility to *prevent*, a responsibility to *react*, and a responsibility to *rebuild*.⁴⁰¹ Accordingly, R2P was not exclusively about military intervention, but about a range of tools, strategies and responses – from diplomacy to coercion. This continuum logic was entirely understandable. It built-on existing international thinking, and was borne out by emphasis on prevention and rebuilding during the regional consultations. It was also consistent with the focus on primary responsibility, designed to help guard against fears R2P would provide the basis for greater uses of military intervention, rather than it being seen as a last resort option. As Evans explains, the crucial need ‘was to come up with a total approach to this that did not just frighten the horses. That motivated governments to respond appropriately to create an environment in which the immediate reflex response would not be “that’s none of our business”...but to create an environment in which the reflex response was “we should do something, yes this is our responsibility”’.⁴⁰²

Inevitably, different situations warrant different kind of responses, and the essential focus of protecting people from mass atrocities would benefit from preventing them in the first place.⁴⁰³ Nevertheless, the continuum argument would contribute to a series of issues which, over time, would threaten to undermine and erode the utility, novelty, and narrow focus of R2P (albeit in a form very different to the one presented by ICISS). Generally these issues would be united by difficulties and disagreement of definition and timing. Indeed, in a stinging critique of the R2-Prevent, Thomas Weiss would take umbrage at the statements that (1) prevention was the ‘single most important dimension’ of R2P, and (2) ‘less intrusive

⁴⁰⁰ Interview with Gareth Evans (London, 25 May 2010), see also ICISS (2001) *The Responsibility to Protect*, Chapter 2

⁴⁰¹ A synopsis of the ICISS framework and core R2P principles can be found in Appendix 1

⁴⁰² Interview with Gareth Evans (London, 25 May 2010)

⁴⁰³ Bellamy (2009) *Responsibility to Protect*, p52

and coercive measures [be] considered before more coercive and intrusive ones are applied'⁴⁰⁴ arguing these were 'highly situational' priorities.⁴⁰⁵ Furthermore, Weiss would describe priority (1) as 'preposterous' because much of the 'superficially attractive' language on prevention was a 'highly unrealistic way to try and pretend that we can finesse the hard issues of what essentially amounts to humanitarian intervention'.⁴⁰⁶ A similar view was expressed by one Canadian official, who described prevention as necessary for the purposes of agreement, but something which added very little of substance.⁴⁰⁷ Weiss' argument that R2-Prevent 'obscured' the most pressing aspect of the R2P, namely to react better, has some merit. The problem lay in that the need to enhance palatability concomitantly had the potential to erode the definitional focus of R2P – the parameters of which were ultimately designed to limit the focus onto mass atrocity crimes. But this meant there was a risk R2P would be too broadly applied, with the characterisation of real world situations as R2P, including in the *preventive stage*, particularly lacking in clarity. Aside from damaging its own credibility, this could also threaten to undermine well-embedded more benign strands of prevention and protection. Indeed, defining what constituted a live R2P-crisis would emerge as a major obstacle. Not least because R2P would remain associated with military/humanitarian intervention, which, combined with misguided invocations, would invoke – for many states – negative connotations of a Western-dominated agenda.⁴⁰⁸ ICISS certainly attempted to condition the debates with the intellectual agenda they proposed. But unavoidably its report was 'very heavily' focused on the military dimension, reflecting the 'currency' of the time and the simple fact that ICISS was formed in response to the challenge of humanitarian intervention.⁴⁰⁹ As such, its proposals were always going to be strongly associated with, and arguably judged, by its contribution in this area. Unsurprisingly, the responsibility to react and the issue of right authority (dealt with in a separate chapter), would expose the most difficult areas of discussion leading to compromises inevitably evident in its final report.⁴¹⁰

⁴⁰⁴ ICISS (2001) *The responsibility to Protect*, pxi

⁴⁰⁵ Thomas Weiss (2007) *Humanitarian Intervention: Ideas in Action*, Cambridge: Polity, p103

⁴⁰⁶ Weiss (2007) *Humanitarian Intervention: Ideas in Action*, p104

⁴⁰⁷ Private interview (31 March 2010), see also Bellamy (2009) *Responsibility to Protect*, p52

⁴⁰⁸ See Alex Bellamy (2009) 'Kosovo and the Advent of Sovereignty as Responsibility', *Journal of Intervention and Statebuilding*, Vol. 3, Issue. 2, pp.163-184

⁴⁰⁹ Interview with Gareth Evans (London, 25 May 2010)

⁴¹⁰ Interview with Gareth Evans (London, 25 May 2010), private interview (31 March 2010): the responsibility to react also dealt with 'measures short of military action', ICISS (2001) *The Responsibility to Protect*, pp29-31

ICISS endorsed the position that military force was a legitimate policy option in 'extreme and exceptional cases'.⁴¹¹ Recognising this lacked definition, ICISS outlined an elaborate framework consisting of a just cause threshold and a set of just war 'precautionary' principles.⁴¹² The latter consisting of right intention, last resort, proportional means, and reasonable prospects were apparently agreed with little difficulty.⁴¹³ While consistent with the various other attempts to develop decision-making criteria, the substance of the proposals, combined with the equally consistent lack of political support for them, meant the prospects for success were extremely limited from the outset. This is not to completely disregard their utility as a useful guide. But it is to say that codification can never displace hard-edged, political realities. To suggest otherwise would be based on the pursuit of analytical distinction which is, in actuality, fallacious. More directly, ICISS's argument that each 'condition' had 'to be met *at the outset*' was particularly problematic, overestimating the clarity of their proposals.⁴¹⁴ Rather than the 'clear guidelines' ICISS suggested they were, such criteria would always be open to interpretation, and carry their own 'inherent' difficulties.⁴¹⁵

They each raise questions and points of debate. The argument for right intention, that the '*primary* purpose of the intervention *must* be to halt or avert human suffering' is highly questionable, and in practice would arguably represent regression rather than progression.⁴¹⁶ Although acknowledging so-called 'mixed motives', it is debatable whether one could pinpoint an intervention where humanitarian objectives were evidently the principal motivation.⁴¹⁷ Moreover, as Kosovo demonstrated, democratic political constraints are very real. Interventions often require evidence of national interest in order to justify, or

⁴¹¹ ICISS (2001) *The Responsibility to Protect*, p29 and see p15-6 on emerging practice

⁴¹² ICISS (2001) *The Responsibility to Protect*, pxii-xiii, p29-25 and see Appendix 1

⁴¹³ Interview with Gareth Evans (London, 25 May 2010)

⁴¹⁴ ICISS (2001) *The Responsibility to Protect*, p35, emphasis added

⁴¹⁵ ICISS (2001) *The Responsibility to Protect*, p35, As Adam Roberts writes, criteria can 'at best be a set of rough guidelines', in (2001) 'Intervention: Suggestions for moving the debate forward', *paper for the ICISS round-table meeting*, London, 3 February 2001, p5

⁴¹⁶ ICISS (2001) *The Responsibility to Protect*, p35

⁴¹⁷ On mixed-motives see Nicholas Wheeler (2002) *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press and Michael Walzer (2002) 'The Argument about Humanitarian Intervention' in Nicolaus Mills and Kira Brunner (Eds.) *The New Killing Fields: Massacre and the Politics of Intervention*, New York: Basic Books

make more palatable, the inherent risks and costs associated with such a course of action. In such circumstances, the legitimating discourse of politicians will almost inevitably – out of pragmatic necessity – emphasise this dimension.⁴¹⁸ Thus, determining whether altruism is actually the primary motive would prove to be extremely difficult. Besides which, ICISS's argument that 'good international citizenship is a matter of national self-interest' as a way to answer the potential for non-altruistic reactions or 'demands' by domestic audiences, underplays, as Welsh et al. argue, the 'serious political barriers...decision-makers face' including whether in fact leaders should put their own citizens in harm's way in order to protect the lives of those elsewhere.⁴¹⁹ More fundamentally, ICISS arguably overstated the extent to which the majority of States defined their interests in a way which would lead to more concerted action to protect people, and, that while R2P attempted to change the 'referent object for analysis' to those who need protection, identifying motive in such a principal way served to reinforce the view – even with the progressive emphasis on responsibility – that the level of focus would remain directed onto those who can do something, rather than those who cannot.⁴²⁰

Additional *practical* difficulties are also relevant. For instance, last resort and reasonable prospects are challenged by issues of timing and temporality which in part define their purpose. What actually represents a 'reasonable prospect for success' is open to interpretation and dependent upon how one defines 'success' and according to what timescale.⁴²¹ Similarly, determining when military force becomes a last resort is open to a raft of interpretations. The points at which diplomatic efforts become exhausted or where sanctions fail to achieve their objective are ultimately political judgement calls which cannot be specified or formulated with any tangible exactitude in advance. It may be the case, as Weiss argues, that coercive action 'may make sense sooner rather than later'.⁴²² Indeed,

⁴¹⁸ See e.g. Tony Blair (1999) 'Doctrine of the international community', Chicago, 22 April 1999

⁴¹⁹ ICISS (2001) *The Responsibility to Protect*, p36, and Jennifer Welsh, Carolin Thielking and S. Neil MacFarlane (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', in Thakur et al. (Eds.) *International Commissions and the Power of Ideas*, Tokyo: United Nations University Press, p208

⁴²⁰ Nicholas Wheeler quoted in Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p209 and Emails from Lakhdar Brahimi (6 November 2009, and 5 October 2010)

⁴²¹ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p209

⁴²² Weiss (2007) *Humanitarian Intervention: Ideas in Action*, p103-4

these problems are relevant to the implicit theme throughout: that aside from issues of political will and interest, determining when and in what form the multilateral system kicks-in is at any stage subject to political difficulties which R2P was unable to address. Furthermore, even without criteria the eventual formulation of R2P would provide states additional opportunity to argue over the various transition points between primary state responsibility and international engagement – with ample room for delay and avoidance on both sides. Meanwhile, R2P would provide a linguistic basis for broader applications and political appropriations which ICISS had attempted to guard against with this framework.⁴²³ ICISS's intention was to narrow R2P's focus to limit the broad and abusive use of humanitarian justifications. However, while a just cause threshold was a central plank for achieving this; its definition would be troubled by differences of opinion between its Commissioners. Consequently, ICISS argued that for military intervention 'to be warranted, there must be serious and irreparable harm occurring to human beings or imminently likely to occur, of the following kind:

- A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
- B. **large scale 'ethnic cleansing'**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape'.⁴²⁴

In principle, the logic of defining limited conditions is sensible.⁴²⁵ In practice, however, arriving at agreement on when it is 'right to fight' is one of the most challenging aspects of *jus ad bellum*. That there is no '[generally accepted] comprehensive and exact definition' of just cause was reflected in ICISS's deliberations, its proposals, and particularly in the real world debates post-9/11.⁴²⁶ Although right to avoid *quantifying* 'large scale' the inclusion of the threshold served to highlight just how politically difficult arriving at common consensus

⁴²³ See ICISS (2001) *The Responsibility to Protect*, p35: 'the Commission believes that they [the threshold and precautionary criteria] will strictly limit the use of coercive military force for protection purposes'

⁴²⁴ ICISS (2001) *The Responsibility to Protect*, synopsis pxi and p32-33

⁴²⁵ Indeed, post-2001 R2P would undergo considerable conceptual narrowing as a result of political necessity. This dynamic is evident in the subsequent chapter but is most obvious during the 2005 negotiations documented in Ch5

⁴²⁶ Charles Guthrie and Michael Quinlan (2007) *The Just War Tradition: Ethics in Modern Warfare*, London: Bloomsbury, p17

on such matters is likely to be.⁴²⁷ As Adam Roberts argues, the preventive dimension of intervention means its resulting 'rationale...must depend crucially, not on actual crimes or hard numbers, but on speculative judgements about the likely future course of events in a given country'.⁴²⁸

This problem was exacerbated by the emphasis on primary responsibility, which, although necessary to reinforce the norm of non-intervention (i.e. intervention permitted only in exceptional cases), highlighted the problem from a different perspective. It added into the mix the question of whether individual state responsibility was in fact exhausted. A long-standing problem with just cause is that there will be claims to 'justice' on both sides.⁴²⁹ It is true this does not imply reflexive 'moral equivalency', and that the nature and history of the regime and situation in question will condition the credibility of such claims, nevertheless it builds in the possibility for delay, and contestation about where the means and responsibility to address a situation actually resides. Individual states will be positioned to argue they are working towards realising their responsibility/demands of the international community, perhaps even directly invoking the language of R2P. Although accepting that your own words can hurt you, they can also provide an instrumental basis for avoidance and delay. This is especially possible where there is disunity at the international-level – either because of a genuine lack of agreement, or because it may suit those with little interest/will to act, or those who remain essentially opposed to any determinations potentially leading to international intervention for humanitarian reasons.

Additionally, a fundamental problem with any such threshold relates to what crimes or situations would justifiably warrant the use of military action. This problem is particularly acute in the area ICISS sought to address. A comparison with self-defence (with its explicit basis under Article 51 of the UN Charter) exposes the political dilemma ICISS faced: of attempting to define a threshold high enough to guard against fears of exploitation – keeping in mind the embedded status of non-intervention under Article 2(7) – but at the

⁴²⁷ Any such quantification would only have served to confuse the purpose of interventions, which are meant to have a built-in 'preventive function' to save lives that 'might otherwise be lost', Roberts (2001) 'Intervention: Suggestions for moving the debate forward', p5

⁴²⁸ Roberts (2001) 'Intervention: Suggestions for moving the debate forward',

⁴²⁹ Guthrie and Quinlan (2007) *The Just War Tradition: Ethics in Modern Warfare*, p18

same time does not set the bar so high it arbitrarily precludes a series of crimes, human rights abuses or other threats to civilians which may justify international action. ICISS wrestled with this issue, with alternative viewpoints on how ambitious, or limited, it should be.⁴³⁰

Resulting compromise was a set of proposals which lacked specificity and includes the optimistic assumption that 'large scale' would *not*, in most cases, 'generate major disagreement'.⁴³¹ Furthermore, ICISS was arguably regressive, excessively narrowing its threshold by omitting precedents already set by the SC – most notably external action to restore an elected government as was the case in Haiti in 1994, and Sierra Leone in 1997.⁴³² Indeed, during the development of the PoC the SC did not caveat its preparedness to respond to deliberate targeting of civilians with such a genocidal or 'large-scale' threshold.⁴³³ Meanwhile, the language of 'actual or apprehended' while potentially incorporating necessary flexibility, returns us back to the dilemma of how its threshold conditions are to be determined, and crucially at what point? The issue of timing means the distinction between various types of threats to civilians, including those below the ICISS threshold, will be marginal and open to interpretation. Likewise the evidence base one uses is dependent upon how it is actually assessed.⁴³⁴ Here ICISS struggled, arguing that 'ideally' a 'universally respected and impartial non-government source' would provide reports on a particular crisis situation.⁴³⁵ In reality, however, member states would not be willing to cede control of the decision-making process in such a way, and besides which – as Welsh cautions – even where facts are 'reasonably clear' states will continue to take into account 'order, stability, and self-interest' in this sense representing only 'necessary, and not sufficient, conditions for a decision to intervene'.⁴³⁶

⁴³⁰ Thomas Weiss (2004) 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, Vol. 35, No.2, p139

⁴³¹ ICISS (2001) *The Responsibility to Protect*, p33, see also Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p204

⁴³² Weiss (2004) 'The Sunset of Humanitarian Intervention?', p139

⁴³³ See Security Council 'Resolution 1265 on the Protection of Civilians in Armed Conflict', S/1999/1265, 17 September 1999 and Bellamy (2009) *Responsibility to Protect*, p62

⁴³⁴ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p205

⁴³⁵ ICISS (2001) *The Responsibility to Protect*, p34-5

⁴³⁶ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p205

The lack of SC authorisation for Kosovo provided the backdrop to the Commission's work. Unsurprisingly, the question of right authority represented the single most challenging issue on which ICISS would struggle to reach agreement.⁴³⁷ How to address a lack of SC authority was, according to one official involved, a 'red-flag' issue raised by Sahnoun in particular.⁴³⁸ As it was, agreement arrived late in the process, with Lee Hamilton the last to join the consensus 'in the last hour of our last meeting'.⁴³⁹ Hamilton's position not only reflected a traditional US desire to avoid being exclusively tied to the SC, but was also based on the not unreasonable question of what states *should* do in the event of a SC veto, or threat of, in a similar, or even more obvious, humanitarian crisis?⁴⁴⁰ It is reasonable because fundamentally legality and legitimacy are not of the same character. Just as a legally authorised intervention can lack legitimacy, or see its legitimacy eroded by how it is conducted, so an intervention could take place without initial explicit legal authority, but has a strong *prima facie* case for legitimacy, which may also lead to subsequent SC endorsement.⁴⁴¹ It is certainly true there are numerous potential formulations, and associated complexities with arguments relating to legitimacy vis-à-vis legality, but the point is nevertheless evident. On the other side of the argument, some Commissioners were equally adamant ICISS was not going to offer any comfort or explicit support for action outside the SC context.⁴⁴² Resultantly, ICISS outlined a formulation which – at its core – was SC approval.⁴⁴³ It was the 'prerequisite for legality'.⁴⁴⁴ Not wishing to consider alternatives to the primacy of the SC would prove to be pragmatic. As subsequent chapters show, political necessity would bind R2P to the SC in such a way that supporters of humanitarian intervention would deem it excessively narrow, and in some respects regressive. The problem for ICISS lay with the general formula they adopted which was overly optimistic and perhaps more elaborate than necessary. Mirroring previously arguments by Annan,

⁴³⁷ Interview with Gareth Evans (London, 25 May 2010)

⁴³⁸ Private interview (31 March 2010)

⁴³⁹ Gareth Evans (2008) *The Responsibility to Protect*, p4

⁴⁴⁰ This questions was, and remains, particularly acute for those who believed in the legitimacy of the NATO intervention in Kosovo

⁴⁴¹ See how Annan sought to address this question in 'Two Concepts of Sovereignty: Address to the 54th session of the United Nations General Assembly', 20 September 1999 in *The Question of Intervention*, New York: United Nations, pp.37-44

⁴⁴² Private interview (31 March 2010)

⁴⁴³ See ICISS (2001) *The Responsibility to Protect*, chapter 6 pp. 47-55

⁴⁴⁴ Interview with Gareth Evans (London, 25 May 2010)

ICISS sought to tie the *credibility* of the SC, and indeed the UN, to its capacity and willingness to realise its R2P.⁴⁴⁵

Accordingly, the challenge was to make the SC 'work much better than it has'.⁴⁴⁶ To achieve this ICISS proposed a P5 'code of conduct' whereby a P5 member would agree not to deploy the veto to block an otherwise majority resolution 'in matters where its vital national interests were not claimed to be involved'.⁴⁴⁷ Even if, *in theory*, such a proposal appeared achievable, the practical obstacles would remain immensely difficult. Aside from a lack of willingness of P5 members to limit their prerogatives in such a way, achieving consensus regarding what national interest actually meant would be particularly problematic – with systemic and domestic pressures at play.⁴⁴⁸ For example, China's 1999 veto of a resolution to extend a peacekeeping mandate in Macedonia was based upon anger and sensitivity at Macedonia's establishment of diplomatic ties with Taiwan a few weeks earlier.⁴⁴⁹ Although highly critical of this veto, which he describes as 'so far removed from their immediate national interest as recognisable by anybody else that it was an offence against the multilateral system', Jeremy Greenstock nevertheless rightly cautions that attempts to realise such a proposal would lead to a 'clause' which, in its attempt to define national interest, would be 'very convoluted'.⁴⁵⁰

Not only that, but such a code would still require the inevitable caveat that each case should be determined on its own merits; according to its own circumstances. This would inevitably condition any assessment of how reasonable or unreasonable a (potential) veto would then

⁴⁴⁵ ICISS (2001) *The Responsibility to Protect*, p55 and Annan 'Two Concepts of Sovereignty: Address to the 54th session of the United Nations General Assembly', 20 September 1999

⁴⁴⁶ ICISS (2001) *The Responsibility to Protect*, p49

⁴⁴⁷ ICISS (2001) *The Responsibility to Protect*, p51: the code of conduct was initially suggested by French Foreign Minister Hubert Vedrine during a roundtable meeting in Paris 23 May 2001, see ICISS (2001) *The Responsibility to Protect: Research, Bibliography, Background*, p378-383

⁴⁴⁸ See Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p210

⁴⁴⁹ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p210

⁴⁵⁰ Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009): similarly Axworthy described this veto as one of the most 'perverse uses of the veto I have ever seen', interview (Winnipeg, 27 November 2008). It also means, as Welsh points out, that human rights abuses by a P5 country which may warrant international attention would not fall under this code of conduct, though this is, I would argue, politically unavoidable, it does nothing to help the issue of consistency and selectivism with one rule for the P5, another for everyone else, see Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p210

be – particularly in recognition that there are numerous potential points of difference in any decision to intervene even if some are admittedly more genuine than others. As Kosovo showed, objections from Russia – and within the UN Secretariat – related to whether diplomacy had in fact been exhausted, and whether or not the use of military force was an appropriate course of action. In this regard, what may be more necessary, but no easier to achieve is a more credible ‘set of relationships’ between the P5 members, defined by increased levels of trust and understanding which could lead to greater consensus and less pronounced objections to ideas of intervention to protect people.⁴⁵¹ Moreover, it is also worth considering that the inability to overcome a veto/veto-threat may be a result of a failure by those who table a resolution, to deploy, with sufficient force and astuteness, the kind of political arguments and diplomatic strategies necessary to enhance P5 engagement, and ultimately involvement with any subsequent decision. As Greenstock remarks, in some cases ‘those who are putting down a resolution that might be vetoed are as responsible for the breakdown as the vetoer’.⁴⁵² These debates aside, the potential that the SC would ever agree to adopting such a code was one of the least likely ICISS proposals.

There were additional problems with ICISS’s proposals. First, arguing the SC needed to work better resulted in an implicit association with the longstanding toxic issue of SC reform. Although ICISS explicitly attempted to sidestep this issue it did at least acknowledge that reform – widely seen in terms of enlargement and enhanced representation – would not necessarily improve SC decision-making.⁴⁵³ Furthermore, ICISS’s understandable insistence that SC approval should be sought *first* ‘in all cases’ raised its own issues, particularly if the SC is unable or unwilling to authorise an intervention.⁴⁵⁴ In the run-up to NATO’s action in Kosovo a concern for German policy-makers, for instance, was that a formal rejection of a resolution would carry a legal weight which would be hard to overcome.⁴⁵⁵ In effect, the ability to plead necessity in mitigation would be hindered by such a clear statement of the

⁴⁵¹ Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009): this would be especially pronounced post-Iraq, see ch4 for the impact of Iraq on the development of the R2P

⁴⁵² Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009), see also David Malone (Ed.) (2004) *The UN Security Council: from the Cold War to the 21st century*, p20

⁴⁵³ ICISS (2001) *The Responsibility to Protect*, p51

⁴⁵⁴ ICISS (2001) *The Responsibility to Protect*, p50

⁴⁵⁵ Interview with Kieran Prendergast (London, 6 October 2009)

SC. Whether or not a credible position, it provides an example of some of the fine political and legal balances at play.

This is not intended, however, to imply any issue with the SC's legal centrality, or in seeking to engage the SC as early as possible in an unfolding humanitarian situation. In fact, the often drawn-out processes of SC decision-making make this more important. But it does demonstrate that a formal authorisation request, if rejected, could pose significant problems for those who regard action as necessary and for the very basis of international law. Alternatively of course, action which neither seeks nor has SC approval similarly has the potential to undermine the authority of the SC and the UN. ICISS's response was, pragmatically, to avoid ruling out the possibility of action in certain cases where the SC is unable or unwilling to do so itself.⁴⁵⁶ Indeed, with the R2P crafted as much a moral calling as it is anything else, should the SC not react accordingly it does not merely dissipate in response. As Roberts argues, while SC approval is of 'inestimable value' it is 'not possible to conclude that in every case such formal approval is essential to international acceptance of a particular operation'.⁴⁵⁷

That said, ICISS ultimately and wisely placed R2P in the domain of the SC. Despite its many political failings and inadequacies, the harsh truth is that the solution ultimately rests in its hands, with alternative institutional proposals such a so-called 'league of democracies' or other formulations of 'coalitions of the willing' loaded with all kinds of difficult and dangerous consequences.⁴⁵⁸ Of course this meant the issue of political will, which ICISS hoped to address with the combination of its proposals pressuring the SC to act for the sake of its own credibility, including under the pressure of world opinion, would remain most challenging. However, ICISS's alternatives if it failed to act, of turning, for instance, to the GA

⁴⁵⁶ ICISS (2001) *The Responsibility to Protect*, p53

⁴⁵⁷ Roberts (2001) 'Intervention: Suggestions for moving the debate forward', p9

⁴⁵⁸ See for instance Robert Kagan, 'The Case for a League of Democracies' *Financial Times*, 13 May 2008, Anne-Marie Slaughter, 'Plugging the Democracy Gap' *International Herald Tribune*, 30 July 2007, Jackson Diehl, 'A 'League' By Other Names' *Washington Post*, 19 May 2008, Shashi Tharoor, 'This mini-league of nations would cause only division', *The Guardian*, 27 May 2008, Allen Buchan and Robert Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal' *Ethics and International Affairs*, 18, 1, 2004, pp1-22, John McCain, 'An Enduring Peace Built on Freedom: Securing America's Future' *Foreign Affairs*, November/December 2007, Thomas Carother et al, *Is a League of Democracies a Good Idea?* Carnegie Endowment for International Peace, Policy Brief no.59, Ivo Daadler and James Lindsay, 'Democracies of the World Unite' *Public Policy Research*, 14, 1, pp47-58,

through the Uniting for Peace procedure, more reflected a lack of agreement between commissioners than a realistic or desirable policy option.⁴⁵⁹ There is little reason to believe this route offers an approach for enforcing R2P. The GA is arguably more politically difficult than the SC, with its processes slow and unwieldy, and composed of a majority of states who remain strongly committed to non-intervention.⁴⁶⁰ Moreover, as with the proposed criteria and code of conduct, the likelihood the SC would cede control in such a way was, and remains, minimal to say the least.

There was more credibility to the option of action pursued by regional organisations.⁴⁶¹ However, this has its own complexities, particularly in cases where state consent is lacking, but also because the willingness of regional organisations to act in such a way has not been generally evident.⁴⁶² Indeed, increased regional action may represent a dangerous precedent, both in terms of not wishing to erode the SC's centrality but also by building-in tensions regarding an apparent universal responsibility. While accepting that it would not be possible to 'find consensus around any set of proposals for military intervention which acknowledge the validity of any intervention not authorized by the SC or GA' the problem for ICISS was that the Kosovo intervention which inspired its establishment did not lead to a formulation politically capable of adequately addressing the relationship between R2P and action outside of the UN context.⁴⁶³ That Ramesh Thakur can subsequently state that 'even now if you brought the twelve commissioners together you would get a difference of opinion on whether or not that was justified or not' and the statement 'Kosovo did not meet the tests we put out in that it was not UN authorised' shows just how difficult this issue was always going to be.⁴⁶⁴ It is apt therefore that one Canadian official would describe ICISS's efforts in this area as somewhat 'tortured'.⁴⁶⁵

⁴⁵⁹ General Assembly Resolution 'Uniting for Peace', 377 A (V), 3 November 1950, ICISS (2001) *The Responsibility to Protect*, p53

⁴⁶⁰ Indeed, as the Kosovo report argued NATO states choose not too 'because, even though there is no veto in the GA, the sensitivity of non-Western states to interventionary claims of any sort made it unlikely that an authorization of force would have been endorsed by the required two-thirds majority', Independent International Commission on Kosovo (2000) *Kosovo Report*, p174

⁴⁶¹ ICISS (2001) *The Responsibility to Protect*, p53-4

⁴⁶² A point ICISS acknowledged, (2001) *The Responsibility to Protect*, p54

⁴⁶³ ICISS (2001) *The Responsibility to Protect*, p54-5

⁴⁶⁴ Interview with Ramesh Thakur (Waterloo, 22 June 2009): and indeed just how difficult this issue is to this day

⁴⁶⁵ Private interview (31 March 2010)

A better option might have been to argue that the concept of domestic law *necessity* be applied to the international context as justification for violating the law in extreme cases. This approach avoids attempts to define or codify action outside the SC and gives scope for some form of subsequent endorsement. It would also have been generally consistent with key aspects of ICISS's position. Indeed, an opening for this line of approach was evident in its mention of *ex post facto* authorisation – as was the case in Liberia and Sierra Leone – and which 'might conceivably have been obtained in the Kosovo and Rwanda cases, and may offer a way out of the dilemma should any case occur again in the future'.⁴⁶⁶ ICISS could have pursued this as an argument for a necessity clause/defence. As Evans has 'subsequently discovered' pleading 'mitigation' was a 'better way' than the more 'complex argument' that the SC would be 'shooting itself politically in the foot if it makes the wrong decision'.⁴⁶⁷ The key point to bear in mind is that mitigation – as Hans Corell makes clear – is not defined in a formulaic or codified way.⁴⁶⁸ There are inevitable issues with this approach, and it would certainly demand high-levels of rigour to avoid political abuses. However, on balance necessity represents a better approach than considerably more contentious attempts to arrive at alternative institutional or legal formulations.

Conclusion

Much of the focus on ICISS's proposals has been purposefully directed at the reactive stage of the responsibility continuum. While ICISS attempted to argue R2P was not simply about military action – and there is undoubtedly merit to this argument – considering its genesis and the context of the debates of the 1990s, one has to recognise that R2P was always going to be associated with the coercive dimension of protection. ICISS would not have put so much effort into trying to define the conditions under which force may be used were this not the case. ICISS hoped its proposals would address the many longstanding concerns the humanitarian intervention debates had provoked. Action without SC authorisation – as in Kosovo – but also the cases of inaction – most notably in Rwanda – where the obstacles to

⁴⁶⁶ ICISS (2001) *The Responsibility to Protect*, p54

⁴⁶⁷ Interview with Gareth Evans (London, 25 May 2010)

⁴⁶⁸ Telephone conversation with Hans Corell (11 February 2010)

action were generally regarded as a lack of will rather than concerns for Rwandan sovereignty, captured the complexity of the issues ICISS was attempting to deal with.

To summarise, ICISS's formulation of R2P – mirroring Axworthy's thinking – was based on the contention that human rights and sovereignty, and intervention and sovereignty were not at incompatible concepts but reconcilable. Accordingly, they argued, there was an emerging consensus that sovereignty implied responsibility and that this should provide the conceptual framework rather than 'humanitarian intervention' or a 'right to intervene'. Indeed, for Alex Bellamy, debates over the legality and legitimacy of force in Kosovo had actually 'masked a deeper consensus about sovereignty as responsibility', and, despite having negative short-term implications, in the 'longer term' created an 'impetus...for resolving apparent tensions between sovereignty and human rights most clearly manifested in ICISS and the activism of Kofi Annan' which 'helped progress and clarify the appropriate licensing authority for the use of force'. In his view, given this 'broad consensus' evident in Kosovo 'it is not surprising that agreement was reached on the adoption of...R2P in 2005'.⁴⁶⁹

However, this reading of the development of sovereignty as responsibility and R2P is highly questionable. Kosovo was undoubtedly a key catalyst as evident throughout, but to suggest that it contributed to *resolving* the relationship between human rights and sovereignty particularly lacks credibility. Indeed, the specific mechanics of the subsequent development of R2P, notably during the WS process, shows that the formulation states adopted was heavily state centric in order to convince sceptical states it did not represent any movement beyond what the UN Charter already provided for. Moreover, that agreement was achieved in 2005 *was* surprising and related more to a series of structural and other political factors than any broad willingness to embrace an idea implying an explicit international R2P which could lead to international action – including external intervention (Ch5). Furthermore, R2P's potential use as a powerful device for *avoiding* responsibility by actually reinforcing state control over a specific situation cannot be overlooked as a genuine concern. Indeed, although this thesis suggests that by applying the logic of 'unpacking' to the R2P one can identify solid elements of agreement; this does not mean that when constituted as a whole,

⁴⁶⁹ Bellamy (2009) 'Kosovo and the Advent of Sovereignty as Responsibility', p176, 182, 185

the distinction is entirely sustainable in the way Bellamy's approach would suggest. As the previous points implied, R2P was intended to address those issues relating to the action and inaction of the international community in the face of mass atrocity crimes. Thus, the form of R2P, with its emphasis on individual state responsibility, cannot be detached from the international dimension, especially the institutional procedural modalities for intervention. The latter are absolutely central to it. R2P was never simply about qualifying sovereignty but about doing so in a way which could lead to associated behavioural changes. As such although one can observe a willingness to support the strong emphasis on individual state responsibility, the motivations of states for doing so varies considerably, which in turn impacts upon how credible the R2P is in terms of its likelihood for motivating action at the international-level. Reversely, the numerous obstacles and complexities provoked by the international dimension of R2P – many of which were discussed in some form above – similarly impacts upon the credibility of the individual state dimension.

The justification for addressing such points here is that for all ICISS's effort its best-case scenario (of SC and GA endorsement of its proposals), had immensely unlikely political prospects.⁴⁷⁰ For instance, the UK's SC-focused efforts from 1999-2001 exposed how difficult it would be to agree a framework for intervention amongst the P5. Even with greater inbuilt flexibility, the UK proposals provided a hard lesson regarding the limits of what might be achievable. This is relevant not simply to illuminate the negative political possibilities in this area, but because post-2001 some ICISS commissioners would increasingly argue the potential constraining power of criteria. The problem with this argument is that it only has merit insofar as there is evidence that the States who need to be signed-up to such criteria display any willingness to do so. Trying to sell to sceptical or fearful GA States the benefits of criteria is naive when the P5 are united by an unwillingness to constrain their scope of action in such a way.

Of course, it would be unfair not to recognise David Malone's insightful point that Commissions need to 'look beyond what is achievable in the short term'. Nevertheless, the suggestion that ICISS based its proposals on 'international politics as [they] think it should

⁴⁷⁰ See ICISS (2001) *The Responsibility to Protect*, Chapter 8 'The way forward', pp.69-75

be rather than as it is' is more telling.⁴⁷¹ ICISS wanted to have 'real world' impact.⁴⁷² But instead, the Commission's proposals often lacked a sense of political realism by ignoring the actual state of play regarding the multilateral capacity of UN member states to arrive at consensus on common values and principles for the implementation of an idea as potentially transformative as R2P. It is similarly for this reason that the reference to state *motivation* is a more central consideration than some may wish to acknowledge. The assertion that the 2005 agreement *was* surprising is based upon an analysis of R2P's development, particularly *how* the agreement was possible considering the difficult political circumstances post-9/11. This of course derives from the process-driven hypothesis and the contentions expressed in Ch1 regarding the theoretical and methodological tools required to understand normative development. But it was also reinforced through the interviewing phase which repeatedly generated responses which suggested that far from commanding unanimous support a considerable majority of member states remain committed to more traditional notions of sovereignty vis-à-vis the role of the international community. As one ambassador intimately involved in the negotiations suggested, a significant majority of the states who signed-up to R2P maintained positions predominantly defined by continuing fundamental objections to an evolution towards a hierarchical international system based upon responsibility, oversight and external intervention.⁴⁷³ As another put it there is a persistent belief that sovereignty continues to trump human rights.⁴⁷⁴ Suggestions that these arguments were made exclusively by those who oppose R2P (or the idea of) would be wrong. In fact, the expression of scepticism and the identification of obstacles were articulated by those most directly involved in its development and negotiation. Neither should one assume such criticism was exclusively directed at the G77 or NAM, it was also directed at key Western countries whose agendas have most closely been associated to the cause and development of human rights, and R2P. These criticisms matter because as the introduction emphasized, the post-2005 focus of R2P advocates has shifted towards its

⁴⁷¹ Email from David Malone (15 September 2009), and Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p217

⁴⁷² As Evans remarked at the ICISS launch: 'the truth of the matter is that unless a number of key countries do come on board at the end of the day particularly in the Security Council context – we're not going to be able, *in the real world*, to move this thing forward', in Nicole Winfield (2000) 'Commission launched to study intervention vs. sovereignty', *Associated Press*, 14 September 2000

⁴⁷³ This was not a lone voice, as the detailed account of the World Summit negotiations in Chapter 5 reveals

⁴⁷⁴ Private interview (27 August 2010), and private telephone conversation with former UN official (28 September 2010)

operationalization. However, considering these questions about the extent of member state commitment to R2P, one has to question the solidity of the foundations on which operationalization can be based? And how closely matched is the understanding and explanation of the R2P presented in the remaining two chapters to the academic literature and R2Ps most committed supporters? Certainly the oft-expressed reliance on the apparent 'unanimity' of the agreement is not in itself sufficient to explain its collective meaning or how agreement was realised.

Thus, the shift from the entrepreneurial/norm brokerage phase captured here, to the hard politics of trying to win support for the R2P idea which consumes resulting chapters, is immensely important. It reveals just how difficult the political context proved to be, and just how qualified one's perception of the R2P's impact should be. Indeed, rather than any reconciliation between sovereignty and human rights, subsequent events captured a clear fading out of the humanitarian intervention debates as terrorism and Iraq became the preoccupation of states to the *detriment* of genuine concern for human rights or humanitarian issues. Moreover, that R2P would be applied *post hoc* to Iraq not only damaged the international environment (and R2P more directly) but also demonstrated that once ICISS published its report its content would no longer fall under its exclusive ownership. On the contrary, its ideas – particularly the language of R2P – would be subject to political appropriation, and (attempts at) reinterpretation, inevitably leading to significant changes to what ICISS proposed here. There was no reason to expect or believe political leaders would not attempt to graft their own thinking and policies onto the potential application and utility of R2P. Indeed, that there were differences within ICISS in relation to the issue of thresholds and authority means it should come as little surprise that such differences would be correspondingly evident once R2P emerged out into the 'real world' – as testified, for instance, by the support of Michael Ignatieff and others, for an invasion of Iraq based on humanitarian justifications. In essence, one should always keep in mind the inevitable centrality of normative contestation in the development of international norms.

Thus remaining chapters are directed at showing how R2P fared in the international policy stream. Considerable emphasis in this regard is directed at the *negotiation* of R2P which is such an important part of any analysis of normative developments (Ch5). This, combined

with an account of R2P advocacy post-ICISS in Ch4, is also about ensuring one does not attempt to retro-fit an understanding of R2P which does not correspond with the procedures and substance of the 2005 agreement.⁴⁷⁵ In this sense, they provide a more realistic and accurate appraisal of the status of R2P by tracing the underlying developmental political processes. However, it is also important to qualify the arguments regarding ICISS and its proposals by acknowledging that the core idea of R2P did have a lasting power. The 2005 agreement was, after all, in the name of R2P. This thesis is not naive to this fact. Indeed, while it certainly offers a critical perspective of what R2P ultimately represents, this is not incompatible with a recognition that its language, not just the novelty and catchiness of its phrasing, but the emphasis on responsibility and the implied moral conviction that mass atrocity crimes ought to demand the attention and action of the international community, has had some impact.

Moreover, that the impact of ICISS's proposals was highly qualified does not diminish the emphasis on them or the entrepreneurship of Lloyd Axworthy. Realising normative change and addressing difficult political issues – particularly at the international-level – depends upon the commitment of individuals in the face of entrenched opposition and existing embedded ideas and behaviour. As this chapter has shown, Axworthy's determination in the face of considerable opposition and indifference resulted in the establishment of the commission which not only developed R2P, but which then subsequently benefited from built-in structural advocacy by the Canadian government and by individuals he had engaged in the process (most notably Evans and Annan). Axworthy deserves considerable credit for his contribution. Perhaps more importantly, however, this entrepreneurial phase provides a necessary comparison point for the detailed tracing and analysis of R2P that follows, which, ultimately – even if likely to provoke the sensitivities of some of R2P's most vocal supporters and advocates – *should* be the (methodological) basis upon which our understanding of the R2P, including potential compliance with it, is founded.

⁴⁷⁵ Private interview with senior UK official (13 August 2010)

Chapter 4: International Advocacy in an Unreceptive Policy Environment

We have entered the third millennium through a gate of fire.⁴⁷⁶

Published in December 2001, the R2P Report emerged into one of the least receptive political contexts one could have imagined. While its pre-Christmas release – designed to ensure ICISS completed its work in accordance with its original mandate – did little to facilitate its political prospects, the issue of timing was ultimately beyond control.⁴⁷⁷ The September 11 terror attacks provided a macro shock to the international system with broad psychological, geo-political, institutional, and thematic repercussions.⁴⁷⁸ By contrast to the systemic consequences of the end of the CW, the ‘post-9/11 era’ was defined by a pronounced shift in the international political *context* – albeit with consequences arguably no less significant. This new context would pose numerous challenges and obstacles to the development of R2P, challenging its appropriateness and relevance, and hindering attempts to engage member states with the idea let alone gather momentum towards common agreement. Indeed, the rapid reorganization of the international political agenda precipitated by 9/11 reduced R2P’s traction as an emerging idea whilst simultaneously impacting – directly and indirectly, implicitly and explicitly – upon its shape, meaning and character.

Appropriately, this chapter adopts a distinct dual-structure to explore the micro-development of R2P within the macro-context which shaped, conditioned, constrained and enabled post-ICISS advocacy and R2P’s eventual negotiating prospects. The combination of Part 1’s ‘changing political contexts’ and the post-ICISS micro-development in Part 2 ensures sufficient analytical weight is directed at the relationship between the broader macro-context and the more specific micro-processes. Though inevitably balanced towards the latter, the complex interrelationship between the two contexts demands this approach. On the one hand the macro-context conditioned the development of the micro-processes, but on the other understanding how R2P fared in that macro-context depends upon the detailed tracing of the micro-processes.

⁴⁷⁶ Kofi Annan (2001) ‘Nobel Lecture’, Oslo, 10 December 2001

⁴⁷⁷ Private interview (31 March 2010)

⁴⁷⁸ The effects of 9/11 were not systemic as such, but they were profound

Structurally this chapter is temporally delineated. It broadly focuses on the period late 2001 until the end of 2004.⁴⁷⁹ Part 1 considers the powerful effects of 9/11, and the Iraq war on the international political context and the status, perception and prospects of R2P. It demonstrates how the normative terrain became significantly less conducive than even the 1990s had proved to be, as alternative interventionist doctrines and ideas emerged in response to the terrorist threat. This was most notably captured by the preventive war Bush Doctrine which moved front and centre-stage.⁴⁸⁰ Additionally it demonstrates the persistent power of individual agency. Changed conditions provided alternative entrepreneurs significant opportunity to introduce new or reawaken previously dormant ideas. Within the US administration, individuals with long-standing neo-conservative views saw their influence rise exponentially after an internal battle to gain the President's ear.⁴⁸¹ As a result, they would unlock the extraordinary resource capacity of the US, including its unrivalled military capabilities.

The important factor in all of this, however, is that there were acute political consequences for R2P's micro-development which help explain the eventual agreement in 2005. In particular, Part 1 captures five core themes relevant to this point. They relate to: *changes in the international political agenda; the formulation of the Bush doctrine and its relationship to R2P; humanitarian justifications for the Iraq war, especially Tony Blair's post-hoc deployment of R2P; a detrimental regression in the normative status and implementation of human rights; and how the substance and nature of the humanitarian intervention debates played out in this new context.* Indeed, while these themes are broadly consistent with the existing (associated) literature, collectively they provide the basis for a dynamic temporal layering of processes which unite the chapter's two principle parts. Additionally, it should also be said that theme five addresses a necessary and significant qualification relating to the overall argument. Namely, that the above reference to post-CW and post-9/11 *systemic* continuity guards against any artificial separation between the humanitarian intervention

⁴⁷⁹ It is not, however, presented chronologically

⁴⁸⁰ Email from Edward Mortimer (19 October 2010)

⁴⁸¹ Indeed, previously moderate voices were also swayed by the events of 9/11 and the arguments of the neo-cons, for an account of the internal politics with the administration see Bob Woodward (2004) *Plan of Attack*, New York: Simon & Schuster

debates of the 1990s and our understanding of R2Ps development in the post-9/11 context.⁴⁸² In other words the debates remained fundamentally relevant even if the context altered their perception, and the way they were dealt with by states.

Indeed, it is entirely reasonable to consider the counterfactual ‘what if?’ in terms of how the transition between the entrepreneurial phase (Ch3) and the post-ICISS advocacy phase (Ch4 and Ch5) might have fared had 9/11 and Iraq not happened? As Ch3 demonstrated, there were already considerable obstacles facing R2P, and though exacerbated during the post-9/11 context, it is likely they would have remained prominent and strongly resistant to multilateral state resolution whatever the scenario. Thus, the change in political context was defined by *continuity* as well as *change*. The international politics around R2P were certainly more difficult and more confused. Political priorities and perceptions were undoubtedly affected by the events that transpired. But it would be wholly misguided to exclusively attribute the difficulties the R2P advocacy coalition faced in trying to build support for R2P, to these events alone. Indeed, in relation to the international agenda, Part 1 argues there was already a discernible fading of political momentum to the humanitarian intervention debates prior to 9/11.

Complicating the picture, however, is the seemingly paradoxical and potentially counterintuitive argument that despite its negative impact on the normative substance of R2P, Iraq was the central impetus for the ‘game-changing’ institutional response which facilitated R2P’s path to 2005.⁴⁸³ Iraq was a factor in limiting the meaning and parameters of R2P, but it also provided the contextual basis for Kofi Annan’s establishment of the *High-level Panel on Threats Challenges and Change* (“HLP”) in late 2003. Born out of Annan’s attempt to re-focus the international agenda, the HLP provided the vehicle to propel an agenda stagnating under considerable pressure. And although the processes around the HLP are dealt with in relation to the political structuring and negotiations of the Summit process in Ch5, it is necessary to recognise from the outset that Ch4 and Ch5 are very much part of

⁴⁸² As Gareth Evans remarked in 2006, the issues relating to the response of the international community in the face of catastrophic internal human rights abuses ‘have not gone away, despite current preoccupations with a new, post-9/11 slate of concerns’ in ‘From Humanitarian Intervention to the Responsibility to Protect’, University of Wisconsin, 31 March 2006

⁴⁸³ Private interview with Canadian official (31 March 2010)

the same explanation. Recalling Ch1, the NLC suggests norms develop in a three-stage process. Entrepreneurs seek to achieve the backing of a 'critical mass' of states, and often institutionalisation, in order to move the norm towards a 'tipping point' eventually leading to a 'norm cascade'. However, as the process-driven hypothesis reveals, the processes of norm construction are highly complex and hugely political, with existing concepts of normative change limited in relation to the specific characteristics of how R2P achieved institutionalisation in 2005. It is for this reason that Part 2 of this chapter introduces the 'structured outcome' construct (prior to its detailed exposition in Ch5). It packages the *structuring* of the processes which propelled R2P from the HLP towards the 2005 agreement and reveals how the sequencing of R2P's construction undermines the three-stage NLC, with the processes defined as much by normative *regress* as progress.⁴⁸⁴

Indeed, the point of introducing these arguments upfront is that they demonstrate the necessity of the micro/macro framework and the structured outcome logic that emerges from it. If tracked according to the NLC one could say that by 2005 R2P's institutionalized status signified successful arrival at the 'tipping point' and momentum towards 'cascade'. But this would inadequately explain the true status of R2P and would imply *layers* of agreement which either do not exist, or which are far more qualified than often portrayed. In other words, the utility of these concepts is inherently limited. By contrast, the power of the structured outcome derives from its understanding of the micro-processes of R2P's development into the 2005 outcome and the impact the macro-context had on shaping them. More specifically, its explanatory power stems from its greater nuance. It shows how R2P was propelled from late 2003 by a series of structuring factors rather than by normative momentum or acculturative dynamics. With an advocacy process stalling in the face of multilateral resistance the HLP was *the* change which most dramatically altered R2P's political prospects. Once it had endorsed R2P in its report, subsequent factors locked R2P into the Summit process in a way which dramatically *reduced* the possibility that it might be *removed* from the 2005 negotiating package. Ch5 tackles the detailed negotiation of this

⁴⁸⁴ For instance, regression, including in terms of expectation, is evident not only in aspects of the constitutive components of R2P (e.g. concern for human rights), but also in terms of the central ICISS idea of an *international-level* collective R2P. Because of the thesis timeframe the issue of post-2005 regression is not explicitly explored, other than in relation to arguments about how the structured outcome impacted upon the nature and significance of the agreement in Ch5. This was touched on in Ch1 whereby post-2005 opposition or contestation is described in terms of 'buyer's remorse' or state 'spoilers'

phase, particularly because a core element of the explanation is that the limited scope of the agreement was also crucial to ensuring it remained in the Outcome document. But a fundamental point about the impact of the structured outcome is that once these factors were no longer active, post-agreement contestation and doubt about R2P's significance and potential impact was even more likely as states began to consider the practical and normative implications of what they had signed-up to.

Thus, the period this chapter covers represents a vital part of R2P's development. It addresses the impact of headline macro events within the context of a micro-focused desire to understand how R2P was agreed in such a short space of time, and in the face of seemingly consistent multilateral resistance. Indeed, Part 2 is very much directed at the micro-processes of an emerging advocacy coalition, tracing their efforts to engage and persuade states to support R2P but also to simply keep it alive within the 'unreceptive policy environment'. Here R2P's principal sponsor and lead advocate was the Canadian government. Its multi-level strategy was broadly defined by a twin-track approach of Civil Society engagement and inter-governmental diplomacy and supported by the persistent efforts of Gareth Evans and Annan's enthusiastic, relieved support.⁴⁸⁵ But despite real commitment, political pressures on R2P were evident almost immediately with a continuation of opposition and scepticism from the 1990s debates exacerbated by the 9/11 instigated change in the political agenda and the Iraq War. And for all the efforts of individual entrepreneurs and advocates, there was greater detachment between them and the member states ultimately responsible for defining R2P than is oft-described. This was not particularly surprising. The lack of matched support for the human security vision which defined Axworthy's Commission response to the intervention challenge essentially mirrors this point. Inevitable limitations on the persuasive abilities of entrepreneurs and advocates partly relates to issues of political ownership and how ideas are appropriated and shaped through state interaction, and negotiation.⁴⁸⁶

⁴⁸⁵ See Part 2, Email from Simon Chesterman (29 October 2010)

⁴⁸⁶ A not dissimilar argument is made by Ed Luck in 'Building a Norm: The Responsibility to Protect Experience' in Robert I. Rotberg (2010) *Mass Atrocity Crimes: Preventing Future Outrages*, p113

Indeed, particularly notable throughout the process was the complete lack of dedicated/exclusive multilateral discussion of R2P within the UNGA.⁴⁸⁷ As becomes clear, Canada's thwarted GA efforts during 2002 provide an early sense of the importance of this point, especially in view of the HLP Report's description of the 'collective responsibility to protect' as an 'emerging norm'.⁴⁸⁸ This statement was questionable considering the normative foundations which should underpin it were highly contested. That said, a key point to note is that some of the changes made to R2P by states during 2005 mirrored some of the responsive changes evident in the advocacy strategies pursued by Canada and Evans. Although there was varied success in the framing and persuasive tactics deployed, there was a clear willingness to narrow R2P's scope in recognition of its continued negative (but unavoidable) association with humanitarian intervention. This was especially explicit post-Iraq. Additionally, one should not underplay the importance of the Axworthy legacy post-2001. The ICISS support structures he put in place were central to the coordination of advocacy efforts with key individuals personally close to him enhancing Canadian leadership throughout the period. In summary, this chapter tracks the political development of R2P identifying the ways advocates sought to keep it alive in the midst of an uncertain and unreceptive environment. In so doing, it pays considerable attention to the impact of key events, and to laying the foundations essential to our understanding of how R2P was agreed in 2005.

Part 1: Changing Political Contexts – 9/11 and Iraq

9/11 and the International Political Agenda

Gareth Evans' description of 9/11 as 'almost suffocat[ing] at birth' the R2P report is certainly apt.⁴⁸⁹ The immediate, but long-lasting sense of shock the coordinated terrorist attacks on the US provoked reverberated worldwide. Previous self-assured perceptions of insulated security on the part of US citizens would quickly diminish – replaced by a climate of fear and expressions of anger and revenge born out of a vulnerability not previously associated with the world superpower. The consequences of almost 3000 deaths – the majority in the heart

⁴⁸⁷ Indeed, as the introduction made clear, the first exclusive GA discussions of the R2P took place in 2009

⁴⁸⁸ High-level Panel on Threats Challenges and Change (2004) *A more secure world: Our shared responsibility*, A/59/565, para.203

⁴⁸⁹ Evans (2006) 'From Humanitarian Intervention to the Responsibility to Protect', 31 March 2006

of the New York financial district – were immense and publically and privately evident almost immediately.⁴⁹⁰ The most obvious effect was the rapid elevation of terrorism to the top of the international agenda, with the US leaving states very little space for demur. As President Bush starkly stated on the 20 September, every nation had:

...a decision to make. Either you are with us, or you are with the terrorists.⁴⁹¹

This ultimatum would symbolise the subsequent nature of the US policy spectrum towards terrorism, and international affairs more broadly. There would be little space for shades of grey, little evidence of ‘subtlety and nuance’.⁴⁹² The approach was one of with us or against us, good versus evil, right versus wrong, freedom versus fear, freedom versus repression, justice versus cruelty.⁴⁹³ The US was now engaged in a ‘war on terrorism’ which demanded a response that was ‘sweeping, sustained, and effective’.⁴⁹⁴ In its own way, sweeping and sustained it certainly was, effectiveness, however, is a considerably more debatable and harder characteristic to assess, particularly when considered in relation to the first two. That said, these broad tenets of US strategy provide a useful categorisation to bear in mind for understanding of how the political context altered and impacted upon R2P. The sweeping response saw the Bush administration shift from apparent disinterest in terrorism and Al-Qaeda prior to 9/11, to preoccupation with the issue and a commitment to responding in whatever way they deemed necessary.⁴⁹⁵ This latter point was particularly significant. Controversially, in addition to military action against the Taliban in Afghanistan, the war on terror led to the formulation of a National Security Strategy with a preventive war doctrine at its heart.⁴⁹⁶ This was consistent with the post-9/11 rhetoric and preferences of a clique of individuals around the President. Framed by the ‘with us or against us’ mentality,

⁴⁹⁰ The private impact, particularly in relation to the issue of Iraq, are well documented, see especially Richard A. Clarke (2004) *Against All Enemies: Inside America's War on Terror*, London: Free Press

⁴⁹¹ George W. Bush, ‘Address to a Joint Session of Congress and the American People’, 20 September 2001

⁴⁹² Clarke (2004) *Against All Enemies*, p243

⁴⁹³ There are numerous examples of this kind of rhetoric, but see Bush’s remarks the day after 9/11 in ‘Remarks by the President in Photo Opportunity with the National Security Team’, 12 September 2001 and National Security Council (NSC) (2002) *The National Security Strategy of the United States*, 17 September 2002

⁴⁹⁴ The ‘war on terrorism’ terminology was evident from 16 September, George W. Bush, ‘Remarks by the President Upon Arrival’, 16 September 2001, see also ‘Address to a Joint Session of Congress and the American People’, 20 September 2001, on how Bush defined the forthcoming response see ‘Radio Address of the President to the Nation’, 15 September 2001

⁴⁹⁵ See Clarke (2004) *Against All Enemies*, p234, and Woodward (2004) *Plan of Attack*, p24

⁴⁹⁶ NSC (2002) *The National Security Strategy of the United States of America*, 17 September 2002

established ideas of containment/deterrence, and previously accepted understandings of self-defence as defined under international law, were fundamentally challenged.

Significantly, the war on terror was neither selectively targeted nor narrowly defined, but was breathtakingly expansionist in its outlook. As Finlan remarks, words that had 'regulated international diplomacy since the end of World War II such as containment, sovereignty and status quo [were] discarded in favour of a new vocabulary of power politics that ranges from the 'axis of evil' to regime change'.⁴⁹⁷ As becomes clear, the implications for R2P were widely negative. Indeed, despite some logic to the linkages made by the US in terms of the relationship between terrorist organisations, state sponsors thereof, and the need to secure WMD and their proliferation, the extent to which the US would prove willing to act with minimal regard for the UN (i.e. unilaterally, or selective multilateralism) undermined confidence in the motivations of Western countries in particular. Moreover, that the invasion of Iraq became the ultimate expression of the Bush doctrine – despite a non-existent relationship with Al-Qaeda – only added to the mistrust.⁴⁹⁸ Iraq's elevation as the primary state focus from 2002 onwards would not only provide space for R2P-appropriation and reenergize the contested question of *just cause*, but represented the hard edge reality of a preventive doctrine which effectively sought to qualify the sovereignty of states in accordance with the determined preferences – or demands – of the US government.⁴⁹⁹ It is unsurprising, therefore, that States – particularly outside the West – would question whether R2P represented a logical concordant normative advance or a dangerous threat to international order⁵⁰⁰, and would subsequently seek to strongly reemphasise the existing building-blocks of IR in accordance with a stricter reading of the UN Charter.

One approach to understanding the impact of an event like 9/11 is to consider it in terms of its defining characteristics, its relationship to individual agency, and how it compares to other significant historical events. By any measure, the 9/11 attacks were of major

⁴⁹⁷ Alastair Finlan (2006) 'International security', in Mary Buckley and Robert Singh (Eds.) *The Bush Doctrine and the War on Terrorism: Global Responses, Global Consequences*, London: Routledge, p159

⁴⁹⁸ See Clarke (2004) *Against All Enemies*, p241 quoting Randy Beers

⁴⁹⁹ See George W. Bush 'Address to a Joint Session of Congress and the American People', 20 September 2001, 'President Delivers State of the Union Address', 29 January 2002: 'some governments will be timid in the face of terror. And make no mistake about it: If they do not act, America will', and NSC (2002) *The National Security Strategy of the United States*, 17 September 2002

⁵⁰⁰ Exacerbated by the new context

consequence, representing a ‘historical focusing event’ which precipitated the opening of a sustained policy window, and altered the composition of domestic and international agendas.⁵⁰¹ Of course, as Birkland points out policy windows do not guarantee subsequent policy change.⁵⁰² In this case, however, policy change was evident in numerous ways. President Bush’s 9/11 diary description that ‘the Pearl Harbor of the 21st century took place today’ provides a revealing insight into the thinking upon which subsequent US policy would be based.⁵⁰³ Such arguments for change were widely articulated, including most prominently by staunch US ally Tony Blair who described the events of 9/11 as ‘a turning point in history’.⁵⁰⁴ US National Security Advisor Condoleezza Rice mirrored this thinking, describing how an ‘earthquake of the magnitude of 9/11 can shift the tectonic plates of international politics’.⁵⁰⁵ This was twined with a powerful sense of opportunity.⁵⁰⁶ Indeed, the very recognition of opportunity is often a crucial factor on the path to realising policy change. While terrorism was already a firmly established issue of concern for many states – including the US – it did not necessarily command domestic or international urgency.⁵⁰⁷ The 9/11 attacks altered the posture of the US, and its willingness to act. The opening of a policy window afforded space for individual contestation regarding the form and direction of US policy. Rice’s posing question to senior National Security Council staff asking ‘how do you capitalise on these opportunities’ to – as Nicholas Lemann explains – ‘fundamentally change American doctrine, and the shape of the world, in the wake of September 11th’ demonstrated the administration’s active reassessment of its position and policy.⁵⁰⁸ This resultantly provided a more conducive environment for the advancement of long-held policy preferences and thinking.⁵⁰⁹ Neoconservatives brought to the table well-prepared,

⁵⁰¹ Thomas Birkland (2004) ‘The World Changed Today’: Agenda-Setting and Policy Change in the Wake of the September 11 Terrorist Attacks’, *Review of Policy Research*, Vol. 21, No. 2, pp.179-200

⁵⁰² Birkland (2004) ‘The World Changed Today’, p180, see also Ch1

⁵⁰³ Quoted in Woodward (2004) *Plan of Attack*, p24

⁵⁰⁴ Tony Blair, ‘Speech by the Prime Minister at the Labour Party Conference’, 2 October 2001

⁵⁰⁵ Condoleezza Rice, ‘Remarks by National Security Advisor on Terrorism and Foreign Policy’, 29 April 2002

⁵⁰⁶ Condoleezza Rice (2002) ‘Remarks by National Security Advisor on Terrorism and Foreign Policy’, 29 April 2002, NSC (2002) *The National Security Strategy of the United States of America*, 17 September 2002, George W. Bush (2001) ‘President Says Terrorists Tried to Disrupt World Economy’, 20 October 2001, Donald Rumsfeld (2001) (2001) ‘Secretary Rumsfeld Interview with the New York Times: 12 October 2001’, US Department of Defense, *News Transcript*, 14 October 2001

⁵⁰⁷ ‘I didn’t feel that sense of urgency’, President Bush quoted in Bob Woodward (2004) *Plan of Attack*, p24

⁵⁰⁸ Lemann ‘The Next World Order’, in *The Iraq War Reader*, p257

⁵⁰⁹ The conducive environment was aided by a Republican majority house, and by a general climate of fear and anger which aided the framing of US policy post-9/11

well-versed views which emerged as key tenets of the Bush Doctrine's formulation.⁵¹⁰ These views also ranged from highly indifferent to highly critical of the UN and, by association, ideas of global responsibilities which might undermine the US's freedom to pursue its own defined interests and objectives. In this backdrop, the already challenged ability of actors like Kofi Annan and States like Canada to shape the agenda, or even to remain relevant in the aftermath of 9/11, would be eclipsed.

Unsurprisingly, the environment for R2P was immensely more difficult. America's commitment to the development of a doctrinally-defined normative agenda based upon humanitarian principles was already limited pre-9/11. But this would only decline further as it focused on a preventive doctrine regarded as more appropriate and more flexible for the pursuit of US security. This did not exclude the subsequent use of humanitarian justifications, or indeed mean there were not foundational similarities underpinning the concepts. But it did mean R2P's appropriateness, relevance, scope, and parameters would be directly and indirectly challenged by an approach predicated upon a broader conception of qualified sovereignty than intended by R2P and by states *already* sceptical of what they perceived as moves to undermine the protection and stability afforded by sovereignty norms. Problematically, such scepticism would be further strengthened post-Iraq as countries – like Germany and Chile – began questioning the dangers of R2P in view of the unilateral impulse 9/11 had seemingly 'accelerated'.⁵¹¹

One can summarise this as alternative entrepreneurs shaping, intentionally or otherwise, the scope, parameters and political prospects of R2P. Indeed, in one respect, R2P's major selling point of emphasizing state responsibility proved to be its Achilles heel, providing a readymade framework to map onto a spectrum of concerns from mass atrocities, to failed and failing states, WMD non-proliferation, terrorism, and rogue states. It is for this reason that acknowledging the foundational links between R2P and aspects of US thinking is so

⁵¹⁰ On neoconservatism see: Irwin Stelzer (Ed.) (2004) *Neoconservatism*, London: Atlantic Books, Irving Kristol (1999) *Neoconservatism: The Autobiography of an Idea*, Chicago: Ivan R Dee, Justin Vaisse (2011) *Neoconservatism: The Biography of a Movement*, London: Harvard University Press, Charles Krauthammer (2005) 'The Neoconservative Convergence', *Commentary*, July 2005, Danny Cooper (2011) *Neoconservatism and American Foreign Policy: A critical analysis*, Abington: Routledge

⁵¹¹ Dannreuther (2007) *International Security: The Contemporary Agenda*, p155: the cases of German and Chile are briefly considered in relation to the discussion of R2P at the 2003 Progressive Governance Summit in Part 2

important. R2P would inevitably be conditioned by the ‘new context for intervention’ and should thus be considered accordingly.⁵¹² It illuminates the damage done to the international context, the difficulties faced by advocates to build support for R2P, and why it underwent significant conceptual narrowing in order to reverse an increasingly diluted focus on mass atrocity crimes. Although quite obviously the issue of humanitarian crises did not go away, with Darfur in particular providing a bold reminder of the many political and moral dilemmas, this additional layer of complexity made the battle to maintain interest in the R2P that much more difficult.⁵¹³

Thus, emphasising the changed context shows how an opportunity for some had a reverse negative impact on R2P. That said, this assertion requires more careful unpacking considering the contention that even prior to 9/11 there was an observable fading of momentum in the humanitarian intervention debates – the ‘what if’ question mentioned above. Of course the discussion of 9/11 to this point would seem strange were one to overlook the validity of statements made by those involved in the R2P process that 9/11 contributed to ‘dissipating’ the momentum, frustration, impatience and guilt which had previously built-up⁵¹⁴, that the attacks ‘distracted’ attention away from the R2P agenda⁵¹⁵, and that one of its major effects was to highlight that the ‘moment for talking’ about intervention had now ‘passed’ with the priority of states directed at terrorism, and not ‘civilian conflicts in Africa or anywhere else’.⁵¹⁶ Equally, perspective also matters. Within the UN Secretariat commitment to righting the wrongs of past humanitarian failures remained strong despite 9/11 – even if the urgency Annan tried to instil was ‘eclipsed’ by it, and conditioned the content of his subsequent speeches.⁵¹⁷ Nevertheless, the prospects for political agreement were already waning. Annan had taken his challenge as far as he reasonably could; exposing a multitude of obstacles in the process. Within the SC, the UK government’s proposals (which continued into 2001) hit a proverbial brick wall, exposing little P5 appetite for a doctrinal or codified solution. More broadly, Kosovo had left a

⁵¹² Dannreuther (2007) *International Security: The Contemporary Agenda*, p155

⁵¹³ The complex case of Darfur has already yielded a significant literature, but in the story of R2P presented in this thesis Darfur is considered more specifically in relation to Annan’s use of the R2P language to frame the crisis in 2004. This falls with a section on Annan’s R2P advocacy in Part 2

⁵¹⁴ Interview with Allan Rock (Ottawa, 11 June 2009)

⁵¹⁵ Private interview with UK official (22 October 2010)

⁵¹⁶ Private interview with Canadian official (31 March 2010)

⁵¹⁷ Email from Edward Mortimer (19 October 2010)

lingering bitter legacy for many NAM states.⁵¹⁸ Similarly, the specific ICISS establishment processes demonstrated the limits of state interest in the issue and Axworthy's proposed institutional response, including the HS thinking which had defined his approach. Indeed, within the Canadian system there was a subtle drop-off in Canadian ministerial support for HS initiatives. Axworthy's successor John Manley sought to emphasise a more 'pragmatic' foreign policy approach and, according to officials, was far less willing to pursue his predecessors work.⁵¹⁹ Thus, although the impact of 9/11 was very real, the picture is significantly more multifaceted and multidimensional, with its impact in many respects accentuating pre-existing political dynamics.

This point was similarly evident in the area of human rights. The post-9/11 period certainly revealed empirical damage to their cause. However, prior to 9/11 the extent to which they were constitutive or embedded in the calculations of States – particularly within the West – was already under challenge. 9/11 merely fuelled this challenge. For instance, Michael Ignatieff's argument that human rights were under 'attack' sophisticatedly captured, albeit in a more philosophical sense, challenges which 'raised important questions about whether their claims to universality are justified, or whether they are just another cunning exercise in Western moral imperialism'.⁵²⁰ His identification of the West as a key source of challenge was especially significant, for instance showing how domestic resistance to human rights norms by the US was evident despite 'linking rights to popular sovereignty'. One should not be surprised therefore when/if the paradoxical US opposition of 'international human rights oversight' predicated as being an 'infringement on its democracy'⁵²¹ is perceived as arrogant and exactly the kind of behaviour likely to undermine the development of an international society constituted by human rights. In this respect, Annan's *We the Peoples* new millennium clarion call to put people at the 'centre of everything we do' was exactly that, a call; an urging which – to be enacted – depended upon the attention and responses of member states, largely in recognition of the essential idealism which defined it.⁵²²

⁵¹⁸ As one UK official stated, even without 9/11, NAM fears about intervention would have remained hostile

⁵¹⁹ Private interview with Canadian official (15 July 2009), with Christopher Cushing (Bradford, 9 June 2010): this is explored in further detail below

⁵²⁰ See Michael Ignatieff (2001) 'The Attack on Human Rights', *Foreign Affairs*, Vol. 80, No. 6, p102

⁵²¹ Ignatieff (2001) 'The Attack on Human Rights', p114

⁵²² Kofi Annan (2000) *"We the Peoples": The Role of the United Nations in the 21st Century*, New York: United Nations, p7

Indeed, returning to the intervention debates, despite assertions 9/11 fundamentally changed the 'strategic landscape'⁵²³, the extent to which humanitarian concerns were driving international policy decisions in the 1990s was always open to question. The suggestion that 'international security again became the primary framework for the use of international force, not humanitarianism' is not just 'debatable'⁵²⁴ but a considerable overstatement.⁵²⁵ As Adam Roberts's writes, the 'historically unprecedented role' of humanitarian issues in the 1990s did not signify a 'fundamental departure from the system of sovereign states and power politics'.⁵²⁶ International action has always been defined by an often indistinguishable (and fluid) mix of motivations, 'politico-strategic' interests and power calculations.⁵²⁷ 9/11 and subsequent events made 'more acute' and brought into 'sharper relief' the 'often uneasy coexistence of altruistic motives with the interest-based and power-political considerations of intervening powers and coalitions' which 'has always been there'.⁵²⁸ Thus, how we define the shift from the pre-9/11 era to the post-9/11 era should be more subtly qualified in recognition of the observable continuity between them.

Nevertheless, 9/11 affected the status of human rights in two principally regressive ways. Their normative standing was damaged, not least because of the implementation of government policies not just inconsistent with them, but detrimental to their cause. A key plank of the Bush Doctrine entailed the promotion of US values of freedom, liberty, and democracy.⁵²⁹ However, concern for civil liberties and the rule of law suffered as a result of action often conducted in the name of such values. With widespread replication, numerous Western governments acted institutionally, operationally and legislatively in ways which contributed to the strengthening of the power of the state vis-à-vis their own citizens.

⁵²³ Thomas Weiss (2004) 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, Vol. 35, No. 2, p136

⁵²⁴ Scott Straus (2006) 'Introduction to the Symposium on Humanitarian Intervention After 9/11', *Wisconsin International Law Journal*, Vol. 34, Issue 3, p700-1

⁵²⁵ See also Dannreuther (2007) *International Security: The Contemporary Agenda*, p155

⁵²⁶ Adam Roberts (2001) 'Humanitarian Principles in International Politics in the 1990s', in Humanitarian Studies Unit (Ed.) *Reflections on Humanitarian Action: Principles, Ethics and Contradictions*, p23

⁵²⁷ Dannreuther (2007) *International Security: The Contemporary Agenda*, p155

⁵²⁸ Mats Berdal (2010) *Building Peace After War*, p14, see also Dannreuther (2007) *International Security: The Contemporary Agenda*, Chapter 8, pp.141-162

⁵²⁹ See Jonathan Monten (2005) 'The Roots of the Bush Doctrine', *International Security*, Vol. 29, No. 4, pp. 112-156, Brian Schmidt and Michael Williams (2007) 'The Bush Doctrine and the Iraq War: Neoconservatives vs. Realists', Paper to the Annual Conference British International Studies Association

Prominent examples included the controversial 2001 US 'Patriot Act', the UK *Anti-terrorism, Crime and Security Act 2001*, and the *Canadian Anti-terrorism Act 2001* all of which expanded the scope and range of powers available to their respective governments.⁵³⁰

Moreover, adherence – rather a lack of – to international humanitarian law and human rights provisions would be a particularly troubling issue. Western and non-western countries alike would exploit terrorism as an enabling justification contra pre-existing obligations. For instance, throughout the war on terror the US would face heavy criticism for its use of rendition and extraordinary rendition, the increasing use of military and special courts, and for its detention practices within and without its borders.⁵³¹ Involvement with such behaviour would not, however, be confined to the US. Numerous countries would be allegedly complicit in some form of the organization, operation and facilitation of such acts. As a report of the International Commission of Jurists explained, the practice of rendition 'involved a "spider's web" of cooperative endeavours' with countries such as Bosnia, Canada, Indonesia, Italy, Macedonia, Pakistan, Poland, Romania, Spain and the UK, alleged facilitators of extraordinary renditions.⁵³²

Such conduct was largely predicated upon the so-called 'war paradigm'.⁵³³ States invoked the 'exceptional' nature of the terrorist threat to justify derogations from existing domestic or international law.⁵³⁴ In one respect, this was very much a US-led agenda.⁵³⁵ However, the extent to which this was more generally appropriated caused considerable damage to R2P and the protection of human rights. Of course, it would be wrong to ignore the ethical

⁵³⁰ Its full title is 'Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001', 26 October 2001, UK Parliament (2001) 'Anti-terrorism, Crime and Security Act 2001', 19 November 2001, Parliament of Canada (2001) 'Canadian Anti-terrorism Act', 18 December 2001

⁵³¹ See International Council on Human Rights Policy (2002) *Human Rights after September 11*, Versoix: International Council on Human Rights Policy and International Commission Jurists (ICJ) (2009) *Assessing Damage, Urging Action*, pp.34-36

⁵³² ICJ (2009) *Assessing Damage, Urging Action*, p81: it also adds the caveat 'to mention only a few'. Additionally the report points to other cases where a number of states 'assisted' the process by taking custody of 'rendered individuals' with some then engaging in torture and other ill-treatment of detainees naming Afghanistan, Egypt, Jordan, Morocco, Syria, Thailand, and Uzbekistan, p81

⁵³³ ICJ (2009) *Assessing Damage, Urging Action*, Chapter 3, pp.49-64

⁵³⁴ The *National Security Strategy* (2002) described the war on terror as 'different from any other war in our history', p5

⁵³⁵ The use of the war paradigm was most strongly evident in George W. Bush (2001) 'Address to a Joint Session of Congress and the American People', 20 September 2001

dilemmas which exist in determining what measures are appropriate, particularly in terms of balancing security concerns with an on-going commitment to liberty and individual rights.⁵³⁶ Nevertheless, examples like the constructed categorisation of ‘unlawful enemy combatants’ designed to strip individuals of their right to protection under the Geneva Conventions⁵³⁷ and the UK’s efforts to derogate from Article 5(1) of the European Convention on Human Rights (“Right to liberty”) to allow the detention, potentially indefinitely, of non-British suspected terrorists, show how security concerns undermined rights protection.⁵³⁸ Moreover, pointing to Western examples – especially those states who openly espouse the language of human rights – is purposeful. Aside from the ‘threat of a bad example’ as Amnesty International put it,⁵³⁹ approaches to the war on terror by such prominent countries enabled others with already questionable records to internally clamp down on dissidents and justify other repressive actions in the name of terrorism.⁵⁴⁰ It ensures we keep this in mind when we describe Western countries as some of the more vociferous supporters of R2P.

Clearly it would be misguided to assume that normative developments, however well intentioned, cannot lead to negative ethical and unintended consequences, particularly considering the problems of political ownership and appropriation. Indeed, the abovementioned points are prescient from the perspective of flagging-up issues which would eventually affect R2P. The gap between rhetoric and action is an obvious criticism. This is not simply because of the kind of inevitable non-compliance with international norms. It is because of behaviour purposefully pursued in contradiction to established international standards – behaviour often justified in the name of the very norms being

⁵³⁶ A sophisticated and valiant attempt is made by Michael Ignatieff, whose arguments are more nuanced than some have wished to imply, see (2004), *The Lesser Evil: Political Ethics in an Age of Terror*, Edinburgh: EUP

⁵³⁷ See ICJ (2009) *Assessing Damage, Urging Action*: the crux issue was the way the US used the categorisation to deprive ‘detainees’ of protective rights, such as those defined by the Geneva Conventions. The key document in this regard was the resolution ‘Authorization for Use of Military Force’, 18 September 2001

⁵³⁸ See Section 30 of ‘Anti-Terrorism, Crime and Security Act 2001’ and Part 4 in general on immigration and asylum. Article 5 of the European Convention on Human Rights deals with the ‘Right to liberty’, see ‘Convention for the Protection of Human Rights and Fundamental Freedoms’, Rome, 4, November, 1950. See also David Blunkett, the then UK Home Secretary’s, argument justifying the need for the Act in House of Commons Hansard, 19 November 2001, Column 23

⁵³⁹ Amnesty International (2003) *USA: The threat of a bad example: Undermining international standards as “war on terror” detentions continue*, 19 August 2003

⁵⁴⁰ International Council on Human Rights Policy (2002) *Human Rights after September 11*, p26 and Human Rights Watch (2003) *World Report 2003*, New York: Human Rights Watch

violated. It is unsurprising, therefore, that for some, the behaviour of states in response to terrorism was described as threatening ‘the very core of the international human rights framework’ just as it should not come as any surprise to see states adopting similarly incompatible behaviour when it comes to R2P.⁵⁴¹ More specifically, R2P would suffer from an association with negative connotations a number of which with roots in the period covered here. These would fuel concerns R2P represented yet another example of well-intentioned but ultimately hollow rhetoric.

The purpose of this section has been to highlight 9/11’s impact on the international political agenda with a broader macro overview of how this affected R2Ps political prospects. As implied, altered perceptions of threat and changed international priorities had direct and indirect implications for R2P. But within this two interrelated issues require greater attention because of their centrality to the above arguments, and to understanding how R2P was agreed in 2005. They are: the Bush Doctrine, and the 2003 unilateral invasion of Iraq.

The Bush Doctrine and Iraq

There is already an extensive literature which deals with the Bush Doctrine and the 2003 invasion of Iraq – one of the most controversial and divisive conflicts in recent history. This section, however, has a specific purpose. It is concerned with understanding their impact on R2P’s development. Is the Bush Doctrine relevant, and how did Iraq alter, if at all, its political prospects? The answers are complex, interrelated and necessarily qualified. But for simplicity, the argument focuses on three principal areas: 1) the concept of preventive war and its structural/foundational relationship with R2P; 2) the Bush Doctrine’s inherent unilateralism revealed by Iraq; and 3) the invocation of humanitarian and R2P-esque justifications.

1. ‘The limits of sovereignty’⁵⁴²

⁵⁴¹ ICJ (2009) *Assessing Damage, Urging Action* pv

⁵⁴² Richard Hass quoted in Nicholas Lemann (2003) ‘The Next World Order’, in Sifry, Micah L. and Cerf, Christopher (Eds.) *The Iraq War Reader: History, Documents, Opinions*, New York: Touchstone Books, p259

Despite contestation and even rejection of the idea of the Bush Doctrine there is sufficient reason to define it this way.⁵⁴³ The 2002 *National Security Strategy* (NSS), and a series of post-9/11 Presidential speeches, articulated its defining strands premised on the view that the changed political context meant 'new threats' required 'new thinking'.⁵⁴⁴ At its heart was a preventive war doctrine which formally stated the US 'will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people and our country'.⁵⁴⁵ Although pre-emptive and preventive are used interchangeably, the pre-emptive label used by the US was, however, a misleading representation of its intentions. As Dale Copeland argues, pre-emptive and preventive motives are distinct.⁵⁴⁶ The distinction is that while the former is action pursued in anticipation of an actual/existing or imminent threat, preventive action is defined by a considerably lower threshold. Preventive action is anticipatory, but neither imminent nor 'presently occurring'.⁵⁴⁷ In this case, there are three notably worrying consequences. First, the burden of proof is massively reduced.⁵⁴⁸ It enables the initiator of military action the power to subjectively determine the extent of their ability to act, and *de facto* the legitimacy of the use of force contrary to existing standards of international law. Second, preventive action accelerates the use of force forward in the response spectrum, and away from what would normally be understood as last resort.⁵⁴⁹ Quite clearly this thinking was counter to ICISS's attempts to placate widespread concerns that force will be used abusively or too quickly. Third, the scope of threats covered by the US doctrine was purposively (and logically) expansive. It covered a swathe of apparently interrelated issues,

⁵⁴³ On the Bush Doctrine see; John Lewis Gaddis (2002) 'A Grand Strategy of Transformation', *Foreign Policy*, Issue 133, pp.50-57; Melvyn Leffler (2004) 'Think Again: Bush's Foreign Policy', *Foreign Policy*, No. 144, pp.22-28; John Ikenberry (2002) 'America's Imperial Ambition', *Foreign Affairs*, Vol. 81, No.5, pp.44-60; Ivo Daalder and James Lindsay (2003) *America Unbound: The Bush Revolution in Foreign Policy*, New Jersey: John Wiley, Robert Jervis (2003) 'Understanding the Bush Doctrine', *Political Science Quarterly*, Vol. 118, No.3, pp.365-388, Jonathan Monten (2005) 'The Roots of the Bush Doctrine: Power, Nationalism, and Democracy Promotion in US Strategy', *International Security*, Vol. 29, No.4, pp.112-156

⁵⁴⁴ See NSC (2002) *National Security Strategy*, 29 January 2002, George W. Bush (2002) 'President Bush Delivers Graduation Speech at West Point', United States Military Academy, West Point, New York, 1 June 2002 and 'President Delivers State of the Union Address', 29 January 2002

⁵⁴⁵ NSC (2002) *National Security Strategy*, p6

⁵⁴⁶ On the differences between the two see Dale C. Copeland (2001) *The Origins of Major War*, p44-45

⁵⁴⁷ Allen Buchanan and Robert Keohane (2004) 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', *Ethics & International Affairs*, Vol. 18, Issue 1, p1

⁵⁴⁸ To the point that it is 'meaningless' according to Antony J. Blinken (2003-4) 'From Preemption to Engagement', *Survival*, Vol. 45, No.4, p37

⁵⁴⁹ And away from concepts such as deterrence NSC (2002) *National Security Strategy*, p15

including WMD, 'rogue states', and dealing with threats posed by the 'evil designs of tyrants'.⁵⁵⁰ Problematically, the scope was not just broad, but 'set no standards' for preventive action, failing to 'distinguish between disarmament and regime change, or between rogue states and stateless actors'.⁵⁵¹ When allied to the more contentious implication that the legal basis of preventive self-defence is long-standing, and thus neither ground-breaking nor unprecedented, there is ample reason to assert there is a *prima facie* case pointing to considerable associated impact to R2P.⁵⁵²

This assertion is particularly strong in relation to the Bush Doctrine's unilateralism and the issue of humanitarian justifications discussed below. Both exposed R2P in highly problematic ways. More fundamental, however, is the implicit idea that a *foundational relationship* exists between R2P and the Bush Doctrine.⁵⁵³ This argument vividly packages the importance of exploring the relationship between the macro-context and the micro-processes. It captures the shared terrain underlying two apparently distinct concepts which helps explain how the legacy of this period contributed to a mistrust of R2P. How this mistrust manifested itself in relation to R2P advocacy is addressed more specifically in Part 2. But powerful remnants of this period, particularly vis-à-vis Iraq, remain relevant today because they stem from the idea that the concepts share commonalities and underlying foundations of a more significant character than often portrayed. In particular, the use of humanitarian justification and the sovereign responsibility framework which fed into the formulation of both reinforced fears of a slippery slope in how R2P might apply in practice.

Before that, however, additional observations demand attention. In particular, the development of the Bush Doctrine exacerbated the tension between altruistic and security interests. It signified a shift away from the primary issue of civilian protection at the heart of the humanitarian intervention debate and thus in one sense rendered the ICISS framework less relevant to the post-9/11 international agenda. Additionally, the Bush Doctrine's scope

⁵⁵⁰ NSC (2002) *National Security Strategy*, pvi

⁵⁵¹ Blinken (2003-4) 'From Preemption to Engagement', p36

⁵⁵² NSC (2002) *National Security Strategy*, p15, 'Dr. Condoleezza Rice Discusses President's National Security Strategy', New York, 1 October 2002, Brian Schmidt and Michael Williams (2007) 'The Bush Doctrine and the Iraq War: Neoconservatism vs. Realists', p9

⁵⁵³ Indeed, although this relates here to R2P and the Bush Doctrine, the foundational similarities argument also has general relevance to debates relating to the use of force, increasingly so as justifications invoke the language of humanitarianism and sovereign responsibilities

fuelled the long-standing debate around mixed motives whereby action can yield positive humanitarian outcomes without being pursued primarily for humanitarian reasons, or where strategic and humanitarian justifications coexist. Nicholas Wheeler describes this as the 'alternative moral possibility'. Indeed, although one can describe the post-9/11 period as accentuating the 'political constraints' on humanitarian intervention it raised the possibility that the required strategic rationale could be provided by the war on terror.⁵⁵⁴ Resultantly, ICISS's emphasis on 'right intention' appeared unrealistically narrow and pure in the new context, as well as unrealistic considering the lack of primary humanitarian impulse driving international action during the 1990s. Inevitably, this would shift emphasis away from ICISS's focused emphasis on mass atrocity crimes. But this kind of debate is arguably more problematic for the claim that debates associated with R2P and the Bush Doctrine derive from the same foundational terrain. Indeed, this argument helps explain efforts, most notably by Lee Feinstein and Anne-Marie Slaughter, to develop corollary frameworks directed at enabling action to address other policy priorities.⁵⁵⁵ It is neither intellectually surprising nor illogical that international risks relating to WMD proliferation, terrorism and unstable or repressive States could be defined by a framework akin to R2P in order to mobilize political action.⁵⁵⁶

Indeed, a key plank of the Bush Doctrine was about 'compelling states to accept their sovereign responsibilities'.⁵⁵⁷ As Richard Haass effectively explained the 'emerging global consensus that sovereignty...is contingent on each state fulfilling certain fundamental obligations' applied to terrorism and WMD as well as mass atrocities. Accordingly, States 'have the right to take action to protect their citizens against those states that abet, support or harbor[sic] international terrorists, or are incapable of controlling terrorists operating from their territory', and that where 'regimes with a history of aggression and support for terrorism' seek WMD thus 'endangering the international community, they jeopardize their

⁵⁵⁴ Nicholas Wheeler 'Humanitarian Intervention after September 11', in Anthony Lang (Ed.) (2003) *Just Intervention*, p193

⁵⁵⁵ Lee Feinstein and Anne-Marie Slaughter (2004) 'A Duty to Prevent', *Foreign Affairs*, Vol. 83, Issue 1, pp.136-150

⁵⁵⁶ The emphasis on sovereign responsibility provides a ready-made framework for mapping-onto a wide range of international problems

⁵⁵⁷ NSC (2002) *National Security Strategy*, p6

immunity from intervention, including anticipatory action'.⁵⁵⁸ Such thinking exposed numerous risks relating to the relationship between the domestic and international dimensions of R2P. Implicit in this formulation is the idea an individual States responsibility to protect its citizens can be inverted in such a way in order to justify external action to uphold it. But this goes considerably further than ICISS's emphasis on international responsibility to address individual failures to uphold domestic responsibilities. So, in the subsequent case of Iraq, the Bush administration's pursuit of regime change became active because the changed post-9/11 context had a pivotal impact on President Bush's sense of 'responsibility' to protect the security of the American people.⁵⁵⁹ Indeed, speaking with Tony Blair on 17 July 2003, Bush explained the action they took in explicit terms:

The prime minister and I have no greater responsibility than to protect the lives and security of the people we serve...[his] regime...was a grave and growing threat.⁵⁶⁰

Notably, this ran in addition to humanitarian justifications relating to abuses committed against the Iraqi people (see below).

2. Unilateralism

Post-2001 R2P would undergo considerable conceptual narrowing. A central element of this was its exclusive binding to the authority of the SC. As already shown, the Kosovo intervention sparked intense debate and hostility. There was minimal desire to weaken non-intervention or other restrictions on the use of force. ICISS's uneasy solution to the authority question focused on the role and responsibilities of the SC, even if this meant many of the most difficult issues remained unanswered. In some respects, the P5's key policy-lines were unaffected by the post-9/11 context. If anything it reaffirmed what we already knew. Most obviously, the US had always reserved its willingness to act without SC authorisation if it deemed necessary to do.⁵⁶¹ Nevertheless, the development of the Bush

⁵⁵⁸ At the time Richard Haass was Director of the Policy Planning Staff in the State Department, in 'When nations forfeit their sovereign privileges; Armed intervention', *International Herald Tribune*, 7 February 2003

⁵⁵⁹ President Bush quoted in Bob Woodward (2004) *Plan of Attack*, p27

⁵⁶⁰ Number 10 (2003) 'Press conference with President Bush at the White House', 17 July 2003

⁵⁶¹ For instance, prominent Clinton administration figures had always been very clear to avoid any misunderstandings that this was anything but the case. Madeleine Albright famously told her UK counterpart

Doctrine exacerbated concerns relating to the potential increased use of unilateralism by embracing it as a key constitutive tenet.⁵⁶² The consequences of this for R2P were thus considerable, but paradoxically not entirely negative.

The problem with the Bush Doctrine centred around its' explicitly expansionist outlook, which was combined with a selective multilateralism *consistent* with long-standing neo-conservative thinking.⁵⁶³ Crucially, its preventive outlook involved 'no mention...of the necessity to refer such judgements to the SC'.⁵⁶⁴ Thus, when it came to Iraq, the full nature of the US approach to legality, and the degree to which it should be subject to international constraints, was most starkly revealed. Donald Rumsfeld's statement that 'the mission...determines the coalition' captured the Administration's attitude to the idea of collective multilateralism.⁵⁶⁵

Consequently, this approach posed a multitude of problems for R2P. In particular, the very essence of the Bush Doctrine challenged the existing law-based international system. As Murswiek warned, if generalized it would lead to a transformation in State relations, with the annulment of the general prohibition on the use of force replaced with a 'general entitlement to preemptive use of force'.⁵⁶⁶ Indeed, only limited attempts were made to

Robin Cook to 'get new lawyers' after he had expressed legal concerns relating to action without SC approval in Kosovo in (2004) *Madam Secretary: A Memoir*, London: Pan Books, p384. Similarly former US Ambassador to the UN Richard Holbrooke remarked in 1999 'We must not overlook a basic fact: the US will not always act through the UN' in 'A New Realism for a New Era: The US and the UN in the 21st Century', US Ambassador's address to the National Press Club, 2 November 1999

⁵⁶² Schmidt and Williams (2007) 'The Bush Doctrine and the Iraq War: Neoconservatism vs. Realists', p9-11

⁵⁶³ On the development of the Bush Doctrine, which should not be seen as an exclusively neo-conservative driven, see Mary Buckley and Robert Singh (Eds.) (2006) *The Bush Doctrine and the War on Terrorism: Global Responses, Global Consequences*, Oxon: Routledge, see also; Paul Wolfowitz (1994) 'Clinton's First Year', *Foreign Affairs*, Vol. 73, No. 1, pp.28-43

⁵⁶⁴ Jim Whitman (2005) 'Humanitarian Intervention in an Era of Pre-emptive Self-Defence', *Security Dialogue*, Vol. 36, No.3, p265

⁵⁶⁵ Donald Rumsfeld (2001) 'Secretary Rumsfeld Interview with Larry King, CNN: 5 December 2001', US Department of Defense, *News Transcript*, 6 December 2001: such statements would be made throughout, see also Dan Baltz (2003) 'President puts onus back on Iraqi leader', *The Washington Post*, 7 March 2003, Jonathan Freedland (2004) 'This war is not yet over: The consequences of Iraq could still break Blair and Bush, and change forever the way our world is ordered', *The Guardian*, 11 February 2004. Moreover as has since been confirmed in testimony to the Iraq Inquiry, even the UK was left in no doubt that its support was 'not essential' to the pursuit of its Iraq policy. See Jonathan Powell, 'Evidence to the Iraq Inquiry', 18 January 2010, p88-89

⁵⁶⁶ Quote in Whitman (2005) 'Humanitarian Intervention in an Era of Pre-emptive Self-Defence', p265

define limitations on the Bush Doctrine's application⁵⁶⁷ which would ultimately *depend* upon unilateralism because of the opposition and divisions it was always going to provoke. It effectively gifted the US its own ability to determine – with considerably less sense of accountability, restraint or definition – the threshold at which action can be taken. Inevitably, debate over the potential precedent-setting of such an approach subsequently emerged. Did the US intend it to apply exclusively to itself, or was there a preparedness to accept its potential use by others in a similarly unregulated way? Even if there is strong reason to view the Bush Doctrine as restricted by its strong belief in US exceptionalism⁵⁶⁸, and indeed on the maintenance and continued pursuit of US primacy⁵⁶⁹, there was a real possibility other states in a position to act may seek to invoke similar justifications in defence of their own actions.⁵⁷⁰ Either way, much of this undermined the collective system R2P depended upon, or alternatively merely exposed it for what it really was. Moreover, aside from inflicting 'massive damage to the UN',⁵⁷¹ the impact of Iraq on P5 relations and SC authority, was especially considerable. As Allan Rock observed, a principle post-Iraq preoccupation focused on attempts to manage the 'frosty' P5 relationships and the general reaction to the invasion.⁵⁷² But for ICISS, the decision to intervene and the resulting breakdown in relations undermined its proposed threshold and precautionary framework. Although US opposition to criteria pre-dated Iraq, its fallout further diminished the political prospects and perhaps even desirability of P5 agreement in this area. Moreover, this applied equally to the always unlikely proposal requesting P5 restraint where the veto was concerned.

That said, as becomes apparent, there is the seemingly paradoxical argument that it was the very unilateral invasion of Iraq which unintentionally instigated the required dynamics for realising the R2P agreement. Post-Kosovo, fears about the possible structural and

⁵⁶⁷ See Nicholas Wheeler (2003) 'The Bush Doctrine: The Dangers of American Exceptionalism in a Revolutionary Age', *Asian Perspective*, Vol. 27, No. 4, p198

⁵⁶⁸ As Wheeler convincingly argues (2003) 'The Bush Doctrine', p205

⁵⁶⁹ See Schmidt and Williams (2007) 'The Bush Doctrine and the Iraq War: Neoconservatism vs. Realists', p6-8

⁵⁷⁰ See Wheeler (2003) 'The Bush Doctrine', p200

⁵⁷¹ Interview with David Hannay (London, 9 March 2010)

⁵⁷² Interview with Allan Rock (Ottawa, 11 June 2009)

precedential effects of unilateralism dominated international debate.⁵⁷³ In the context of Iraq, such fears assumed even greater political significance and spurred Kofi Annan to argue the ‘fundamental challenge’ posed by preventive self-defence required an urgent, proactive assessment of the ‘rules of the road’ for dealing collectively with the multitude of challenges facing the UN and its member states.⁵⁷⁴ This led to the above-mentioned establishment of the High-level Panel – defined here as the first stage in R2P’s structured outcome. Additionally, the fractures exposed by Iraq impacted on the eventual formulation of the R2P agreement. Although any agreement was always going to be narrowly and tightly defined (particularly compared to ICISS), Iraq further reinforced and imposed certain expectations, preconditions and political necessities upon the Summit negotiations.

These would lead to an R2P package defined by a narrow high-bar threshold, explicit binding to the SC, and a strengthened emphasis on individual responsibility to reaffirm the centrality of the state. Underlying motivations for this package mirrored long-standing opposition and scepticism evident during the humanitarian intervention debates. But in 2005 the imperative to resist further potential interventionist moves was an acute factor in light of a strong sense that the diplomatic and political options prior to the Iraq invasion had not been fully exhausted.⁵⁷⁵ Inevitably, tensions were built into the eventual agreement which spoke to political pragmatism but which reaffirmed a continuation in the underlying politics of the debate.⁵⁷⁶

3. Humanitarian and R2P Justifications

R2P’s eventual formulation was also about seeking to guard against its potential use as a pretext for future Iraq’s.⁵⁷⁷ There was little doubt amongst interviewees that Iraq inflicted significant direct/indirect damage. Observations highlighted its ‘poisoning’ of the international atmosphere for R2P, the ‘terrible damage’ it inflicted on the idea, how it gave

⁵⁷³ See for instance Kofi Annan’s warnings in relation to humanitarian intervention in ‘Two Concepts of Sovereignty: Address to the 54th session of the UNGA’, in *The Question of Intervention*, New York: United Nations, pp.37-44

⁵⁷⁴ Kofi Annan (2003) ‘The Secretary-General Address to the General Assembly’, 23 September 2003 and interview with Kieran Prendergast (London, 6 October 2009)

⁵⁷⁵ Private interview (13 August 2010)

⁵⁷⁶ See Chapter 5

⁵⁷⁷ Private interviews (31 March 2010, 3 August 2010, 13 August 2010): and as a pretext more generally

R2P a 'very bad name', provided opponents with a 'recent and dramatic example of how Western powers cannot be trusted', and generally 'soured' the name of intervention.⁵⁷⁸ Certainly, the immense complexity of the Iraq affair throws up numerous avenues for considering its relevance to R2P.⁵⁷⁹ However, the most identified issue was the use of humanitarian language, particularly as a cover/justification for geo-strategic objectives, and the efforts of Michael Ignatieff and Tony Blair to justify Iraqi regime change in accordance with R2P principles.⁵⁸⁰ These factors complicated the effort to build support for R2P, contributed to its conceptual narrowing, and which, for many, undermined the prospects for future action driven by humanitarian values.

Afghanistan and Iraq highlighted the long-standing debate about the role of utilising state motivation as a means for assessing the legitimacy of interventions.⁵⁸¹ The issue was not whether humanitarian concerns were the principle justification, but whether the outcomes could warrant justifiable humanitarian claims – thus undermining the claim that right intention should be central to R2P – and whether the ICISS'S just cause threshold was too high and too strict considering the nature of the two regimes. Such factors are embedded in a complex web of considerations, with equally complex and contested explanations. Putting aside humanitarian questions, the interventions in Afghanistan and Iraq were principally and initially driven by strategic objectives. Indeed, in the post-9/11 context the prospects for action pursued purely or predominantly to prevent humanitarian crises was undoubtedly diminished.⁵⁸² This question of whether the requirement for right intention was compatible during the 1990s was even more acute in the post-9/11 context. Here the relationship between interests and humanitarianism became murkier and security concerns overrode

⁵⁷⁸ Interviews with Jeremy Greenstock (Chipping Norton, 8 June 2009) Gareth Evans (London, 25 May 2010), Lloyd Axworthy (Winnipeg, 27 November 2008), Allan Rock (Ottawa, 11 June 2009), and private interview with UK official (22 October 2010)

⁵⁷⁹ These actually get more complex as time passes, particularly since the UK role is, at the time of writing, subject to an extensive independent inquiry, on the debate about Iraq's impact see Nicholas Wheeler (2004) 'The emerging norm of collective responsibility to protect after R2P and HLP', paper presented at the BISA Conference, University of Warwick, 20-22 December 2004

⁵⁸⁰ Almost all of the interviews considered at some point the impact of Ignatieff and Blair. Lloyd Axworthy (Winnipeg, 27 November 2008) and Gareth Evans (London, 25 May 2010) were particularly critical

⁵⁸¹ See especially Nicholas Wheeler (2000) *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press

⁵⁸² And by definition even less likely than it was during the 1990s, see Simon Chesterman (2006) 'Humanitarian Intervention and Afghanistan' in Jennifer Welsh (Ed.) (2006) *Humanitarian Intervention and International Relations*, p172

humanitarian considerations to an even greater extent. Although 'Operation Enduring Freedom' in Afghanistan was initially justified as self-defence and directed at targeting Al-Qaeda and Taliban 'military installations', the observable 'shift' in the US government's war aims towards nation-building raised some important questions.⁵⁸³ Without the overriding 9/11 strategic rationale for the intervention, it is unlikely serious violations of human rights would not have breached the ICISS threshold, nor have been met with any comparable concern by the international community.⁵⁸⁴ This is despite, for instance, reports of the targeted massacres of civilians in May 2000 and January 2001.⁵⁸⁵ Thus, Welsh rightly asks what 'could and should' the international community have done prior to 9/11 'to prevent massive human rights violations inside that country?'⁵⁸⁶ With this in mind, it is unsurprising some would wish to emphasize the potentially positive humanitarian outcomes of such an intervention, and identify a relationship between the R2P framework and the war on terror. As Chesterman elucidates, the shift towards R2P applies 'to civilian protection in another state' and 'action in response to terrorist attacks against one's own'. For instance, had more been done to 'induce or compel the Taliban regime to protect the Afghan population, Afghanistan might have proved a less inviting haven for Al-Qaeda' and once the US removed the Taliban from power 'it imposed a special responsibility...to leave Afghanistan a better place than they found it'.⁵⁸⁷ The cross-over application of R2P is clear to see and is consistent with the suggestion R2P has significant political utility because of more fundamental structural relationships rather than simple misguided appropriations. Additionally, this strengthens Dannreuther's identification of a shift towards intervention debates 'increasingly contextualized with the longer-term demands of 'peace-building'.⁵⁸⁸ If

⁵⁸³ Chesterman 'Humanitarian Intervention and Afghanistan', p166

⁵⁸⁴ As Dannreuther remarks 'the post-9/11 period has opened up a wider strategic context for intervention where positive humanitarian outcomes are conceivable', *International Security*, p156

⁵⁸⁵ *Human Rights Watch* documented these massacres in 'Afghanistan: Massacres of Hazaras', February 2001, Vol. 13, No. 1, accordingly the January 2000 massacre in Yakaloang involved the killings of approximately 170 men, the May 2000 massacre near the Robatak pass led to the discovery of 31 bodies. This followed other reports of human rights violations, including a November 1998 *Human Rights Watch* report 'The Massacre in Mazar-I Sharif' which documented an even more shocking case, Vol. 10, No. 7

⁵⁸⁶ Jennifer Welsh (2002) 'From Right to Responsibility: Humanitarian Intervention and International Society', *Global Governance*, Vol. 8, No. 4, p518

⁵⁸⁷ Chesterman 'Humanitarian Intervention and Afghanistan', p172

⁵⁸⁸ Dannreuther (2007) *International Security*, p157

so, this would at least imply a more positive emphasis on a key aspect of the R2P-continuum.⁵⁸⁹

The potential for positive humanitarian outcomes was also evident in the Iraq debates, with Ignatieff and Blair prominent adopters of this position.⁵⁹⁰ For both, however, their justifications were more closely bound-up with alternative preferences regarding the moral permissibility of removing a tyrannical regime such as Saddam Hussein's. As an ICISS Commissioner, and one of the Report's principal authors, Ignatieff's support for the Iraq war was particularly revealing.⁵⁹¹ His position was not determined by an assessment of US intentions – which led to the assumption by 'anti-interventionists' that 'all the bad consequences of an intervention derive from ignoble American intentions' – but rather was swayed by a greater emphasis on the potential *consequences* of the military intervention.⁵⁹² His view was that it was perfectly possible, and reasonable, to apply one's own priorities onto the actions of another, even if they did not correspond. Alternative justifications could lead to desirable consequences: 'if the consequence of intervention is a rights-respecting Iraq in a decade or so, who cares whether the intentions that led to it were mixed at best?'⁵⁹³ Accordingly, the 'fundamental case for war' was about taking the opportunity to deal with an 'especially odious regime' with the potential for the creation of a 'decent' Iraqi society.⁵⁹⁴ Of course, Ignatieff would later recant his support.⁵⁹⁵ But his uneasiness with the indifference of some towards Saddam Hussein remaining in power reflected on-going

⁵⁸⁹ See especially Ch5 'The Responsibility to Rebuild' in ICISS (2001) *The Responsibility to Protect*, Ottawa: IDRC

⁵⁹⁰ For instance, Blair linked Iraq to previous UK military engagements in Kosovo, Sierra Leone and Afghanistan: 'Those people who benefited most from military action had been the people of those countries...If we have to do this in Iraq, the people in Iraq will be the main beneficiaries', in John Kampfner (2004) *Blair's Wars*, London: Free Press, p279

⁵⁹¹ The use of the word 'was' is especially relevant because Ignatieff's position would change significantly over time to the point where he would eventually state he had been 'wrong' about Iraq

⁵⁹² This is a marked contrast to ICISS's emphasis on right intention: see Michael Ignatieff (2003) 'Why Are We in Iraq? (And Liberia? And Afghanistan?)', *The New York Times*, 7 September 2003

⁵⁹³ Ignatieff (2003) 'Why Are We in Iraq?', see also (2003) 'The American Empire; The Burden', *The New York Times*, 5 January 2003

⁵⁹⁴ Ignatieff (2004) 'The Year of Living Dangerously', *The New York Times*, 14 March 2004

⁵⁹⁵ Ignatieff would alter his position in March 2004 writing that 'now I realize that intentions do shape consequences' and that as such his support was a 'gamble' in 'The Year of Living Dangerously', *The New York Times*, 14 March 2004 and would ultimately describe his support as wrong in 'Getting Iraq Wrong', *The New York Times Magazine*, 5 August 2007

contestation regarding the conditions which could justify military action for humanitarian reasons.⁵⁹⁶

As becomes apparent, the association between Iraq and R2P-esque justifications would shape the future ambitions and framing strategies of its key advocates. In the eyes of ICISS colleagues Evans and Thakur, Ignatieff's position failed to 'satisfy' the criteria/framework they had outlined.⁵⁹⁷ Unfortunately, the harsh political reality was that the criteria they had defined were neither formally accepted, nor insulated from continuing debate. As Fernando Tesón wrote in defending his support for the intervention on humanitarian grounds, the 'question of threshold has long been a matter of debate'.⁵⁹⁸ Whereas ICISS argued for actual or apprehended large-scale loss of life, alternative viewpoints posited that the sustained level of repression warranted action. Ignatieff would even ask – in response to comments that [Hussein] 'was a genocidal killer, but that was yesterday' – 'since when do crimes against humanity have a statute of limitations?'⁵⁹⁹ Such thinking was self-evidently removed from the ICISS framework and all its qualifications.⁶⁰⁰

However, more problematic was Tony Blair's efforts – couched in the language of R2P – to articulate a lower threshold justifying action against a regime like Saddam's. According to one Canadian official, Blair's appropriation of R2P proved highly damaging, with doubt as to whether he did so because 'the language sounded good' or for another reason.⁶⁰¹ Blair's use would be most evident in a 2004 speech which questioned the existing state of international law⁶⁰²:

It may well be that under international law as presently constituted, a regime can systematically brutalise and oppress its people and there is nothing anyone can do,

⁵⁹⁶ For instance, Ignatieff wrote: 'What I found harder to respect was how indifferent my antiwar friends seemed to be to the costs of allowing Hussein to remain in power' in 'The Year of Living Dangerously', on humanitarian arguments for the Iraq war see Thomas Cushman (Ed.) (2005) *A Matter of Principle: Humanitarian Arguments for War in Iraq*, University of Carolina Press

⁵⁹⁷ Interview with Gareth Evans (London, 25 May 2010)

⁵⁹⁸ Fernando Tesón (2005) 'Reply to Terry Nardin: Of Tyrants and Empires', *Ethics & International Affairs*, Vol.19, No. 2, pp.27-30

⁵⁹⁹ Ignatieff (2004) 'The Year of Living Dangerously', 14 March 2004

⁶⁰⁰ Evans addressed this point directly in interview (London, 25 May 2010): on how advocates sought to address the challenge of Iraq see below

⁶⁰¹ Private interview (31 March 2010)

⁶⁰² A speech which Blair most likely wrote himself, email from Phil Collins (1 November 2010)

when dialogue, diplomacy and even sanctions fail, unless it comes within the definition of a humanitarian catastrophe (though the 300,000 remains in mass graves already found in Iraq might be thought by some to be something of a catastrophe). This may be the law, but should it be?

If we are threatened, we have a right to act. And we do not accept in a community that others have a right to oppress and brutalise their people...we surely have a responsibility to act when a nation's people are subjected to a regime such as Saddam's. Otherwise, we are powerless to fight the aggression and injustice which over time puts at risk our security and way of life.⁶⁰³

The Iraq war was certainly not pursued primarily for humanitarian motives.⁶⁰⁴ However, the suggestion Blair's position cynically abused or was a selective 'rationalisation'⁶⁰⁵ of R2P to shore up a controversial case, arguably underestimates the extent to which it was genuine dynamic driving Blair's motivation to act and which 'built on the frame' of his 1999 Chicago speech.⁶⁰⁶ Although aware regime change lacked a legal basis,⁶⁰⁷ it was nevertheless always part of the justificatory mix, and the UK's underlying policy objectives.⁶⁰⁸ In terms of motivation, there is evidence Blair believed the repressive nature of the regime was one important reason for acting, and that this reflected a continuity of position from Kosovo, through Sierra Leone, Afghanistan and Iraq. In this respect, the rationalisation argument is overly simplistic. Arguably, Blair's *post hoc* justifications were arguably more damaging because they actually legitimized concerns Iraq represented a genuine example of what R2P was about and how it might be used.⁶⁰⁹ For Blair, that consensus coalesced to a greater degree over dealing with Milosevic, did not mean the basis upon which the policy in Iraq

⁶⁰³ Tony Blair (2004) 'Speech by the Prime Minister in Sedgefield', 5 March 2004

⁶⁰⁴ See Nicholas Wheeler and Justin Morris (2005) 'Justifying Iraq as a Humanitarian Intervention: The Cure is Worse than the Disease' in Thakur, Ramesh and Sidhu, Waheguru Pal Singh (Eds.) (2006) *The Iraq Crisis and World Order: Structural and Normative Challenges*, Tokyo: United Nations University, p444-463 who argue Iraq failed as a 'justifiable humanitarian intervention'

⁶⁰⁵ Gareth Evans (2004) 'When is it right to fight? Legality, Legitimacy and the use of force', Oxford University, 10 May 2004: 'while it may not have been the primary motivation – or even the real motivation – for actions of the US or the UK, the truth of the matter is that the responsibility to protect emerged as a rationalization for action to defeat Saddam Hussein's tyranny – so-called humanitarian intervention to protect the Iraqi people from a tyrant'

⁶⁰⁶ Email from Phil Collins (2 November 2010)

⁶⁰⁷ See 'Evidence presented by the Rt. Hon. Tony Blair MP, Prime Minister', House of Commons, Liaison Committee, HC 334-ii, 8 July 2003

⁶⁰⁸ See Jason Ralph (2005) 'Tony Blair's 'new doctrine of international community' and the UK decision to invade Iraq', *POLIS Working Paper No. 20*, August 2005, p13-15 and Christoph Bluth (2004) 'The British road to war: Blair, Bush and the decision to invade Iraq', *International Affairs*, Vol. 80, No.5, p877

⁶⁰⁹ Private interviews with Canadian officials (19 May 2009, 31 March 2010): indeed, one UK official stated Blair was never as explicit as he should have been about this aspect of his thinking, private interview

was pursued was necessarily distinct, and that when opportunities arise to remove such regimes they should not be taken.⁶¹⁰ Indeed, a memo to his Chief of Staff dated 17 March 2002 (a year *prior* to the invasion) shows Blair wanting to ‘re-order our story and message’ to one ‘increasingly...about the nature of the regime. We do intervene – as per the Chicago speech. We have no inhibitions – where we reasonably can – about nation-building i.e. we must come to our conclusion on Saddam from our own position, not the US position. From a ‘centre-left perspective’, Blair wrote, ‘the case should be obvious’:

Saddam’s regime is a brutal, oppressive military dictatorship. He kills his opponents, has wrecked his country’s economy and is a source of instability and danger in the region. I can understand a right-wing Tory opposed to nation-building, being opposed to it on grounds it hasn’t any direct bearing on our national interest. But in fact a political philosophy that does care about other nations – e.g. Kosovo, Afghanistan, Sierra Leone – and is prepared to change regimes on the merits, should be gung-ho on Saddam.⁶¹¹

Considering this, it is not surprising Blair would seek to shape how things *ought* to be. It is the very essence of normative contestation. His arguments certainly made R2P advocacy more difficult. But we should not fall into the trap of thinking R2P’s path to achieving wide acceptance was merely disrupted by an anomalous distortion of its purpose.⁶¹² Indeed, R2P would undergo a series of changes throughout this period, as advocates sought to fight back against the association with humanitarian intervention, the generally difficult political context *and* Iraq. This resulted in advocates limiting the ‘scope of what they would ask the world to sign up to’⁶¹³ – a reflection of these political difficulties and the reality that R2P was very much an *emerging* idea with no agreed or collective understanding of its meaning or application.

It is important to note, however, that these observations are not about defending Blair’s approach, but rather provide an explanation of key political dynamics. How these impacted

⁶¹⁰ As Blair was quoted in Peter Stothard: ‘They ask why we don’t get rid of Mugabe, why not the Burmese lot? Yes, let’s get rid of them all. I don’t because I can’t, but when you can, you should’, in (2003) *30 Days: A month at the Heart of Blair’s War*, p42

⁶¹¹ ‘Memo from The Prime Minister to Jonathan Powell: Iraq’, 17 March 2002

⁶¹² See for instance Gareth Evans’ suggestion that because of Iraq an ‘emerging international norm of real potential utility was once again struggling for acceptance’ in (2004) ‘When is it right to fight?’, 10 May 2004, quite why it was ‘once again’ struggling is unclear

⁶¹³ Bellamy (2009) *Responsibility to Protect*, p69

on the micro-processes of R2P's development are picked-up in Part 2, but beforehand it is necessary to consider some of the broader counter arguments and critiques relevant to understanding how the R2P was eventually shaped, but which also frame some of its potential weaknesses. First, while the use of humanitarian justifications were always part of the justifying discourse – including by the US – the feeling that Iraq was one step towards a slippery slope of interventions to remove unacceptable regimes did little to engage the support of those states already 'allergic' to the idea of R2P.⁶¹⁴ Considering the lower threshold evident in the positions of Blair, Ignatieff and Tesón it was entirely reasonable to ask where the argument for intervention ends? Dealing with repressive regimes without narrow constraints could leave any number open to potential intervention.⁶¹⁵ Moreover, although any justification relating to the nature of a regime is likely to involve reference to past actions, any attempt to allow retrospective action would undermine the existing basis of international law, and prove even less amenable to rational decision-making.⁶¹⁶

Second, although there was a general reaction against the humanitarian arguments, they fuelled fears R2P could be used and abused as a 'politically attractive' pretext to justify military actions pursued for instrumental and strategic reasons.⁶¹⁷ This problem is entwined with a broader trend of humanitarianism seeping into the justifications used to legitimate military force, thus exacerbating the difficulty of convincing already sceptical states that they represent something more than cover for Western manipulation or convenience.⁶¹⁸ This was evident in Iraq where the US was accused of reverting to a 'liberal rationale' in defence of action floundering on the principle justification of ridding a dangerous and repressive regime of its WMD.⁶¹⁹ This led to suggestions Iraq had 'wrecked' the 'liberal intervention consensus' and warnings by Kenneth Roth that it risked breeding 'cynicism about the use of military force for humanitarian purposes' which 'could be devastating for

⁶¹⁴ Interview with Allan Rock (Ottawa, 11 June 2009)

⁶¹⁵ For instance Gareth Evans suggested Blair saw R2P as a 'perfect opportunity to justify everything', interview

⁶¹⁶ As Gareth Evans remarked justifying intervention in Iraq based upon his actions against the Kurds in the 1980s and the Shiites in the 1990s would be 'like saying you could roll in a military force against Mugabe because of what he did in Matabeleland' in the 1980s, interview (London, 25 May 2010)

⁶¹⁷ Interviews with Allan Rock (Ottawa, 11 June 2009), and Gareth Evans (London, 25 May 2010)

⁶¹⁸ See David Rieff (2002) *A Bed for the Night: Humanitarianism in Crisis*, London: Vintage, p240 and David Chandler (2002) *Kosovo to Kabul: Human Rights and International Intervention*, London: Pluto Press

⁶¹⁹ Terry Neal (2003) 'Bush reverts to Liberal Rationale for Iraq War; Critics Still Oppose War Despite Hussein's Human Rights Record', *Washington Post*, 9 July 2003

people in need of future rescue'.⁶²⁰ Interestingly, however such arguments were couched predominantly in terms of humanitarian intervention and not R2P. The former continued to be the principle framework for considering such debates, fuelling the idea that for many it and R2P were much the same. This association, further exacerbated by Iraq and the Bush doctrine, would intensify efforts to frame and define R2P contrary to such negative connotations.

The third major issue is the question of to what extent state motive should be a factor in assessing humanitarian action/inaction and opposition to a normative development like R2P.⁶²¹ This longstanding debate was particularly significant in the case of Iraq. Fears R2P could provide a vehicle/slippery slope for further interventions, and the argument Iraq damaged the cause of humanitarian intervention, are united by motivational concerns – even if they emanate from different perspectives. For instance, cynicism about the Bush administration's emphasis on the nature of the regime was understandable considering the US's historical attitude towards human rights abuses in Iraq. Additionally, limited initial concern for humanitarianism had consequences for how military operations in Afghanistan and Iraq were conducted, further damaging the name of intervention and R2P.⁶²² It is certainly true, therefore, that such events impacted upon R2P's subsequent formulation. During 2005 supporters would work hard to narrow R2P's scope, and to guard-against genuine concerns it represented a shift away from pre-existing UN Charter provisions. However, motive is not simply a Western problem. The negative associations identified provided ammunition to those States who would wish to avoid further intrusive measures which could shine a light upon their own questionable human rights records. This was practically evident in Darfur. Opposition to Western intervention was seemingly

⁶²⁰ David Clark (2003) 'Iraq has wrecked our case for humanitarian wars: The US neo-cons have broken the Kosovo liberal intervention consensus', *The Guardian*, 12 August 2003, Kenneth Roth (2004) 'War in Iraq: Not a Humanitarian Intervention', *Human Rights Watch Annual World Report*, June 2004: Roth's concern with breeding cynicism was a fair point, but David Clark' however arguably overstated the extent to which there was a 'liberal consensus' on the issue of intervention prior to Iraq

⁶²¹ See Wheeler and Morris 'Justifying Iraq as a humanitarian intervention: the cure is worse than the disease', and Wheeler (2000) *Saving Strangers*, p37-8

⁶²² For a revealing account of the humanitarian consequences of the US intervention in Afghanistan see Jonathan Steele (2002) 'Forgotten victims', *The Guardian*, 20 May 2002, additionally on the issue of humanitarian purpose in relation to Iraq see Roth_(2004) 'War in Iraq: Not a Humanitarian Intervention' and Ignatieff's arguments recognising the importance of intent/motive in 'The Year of Living Dangerously', *The New York Times*, 14 March 2004

emboldened,⁶²³ with the Sudanese government seeking to draw links between Iraq and R2P to portray US activism in Iraq and Darfur as 'oil-oriented and anti-Islamic'.⁶²⁴ This was exacerbated post-2005. With R2P loaded heavily in favour of primary state responsibility it enabled Sudan to emphasise its own role in addressing the problem, and enable states unwilling to assume responsibility for events in Darfur.⁶²⁵

Indeed, despite considerable debate about what international response would have been appropriate, there is also a sense among some that the response of the international community was too late, and that besides which the motivations of states were not driven by a genuine willingness to commit to an armed intervention if necessary, even when the US described events in Darfur as 'genocide'.⁶²⁶ Although one should be extremely careful in how R2P is applied to a crisis which flared well before its formal adoption, it nevertheless raises important questions of political dynamics relevant to our future understanding of it.⁶²⁷ However, that the severity of the crisis in Darfur emerged from early 2003 also meant it ran parallel with vast military deployments in Iraq and Afghanistan. Even if there had been clear consensus and support for a military response to Darfur, in such circumstances the ability to provide the kind of military resources required was greatly reduced.⁶²⁸ Indeed, this point is about more than military capacity. It more generally reiterates how the changed political context altered the perception of threat and strategic priorities of key powers which were sufficient to mobilized an immense show of power with qualified concern for its impact on the international system and an agenda focused on responding to mass atrocities crimes. And although there is evidence throughout this period of what Macfarlane and Weiss describe as 'a quieter movement over the longer run towards institutionalising the

⁶²³ Paul Williams and Alex Bellamy (2005) 'The Responsibility to Protect and the Crisis in Darfur', *Security Dialogue*, Vol. 36, No. 1, pp.27-47

⁶²⁴ Bellamy (2009) *Responsibility to Protect*, p69 and David Rieff (2006) 'A Nation of Pre-emptors?', *The New York Times*, 15 January 2006

⁶²⁵ See Bellamy (2005) 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq', *Ethics & International Affairs*, Vol. 19, No. 2, p53

⁶²⁶ See Scott Straus (2005) 'Darfur and the Genocide Debate', *Foreign Affairs*, Vol. 84, No. 1, pp.123-133

⁶²⁷ Many of which are far too complex to be addressed here, including one very important but arguably overlooked dimension of dealing with such crisis situations, namely that of actually seeking to understand 'what the problem is' and the 'nature' of it, a point made strongly in interview by Kieran Prendergast (London, 6 October 2009). As he pointed out, this does not lend itself to quick and easy resolutions and is certainly not about 'sound-bite' responses to problems

⁶²⁸ Indeed Ignatieff suggested that the humanitarian interventions of the 1990s was 'an interregnum, made possible because Western militaries had spare capacity and time to do human rights work', 'Is the Human Rights Era Ending?', *The New York Times*, 5 February 2002

protection of civilians in international society',⁶²⁹ this progress was complicated by a complex mix of post-9/11 Iraq-driven regression which exacerbated pre-existing political objections and challenges to R2P. The ability to generate political support for R2P was thus hindered by Iraq, but paradoxically it provided sufficient shock to the international system to initiate the pivotal institutional response in the process leading to the 2005 agreement.

Part 2: International Advocacy in an Unreceptive Policy Environment

Considering the development of the humanitarian intervention debates, the obstacles evident in the processes leading to ICISS, and the changed political context post-9/11, R2P's rapid progression into the 2005 agreement was immensely surprising. Explaining *how* and *why* this happened leads to a complex set of dynamics which do not lend themselves to existing accounts of norm emergence, including the classic NLC.⁶³⁰ In R2P's case, its institutionalization in 2005 did not *necessarily* reflect widespread acceptance of its meaning or, crucially, its significance.⁶³¹ Nor was the agreement necessarily underpinned by sufficient normative foundation for moving towards its 'operationalization'. The agreement of 2005 was purposefully designed to be non-transformational in terms of how the international community sought to deal with mass atrocities and commanded broad rather than deep foundational support. Indeed, it merely opened up a new stage of legitimate political normative contestation.⁶³² Considering Ch5's explanation of R2P's development as a heavily state-centric formulation which purposefully qualified and limited the international scope of R2P⁶³³, of all the problems currently facing R2P one of the most significant arguably stems from lack of careful attention to these *how* and the *why* questions. Indeed, this has been

⁶²⁹ S Neil Macfarlane, Carolin Thielking and Thomas Weiss (2004) 'The Responsibility to Protect: is anyone interested in humanitarian intervention?', *Third World Quarterly*, Vol. 25, No.5, p990: for instance through continued UN peacekeeping deployments (*by consent*) in Liberia, the Congo, and Côte d'Ivoire, the continued development of the protection of civilians in armed conflict policy framework including the SC's adoption of an Aide Memoire on the PoC in March 2002 designed as a 'means to facilitate its consideration of issues pertaining to protection of civilians', *Aide Memoire*, S/PRST/2002/6, 15 March 2002

⁶³⁰ My thinking on the *how* and *why* has been greatly influenced by Dyson & Featherstone (1999) *The Road to Maastricht*, see especially Chapter 17 'Conclusions and Reflections', pp.746-801

⁶³¹ Particularly when we contrast statements by advocates, and SG post-2005 with the understanding of Summit agreement documented in this thesis, and as demonstrated by post-2005 disputes over application/operationalization

⁶³² The word legitimate is important and designed to emphasise that just because R2P advocates are unquestionably committed to it, does not mean that on-going state contestation, including potential moves to limit it further, is inherently wrong

⁶³³ Private interview (3 August 2010)

accentuated by repeated overestimations of its significance, and symptomatic, for instance, of a general lack of understanding, individual normative preferences of advocates, and what Welsh describes as ‘limitations in international relations theory with respect to the study of normative change’.⁶³⁴

For all R2P offered as an idea, not least its pithy phrasal qualities, there was a discernible lack of a catalytic core group of states working actively (post-ICISS) to prioritize its normative development – particularly not around a norm which sought to expand on or assign international responsibilities. Despite increasing evidence of its use in the diplomatic lexicon, and some momentum in efforts to build support, the eventual agreement was not ultimately driven by these factors. Indeed, considering Canada ‘was almost alone in its efforts to ‘operationalize’ the Report’ post-2001⁶³⁵ – a position confirmed below – the need to understand those factors which facilitated its agreement becomes even more significant. What emerges is a complex explanation of macro and micro change, with exogenous and endogenous factors interacting with structure and agency, continuity and change. It is these which provide the basis for the ‘structured outcome’ logic.

Keeping in mind Part 1, the principle exogenous shock affecting R2P’s prospects was Iraq. It provided the impetus for an assessment – through the *High-Level Panel* – of how existing international structures dealt with threats to international peace and security, and how they might be changed to address a raft of long-standing and emergent policy issues. In terms of the overall process, this institutional innovation was arguably the high point of Annan’s ability to shape, albeit indirectly, R2P’s political prospects. It was also the first stage in R2P’s structured outcome.⁶³⁶ Returning more directly to the how and why, the emphasis on the

⁶³⁴ Jennifer Welsh (2010) ‘Implementing the Responsibility to Protect: Where Expectations Meet Reality’, *Ethics & International Affairs*, Vol. 24, No.4, online edition: As Ch1 explained this thesis seeks to address this problem through the adoption of a micro process-driven framework and in the case of R2P’s development into the 2005 agreement, through the development of new explanatory concepts to explain what existing models cannot

⁶³⁵ Maria Banda (2007) ‘The Responsibility to Protect: Moving the Agenda Forward’, United Nations Association in Canada, p10

⁶³⁶ Why it was the first stage relates mainly to its agenda-setting role, and the way it, with Annan’s subsequent *In Larger Freedom* Report, locked R2P into the negotiations. These are addressed more substantially in Ch5. Complementing this was an on-going sense that humanitarian crises would continue to expose the limits of collective action. This was provoked by the Darfur situation, but also by events commemorating the Rwandan genocide – especially the tenth anniversary in 2004. These examples would variably feed into the specific

HLP as Stage 1 of R2P's structured outcome essentially relates to an attempt to specify the structural factors *within/of* the process which enabled its agreement – a strategy which demands the application of micro-level analysis. Ch5 traces the specifics of this logic, along with the multilateral negotiations in 2005. But for the purposes of early signposting, examples of key endogenous factors included the HLP (for its agenda-setting vehicular role and endorsement of R2P); Annan's subsequent report *In Larger Freedom* (for reiterating and amending the HLP's endorsement of R2P, thus locking R2P into the World Summit process); and, the design and structure of the member state negotiations (including the 'piggy-backing' of the HLP/ILF agenda onto previously agreed Millennium Review Conference processes, the adoption of a 'package'-driven approach to reform, the introduction of a smaller 'core group' of states, and resource constraints relating to time and scale).

Uniting these is the idea that the structural characteristics of the negotiation process were causally significant for realising the outcome.⁶³⁷ The extent to which the outcome was possible depended upon the possibilities the structure provided: the way it locked R2P into the GA negotiations; the way it narrowed the odds for its inclusion and limited the resources of states and their capacity to maintain pre-existing policy lines/positions in the context of the processes characteristics. In this respect, the argument here is consistent with the idea that 'agency must itself be contextualized within its structural setting, but must be seen as *structuring* and not *just structured*'.⁶³⁸

processes leading to the R2P agreement, particularly those relating to its negotiation. How they did so was thus revealed in the factors endogenous to the process. For instance, Iraq would condition the scope of R2P, cementing existing objections to intervention revealed over Kosovo, by affecting the policy positions – and policy limits – of all states (supportive, sceptical, or hostile). Similarly, Darfur and Rwanda would feed into the framing strategies of R2P advocates, and apply a different type of pressure by making it more difficult for states to simply avoid the problems inherent to both. Such examples show how exogenous factors, highlighted in the macro-focused Part 1, would impact upon the R2P's development as shown herein

⁶³⁷ This is not to say, however, that the structuring *directly* led to, or guaranteed the R2P outcome. It would be quite wrong to read this as a structural account which relegates agency, and undermines the constructivist research framework. On the contrary, the effort of individual agency has been a theme throughout, and does not change with the introduction of this argument; structure and agency are mutually constituted. Indeed, each stage of this structuring depended upon individuals and their interaction with others: the establishment of HLP was an Annan innovation; the inclusion of R2P in the HLP report greatly depended upon the efforts of Evans and David Hannay, and the lobbying efforts of governments; the World Summit negotiations required the direction of individuals in the Office of the GA President, aided by a group of facilitators and the Secretariat; while the R2P itself depended upon the strong support of a group of countries, notably Canada, the UK/EU, and a number of African countries, with individuals from each playing central roles in the negotiations

⁶³⁸ Dyson and Featherstone (1999) *The Road to Maastricht*, p782 (my emphasis)

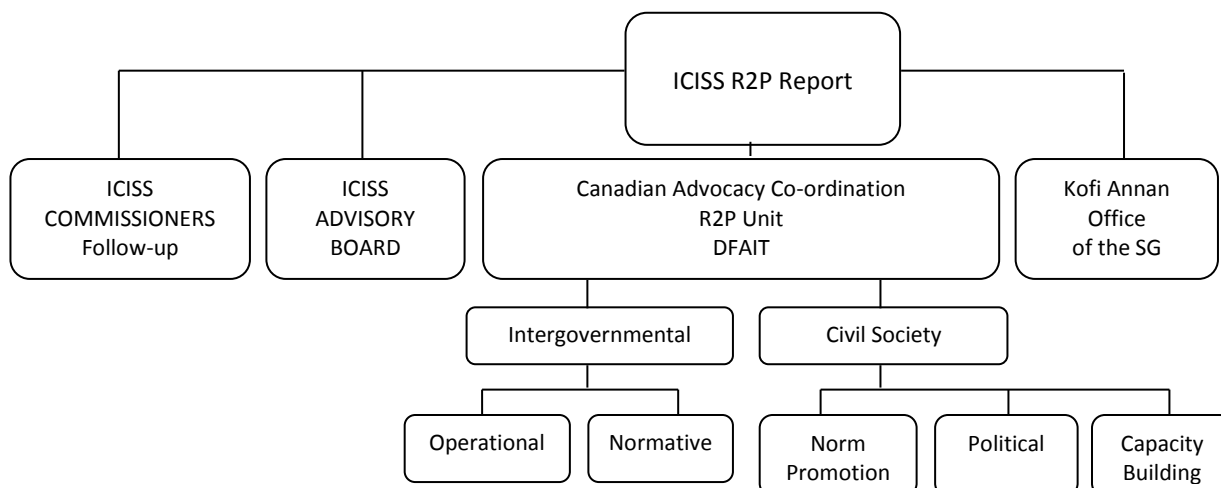
Hence structure helps us understand how the agreement was possible, while the micro-processes of R2P's emergence and negotiation enable us to better understand its 2005 formulation. However, an important question at this point is why this argument has been outlined in such detail in a section designed to focus on post-ICISS advocacy? The answer is Chapter's 4-5 overlap in significant ways, with both necessary for completeness, and substantiation. The structuring (argument) is significant because without it the political prospects for R2P – within the GA especially – were unquestionably mixed and murky. R2P did not emerge into the 2005 process under the propulsion of a significant coalition of states. There was no widespread consensus of its meaning, or potential use, beyond the emphasis on individual state responsibility which would become a fundamental framing strategy during the negotiations to limit concerns regarding R2P's scope. Indeed, Canadian advocacy was projected to be a long-term endeavour of building-upon and consolidating emerging norms relating to state responsibility and international responsibilities.⁶³⁹ That Canada (et al.) would seek to make the most of the Summit opportunity is unsurprising. But it did mean the agreement would reflect many of the weaknesses evident prior to, and during, the advocacy stage. Although controversial, one should ask whether R2P would have achieved multilateral agreement without the structuring elements of the process – if it were negotiated more exclusively, or in a less overwhelming package?⁶⁴⁰ This does not mean R2P cannot have an impact, or is illegitimate or insignificant, but does mean our understanding of the 2005 agreement should be more nuanced than focusing on the simple fact of agreement.

This section thus traces ICISS follow-up efforts – essentially driven by Canada, but aided to varying degrees by Annan, Civil Society and ICISS remnants. In so doing, it illuminates the obstacles they faced, but also why persistence and state sponsorship are vital elements for achieving normative change. Without these the Summit opportunity would not have been an opportunity at all.

Figure 4.1: R2P Advocacy Post-ICISS Report

⁶³⁹ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort', GHDC-18, 26 March 2004, prepared by Heidi Hulan: Canadian strategy is dealt with in more detail below

⁶⁴⁰ This point is explicitly picked-up in the context of the Summit negotiations in Ch5



Post-ICISS Advocacy: A Brief Synopsis

The ICISS process was conducted more under the radar than originally envisaged. An initial idea for an intergovernmental ‘Group of Interested States’ (GIS) proved particularly unworkable, not least because until the Report was completed such a Group would have very little to go on, let alone rally around.⁶⁴¹ This, as it transpired was not especially problematic. Besides, as Ch3 documented, ICISS establishment processes were Canadian dominated with limited additional state sponsorship or support. Subsequent follow-up efforts would largely mirror this, with Canada often singularly leading where intergovernmental efforts were concerned.⁶⁴² Central to Canadian advocacy were the officials and structures within DFAIT responsible for defining, coordinating, and resourcing what would prove to be a multidimensional and ‘multifaceted’ strategy.⁶⁴³ In this respect, ICISS’s design proved to be particularly crucial. Although initial follow-up ideas like the Advisory Board functioned extremely poorly, the embedding of the initial ICISS Secretariat within DFAIT installed a small but **vital** support structure for advancing R2P. Post-ICISS this structure would remain in place, renamed “*The R2P Unit*”.

⁶⁴¹ Private interview (31 March 2010): for further details see footnote 385

⁶⁴² Private interview (19 May 2009)

⁶⁴³ Marie Gervais-Vidricaire in ‘Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade, 17 November 2004, p9

Figure (4.1) captures the transition from ICISS to advocacy, and the (intended) building blocks of it. The contribution of each element is unpacked below with the focus on micro-process yielding insights and detail insufficiently evident in the existing R2P literature. From the outset, supplementing Canadian leadership was the committed support of Annan – who fulfilled and built-on his commitment to publically receive the report – and continuing support of some ICISS Commissioners; most prominently Gareth Evans. The initial presentation of the Report to Annan in December 2001 captured this composition with representatives from each of the active elements of follow-up in attendance.⁶⁴⁴ But it was also symbolic for its limited profile. Publishing and launching in December under any circumstances would be difficult. But with 9/11 (which delayed publication to accommodate an additional ICISS meeting to consider its consequences⁶⁴⁵) it is not surprising Edward Mortimer would describe the Report as ‘sinking like a proverbial stone’.⁶⁴⁶ Thus, the *de facto* – albeit second – launch, took place at the IPA on 15 February 2002. This was one of a series of significant R2P-related events which took place throughout the period 2002-2004.⁶⁴⁷

Consistent with the characteristics of the follow-up campaign, few of these events were especially high-profile. This was symptomatic of the restrictive political context but also of on-going scepticism and hostility which rendered such a strategy unwise. Indeed, for this reason Canada would focus on ‘bottom-up’ advocacy designed to raise awareness and build support – be it regionally or bilaterally – and continued support for ‘operationally’ focused efforts consistent with the work undertaken within DFAIT’s Human Security Program. That said, many of these events – which are explored throughout this section – illuminate many of the central problems which would plague R2P throughout its development.⁶⁴⁸ These included a notable inability to engage the P5 with an idea that might undermine their decision-making freedom; a lack of observable consensus showing the GA was willing to adopt a norm accepting (let alone assign) international responsibility as proposed by ICISS; fears R2P would be used as a cover for military action, or expand into other areas which

⁶⁴⁴ ICISS (2001) ‘Canada launches report of the International Commission on Intervention and State Sovereignty’, 18 December 2001

⁶⁴⁵ Although ICISS met they did not make any real changes to the report which by that point had already been ‘largely completed’, ICISS (2001) *The Responsibility to Protect*, Ottawa: IDRC, pviii

⁶⁴⁶ Email from Edward Mortimer (19 October 2010)

⁶⁴⁷ Simon Chesterman (2002) ‘Discussions at the Release of the Responsibility to Protect’, *International Peace Academy*, 13 July 2002

⁶⁴⁸ With some of these continually evident long after its agreement in 2005

could infringe sovereignty; a continued association with humanitarian intervention; and ongoing contestation over the point at which military action might be necessary and how it should be authorized. That many of these would also plague R2P post-2005 was largely because the agreement reflected such competing and contradictory pressures, rather than actually dealing with them. However, the roots of the 2005 formulation also reflected a narrowing in the R2P being sold by advocates post-ICISS in response to the political obstacles. Advocacy would be increasingly directed at emphasizing R2P's potential to constrain the ability of states to 'justify the use of force for humanitarian purposes'.⁶⁴⁹ Central to this approach included strengthening emphasis on its primary state dimension, tying R2P exclusively to the SC, and advocating for agreement on use of force criteria. Inevitably, however, the success of these elements varied in terms of their political realism and in terms of the political consequences they would later have.

The ICISS Commissioners and Advisory Board

Beginning with ICISS is a logical starting point for tracking R2P advocacy. Like the explanation of the processes leading to its formation, the emphasis on micro-process generates new and interesting insights not widely evident in the R2P literature. Structurally the most important development was the transition of the ICISS Secretariat into the R2P Unit. This was central to Canadian follow-up strategy, and within that, for the facilitation, deployment and continued coordination of ICISS assets.⁶⁵⁰ Incorporating follow-up was always a key objective for Canadian officials. ICISS's structural characteristics demonstrated this, albeit consistent with the desire to maintain the integrity of the Commission's independence. The previously-mentioned 'light touch' approach of the ICISS Secretariat, whilst not oblivious to the possibility that occasional interventions might have been needed to bring discussions back on track (so not so independent Canada would be unable to move forward with follow-up),⁶⁵¹ was about avoiding accusations of a pre-cooked agenda and about giving Canada flexibility and space to determine for itself how it would take

⁶⁴⁹ Bellamy (2009) *Responsibility to Protect*, p73-4

⁶⁵⁰ Private interviews with Canadian officials (19 May 2009, 31 March 2010); interviews with: Christopher Cushing (Bradford, 9 June 2010) and Ramesh Thakur (Waterloo, 22 June 2009). The Unit is dealt with in more detail in the section on Canadian follow-up efforts below. Here it relates mainly to how ICISS assets were incorporated into Canadian efforts (the overarching strategy for which is also detailed below)

⁶⁵¹ Interview with Christopher Cushing (Bradford, 9 June 2010)

subsequent ownership of follow-up.⁶⁵² Thus, with this significant caveat in mind ICISS 'assets' essentially related to three categories: the ICISS Report; the ICISS Commissioners; and the regional consultations it undertook from 2000-2001. Each of these would directly influence key planks of Canadian strategy such as dissemination, stimulating debate, and 'bottom-up' regional advocacy.⁶⁵³ The framework provided by the report would be deployed in each of these areas as a key introduction to R2P, and to instigate debate. However, as important as the transition from ICISS Secretariat support to Canadian advocacy through the dedicated R2P Unit is, it was *not* a simple progression without qualification. As an internal document reveals, Canada's 'leadership on R2P follow-up' did not 'imply...comprehensive endorsement of all its findings':

Rather we view the report as a helpful contribution to a complex legal and political debate and as a vehicle for promoting international discussion...⁶⁵⁴

This is an important qualification which, with the point about flexibility and space, would feed directly into how DFAIT framed the report's utility across its follow-up strategy. ICISS no longer maintained control of its report, but was now a tool for an intergovernmental effort which would inevitably shape its substance and political prospects. Nevertheless, it was an important tool and starting point. Similarly, the engagement of ICISS Commissioners would continue – admittedly in a less significant way – but with continued coordination through the R2P Unit.⁶⁵⁵ Generally, this would relate to inviting them to attend events relevant to Canadian efforts.⁶⁵⁶ Finally, the process dimension of ICISS may seem an odd 'asset' but was significant for its impact upon advocacy, particularly as Canadian follow-up continued in a not too dissimilar path thereafter.⁶⁵⁷ Meanwhile, a key strand of Canadian advocacy would continue to embrace key tenets of the policy-making model which underpinned many initiatives of the Axworthy era – including the establishment of ICISS.

⁶⁵² Private interview (31 March 2010)

⁶⁵³ Private interviews (19 May 2009, 31 March 2010) and 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade, 17 November 2004

⁶⁵⁴ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁶⁵⁵ Private interview (31 March 2010), interview with Ramesh Thakur (Waterloo, 22 June 2009)

⁶⁵⁶ Private interview (31 March 2010)

⁶⁵⁷ For instance, the framing strategies of Canada and key Commissioners would reference the regional nature of the consultations, and ICISS's regional representation, as examples of how consensus was possible

The emphasis on regional engagement and engagement with a multitude of state and non-state actors would continue as a feature of Canadian policy.⁶⁵⁸

Thus, effective follow-up support structures, additional to the strict timeframe and demand for a politically-driven report, were central to how ICISS was constituted.⁶⁵⁹ Officials wanted to avoid replicating previous Commissions which lacked political follow-up or enabling mechanisms, leading to their reports falling by the wayside.⁶⁶⁰ Ultimately, ICISS's distinguishing feature was Canada's unique state sponsorship. This gave R2P the platform, access, resources and persistence necessary to be in a position to eventually influence the 2005 outcome. Indeed, follow-up processes were always going to be intensely political. Without such sponsorship even the most effective and committed post-ICISS efforts would have struggled to merely keep the idea alive. However, Canada's sponsorship was not just essential because of political intensity, but because key ICISS structures did not function as intended, or were less pronounced than might have been expected.⁶⁶¹ Most obviously the Advisory Board proved unworkable for a host of personnel-related reasons. The initial idea was that its members would act as the Report's 'key advocates to ensure...the political momentum required to follow-up on its recommendations is maintained.'⁶⁶² It would play a 'key role' in follow-up by integrating a cross-regional coalition of sitting politicians or individuals linked or committed to the agenda.⁶⁶³ Although partly established to keep Axworthy involved, the intention for each of the ICISS components was that they should be 'real', and function accordingly.⁶⁶⁴ However, aside from one joint ICISS-Advisory Board meeting in June 2001, it did not operate effectively. The central problem was that its

⁶⁵⁸ Private interviews (19 May 2009, 31 March 2010), see also Edward Luck (2000) 'Blue Ribbon Power: Independent Commissions and UN Reform', *International Studies Perspectives*, Volume 1, Issue 1, pp.89-104 and Ramesh Thakur, Andrew Cooper, John English (Eds.) (2005) *International Commissions and the Power of Ideas*, United Nations University

⁶⁵⁹ The Backgrounder attached to the Press Release announcing ICISS stated under the heading 'follow-up action' that 'the global effort to address the issues of intervention and state sovereignty, and the positioning of the international community to deal with these difficult issues, will be an ongoing process' in DFAIT (2000) Backgrounder in 'Axworthy launches International Commission on Intervention and State Sovereignty', 14 September 2000

⁶⁶⁰ Private interview (31 March 2010)

⁶⁶¹ Indeed Canadian follow-up strategy was also described by Hulan as 'relatively low-key' in (DFAIT) (2004) 'Canada's Responsibility to Protect Follow-up Effort', GHDC-18, 26 March 2004

⁶⁶² DFAIT (2000) 'Axworthy launches International Commission on Intervention and State Sovereignty'

⁶⁶³ DFAIT (2000) Backgrounder in 'Axworthy launches International Commission on Intervention and State Sovereignty', and private interview (31 March 2010)

⁶⁶⁴ Interview with Christopher Cushing (Bradford, 9 June 2010)

membership was constructed around individuals Axworthy had been personally or politically allied to whilst Foreign Minister.⁶⁶⁵ This may seem unremarkable. However, the danger was that by composing it around Axworthy the perception would be ICISS was just another personally-driven HS initiative, and thus a vehicle for furthering his well-known policies regarding intervention.⁶⁶⁶ This would have merely compounded the difficulties evident during the initial efforts to gain state support for the initiative in 2000. However, paradoxically whereas a number of the Board Members had been allies on other policy files this did not translate to reflexive support in this issue area. Amre Moussa, for instance, while personally close to Axworthy, was deemed unsupportive of the R2P agenda by Canadian officials. But ultimately any resulting public damage was limited by its lack of profile, and because of its ultimately inactive role.⁶⁶⁷

An additional issue was that a number of its members left office, or moved positions during the lifecycle of ICISS. Many who were Foreign Ministers when ICISS began were no longer so after its report was finished.⁶⁶⁸ The prime example of this was demotion of UK Foreign Secretary Robin Cook to Leader of the House of Commons in early June 2001. Cook was a close friend of Axworthy, who, despite only sanctioning *highly qualified* UK support for ICISS, pushed for Board representation rather than simply participation in the GIS. His reasoning was interesting:

[Cook] is not, however, persuaded that we should stand aside from the Advisory Board. He is concerned that, if we are not on the Advisory Board, we will have responsibility for the report without real power to influence it.⁶⁶⁹

As it was, Cook attended the London meeting in a 'personal capacity' without FCO objection.⁶⁷⁰ However, the concern with not being able to influence a report which the UK

⁶⁶⁵ Private interview (31 March 2010)

⁶⁶⁶ Officials were aware of this problem, but at the time went ahead with the structural establishment of the Advisory Board, despite subsequently recognising it was a mistaken approach

⁶⁶⁷ Private interview (31 March 2010): as one official suggested had it met more often it may have become an issue and inflicted harm on their efforts on R2P

⁶⁶⁸ For example: Argentine Minister for Foreign Relations Adalberto Rodriguez Giavarini left his post in December 2001, Amre Moussa, Minister of Foreign Affairs of Egypt left his post in May 2001 to become Secretary-General of the League of Arab States, Rosario Green Macias, Secretary of Foreign Relations of Mexico left her post in November 2000, Robin Cook, British Foreign Secretary left his post in June 2001

⁶⁶⁹ FCO (2000) 'Canadian Proposal for International Commission on Intervention and State Sovereignty', *Letter from Principal Private Secretary to Secretary of State to UN Department*, 5 September 2000

may subsequently be associated with is an interesting dynamic considering ‘ownership’ and ‘credit’ were reasons which militated against greater UK sponsorship from the outset.⁶⁷¹ Nevertheless, this raises the question of just how much influence the Board could have yielded in any case. Aside from those real issues around the Board’s composition, Axworthy himself expresses a sense of marginalisation from the work of the initiative he, in the final analysis, had been most responsible for establishing:

I found a very cold shoulder from those who were now running the operation, they didn’t want to talk to me, didn’t want much to do with me; were basically saying “you’re history”.⁶⁷²

Of course, clashes of political ego are always part of the explanation, especially in cases where political ‘big beasts’ are concerned. That said, a series of factors within ICISS seemed to work against a more activist Board however constituted. First, whereas Axworthy believed the Board’s political profile was well-equipped to help sell the report, Thakur did not believe ICISS ‘lacked people from the real world’.⁶⁷³ Second, the immensely dominant personality and approach of Evans meant the extent to which the former Australia Foreign Minister would be willing to take political advice from such a Board was always questionable.⁶⁷⁴ Moreover, as ICISS’s main intellectual force, that Evans would wish to take ownership of the idea, and exert his personality (however forceful) in whatever came afterwards, was entirely unsurprising. Indeed, whereas the Advisory Board proved to be ‘unworkable’⁶⁷⁵ Evans would become one of R2P’s foremost advocates.⁶⁷⁶ His contribution would be exhaustive, and fundamental to the HLP’s 2004 endorsement of R2P.⁶⁷⁷

⁶⁷⁰ (FCO) (2001) ‘International Commission on Intervention and State Sovereignty (ICISS), Attendance at Advisory Board Meeting in London on 22 June’, *Note from UN Department, Political Section, to Private Secretary to the Secretary of State*, dated 12 June 2001

⁶⁷¹ Based on private interview (25 June 2010) and email (27 August 2010), see also Ch3

⁶⁷² Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

⁶⁷³ Interviews with: Lloyd Axworthy (Winnipeg, 27 November 2008) and Ramesh Thakur (Waterloo, 22 June 2009)

⁶⁷⁴ Interview with Christopher Cushing (Bradford, 9 June 2010): this is backed up throughout interviews, although Evans was greatly praised, his personality was also portrayed as having a dark side

⁶⁷⁵ Private Interview with Canadian official (31 March 2010)

⁶⁷⁶ Something Axworthy acknowledged in interview (Winnipeg, 27 November 2008)

⁶⁷⁷ Private interviews (19 May 2009, 31 March 2010): one official described Evans’ commitment as ‘extraordinary’, and interviews with David Hannay (London, 9 March 2010), Allan Rock (Ottawa, 11 June 2009): the HLP, and Evans’ role in it, is dealt with specifically in Ch5

Evans' commitment was significant by any measure. His constant willingness to make the case for R2P combined with the ability to influence the HLP stood him apart from his fellow Commissioners. His output was remarkable.⁶⁷⁸ The initial expectation was that ICISS Commissioners would be 'used wherever possible within their region'.⁶⁷⁹ As it unfolded, however, their contribution to follow-up was less than might have been expected. This was not necessarily a criticism, but more a pragmatic recognition that commitment to the ICISS process was itself a significant investment of time.⁶⁸⁰ Indeed, it was hugely beneficial that Evans' advocacy of R2P aligned with the work undertaken by the widely-respected International Crisis Group (ICG). As he acknowledges, a 'good deal' of his advocacy was as its President, a position which undoubtedly enhanced his claim to a hearing.⁶⁸¹ After Evans, Thakur was the next most public advocate, publishing extensively as well as attending numerous R2P-related seminars and events.⁶⁸² Meanwhile, Co-chair Sahnoun was not a prolific writer or as prominent as Evans, but was nevertheless appreciated as bringing respect and credibility to the Report, particularly in Africa.⁶⁸³

Although other Commissioners attended events and made some effort to bring attention to the report, arguably the biggest issue was not variation in ICISS follow-up, but Michael Ignatieff's support for Iraq. The new context exposed internal differences regarding thresholds for potential military action and thus effectively exposed the consensus on which ICISS was apparently built.⁶⁸⁴ The trouble was when faced with a situation like Iraq Ignatieff clearly felt the debates were far wider than the framework ICISS had proposed to shape

⁶⁷⁸ For a detailed list of his speeches and publications visit his website: www.gevans.org

⁶⁷⁹ Interview with Ramesh Thakur (Waterloo, 22 June 2009)

⁶⁸⁰ Private interview (31 March 2010): and so expected would have to move on to other commitments, and also pointed out that extent of commitment varied, some purely saw their role in terms of developing the proposals and not as part of any follow-up effort

⁶⁸¹ Gareth Evans (2008) *The Responsibility to Protect*, p6

⁶⁸² Nexis UK and Google Scholar searches reveal the extent of Thakur's advocacy

⁶⁸³ Interviews with a Canadian official (31 March 2010) and Ramesh Thakur confirmed Sahnoun's role in Africa. Sahnoun's influence demonstrated how persuasiveness is not necessarily achieved by forcefully/prolifically expressing one's opinion, indeed one needs to be aware of the difference between genuine influence and respect and a high output

⁶⁸⁴ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', in Ramesh Thakur et al. (Eds.) *International Commissions and the Power of Ideas*, Tokyo: United Nations University Press, p204-5

international debate.⁶⁸⁵ And while Ignatieff was by no means a prominent articulator of R2P, and was subsequently no longer deployed as an advocate in the way he might have been⁶⁸⁶, his position exacerbated the difficulty of winning support for an idea in which interest had already been ‘killed stone dead’ by 9/11.⁶⁸⁷

Like Canadian advocacy, Evans’ and Thakur’s efforts were driven by persistence. Neither wanted the report they had spent a year working on to be left on a shelf to get dusty.⁶⁸⁸ This is an important motivation in itself. However Evans’ efforts were so committed and driven his experiences as a student in Cambodia, and then watching ‘impotently’ as events in Africa and the Balkans destroyed hundreds of thousands of lives, are very much part of the explanation.⁶⁸⁹ By 2004, Evans’ efforts to embed R2P ‘in the consciousness of policy-makers and those who influence them’ was his ‘primary public policy objective’. The aim was for R2P to become a ‘commonplace’ not ‘controversial’ idea – something he believed was beginning to succeed due to ‘an endless repetition of the principles and constant articulation of what follows from them.’⁶⁹⁰ This advocacy, though, was about more than energy and persistence. Both focused on the substance of what R2P was about, and how it could remain relevant in an international context focused on terrorism, and subsequently divided by Iraq. Both would put considerable effort into responding to the ensuing post-Iraq backlash, firstly by emphasizing the responsibility continuum in an attempt to quell fears R2P was merely about armed intervention, and secondly by arguing R2P only applied in a narrow set of circumstances (i.e. mass atrocity crimes).

Accordingly, Thakur and Evans ardently espoused the *just cause* and precautionary criteria ICISS outlined. Evans essentially argued the threshold for intervention needed to be ‘set very high and tight’, because without ‘excluding less than catastrophic forms of human

⁶⁸⁵ Indeed, Thakur is surely right when he argues the ICISS report ‘didn’t satisfy [Ignatieff’s] beliefs, he went along with it because he could live with it, but not because he was committed to all the things that we were saying necessarily’, interview (Waterloo, 22 June 2009)

⁶⁸⁶ This is according to Ramesh Thakur, interview (Waterloo, 22 June 2009)

⁶⁸⁷ Interview with Gareth Evans (London, 25 May 2010)

⁶⁸⁸ Interview with Ramesh Thakur (Waterloo, 22 June 2009)

⁶⁸⁹ See Gareth Evans (2008) ‘Introduction: A Personal Journey’ in *The Responsibility to Protect*, pp.1-7. Although Evans has written this book on the subject, a more complete, impartial biography of his efforts will need to be written. His efforts within the HLP fit this explanation, see Ch5

⁶⁹⁰ Swedish Government (Ed.) (2005) *Beyond the ‘Never Again’s*, Stockholm: Swedish Government, p59

rights abuse, prima facie cases for the use of military force could be made across half the world'.⁶⁹¹ As it transpired, keeping R2P narrowly-defined would prove essential in 2005, a development Evans accepted as necessary because he realised 'very early on that our formulation was too wide, and that you had to find ways of narrowing it.'⁶⁹² Moreover, in contrast to Ignatieff, both would reiterate the threshold's *imminence* which meant they were not retroactively applicable.⁶⁹³ However, although such arguments were eminently sensible, the political traction they garnered was extremely limited. Putting aside debates relating to the desirability of such politically subjective criteria, Thakur's argument they could potentially constrain abuse or unilateralism and provide some 'safeguards' for sceptical or hostile states, might have played well in those regions where R2P scepticism/opposition was greatest, but was never going to win P5 support.⁶⁹⁴ The P5 would ultimately accept a high/narrow threshold, but at no point demonstrated a willingness to actively consider – let alone agree – precautionary principles, or any other prerogative impacting limitation. Moreover, post-Iraq political necessity meant Canada would further narrow R2P, arguing that action could *only* be authorized by the SC – a position further removed from ICISS's more open position.⁶⁹⁵ Although designed to sooth unilateralist fears and assure states R2P did not go beyond the UN Charter, the P5 were ultimately content to accept this formulation because it did not obligate them in any new way, nor limit their freedom to manoeuvre. Thus, R2P's hard-end reactive weaknesses would remain the most problematic issue throughout reflecting the fact that R2P was an intensely political idea which would continue to reflect the nuances and differences between those *States* ultimately responsible for (directly/indirectly) shaping it.

Kofi Annan and R2P: 'I wish I had thought of this myself...'

⁶⁹¹ Gareth Evans (2004) 'When is it right to fight?', *Survival*, Vol. 46, No.3, January 2004, p70

⁶⁹² Interview with Gareth Evans (London, 25 May 2010)

⁶⁹³ See Ramesh Thakur (2003) 'Chretien was right: It's time to redefine a 'just war', *The Globe and Mail*, 22 July 2003, and Evans (2004) 'When is it right to fight?', p70-1

⁶⁹⁴ Bellamy (2009) *Responsibility to Protect*, p74, interview with Ramesh Thakur (Waterloo, 22 June 2009) and 'Chretien was right: It's time to redefine a 'just war'

⁶⁹⁵ See below and Bellamy (2009) *Responsibility to Protect*, p73-4: Ramesh Thakur also argued that 'only the UN can build, consolidate and use military force in the name of the international community' in (2003) 'Chretien was right: It's time to redefine a 'just war'

Annan's headline-challenge was vital for sparking into motion the processes leading to ICISS. However, his contribution continued well beyond his passing of the 'talking stick'. His two most important contributions: the HLP, and subsequent endorsement of R2P in his ILF Report, are addressed more exclusively in Ch5 in recognition of their importance to the structuring of the Summit process. But understanding the roots of both depends upon an understanding of Annan's own advocacy for R2P, which began from the moment ICISS published its report. Although different in its profile and approach, Annan's advocacy represented continuity in terms of the motivations and commitment which underpinned his efforts to mobilize states prior to ICISS. Such continuity mattered because Annan's support for R2P was not entirely matched by those around him, with some cautioning against his association with a controversial idea which could negatively impact upon his profile if it failed to gain the support of states. The internal politics of Kosovo remained relevant post-ICISS indicative that for some R2P was substantively similar to humanitarian intervention and did not alter the underlying politics. Despite this, Annan's support was unambiguous and prominent. He was, as Canadian officials put it, a 'crucial' and 'committed' ally whose support was 'sincere and strong'.⁶⁹⁶

During the ICISS establishment phase, Annan's rejection of a UN Commission, and private urging for an alternative route, were important factors in the process. Just as important, however, was Annan's 'gutsy' commitment to receive the report on its release, give it 'prominence' and to put it into the UN system.⁶⁹⁷ That this commitment came prior to the ICISS process had begun was indeed gutsy. But as it transpired, any risk the report would not align with Annan's instincts was almost immediately dispelled. Annan's 'relief' at the 'rhetorical reformulation'⁶⁹⁸ – which he believed was the report's 'central accomplishment'

⁶⁹⁶ Paul Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', Wilton Park, 11 February 2003, DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort', private interview, Allan Rock also commented on Annan's support stating that it was 'almost as though we were working in concert, although there wasn't any formal agreement to do so', interview

⁶⁹⁷ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008)

⁶⁹⁸ Relief was how Simon Chesterman described Annan's reaction to R2P in email (29 October 2010), indeed Annan's speechwriter Edward Mortimer recognised the importance of the phrase, describing it as 'brilliant', recalling being 'very grateful for the chance to write a speech welcoming the report' and believing that it 'effectively junked' the humanitarian intervention phrase, interview. Moreover, Kieran Prendergast highlighted the contrast with Annan's own efforts commenting that 'what we didn't contribute was the very skilful way in which they turned it around from a right of humanitarian intervention...to a responsibility to protect', but

– was clear to see. Wishing he had thought of it himself, Annan’s overwhelming endorsement confirmed him as a ‘true believer’ from the outset.⁶⁹⁹

Annan’s role was generally based on public advocacy but was also complemented by efforts to strengthen institutional mechanisms associated with the agenda.⁷⁰⁰ Annan sought to bring attention to R2P wherever he could, doing so at high-profile events, press conferences, interviews, and most interestingly in relation to live conflicts. Such activities helped build R2P’s profile,⁷⁰¹ provided early indications of how it might apply diplomatically, and contributed to attempts to detach R2P from the unilateralism debate which drove its emergence. Annan’s position also gave him a privileged agenda-setting role within the UN. A key event in this regard was the SC Retreat held under the Presidency of Singapore in May 2000.⁷⁰² This retreat represented the *only* time R2P was discussed by the SC throughout the period until 2006.⁷⁰³ Indeed, it was the only real example of *exclusive* UN-based discussion of R2P prior to the Summit process and GA debates in 2009.⁷⁰⁴ The relevance of this retreat for understanding R2P’s development is twofold. First, that it was discussed as an agenda-item under Annan’s initiative was an example of his privileged ability to provide access points for introducing R2P into fora which mattered most for its future prospects.⁷⁰⁵ Second,

qualifying the linguistic contribution by stating that ‘I didn’t think it would fool anybody, people are not stupid, they can see that that’s the same coin flipped over’, interview

⁶⁹⁹ ‘Secretary-General Addresses International Peace Academy Seminar on the ‘Responsibility to Protect’, *Press Release*, SG/SM/8125, 15 February 2002, interview with Gareth Evans (London, 25 May 2010): indeed, Fred Eckhard would describe Annan as ‘practically walking around with a copy of [the] report in his pocket’ in *Speaking for Kofi Annan*, p299, copy of manuscript with author

⁷⁰⁰ Most notably, consistent with efforts to solidify the development of strands of conflict prevention, the protection of civilians and ending impunity, Annan would outline in 2004 an ‘Action Plan to Prevent Genocide’ and the appointment of Juan Méndez to a newly-created post of Special Adviser on the Prevention of Genocide: ‘Risk of genocide remains frighteningly real’, Secretary-General tells Human Rights Commission as he launches action plan to prevent genocide’, *Press Release* SG/SM/9245, 7 April 2004 and UN (2004) ‘Letter dated 12 July 2004 from the Secretary-General to the President of the Security Council’, S/2004/567, 13 July 2004

⁷⁰¹ DFAIT (2004) ‘Canada’s Responsibility to Protect Follow-up Effort’

⁷⁰² This retreat was held on the 10-11 May 2002 at Pocantico Hills in New York: the decision to consider the retreat in the context of Annan is because it relates to his ability as a key R2P entrepreneur and advocate to create opportunities for R2P, in so doing it also allows the positions of key SC states to be unpacked in order to understand the their response to R2P post-2001

⁷⁰³ Until SC ‘Resolution 1674 on the Protection of civilians in armed conflict’, S/2006/1674, 28 April 2006

⁷⁰⁴ Albeit in an informal and closed-membership setting

⁷⁰⁵ Part-two of the three part agenda focused on ICISS’s R2P Report: although agreement on the agenda would have involved discussion between the members, especially Singapore as SC President, Edward Mortimer has ‘no doubt it was [Annan’s] idea to put R2P on the agenda that year, and to invite Gareth and Mohammed to come and talk about their report’, email (27 October 2010), see also ‘Letter dated 20 June 2002 from the Permanent Representative of Singapore to the UN addressed to the President of the SC’, S/2002/685, p16-17,

the ensuing political discussions illuminated the scale of the challenges facing the agenda and thus require detailed explanation.⁷⁰⁶

The report was introduced by both ICISS co-chairs.⁷⁰⁷ Attendance involved P5 representation, including Jeremy Greenstock, Jean-David Levitte, John Negroponte, and staff from within the UN Secretariat. Ultimately, the response of SC members varied.⁷⁰⁸ P5 positions generally mirrored contributions made during the February IPA launch event, where subtle nuances and shared commonalities emphasized some of the obstacles which R2P would have to navigate.⁷⁰⁹ Here the P5 were generally united by a shared 'reluctance to accept any kind of constraint of the discretion of the UNSC',⁷¹⁰ as Malone explains:

[w]hat was striking was that those most resistant to being tied down by the R2P concept were SC ambassadors rather than the membership at large or the G-77. Both Greenstock and Levitte favoured the concept in principle, particularly Levitte, but they made clear that the Council would continue to act on a case-by-case basis rather than driven primarily by abstract principles. Frankly, this surprised nobody from the UN community in attendance, although, as I recall, Evans took on the Council's approach quite heatedly as too convenient by half.⁷¹¹

This certainly fits with Greenstock's account, who recalls asserting that he could not see the SC agreeing 'in principle...to have a doctrine as opposed to ad hoc judgement on each specific case', adding Evans 'was quite cross with me in saying that so firmly'.⁷¹² Within the Retreat this issue was exposed to an even greater extent. Chinese and Russian representatives both emphasised the SC's central role for legally authorising action – a longstanding position which would become even more entrenched post-Iraq. Moreover,

see also below in relation to Canada's letter to Annan requesting he circulate the ICISS report to the UN membership, 'Letter dated 26 July 2002 from the Permanent Representative of Canada to the UN addressed to the Secretary General', A/57/303, 14 August 2002

⁷⁰⁶ See Kishore Mahbubani (2004) 'The Permanent and Elected Council Members' in David Malone (Ed.) *The UN Security Council: From the Cold War to the 21st Century*, London: Lynne Rienner Publishers, p248

⁷⁰⁷ 'Letter dated 20 June 2002 addressed to the President of the SC', S/2002/685, p16-17

⁷⁰⁸ Welsh at al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p215

⁷⁰⁹ By contrast Ramesh Thakur's statement that at the IPA event 'most SC members seemed supportive of the main thrust of the report' conveniently brushes over the nuances of position amongst the P5 which were directly problematic for R2P in (2002) 'Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS, *Security Dialogue*, Vol. 33, No. 3, p337

⁷¹⁰ Email from Simon Chesterman (29 October 2010)

⁷¹¹ Email from David Malone (8 November 2010)

⁷¹² Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009)

Mortimer specifically recalls Russia focusing on the proposed 'code of conduct' by arguing that the veto right was not about national interests but was 'part of their global responsibility'.⁷¹³ Both shared an absolute unwillingness to undermine the SC's centrality, the privileges which flow from permanent membership, and to constrain their freedom to manoeuvre within the Council's decision-making processes. In a not dissimilar vein, the US was the arguably the least engaged of the P5.⁷¹⁴ Attempts to potentially obligate US action in areas outside its national interest, and to then constrain its ability to decide on what cases American force might be used were always unlikely.⁷¹⁵ As Greenstock remarks, the US 'never likes to be constrained by general principles of multilateral action' and if 'you scratch beneath the skins of a Russian and American' you will find them 'equally resistant to being constrained or vulnerable to global governance or multilateral action'.⁷¹⁶ Indeed, Somalia had demonstrated to the US the pitfalls of humanitarian intervention, leading to subsequent efforts to limit US involvement in peace operations and more explicitly tie any such involvement more closely to advancing US interests and 'national security objectives'.⁷¹⁷ But more directly problematic was that the ICISS proposals coincided with the US administrations preoccupation with Iraq, and moves toward the expansionist and legally indifferent Bush Doctrine.

Although France and the UK were more open to the idea, their positions came with significant caveats. Notably, they apparently shared the P5 view that they would lack political will to act with hard power if 'new situations emerged'⁷¹⁸ – a position which for some was confirmed by the SC's response to Darfur – and questioned the extent to which

⁷¹³ Email from Edward Mortimer (19 October 2010): this is consistent with Welsh et al. who argue Russia has 'continually resisted any idea of restraint in their veto power', (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p215

⁷¹⁴ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p215-6

⁷¹⁵ Jennifer Welsh (2006) *Humanitarian Intervention and International Relations*, p185

⁷¹⁶ Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009)

⁷¹⁷ US Department of State (1994) 'Clinton Administration Policy on Reforming Multilateral Peace Operations (PDD 25)', Bureau of International Organizational Affairs, 22 February 1996

⁷¹⁸ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p215, see also Paul Heinbecker: 'At that retreat, one P5 Ambassador confessed that if the conditions arose elsewhere akin to those that presaged the Rwandan genocide, his government might be no more able to act than it was in Rwanda' in (2004) 'The UN and Never Again: the Responsibility to Protect', Carleton University, 13 March 2004

criteria would actually facilitate consensus.⁷¹⁹ Moreover, both also accepted SC action would remain case-by-case, a politically pragmatic caveat but from Greenstock's perspective shaped by his experience of trying to sell the UK's less formulaic criteria through 1999-2001. Indeed, ICISS proposals entered into a forum where political discussion of such codification was actually 'fading out'.⁷²⁰ Furthermore, neither could rule out action taken outside the SC, a position consistent with their involvement in the Kosovo intervention and a caveat relevant to keep in mind despite R2P's binding to SC authority in 2005.

Though there are obvious tensions between the P5 positions, the Retreat discussions encapsulated the 2005 formulation of R2P which emerged without veto restraint, without criteria, and without international obligation/responsibility. The weight of Council opinion in 2001 which favoured 'the principle of authorization for specific action only, and not for any general doctrine',⁷²¹ would remain consistent throughout the period leading to 2005. Indeed, the '05 agreement was permissible because it did not undermine/override the policy positions outlined but essentially suited the above preferences. The US would accept R2P's tying to the SC because it did not obligate them to act, alter the decision-making process of the SC, or impact upon its ability to act unilaterally. Likewise, China and Russia were *satisfied* by the SC's confirmed centrality, the narrow four-crime formulation, and acknowledgement of a case-by-case approach. Although China had apparently suggested during the Retreat that were an extreme case like Rwanda to happen again there would be consensus on the need for action,⁷²² this would not be about behaviour *driven* by principle, but about decision-making driven by the merits of the individual case. Of course, future action seemingly consistent with, or even part-motivated by R2P, can have precedent-setting consequences. But the unwillingness to embrace R2P as conceived by ICISS, or in a way which implied acting according to *principle* is a subtle distinction many would do well to bear in mind when R2P is attributed as a principal driver/motivator of policy in certain cases.⁷²³ Moreover, that the SC-centric formulation would emerge as the only politically feasible option also meant fundamental questions relating to the nature and residence of

⁷¹⁹ Bellamy (2009) *Responsibility to Protect*, p67-8

⁷²⁰ Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009)

⁷²¹ Interview with Jeremy Greenstock (Chipping Norton, 8 June 2009)

⁷²² Email from Edward Mortimer (19 October 2010)

⁷²³ This point is directly relevant to the Libya intervention. I am greatly appreciative for the insight of David Malone for aiding my understanding of the SC

international responsibility, the point at which multilateral system engagement moves beyond individual responsibility into more coercive territory, and then what the appropriate policy options might be, would remain areas of contention.

The exclusive tying of R2P to the SC was one of the clearest symptoms of the Iraq war. Its impact on the political context antagonised states already exercised by the unilateral Kosovo intervention, and in so doing impacted upon how advocates sought define R2P. In key respects advocates had little choice but to respond in this way. As state sensitivity widened, so the willingness of states to agree narrowed. After his ambiguous flirtation with 'legitimacy' in relation to the 1999 Kosovo intervention, Annan's position thereon was no different. Indeed, Annan's contribution to the structuring of the Summit process and his advocacy of R2P substantially flows from his response to the Bush Doctrine and the march to Iraq which stemmed from it.

As Mousavizadeh observes, Annan's post-Kosovo position was 'even more wedded to the importance of SC authorisation' – a position which would be conditioned and amplified to an even greater extent post-2001.⁷²⁴ The changed context certainly affected the content of Annan's public output, with Mortimer's work increasingly focused on terrorism, preventive force, and themes such as the 'dialogue of civilizations'.⁷²⁵ But the rule of law and emphasising his 'continuing belief in multilateralism and collective security' were central themes throughout the period Iraq dominated.⁷²⁶ Annan's advocacy of R2P was thus embedded within this approach, making clear, for instance, that the 'instrument' for action 'must be the UN, and specifically the SC'.⁷²⁷ However, Annan's advocacy was about more than ensuring it stayed within the legal parameters of the Charter. Rather, R2P represented part of the solution for addressing an international system 'in crisis'.⁷²⁸ Crucially, though Iraq

⁷²⁴ Interview with Nader Mousavizadeh (London, 13 October 2009)

⁷²⁵ Email from Edward Mortimer (19 October 2010)

⁷²⁶ Interview with Kieran Prendergast (London, 6 October 2009): this is most obviously captured by Annan's set-piece GA speeches from 2001-2004 which focused on these key themes, especially in response to Iraq, see Ch5

⁷²⁷ Annan (2004) 'Risk of genocide remains frighteningly real', 7 April 2004, Annan reiterated this on 29 June 2004 stating the 'Council also has the [R2P] the innocent and weak if the situation continues' in 'Secretary-General's press conference', *Off-the-Cuff*, 29 June 2004

⁷²⁸ 'Transcript of press conference by Secretary-General Kofi Annan at UNHQ', *Press Release*, SG/SM/8803, 30 July 2003

was the principle motivator for his institutional HLP response, an accumulation of factors – including ‘hesitant and tardy’ responses to crises in Liberia and the DRC – led Annan to the conclusion that there needed to be ‘a hard look at fundamental policy issues and at the structural changes that may be needed in order to strengthen them’.⁷²⁹ Unsurprisingly, Annan expressed hope the HLP would consider R2P in its work – not that they would have needed any reminder of Annan’s clear, public support for the idea.⁷³⁰

One of the most interesting elements of Annan’s public advocacy was his willingness to apply the *language* of R2P to a live crisis such as Darfur; despite divisions within the UN regarding what the political approach should be.⁷³¹ Annan would invoke R2P on numerous occasions from mid-2004 onwards,⁷³² as he sought to exert pressure on the Sudanese regime and the international community to respond to alleged ‘ethnic cleansing’ taking place in Darfur.⁷³³ The use of R2P language did not observably alter the political dynamics of the crisis, especially in terms of mobilizing an engaged, or more importantly unified, international response. But it was a demonstration of Annan’s desire to embed R2P in the vocabulary of international diplomacy. Nevertheless, despite pleas for a ‘robust international response’ Darfur raised more questions than answers, and exposed the SG’s ultimate reliance upon member states.⁷³⁴ While Annan raised the possibility of military

⁷²⁹ Annan also suggested states still needed ‘to engage in serious discussion of the best way to respond to threats of genocide or other comparable massive violations of human rights’ in ‘Statement by the Secretary-General’, A/58/PV.7, 23 September 2003, pp.2-4 see also ‘Transcript of press conference by Secretary-General Kofi Annan at UNHQ’, 30 July 2003

⁷³⁰ PBS Frontline (2004) ‘Ghosts of Rwanda: Interviews: Kofi Annan’, 17 February 2004: in some respects this may appear to be a step-change in the focus on advocacy but it is necessary to understand the form of R2P Annan was selling as well as how the context which shaped that form impacted upon the processes which eventually helped propel R2P

⁷³¹ See Traub (2006) *The Best Intentions*, pp.209-227

⁷³² See: ‘Secretary-General’s interview for UN Radio and UN Television on the launch of the UN and Africa radio programme’, *UN Radio*, 21 June 2004, ‘Secretary-General’s press conference’, *Off-the-Cuff*, 29 June 2004, ‘Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters’, *Press Release*, SG/SM/9427, 21 July 2004, ‘Secretary-General’s press encounter upon arrival at UNHQ’, New York, *Off-the-Cuff*, 3 August 2004, ‘Urgent task is to do everything possible to help protect the people of Darfur from violence, human rights abuse, Secretary-General tells Security Council’, *Press Release*, SG/SM/9502, 24 September 2004, ‘Each of us is his brother’s keeper’, says Secretary-General at International Rescue Committee dinner’, *Press Release*, SG/SM/9588, 11 November 2004

⁷³³ Annan (2004) ‘Risk of genocide remains frighteningly real’, 7 April 2004

⁷³⁴ Annan (2004) ‘Each of us is his brother’s keeper’, 11 November 2004: even if some wished to blame Annan personally: Traub (2006) *The Best Intentions*, p226-7

intervention even the strongest advocates of sovereignty as responsibility 'failed to seriously contemplate military intervention'.⁷³⁵

Indeed, the complex politics of Darfur exposed key potential weaknesses in any *eventual* formulation of R2P. The emphasis on primary responsibility – particularly if there is limited appetite for serious international action – can give space to a government to argue that it is working towards realising protection, and enable an individual leader to successfully exploit the disunity of the SC. In this case, Sudanese President al-Bashir proved able to 'skilfully present himself as part of the solution'⁷³⁶, without following through on any commitments he might have made.⁷³⁷ Moreover, the perennial problem of achieving SC consensus was evident even in terms of whether to impose sanctions on the Sudanese regime.⁷³⁸ Furthermore, Williams and Bellamy identified further obstacles directly relevant to the change in political context discussed in Part 1, including accusations of Western hypocrisy, abuse of humanitarian justifications, and the prioritization of the war on terror which altered the strategic priorities of states.⁷³⁹ In any case, the complexity of the crisis did not lend itself to straightforward or obvious policy responses. Indeed, that Annan even *raised* the possibility of military action hardly seemed sensible considering the likelihood of such action.⁷⁴⁰ Such words may have contributed to a sense of urgency, but had just as much potential to further inflame the situation. Annan could neither see his public declarations through, nor safely say that the consequences of such action would be acceptable considering the region's history, the evident internal fragmentation, the dire conditions on the ground and the need to consider how military action might impact upon the broader Sudanese political context. Moreover, even though Annan was not specifically calling for intervention, raising it as a possibility riled the DPA. As Prendergast explains, it 'doesn't help

⁷³⁵ Traub (2006) *The Best Intentions*, p220, and Williams and Bellamy (2005) 'The Responsibility to Protect and the Crisis in Darfur', pp.27-47

⁷³⁶ Edward Mortimer (2007) 'The price of peace', *The Guardian*, 24 February 2007

⁷³⁷ See Traub (2006) *The Best Intentions*, p224

⁷³⁸ Traub (2006) *The Best Intentions*, p227 and Adam LeBor (2006) "*Complicity with Evil*" *The United Nations in the Age of Modern Genocide*, New Haven: Yale, p193. Thus the capacity for agreement beyond sanctions was inevitably always going to be a more difficult prospect – especially with conflicting opinions on whether forcible intervention was the most appropriate option, and because of the apparent requirement for host state consent, including by the AU, see Williams and Bellamy (2005) 'The Responsibility to Protect and the Crisis in Darfur', p35

⁷³⁹ Williams and Bellamy (2005) 'The Responsibility to Protect and the Crisis in Darfur', p36-8

⁷⁴⁰ Annan (2004) 'Risk of genocide remains frighteningly real', 7 April 2004

to start floating options which are totally unrealistic' because it actually contributes to making internal opposition 'more obdurate' if they are led to believe external intervention might be an option. As far as Prendergast was concerned, western military intervention was a clear non-starter, and thus any approach should have been based on assessing not the 'ideal options but the available options'.⁷⁴¹

These points may seem a departure in the narrative of post-ICISS advocacy but in actuality the Darfur case demonstrated the challenges the agenda faced. Annan's use of R2P was a clear attempt to solidify R2P's development in the language of international diplomacy despite lacking widespread support or understanding. But in so doing, Annan effectively exposed the limitations associated with any invocation of R2P. Despite boldly stating that 'when crimes on such a scale are being committed, and a sovereign state appears unable or unwilling to protect its own citizens, a grave responsibility falls on the international community, and specifically [the] Council'⁷⁴² any specificity of what this practically meant beyond broad principle was self-evidently lacking.⁷⁴³ With or without R2P, there was no straightforward panacea to the complex set of factors at work in this case. More fundamentally, however, the conviction which drove Annan's advocacy was not matched by broad or deep acceptance by UN member states. Within the AU the language of non-interference was apparent,⁷⁴⁴ and though the SC had the central role in authorising any international response, it did not follow that key SC members accepted Annan's vision of an international responsibility or obligation to act. Ultimately, even by 2004 R2P's political traction was more limited than any advocate might have hoped with the obstacles to achieving even state discussion of R2P starkly exposed by Canada's intergovernmental advocacy. The tracing of these efforts dominates herein, before returning in Ch5 to Annan's more pivotal role in introducing the HLP game-changer which transformed R2P's political prospects.

⁷⁴¹ Interview with Kieran Prendergast (London, 6 October 2009); for more detail on Prendergast's views regarding Darfur see 'Interview with Sir Kieran Prendergast', *The Fletcher Forum of World Affairs*, Vol. 30, No. 1, Winter 2006, pp.61-74 and PBS Frontline (2007) 'Interview – Kieran Prendergast', for documentary *On Our Watch*

⁷⁴² 'Secretary-General's statement to the Security Council meeting on the Sudan', 18 November 2004

⁷⁴³ Traub (2006) *The Best Intentions*, p242

⁷⁴⁴ Williams and Bellamy (2005) 'The Responsibility to Protect and the Crisis in Darfur', p42-3

Canada's 'critical state' sponsorship

It clearly matters a great deal whether a project has sufficient funding, staff, and time built in for follow-up work aimed at reaching policy influentials, the media, educators, and the public.⁷⁴⁵

The importance of political sponsorship was evident throughout the processes leading to ICISS. Axworthy's entrepreneurialism was matched by the backing of his Government, with DFAIT responsible for providing and funding many of the support structures necessary for its work. However, Canadian support for R2P would not just continue post-ICISS but would be *critical* for realising its agreement within the opportunity-framework provided by the World Summit process. It is entirely reasonable to suggest that without Canada's sponsorship R2P would have died as a credible idea. If DFAIT was the 'engine' which drove follow-up, *The R2P Unit* within it provided the spark and direction to a multidimensional advocacy strategy broadly defined by an 'interrelated' twin-track approach of civil society engagement and intergovernmental (bilateral/multilateral) diplomacy.⁷⁴⁶

The Unit was vital for many reasons. First, it provided a natural home for follow-up. It built-in vital departmental knowledge of the ICISS process and Report, partly because the original Secretariat structure meant senior DFAIT officials were regularly briefed about progress, but also because key officials involved in the original process subsequently led the post-ICISS R2P Unit.⁷⁴⁷ Second, this dissemination of knowledge resultantly mattered because the ICISS structures – with the Secretariat physically located within DFAIT, combined with the external support of private foundations – effectively 'locked-in' future advocacy. As officials observed, the structuring of ICISS helped to develop a 'sense of [follow-up] obligation'.⁷⁴⁸ Although it was possible Canada would decide against supporting the proposals the

⁷⁴⁵ Ed Luck (2000) 'Blue Ribbon Power: Independent Commissions and UN Reform', p90

⁷⁴⁶ Private interview with Canadian official (31 March 2010): this was confirmed in interviews with Canadian officials and also in DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁷⁴⁷ Most notably Heidi Hulan who would initially Head/coordinate the R2P Unit, private interviews (19 May 2009, 31 March 2010)

⁷⁴⁸ Interview with Christopher Cushing (Bradford, 9 June 2010), private interview with Canadian official (who specifically mentioned obligations to funding sources) (31 March 2010)

expectation was that this (as it would indeed transpire) would not be necessary.⁷⁴⁹ As Ch3 showed, there was considerable concordance between Canada's HS agenda and the ICISS proposals. Besides which, partly because Canadian support did not represent *wholesale* endorsement of the proposals, and partly to infuse their advocacy with a degree of beneficial political distance, officials would deploy a reverse framing strategy designed to portray the report as representative of a 'reasonable middle ground' which Canada was able to support despite objections.⁷⁵⁰ Indeed, the 'prevention' and 'rebuild' aspects of the report provoked less enthusiastic responses, with a sense they were too strongly emphasized whereas Canada would have placed greater emphasis on the reactive dimension and forms of intervention within that. Resultantly, officials would present the report as a basis for discussion with the caveat that this was 'not our product' but one 'we are willing to accept, even if our own version would have looked and sounded very different'.⁷⁵¹ This approach was about challenging others to compromise, even though it would be widely recognised that even with these qualifications the essence of R2P was almost instinctively Canadian. But illuminating such framing tactics is relevant here because the existence of a small embedded Unit, working exclusively on R2P, meant Canada was well-equipped to develop appropriate and adaptive strategies in a difficult context. Resultantly Canada would prove to be the actor most responsible for building political awareness and arguably most responsible for (re)defining R2P's scope and parameters as the WS processes approached.

Furthermore, the third major point is that the very structure of an embedded Unit was itself an innovation which helped to insulate and continue the agenda as pressures on it became more acute post-9/11.⁷⁵² The pressures identified in Part 1 not only affected the form and prospects of R2P, but also impacted upon Canadian foreign policy priorities and associated staffing within the Department.

Although questions would be raised regarding the funding and structural arrangements for R2P follow-up – and the extent of on-going Canadian governmental support for HS projects

⁷⁴⁹ Interview with Christopher Cushing (Bradford, 9 June 2010), private interview with Canadian official

⁷⁵⁰ Private interview (31 March 2010)

⁷⁵¹ Private interview (31 March 2010): one official also suggested that in terms of substance the prevention aspect added little, ironically, however, as the political context became increasingly difficult so the R2P continuum became more central to efforts to sooth fears R2P was purely about military intervention

⁷⁵² Private interviews (19 May 2009, 31 March 2010)

– the Unit benefited significantly from the legacy of the Axworthy era.⁷⁵³ Reporting directly to the Director-General of Global Affairs, R2P follow-up coordinated by the Unit was funded through the five-year HSP and specifically under the Sub-Priority Issue ‘Humanitarian Intervention’ within the PoC Issue Area.⁷⁵⁴ At the time, the \$10m annual HSP funding was, in the words of one official, ‘quite an exceptional’ amount of dedicated money.⁷⁵⁵ Drawing on this guaranteed revenue stream, R2P follow-up would be funded from the outset at circa \$750k per year.⁷⁵⁶ For instance, from 2000-2002 seven projects ‘to support’ R2P were funded at a combined expenditure of \$1.6m (6% of total Program expenditures) with humanitarian intervention representing almost 20% of all the PoC sub-priority projects.⁷⁵⁷ Additionally a further \$750k was announced in 2003 to fund specific R2P follow-up activities.⁷⁵⁸ By 2004 a total of twenty-seven humanitarian intervention-related projects were funded at a cost of \$1.8m, and, though there was a clear decline in the amount of funding directed at the PoC, a 2004 Evaluation noted that the Program’s priorities had ‘shifted’ towards R2P and small arms.⁷⁵⁹

Embedding follow-up within the HSP represented a logical fit, obviously for thematic reasons but also because the latter was designed ‘to support diplomatic leadership’ and ‘chiefly’ regarded by DFAIT as an ‘advocacy tool’ which aimed to ‘enhance people’s safety from the danger of violence...predominately via changing attitudes of specific governments or of the international community’. The overriding strategy for follow-up sought to ‘promote the widest distribution’ of R2P and ‘advocate internationally for greater global consensus on its recommendations’ and was defined by two principle aims⁷⁶⁰:

to strengthen and consolidate emerging norms regarding the responsibilities of nation-states and the international community to protect’;

⁷⁵³ Private interviews with Canadian officials (19 May 2009, 31 March 2010)

⁷⁵⁴ DFAIT (2003) *Evaluation of the Human Security Program*, June 2003, p17

⁷⁵⁵ Private interview (19 May 2009): even if this is a small amount of resource compared to other leading states

⁷⁵⁶ Private interview (19 May 2009): additionally Canada was also able to leverage financial contributions from private sources, notably the Carnegie Foundation

⁷⁵⁷ DFAIT (2003) *Evaluation of the Human Security Program*, June 2003, p48-9; the HSP sub-priorities were listed in Chapter 3 Tables 3.1 and 3.2

⁷⁵⁸ The announcement was made by Foreign Minister Bill Graham DFAIT (2003) ‘Graham announces new human security initiatives’, *News Release*, No. 55, 9 May 2003

⁷⁵⁹ DFAIT (2004) *Summative Evaluation of the Human Security Program*, November 2004, p30

⁷⁶⁰ DFAIT (2003) *Evaluation of the Human Security Program*, June 2003, p47, p15, p23-24

*to promote more consistent responses on the part of the UN, and the wider community, in cases where states are unable or unwilling to protect people from massive harm.*⁷⁶¹

The means for achieving these varied but were consistent with the multi-actor, multi-level approach of the HSP as captured by a 2004 evaluation framework of its four *Mandated Activity Areas* (Table 4.1).⁷⁶²

HSP Mandated Activity Areas	Evaluation Success Issues
Canadian Capacity Building	1. Awareness Raising 3. Strengthening Capacity
Diplomatic Leadership and Advocacy	2. Awareness Raising 2. Policy Dialogue and Coherence 4. International Norms and Standards 5. Leveraging Resources 6. Canadian Reputation and Credibility
Strengthening Multilateral Mechanisms	3. Strengthening Capacity
Targeted Country-Specific Initiatives	All Issues

R2P follow-up activities were focused on ‘Diplomatic Leadership and Advocacy’ as illuminated by the twin-tracks outlined below. Indeed, these tracks constituted the overall approach, with each revealing specific micro-political insights into the development of R2P. That they did, however, was because they were embedded within a strategically-driven tool of foreign policy which generated activity outputs well-aligned with the objective of building support for R2P. Indeed, in explaining the 2003 funding, Bill Graham succinctly articulated this point:

Efforts will focus on engaging governments, international organizations, NGOs, parliamentarians, non-governmental policy experts and academics to advance the report’s recommendations...Activities will include conferences, round-tables and other structured dialogues in national, regional and international settings aimed at promoting greater clarity and consensus on the human protection responsibilities of sovereign states and the international community.⁷⁶³

⁷⁶¹ DFAIT (2004) ‘Canada’s Responsibility to Protect Follow-up Effort’

⁷⁶² Further details of these can be found in the 2004 Evaluation report section 4.1 ‘Program Success’

⁷⁶³ DFAIT (2003) ‘Graham announces new human security initiatives’, 9 May 2003

The process reveals just how politically difficult this proved to be. However, the purpose of explaining follow-up in relation to the structures and approach of Canadian advocacy is because R2P's prospects depended upon the platform, staffing, resources and access that only a State could provide. Specifically R2P depended upon the dedicated 'sincere' commitment of DFAIT officials.⁷⁶⁴ As one senior official remarked, that Canada was able to overcome a series of difficult challenges and exploit eventual opportunities was 'a fantastic example of what you can accomplish when you have a good idea, and you have the means to promote it, and you do it with persistence and determination'.⁷⁶⁵ Although high-level diplomacy would become increasingly important – especially in the context of the WS process – the groundwork for all international interaction and agreement depends on officials. This may seem a prosaic point, but in the story of R2P was more significant considering the contextual pressures on the R2P/HS agendas which contributed to, and exacerbated, post-Axworthy shifts in Canadian foreign policy. While Canada was R2P's 'state champion from start to finish', helped – as Thakur and Weiss point out – by continuity of government, one should not equate continuity with *consistency*. There may have been no direct 'breaks'⁷⁶⁶ in continuity, but Canadian follow-up was nevertheless affected by numerous *interrelated* external and internal factors. This was evidenced by a 2003 Evaluation of the HSP which revealed that 'although the follow-up campaign has just begun in earnest, the unmistakable impression of people interviewed in New York regarding ICISS is that the Canadian government seems to have lost interest in the issue. Compare the great care taken to ensure success in phase 1 – the political backing, the level of funding, the staffing, the orchestration – to that phase 2, they said'.⁷⁶⁷ Quiet clearly it would be wrong to overlook or wash-over evident variations within the efforts of even the strongest supporter of R2P. In terms of explanation the evaluation suggested the perception may have derived from the fact R2P follow-up was funded via a Program that 'we know will sunset' (the HSP), and was thus reliant upon temporary rather than core program funding.⁷⁶⁸ Certainly this may have been one important reason for the perception. However, a deeper understanding of what lay behind the perception points to a series of factors which interviewees

⁷⁶⁴ Interview with Christopher Cushing (Bradford, 9 June 2010), private interview (19 May 2009)

⁷⁶⁵ Private interview (19 May 2009)

⁷⁶⁶ Thakur and Weiss (2009) 'R2P: From Idea to Norm – and Action', p35

⁷⁶⁷ DFAIT (2003) *Evaluation of the Human Security Program*, June 2003, p24

⁷⁶⁸ The report thus suggested that R2P follow-up be 'mainstreamed as a core funded DFAIT on-going activity', DFAIT (2003) *Evaluation of the Human Security Program*, June 2003, p24, 57

acknowledge impacted upon follow-up, and which, conversely, may actually have amplified the necessity of the HSP during the post-ICISS phase. These factors broadly relate to: the *changed post-9/11 geo-political context and differential ministerial support post-Axworthy*, (post-9/11).

In a more specific micro-sense, 9/11's impact on Canadian follow-up was not just thematic but was also institutional – within DFAIT and across government. The increased emphasis on terrorism and counter-terrorism created a widely-replicated dynamic whereby staffing and resources were diverted to these new priority areas.⁷⁶⁹ This resultantly impacted upon the availability of resources for policy-files of a more humanitarian ilk, with one official describing this as creating a problem of 'brain-share'.⁷⁷⁰ Unsurprisingly, this was also exacerbated by the changed circumstances which seemingly undermined the appropriateness and relevance of HS and R2P.⁷⁷¹ Civilian crises seemed like a bygone problem of the 1990s, while HS seemed to suffer from a lack of 'toughness' in the new context.⁷⁷² Indeed, linked to this – but also independent of it – is that post-Axworthy there would be inevitable changes in ministerial approaches and support for HS projects.⁷⁷³ As far as Axworthy was concerned, post-9/11 Canadian foreign policy turned to the 'dark side', and far from demonstrating continuity only renewed its 'stewardship' of R2P after a 'hiatus'.⁷⁷⁴ Although it is true Axworthy would particularly have had major problems with the direction of travel – believing he would likely have 'suffered' had he remained in office – the issue of varied ministerial support was always possible considering the sheer energy he committed to an agenda defined as his own.⁷⁷⁵ In key respects, the HS agenda was 'personality-driven'.⁷⁷⁶ And though Axworthy left a considerable residual legacy, the degree of visibility and profile would suffer as new ministers sought to – quite reasonably – apply

⁷⁶⁹ DFAIT (2004) *Summative Evaluation of the Human Security Program*, November 2004, p30, private interview with Canadian official

⁷⁷⁰ Private interview (31 March 2010)

⁷⁷¹ Private interviews (15 July 2009, 19 May 2009, 31 March 2010): thus increasing the amount of work Canadian officials would have to put into the effort to build support for R2P

⁷⁷² Private interview with Canadian official (15 July 2009)

⁷⁷³ This was confirmed in interviews with Canadian officials (19 May 2009, 15 July 2009), and interview with Christopher Cushing (Bradford, 9 June 2010)

⁷⁷⁴ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008) and (2004) *Navigating a New World*, p192

⁷⁷⁵ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008), and see Don Hubert (2000) 'The Landmine Ban: A Case Study in Humanitarian Advocacy', Occasional Paper No. 42, Thomas J. Watson Jr. Institute for International Studies, p70

⁷⁷⁶ Phrase adopted from Hubert (2000) 'The Landmine Ban: A Case Study in Humanitarian Advocacy', p70

their own personality and political preferences.⁷⁷⁷ Thus, Paul Heinbecker's statement that 'although the Canadian Government never actually abandoned...human security, it never pursued it again with the same sense of purpose' rings most true.⁷⁷⁸

This is not to say, however, that R2P follow-up was not recognised as an important initiative. For instance, Bill Graham publically supported R2P and was regarded as strongly supportive while all ministers signed-off funding requests without objection, and with the continued support of PM Chrétien.⁷⁷⁹ But nevertheless there was less visibility to follow-up, and a less obvious high-profile 'political champion', at least until Paul Martin became Prime Minister in December 2003.⁷⁸⁰ In this regard, it is important to recognise that while longstanding characteristics of a country's foreign policy can exist in some continuous form, priorities are essentially transitory, not permanent. They can be affected by a changing context, by changes of government and of personnel. A revealing example of this was Axworthy's immediate successor as Foreign Minister. According to interviewees, John Manley was entirely different in his approach to policy and process.⁷⁸¹ His political preferences favoured a more 'pragmatic' rather than thematic foreign policy approach, based upon a desire to return to 'first principles' which meant greater emphasis on bilateral relationships with longstanding and emerging/potential partners and opportunities within emerging markets.⁷⁸² As Cushing recalls, the language of HS resultantly diminished, partly because it represented the 'previous minister's work' but also (according to another official) because Manley quite reasonably saw HS in the context of a broader foreign policy, rather than the principle driver of it.⁷⁸³ Indeed, 9/11 was seen as actually reaffirming this kind of approach, not just under Manley but thereafter as Canada faced the 'challenge' of demonstrating it

⁷⁷⁷ This point was also well made in private interviews with officials, in addition to the point that it is far less interesting to push for someone else's idea with politicians often wanting to set their 'own path' (19 May 2009, 15 July 2009)

⁷⁷⁸ Paul Heinbecker (2004) 'The US, the UN and Human Security: Protecting People in a Unipolar World', Notes from a Keynote Address to the Annual General Meeting of the Academic Council on the UN system, Geneva, Switzerland, 1 July 2004

⁷⁷⁹ Private interview (19 May 2009) and interview with Ramesh Thakur (Waterloo, 22 June 2009)

⁷⁸⁰ Private interview (15 July 2009)

⁷⁸¹ Private interviews with Canadian officials (19 May 2009, 15 July 2009), and interview with Christopher Cushing (Bradford, 9 June 2010)

⁷⁸² Private interview (15 July 2009)

⁷⁸³ Interview with Christopher Cushing (Bradford, 9 June 2010), private interview (15 July 2009)

was a credible and secure partner of the US.⁷⁸⁴ Thus, HS and R2P would be squeezed by the impact of 9/11 and would be subject to further pressures relating to ministerial variations of greater importance than generally projected in dominant accounts of R2P's development.⁷⁸⁵ They illuminate a simple but undeniable point that one cannot guarantee political support for a specific idea or project will be maintained, reciprocated and remain unchallenged by alternative policy options. This is particularly important for ideas dependent upon significant resources of political will. In this context, though R2P advocacy was affected in the ways outlined, that the core priorities of the HSP remained 'intact' with R2P follow-up continued throughout, is testament to significant 'leg-work' undertaken over previous years which enabled officials to further the agenda in subsequent years.⁷⁸⁶

Canada's Twin-track Strategy

Canada's R2P follow-up model was by no means new. The combination of an inter-governmental diplomatic track directed at 'promoting broad acceptance of core R2P principles', with a Civil Society ("CS") track intended to 'stimulate discussion'⁷⁸⁷ and potentially lead to an NGO-driven advocacy network, in key respects, built on the core characteristics of previously successful HS campaigns. However, in contrast to the ICBL – the most successful example of this hybrid approach – R2P advocacy would be considerably more difficult and fail to achieve a similar kind of bandwagon effect propelling R2P towards agreement. Of course, though related in their focus on ensuring the protection of civilians from violence, land-mines and R2P are substantially different. R2P is of a more fundamental character, more directly bound-up in the contestation over the future development of international society as evidenced by the political reaction it provoked. Though Canada sought to demonstrate R2P's concordance with developing international consensus and its

⁷⁸⁴ Private interview (15 July 2009)

⁷⁸⁵ Moreover, it is worth stating that an account of R2P would be weakened without paying attention to this kind of detail; detail unearthed by the application of methodological tools designed for this very purpose

⁷⁸⁶ DFAIT (2004) *Summative Evaluation of the Human Security Program*, November 2004, p30: not all officials however: within DFAIT there was – according to one official – some backlash against the all-consuming idea of human security, with Axworthy gone the voices of those who preferred a less thematic approach were easier heard; private interview (15 July 2009)

⁷⁸⁷ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

inclusion of a number of 'underlying concepts' that were not 'fundamentally new'⁷⁸⁸, its efforts exposed significant limitations in the capacity and preparedness of states to engage particularly in a 'norm-building' process within the GA⁷⁸⁹. This difficulty reaffirmed the need for a varied approach to follow-up.

As such, intergovernmental efforts were defined by an *operational* dimension focused primarily on the SC, and a *normative* one focused primarily on the GA.⁷⁹⁰ Indeed, though Canadian follow-up was a multi-dimensional, a multi-level and multi-actor approach, the strategy was always UN-'centred'.⁷⁹¹ This was inevitable. Unlike the ICBL, any agreement on R2P could only be achieved through the UN. There were no alternatives.⁷⁹² However, the initial plan of taking the report straight into the UN system and pursuing a process within it would provide an early indication of just how difficult building support for R2P would be, and help explain why in 2004 Hulan would describe reaction to Canadian follow-up efforts as 'mixed'.⁷⁹³ Whereas officials believed many governments were more 'receptive' to the report's ideas than expected, with the concept of R2P garnering 'broad appeal across multiple constituencies'⁷⁹⁴, the *depth* of this appeal was highly questionable and did not necessarily translate to a preference or support for codification (in whatever form).⁷⁹⁵ Indeed, a 'considerable number' of states 'very hostile' to the idea would exist throughout motivated for instance by a belief R2P entailed 'a right of intervention in their domestic

⁷⁸⁸ Bill Graham 'Notes for an Address to the Parliamentarians for Global Action 24th Annual Parliamentary Forum on the ICC and R2P', 4 November 2002, 'Notes for an Address to the Canadian Bar Association', 12 August 2002, World Federalist Movement-Institute for Global Policy (WFM-IGP) (2002) *NGO Meeting on the Responsibility to Protect*, New York, 26 November 2002, p7-8

⁷⁸⁹ 'Statement by Mr. Graham', Canada, A/57/PV.3, 12 September 2002, p27, Paul Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', 11 February 2003, Bellamy (2009) *Responsibility to Protect*, p71-3

⁷⁹⁰ Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', WFM-IGP (2003) *Civil Society Meeting on the Responsibility to Protect*, Washington, 18 March 2003, p5

⁷⁹¹ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁷⁹² This was especially true because of the potential use of force associated with it. On the importance of the UN for norm-building see Heinbecker 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', 11 February 2003 and 'Statement by Mr. Graham', Canada, A/57/PV.3, 12 September 2002, p27

⁷⁹³ DFAIT, (2000) 'Axworthy launches International Commission on Intervention and State Sovereignty', 14 September 2000, and Hulan in DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁷⁹⁴ WFM-IGP (2002) *NGO Meeting on the Responsibility to Protect*, New York, 26 November 2002, p8 and DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁷⁹⁵ Private interview (19 May 2009), see for instance Paul Heinbecker's characterization of the lack of progress Canada made at the UN up to 2004 in (2004) 'The UN and Never Again: the Responsibility to Protect', Carleton University, 13 March 2004

affairs'. This hostility would only be exacerbated by Iraq after which 'many countries backed away further'.⁷⁹⁶ Moreover, Iraq fuelled scepticism even in the eyes of those more instinctively supportive of R2P.

Highlighting such problems in relation to the twin-track approach strengthens the structured outcome argument and highlights a tension at the heart of the intervention problem, and by definition at the heart of Canada's intergovernmental approach. Throughout the process Canada never attempted to present R2P as anything other than a potential solution to the question of intervention to protect people. There were inevitable variations and subtleties within Canadian advocacy, but unsurprisingly many states focused on hard-end questions relating to military action. But this revealed just how difficult achieving political support for an international norm which sought to qualify sovereign responsibilities *in relation* to possible international action would be. Resultantly, this raised the dilemma of whether pursuing an overtly normative route was in the interests of the protection agenda, or whether focusing on the operational dimension (encouraging the SC to refer to aspects of R2P/pushing for its 'practical application' in 'specific country situations' would be a better option). In the latter action would be 'presented as an exception rather than a norm'.⁷⁹⁷ Akin to the UK's unsuccessful efforts to agree a SC-focused doctrine, this dilemma would similarly exercise Canadian officials.⁷⁹⁸ For instance, Paul Heinbecker, Canada's Ambassador to the UN, would be acutely aware of this dilemma:

...should we instead focus on developing operational norms rather than the overarching normative framework? Do we risk reversing progress by seeking to turn accumulated practice into explicit norms?⁷⁹⁹

⁷⁹⁶ 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade', 17 November 2004, p14

⁷⁹⁷ Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', 11 February 2003

⁷⁹⁸ For instance, in a consultation with Civil Society, Canadian official Patrick Wittmann would describe the normative dimension as 'more challenging', and would request feedback on what the best strategy should be, see WFM-IGP (2003) *Civil Society Meeting on The Responsibility to Protect*, Ottawa, 8 April 2003, p9

⁷⁹⁹ Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', Heinbecker would be quoted as describing the operational dimension as the "just do it and don't call it a doctrine" approach, in *Civil Society Meeting on The Responsibility to Protect*, Ottawa, 8 April 2003, p9

Heinbecker's question was drawn from his own difficult experience during 2002-2004 of trying to *even get the R2P report discussed* within the GA, let alone realise some form of agreement/declaration. In this respect some important details are worth highlighting. In July 2002 Canada circulated the ICISS report via a Letter to the SG.⁸⁰⁰ This was central to an early prioritisation of ensuring wide dissemination of the report, and gave the report a formal UN number under GA Agenda Item 44. However, even these 'modest' efforts encountered 'stiff resistance'.⁸⁰¹ Unsurprisingly, subsequent political process would run into numerous roadblocks. After this first step, efforts to agree even a procedural resolution designed to allow formal deliberation of the report were blocked, despite Canada watering down its initial proposals to the point of merely requesting Annan to 'facilitate dialogue'.⁸⁰² As Heinbecker bluntly stated:

We could not get agreement among members even to permit official discussion of the report. We could not even get agreement to permit discussion of the report in the UN just by interested countries at their own expense.⁸⁰³

The lack of progress within the GA and the continuing political obstacles which beset R2P throughout this period demonstrated its lack of development as an international norm. Indeed, the repeatedly mentioned structured outcome logic explains how R2P transitioned from the state described by Heinbecker to one rapidly accelerated towards agreement in 2005. The process-driven hypothesis and associated methods exposed just how limited R2P's development within the GA was and why it is so necessary to considering the path to 2005 in terms of the how and the why of that agreement and in terms of the micro-processes which defined it. In terms of the politics of these obstacles resistance within the GA was strongly evident from within the NAM, with core opposition from India, Pakistan, Egypt, Sudan, Cuba, among others⁸⁰⁴. There was limited desire to lock the GA into a process which could lead to substantive discussion of R2P.⁸⁰⁵ The difficulty of developing a

⁸⁰⁰ 'Letter dated 26 July 2002 from the Permanent Representative of Canada to the UN addressed to the Secretary General', A/57/303, 14 August 2002

⁸⁰¹ Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action'

⁸⁰² WFM-IGP (2003) *Civil Society Meeting on The Responsibility to Protect*, Geneva, 28 March 2003, p8 and private interview (31 March 2010)

⁸⁰³ Heinbecker (2004) 'The UN and Never Again: the Responsibility to Protect', 13 March 2004

⁸⁰⁴ Heinbecker (2004) 'The UN and Never Again: the Responsibility to Protect', *Civil Society Meeting on The Responsibility to Protect*, Geneva, 28 March 2003, p8

⁸⁰⁵ WFM-IGP (2003) *Civil Society Perspectives on The Responsibility to Protect: Final Report*, 30 April 2003, p8-9

normative framework in this context was thus clear to see. Moreover, the obstacles facing R2P were not simply about a group of 'usual suspects'. Although one official believed Canada could potentially have forced a vote to discuss the report, it was clear that to have set R2P off on such a negative footing would have been counterproductive, and besides which, there simply was 'not enough' cross-membership support to have justified such an approach at this stage.⁸⁰⁶ Despite identifying positive movement within key regions, officials were well aware of a 'high degree of scepticism' across the spectrum regarding the use of 'robust action to protect civilians'.⁸⁰⁷ Though Africa was regarded as more receptive to the idea, particularly with developments like the agreement of Article 4(h) of the AU Constitutive Act, and a similar clause under Article 11 of SADC's Protocol on Politics, Defence and Security Cooperation,⁸⁰⁸ Heinbecker regarded African countries as resistant, reticent and 'circumspect' in their reactions to his efforts to promote R2P at the UN. Their scepticism was broadly defined by those who feared too much intervention, and those who believed there would be too little, in addition to strong widespread resistance to the notion of 'non-African' intervention.⁸⁰⁹ Certainly African support for R2P was undoubtedly a crucial factor for ensuring its inclusion in 2005.⁸¹⁰ Nevertheless, this resistance to outside interference could be seen as undermining potential for genuine international responsibilities and involvement in African problems, with AU regional ownership about more than a desire to deal with one's own problems. Such a division of responsibility poses significant normative, operational and legal questions which strengthen a number of the arguments made previously.⁸¹¹

⁸⁰⁶ Private interview (31 March 2010)

⁸⁰⁷ Heinbecker (2003) 'The Responsibility to Protect: Galvanizing Support for Responsible International Action', 11 February 2003 and reiterated by Canadian official 'Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade', *Evidence*, 17 November 2004

⁸⁰⁸ Article 4(h) reads: 'The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity', *The Constitutive Act of the African Union* (2000); and Article 11, 2 (b:i), Southern African Development Community, *Protocol on Politics, Defence and Security Co-operation*, 14 August 2001. Both were described by Jennifer Welsh et al. as 'potentially very significant' in 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p216

⁸⁰⁹ Heinbecker (2004) 'The UN and Never Again: the Responsibility to Protect', 13 March 2004

⁸¹⁰ As Bellamy rightly points out in (2009) *Responsibility to Protect*, p77-81 and made clear in private interviews, see Ch5

⁸¹¹ See Bellamy (2009) *Responsibility to Protect*, p78-80

Until 2005 there were few fleeting mentions of R2P within the UNGA.⁸¹² For all its negativity, India's statement that R2P continued to lack support and that discussion would be 'infructuous' and 'divert attention from issues...of real concern to most Member States' seemed to capture the mood.⁸¹³ The effect of this on Canadian advocacy was significant, necessitating a shift from an overt/provocative normative push to a 'ground-up' campaign designed to increase support within regions, and negate some of the negative connotations, or scepticism hindering progress. As one official commented, post-ICISS follow-up needed to reflect the fact that the various regions of the world would not necessarily look at R2P 'with the same eyes'.⁸¹⁴ Equally significant was the open admission that GA agreement may take *years* and only after a more exhaustive intergovernmental process had taken place.⁸¹⁵ This meant focusing on multilateral/bilateral opportunities, engaging with parliamentarians, academia, and continuing to make the most of high-level events within the UN context when they arose.⁸¹⁶ In effect, officials acknowledged successful advocacy would depend upon commitment, constant reiteration and repetition of R2P's principles in order to more clearly define what it was (and was not) about.

Consistent with this, was the interrelated "**CS-track**" designed to facilitate awareness of R2P, and to more ambitiously build an NGO-led advocacy coalition akin to those which existed for other HS initiatives.⁸¹⁷ CS engagement was by no means straightforward. It required considerable patience, not least because consensus was less developed than in other areas with the issue of military intervention particularly problematic for many NGOs.⁸¹⁸ Nevertheless, there were real advantages to engaging CS. Between November 2002 and April 2003 the World Federalist Movement led cross-regional consultations, with

⁸¹² For instance, aside from Canada, New Zealand, A/57/PV.22, 4 October 2002, p10 and Columbia, A/57/PV.25, 7 October 2002, p26-7 expressed support for discussion of the report with no other examples I could find until 2004

⁸¹³ 'Statement by Mr. Gopinathan', India, A/57/PV.58, 25 November 2002, p16

⁸¹⁴ Private interviews with Canadian officials (19 May 2009, 31 March 2010)

⁸¹⁵ WFM-IGP (2003) *Civil Society Meeting on The Responsibility to Protect*, Geneva, 28 March 2003

⁸¹⁶ For instance, Bill Graham raised the issue of R2P, and expressed Canada's support for it, in numerous speeches during his time as foreign minister, including on the following dates: 17 June 2002, 12 August 2002, 12 September 2002, 4 October 2002, 4 November 2002, 3 February 2003, 13 June 2003 and 19 November 2003, relevant references are listed in the bibliography under Bill Graham

⁸¹⁷ Private interview (31 March 2010): the International Campaign to Ban Landmines and the ICC campaigns are the two most relevant in this regard

⁸¹⁸ This was born out by the WFM-led consultations, see *Civil Society Meeting on The Responsibility to Protect: Final Report*, 28 March 2003, Geneva

key principle meetings held in New York, Washington, Geneva, and Ottawa.⁸¹⁹ These proved invaluable. The lead role of the WFM re-activated an important relationship. Its Executive Director Bill Pace was widely-respected and experienced in coalition-building.⁸²⁰ He was extensively networked, and well known to DFAIT having approached Axworthy in 1998 requesting help to re-energize the ICC negotiations.⁸²¹ That DFAIT sought a return on the favour helped protect R2P from what one official described as NGO ‘friendly fire’. The consultations certainly provided important feedback on the substance and how Canada’s should pursue follow-up. Indeed, feedback was a key priority of the process. However, because this was provided within the context of a dedicated process, it helped to negate the possibility for hostile public criticisms.⁸²²

Crucially, the consultations considered CS’s potential involvement in R2P advocacy. Suggested emphasis for normative promotion focused on R2P’s language, its responsibility continuum, alongside efforts to fashion the political will to act, and to strengthen the capacity of IOs to respond to emerging crises.⁸²³ Throughout the process the WFM was the lead CS actor. Aside from organizing the consultations, from 2003 its ‘R2P-Civil Society’ project would become one of two major projects it could support at the time, complementing a Canadian effort increasingly defined by intergovernmental diplomacy.⁸²⁴ For instance, its focus on raising awareness and building CS capacity was evident at the 2003 World Social Forum held in Brazil. This major five-day event enabled the WFM to develop contacts with NGOs from all major regions (especially Latin America), convene and attend seminars and workshops to raise R2P, meet with media representatives, and distribute numerous resource materials.⁸²⁵

⁸¹⁹ The reports from these meetings were released by the WFM-IGP on the 26 November 2002, 18 March 2003, 28 March 2003 and 8 April 2003 with the final report of the consultations released on the 30 April 2003

⁸²⁰ As emphasized by Canadian officials in private interviews (19 May 2009, 31 March 2010)

⁸²¹ Interview with Lloyd Axworthy (Winnipeg, 27 November 2008) and (2004) *Navigating a New World*, p202, and private interview (31 March 2010)

⁸²² As the official further commented, this was particularly important in the context of the emerging Bush Doctrine, interview (31 March 2010)

⁸²³ WFM-IGP (2003) *Civil Society Perspectives on The Responsibility to Protect*, 30 April 2003, p20-22

⁸²⁴ As the minutes of the WFM Executive Committee confirmed in October the new R2P project had become its second major project alongside its Coalition for the ICC project, see WFM Executive Committee Minutes, Copenhagen, 24 October 2003, p2

⁸²⁵ WFM-IGP (2003) ‘Forum Social Mundial 2003 – World Social Forum, The WFM-IGP and the Responsibility to Protect, *Summary Report*’, undated

The significant effort required to achieve broader and deeper state support for R2P was born out by the “**intergovernmental-track**” primarily designed to realise it. In addition to the complex African position, the most difficult regions to bring onside were Asia and Latin America.⁸²⁶ This should not imply, however, that Canada was able to immediately activate the support of ‘like-minded’ states. Canada would have allies. But even this support required real work. This was apparent early on as Canada began consulting within the EU and the HSN – the latter of which officials used as a cross-regional ‘sounding board’ to promote R2P, and to adapt strategy accordingly. Despite general interest, initial reactions were characterized by real scepticism that the idea was ever ‘going to fly’.⁸²⁷ Over time, Canada would make significant headway in aligning both behind an active push for R2P. Before that, however, the credibility of state scepticism was enhanced by what one internal DFAIT document tantalisingly described as a substantial deterioration in the ‘diplomatic terrain’ since the report’s publication.⁸²⁸ Interviewees were very clear that Iraq and specifically the implicit association with humanitarian justifications exacerbated an already ‘uphill battle’ to convince states of the need for R2P. Iraq compounded long-standing opposition and opened up new fault-lines which officials would have to counter. As one official remarked, Iraq was ‘seized’ upon by those already opposed, and set-back those who were hesitant for fear R2P would give ‘carte blanche’ for other interventions.⁸²⁹

Resultantly, officials would have to ‘constantly...explain and re-explain’ R2P was *intended* to address mass atrocities not situations like Iraq.⁸³⁰ For instance, as the Iraq war approached, core framing tactics included arguments R2P could ‘limit’ interventions by creating ‘more, not fewer rules’; was a ‘hedge’ against unilateralism/non-SC authorization; and was a ‘pro-sovereignty’ doctrine.⁸³¹ The need for such arguments would be more acute after invasion had taken place, with the July 2003 Progressive Governance Summit capturing the hostility

⁸²⁶ Private interview with Canadian official (19 May 2009), see also ‘Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade’, 17 November 2004, p15-16, Paul Heinbecker (2004) ‘The UN and Never Again: the Responsibility to Protect’, 13 March 2004

⁸²⁷ Based on private interviews with Canadian officials (19 May 2009, 31 March 2010)

⁸²⁸ DFAIT (2004) ‘Canada’s Responsibility to Protect Follow-up Effort’, further details were redacted

⁸²⁹ Private interviews with Canadian officials (19 May 2009)

⁸³⁰ Private interviews with Canadian officials (19 May 2009, 31 March 2010)

⁸³¹ WFM-IGP (2002) *NGO Meeting on the Responsibility to Protect*, New York, 26 November 2002, p8 and Heinbecker, ‘The Responsibility to Protect: Galvanizing Support for Responsible International Action’, 11 February 2003

and divisions Iraq provoked. Though its communiqué agreed ICISS's report was a 'valuable contribution' to the debate, and encouraged 'urgent consideration' of it by the GA, the final text was more significant for the political realities it exposed – both in what it said and what it did not.⁸³² Discussion of the report by the broadly 'centre-left' world leaders in attendance was introduced by Jean Chrétien and strongly supported by Tony Blair. Despite attempts to paper over disagreement, there was no endorsement of R2P. Indeed, such language was explicitly omitted:

Where a population is suffering serious harm as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.⁸³³

According to newspaper coverage, this passage – lifted directly from ICISS – was removed as a result of strong objections by Argentina, Brazil, Chile and Germany.⁸³⁴ With Iraq in mind, references to 'repression' and 'state failure' took on an altogether more challenging meaning, provoking fears the formulation 'could have provided justification for the war'.⁸³⁵ Moreover, equally important was the general desire for clarity regarding the centrality of SC authorization, with Brazil especially insistent there should be no doubt in this regard.⁸³⁶ The Summit thus endorsed the position that the UNSC 'remains the *sole body* to authorise global action in dealing with humanitarian crises'.⁸³⁷ Of course, there is substance to Welsh et al suggestion that such fears were 'exaggerated' when one considers ICISS's emphasis on UN authorisation and its threshold conditions. However, while they rightly point out such fears

⁸³² Progressive Governance Summit (2003) *Communiqué: Countries Commit to Progressive Governance*, London, 13-14 July 2003

⁸³³ Quoted in Toby Helm 'Blair's new world order', *The Daily Telegraph*, 15 July 2003: however, Downing Street was reported as suggesting that the outcome communiqué was, despite the edits, the same in 'substance and meaning', see also Patrick Wintour 'Policy and Politics: Third way conference ends with argument over Iraq', *The Guardian*, 15 July 2003, Ben Russell 'Iraq aftermath: World Leaders reject Blair's move over military action', *The Independent*, 15 July 2003, Philip Webster 'Summit balks at 'justifying' armed regime change', *The Times*, 15 July 2003 – all of which linked the disagreements to Iraq

⁸³⁴ UK papers particularly focused on an apparently 'fierce' row between Blair and Gerhard Schroder, see: Andy McSmith and Jo Dillon (2003) 'Blair seeks new powers to attack rogue states; Germans furious as row over missing weapons worsens; Cook demands', *Independent on Sunday*, 13 July 2003

⁸³⁵ Russell (2003) 'Iraq Aftermath: World Leaders Reject Blair's Move Over Military Action'

⁸³⁶ See Wintour 'Policy and Politics: Third way conference ends with argument over Iraq' and Alan Freeman (2003) 'Chrétien blueprint to stop genocide gets cool response; World leaders prefer UN supervision', *The Globe and Mail*, 15 July 2003

⁸³⁷ This was clearly designed to sooth fears relating to unilateral action, (2003) *Communiqué: Countries Commit to Progressive Governance*, London, 13-14 July 2003

were 'symptomatic' of the divisions created by the Iraq war,⁸³⁸ this statement was more fundamental because its clarity symbolised a subtle shift away from the caveated nuances which ICISS deemed necessary to address the issue of what should be done when the SC is unable to agree.⁸³⁹ Indeed, SC exclusivity would be *prerequisite to any political agreement on R2P*, and increasingly central to Canadian advocacy despite Chrétien's best efforts to caveat the statement by describing it as 'perhaps...not that clear' referring to situations 'like Kosovo where it's possible to move without the UN'.⁸⁴⁰ Like the UK, Chrétien did not wish to define R2P in a way which implied Kosovo was unacceptable, or accept the SC was now more likely to agree than it had been during Kosovo. This was especially important considering how difficult engaging the P5 in active consideration of the idea proved to be. Despite awareness building events in P5 capitals, responses were unsurprisingly mixed.⁸⁴¹ Of the P5, France and the UK were deemed supportive, with China and Russia the most 'difficult' to convince, for well-known reasons.⁸⁴² The US, meanwhile, was arguably the least engaged of all. Not only were its priorities elsewhere, but its relationship with Canada was strained by the latter's refusal to support or participate in Iraq. Canada had to 'fight publically' with allies.⁸⁴³ As such, there was limited interaction on this specific issue, with the US public statements or comment conspicuous by their absence. Chrétien aptly captured the US position, describing it as 'unlikely to approve' of the approach Canada was pursuing.⁸⁴⁴

Nevertheless, the Summit did have positive consequences. Despite Canada's various follow-up efforts, the international agenda had found little place for R2P. But the controversy provoked by Iraq had a perverse upside, helping to breathe new life into the ember R2P had become:

⁸³⁸ Welsh et al. (2005) 'The responsibility to protect: Assessing the report of the International Commission on Intervention and State Sovereignty', p216

⁸³⁹ See ICISS (2001) 'Chapter 6: The Question of Authority', pp.47-55 and Bellamy (2009) *Responsibility to Protect*, p69, 73. This problem was also flagged-up during the WFM consultations

⁸⁴⁰ Freeman (2003) 'Chrétien blueprint to stop genocide gets cool response', 15 July 2003

⁸⁴¹ Private interviews (19 May 2009, 31 March 2010)

⁸⁴² 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade, 17 November 2004, p15 and private interviews (19 May 2009, 31 March 2010)

⁸⁴³ Private interview (31 March 2010)

⁸⁴⁴ Jean Chrétien quoted in Freeman (2003) 'Chrétien blueprint to stop genocide gets cool response'

...the summit...served to revive a process that had been moribund for some time. This was dead and overtaken by September 11...The summit has made it an issue and put it back on the agenda.⁸⁴⁵

Chrétien would reinforce this by expressing support for R2P during one of his last major speeches on foreign policy, at the UNGA in September 2003.⁸⁴⁶ But if the Summit sparked interest, it would be Chrétien's Prime Ministerial successor – and long-time rival – who would drive the process forward from 2004 onwards.⁸⁴⁷

Paul Martin's advocacy of R2P would shift the balance from a DFAIT-dominated follow-up campaign to one driven more from within his own office. According to Martin, although he recognised there had been a centralization of policy-making towards the Privy Council under successive PM's – and was not one to shy away from getting heavily involved in Canadian foreign policy – his intention was to 'build-up the overall foreign policy capacity' of the Canadian Government.⁸⁴⁸ This also meant reinvesting in Canada's military and strengthening the Department of Defence, in recognition that R2P depended upon a stronger defence capacity to enforce it when necessary.⁸⁴⁹ R2P would thus form a central plank of Martin's 'responsibilities agenda' first articulated at the UNGA in September 2004.⁸⁵⁰ His contribution to follow-up was, however, evident almost immediately, and was significant for a number of reasons.

First, Martin immediately contributed to creating 'new profile' for R2P.⁸⁵¹ Key speeches over a four month period at the World Economic Forum; to the Canadian Parliament; and to the Woodrow Wilson Centre in Washington included important references to R2P, complementing a typically supportive speech by Annan to a Joint Session of the Canadian

⁸⁴⁵ Anonymous official quoted in Freeman (2003) 'Chrétien blueprint to stop genocide gets cool response'

⁸⁴⁶ 'Statement by Jean Chrétien', Canada, A/58/PV.8, 23 September 2003, pp.21-22

⁸⁴⁷ Interview with Allan Rock (Ottawa, 11 June 2009): Paul Martin became Prime Minister on 12 December 2003

⁸⁴⁸ Interview with Paul Martin (telephone, 27 January 2010), see also Paul Martin (2009) *Hell or High Water*, p251

⁸⁴⁹ Interview with Paul Martin: It was also for this reason Bill Graham, who Martin described as his 'strongest minister', became Defence Minister in June 2004. Martin also accepted that some of the criticisms of Canadian foreign policy during the 1990s – such as being overly reliant upon soft power – had validity partly because of the impact of his own efforts to eliminate Canada's fiscal deficit (telephone, 27 January 2010)

⁸⁵⁰ 'Statement by Paul Martin', Canada, A/59/PV.5, 22 September 2004, pp.30-33

⁸⁵¹ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

Parliament in March 2004.⁸⁵² Second, this coincided with a renewed sense of opportunity derived from the establishment of the HLP, and the realisation that should it endorse R2P the World Summit (process) could be the endgame for an 'enhanced diplomatic strategy in support of R2P'.⁸⁵³ In this regard Martin's appointment of Allan Rock as Ambassador to the UN would be especially important for R2P negotiation prospects, as would his own personal diplomacy at key points during the process.⁸⁵⁴ Third, the substance of Martin's advocacy clearly captured the conceptual narrowing of R2P deemed necessary to ensure it remained a politically viable idea. This meant locking R2P into SC-authorization and calling for 'thresholds' to aid the international community in determining when and what action might be necessary to protect civilian from 'extreme threats'.⁸⁵⁵ This position was apparent throughout 2004. For instance, an internal document reveals Canada's support for R2P was based upon 'the report's finding that the use of force to protect civilians should be UN-sanctioned and multilateral in nature'.⁸⁵⁶ ICISS was less directly clear-cut, hence it's numerous, unconvincing efforts, in terms of 'what if' the SC is slow to react, or unable to agree. Nevertheless, the impetus for Canada was about showing that a 'properly constructed' R2P would complement existing international law, was about dealing with mass atrocities, and would thus make it *more* difficult to justify intervention for humanitarian reasons.⁸⁵⁷

But as Bellamy points out, these conceptual moves 'bypassed' the issue of unauthorised intervention – as would the World Summit Outcome.⁸⁵⁸ Martin's role in this has certainly provoked criticism, not least from Michael Byers who believed by refraining from suggesting interventions could occur without the SC's 'expressed authorization' Martin (and thus Canada) 'conceded the point that had motivated the development of [R2P] in the first place:

⁸⁵² Paul Martin (2004) 'Prime Minister Paul Martin speaks at the World Economic Forum on "The Future of Global Interdependence"', 23 January 2004, 'Address by the Prime Minister in Reply to the Speech from the Throne', Hansard, 37th Parliament, 3rd Session, Number 002, para.1140, 3 February 2004, 'Address by Prime Minister Paul Martin on the occasion of his visit to Washington, D.C', 29 April 2004, Annan (2004) 'Canada 'pillar of support' for UN leader in promoting peaceful, global governance, says Secretary-General, in address to Parliament', *Press Release*, SG/SM/9190, 9 March 2004

⁸⁵³ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁸⁵⁴ The crucial role of Allan Rock was clearly expressed in numerous interviews, and will be highlighted in Chapter 5: he took up the position in January 2004

⁸⁵⁵ 'Statement by Paul Martin', Canada, A/59/PV.5, 22 September 2004

⁸⁵⁶ DFAIT (2004) 'Canada's Responsibility to Protect Follow-up Effort'

⁸⁵⁷ Private interview with Canadian official (31 March 2010)

⁸⁵⁸ Bellamy (2009) *Responsibility to Protect*, p73, see also Chapter 5

that some mechanism should exist for interventions to prevent mass suffering where the UN is unable or unwilling to act'. This, he suggested, 'stripped' R2P of its 'meaningful content'.⁸⁵⁹ On one level the post-ICISS development of R2P revealed evidence of its hollowing out as a norm designed to address the question Byers rightly identifies as inspiring its initial development⁸⁶⁰. This resultantly raised questions about how one understands the political agreement in 2005. As the politics of the Summit negotiations reveal, the transition from ICISS was fundamental in all sorts of ways. The 2005 context was very different from the one which led to Axworthy's establishment of ICISS. Many elements of the 2005 agreement were designed to ensure R2P reaffirmed existing processes and provisions rather than transform them. Inevitably there were political consequences in terms of what this meant for addressing future mass atrocities.⁸⁶¹ But Canadian advocacy was shaped by a series of factors which were arguably more significant than the debate around defining a mechanism for action outside the SC. A combination of the political context – which exacerbated longstanding opposition to unilateralism – and the unexpected opportunity of the World Summit meant the advocacy process was concomitantly accelerated and narrowed. The politics of intervention, and thus R2P, ensured any possible nuance regarding unilateralism was unrealistic and counterproductive. SC authorisation was an absolute imperative, and from a tactical perspective *had* to be the primary starting point for any multilateral discussion if – as Canada determined it should be – the Summit was to be the target venue for agreement. However, an assessment as to whether or not the approach Canada adopted was wise depends on one's perspective. From Byers perspective, Canadian strategy under Martin took the easy option by advancing a 'watered-down, parsimonious version' of R2P believing Canada should have embarked on a longer-term effort to 'shift international opinion towards a right to unauthorized humanitarian intervention'.⁸⁶² But such an approach was, and *remains*, entirely unrealistic. In reality a unilateral doctrine of R2P was off-the-table well before the World Summit. Canadian advocacy was ultimately about making the most of available opportunities. Had there been a desire to pursue the Byers approach it is likely that there would still be no R2P agreement

⁸⁵⁹ Michael Byers (2007) *What is Canada for? Intent for a Nation: A relentlessly optimistic manifesto for Canada's role in the world*, Vancouver: Douglas & McIntyre, p118-121

⁸⁶⁰ One official was very clear that R2P was about trying to deal with the Kosovo problem, interview

⁸⁶¹ These are addressed more specifically in the context of the development of the R2P language in Ch5

⁸⁶² Byers (2007) *What is Canada for? Intent for a Nation*, p118-119

to this day. But the important point is that the shift towards unambiguous SC-authorisation was a necessary factor for achieving any potential outcome during 2005.

However, this debate does raise the issue of timing highlighted in the introduction. Considering the formulation of R2P in Ch5, the question is, was the Summit opportunity in the best interests of R2P, or did it come too soon for an idea which was not propelled into the process by a universal clamour to embrace it? In this sense, there is no reason to regard Canada's advocacy approach from 2004 onwards as necessarily in conflict with this idea. The problem is of timing is more fundamental, it relates to efforts to understand the dynamics of normative evolution in order to better understand the factors which drive international behaviour and the potential importance of R2P. Canada certainly had success in building awareness and achieving the support of states (including those it otherwise would not have had). For instance, it successfully activated the HSN to express support for R2P in a submission to the HLP,⁸⁶³ and achieved Martin-led high-level discussion of R2P at the Progressive Governance Summit in Hungary (14-15 October), the APEC summit in Santiago (20-21 November), and the Francophone summit in Burkina Faso (26-27 November).⁸⁶⁴ Canada also had bilateral successes. Most notably, after considerable consultations, Mexico would move from 'reticent' about the idea to an active supporter, with officials taken aback at how seriously Mexico engaged in discussions prior to announcing its support in the GA in 2004.⁸⁶⁵ Similarly, the EU would become much more actively engaged as 2005 approached, Chile would become more supportive, as would Japan, whose conception of HS found difficulty with R2P which meant officials had 'a lot of explaining to do'.⁸⁶⁶ With such cases, it was not unreasonable that Canada would regard itself as making progress. However, an equally important part of the story was the recognition that ultimately Canada needed a 'game-changing moment' to get R2P on the UN agenda – particularly after the 'failures' of 2002.⁸⁶⁷

⁸⁶³ Human Security Network (undated) 'Human Security Network Submission to the Panel on Threats, Challenges and Change'

⁸⁶⁴ Policy Network (2004) 'Progressive Governance Summit 2004, 14-15 October, Joint Communiqué', DFAIT (2004) 'Apec Economic Leaders Meeting November 20-21, 2004 – Santiago, Chile', 'Address by Prime Minister Paul Martin at the opening of the Tenth Summit of Heads of State and Government of Countries using French as a common language', 26 November 2004

⁸⁶⁵ Private interview: 'Statement by Mr. Derbez', Mexico, A/59/PV.10, 24 September 2004, p36-7

⁸⁶⁶ Private interview with Canadian official (19 May 2009)

⁸⁶⁷ Private interviews with Canadian officials (31 March 2010, 19 May 2009)

The HLP was this game-changer. It altered the approach and focus of Canadian efforts as the potentiality of the World Summit emerged. As Heinbecker commented in 2004, the hope for R2P lay 'primarily...in the SG's reform efforts, and the work of the reform panel' because efforts to build support for R2P had got 'almost nowhere' at the UN.⁸⁶⁸ Thus, while repeated references to the HLP may appear out of place (considering its establishment processes are outlined in Ch5), it is evident because it represents a vital element of the abovementioned structured outcome argument which can only be understood in the context of the advocacy efforts this chapter has sought to explain. What should be clear is that without this structuring, there would have been no R2P in 2005. This does not necessarily invalidate the agreement, as one official rightly remarked, multilateral Summits can provide significant opportunities to 'blow-through' entrenched opposition or resistance, and bring into play ideas which would otherwise struggle to gain a foothold.⁸⁶⁹ But even so the lack of normative momentum behind R2P should qualify the significance of the 2005 agreement. This is especially true considering the detailed negotiations the next chapter traces. R2P emerged into the WS process with major questions about the extent to which states were willing to embrace the idea of an *international* responsibility, and how R2P might translate into the actual protection of people in need particularly as the only institution which seemed to gain from the processes outlined was the SC.⁸⁷⁰ Advocates certainly deserve credit for fighting to keep the idea alive in an often unreceptive political context. But their successes were more than matched by significant concessions, and continually checked by questions and contestation about what R2P would normatively and practically mean. R2P was always a controversial idea, and contrary to what the NLC might suggest, this controversy would be inflamed with each new step, each new proposal, and each new crisis. But this controversy is just as much because the speed of R2P's emergence was not underpinned by the kind of normative development the NLC might imply.⁸⁷¹ Ch5 picks-up

⁸⁶⁸ Paul Heinbecker (2004) 'The UN and Never Again: the Responsibility to Protect', 13 March 2004

⁸⁶⁹ Private interview with Canadian official (31 March 2010)

⁸⁷⁰ As one official remarked in late 2004: 'Although there is a high degree of consensus regarding humanitarian principles, there remain serious differences among UN member states regarding how these principles should be enforced', 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire to the Standing Committee on Foreign Affairs and International Trade, 17 November 2004, p9

⁸⁷¹ As Canadian official Ferry de Kerckhove remarked in late 2004: 'It's a Canadian initiative. Seen from Ottawa, The R2P seems to be a very nice concept. Everyone agrees...But if you think that the countries we're facing take it the same way, I have to tell you that's not the case' in 'Evidence of Mr. Ferry de Kerckhove and Mrs.

the remainder of the story, showing why the emphasis on micro-process matters so much, and why the 'structured outcome' explanation offers a more realistic and convincing account of how a form of R2P became part of a UNGA Resolution in 2005. In so doing it reveals how the multilateral process exposed the fundamental dividing-lines and alternative normative preferences which led to an agreement highly qualified, and of distinct character to what advocates originally envisaged.

Chapter 5: A 'structured outcome': R2P and the 2005 World Summit

*R2P snuck by, and the history of R2P is that it ran into much greater difficulties after the summit than before.*⁸⁷²

*I think there's a very legitimate question to raise whether we would have succeeded in getting those two paragraphs in had they been the only subject on the agenda.*⁸⁷³

*I think it more or less slipped through in the shadow of the bigger issues.*⁸⁷⁴

2005 World Summit Outcome Document

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

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

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help 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.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

⁸⁷² Interview with John Dauth (London, 25 May 2010)

⁸⁷³ Interview with Allan Rock (Ottawa, 11 June 2009): to be clear this quote is about setting up the argument that we need a better account of how R2P was agreed in 2005. Rock's point is one dimension of that, but should be read keeping in mind Rock's view that the agreement was very significant. I would not wish to the reader to think otherwise

⁸⁷⁴ Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

As the Introduction outlined, paragraphs 138-140 of the 2005 World Summit Outcome provoked considerable praise, attention and hope. However, as it also alluded to, the idea that the ‘unanimous’ endorsement of R2P suddenly signified consensus in such a contentious area, would be quickly dispelled. Subsequent evidence of on-going disagreement and contestation over its use; appropriateness; and the extent to which R2P genuinely reflected a willingness to mobilize resources for collective action to protect civilians, have all served to expose the agreement’s many weaknesses.⁸⁷⁵ Perhaps the most revealing problem underpinning this observation is that such difficulties were not anticipated even though they were entirely inevitable; entirely unsurprising. The earlier statement that ‘unanimity of agreement does not necessarily equate to unanimity in terms of meaning, significance or application’, was not generically made – even if it does have broad relevance to many forms of international agreement. Nor is the argument presented throughout a product of convenient hindsight. On the contrary, it is based upon an analysis of the micro-processes of R2P’s emergence driven by the application of methods designed to provide a more sophisticated account of the complex interplay of factors which define the explanation.

It is from this that the structured outcome thesis emerges, based ultimately on the previously identified key questions of *how* and *why* R2P was agreed in 2005, and in *what* form. Each of these feed directly into the resulting explanation, as demonstrated by the structure of this chapter, which essentially proceeds in two principal – but intensely interconnected – stages. The first focuses on the factors which gave structure to the overall process, with particular emphasis on the High-level Panel (HLP), Annan’s *In Larger Freedom* (“ILF”) report and the way these fed into the negotiation stage, most obviously by shaping the agenda for a Summit initially intended as a follow-up to review commitments made at the Millennium Summit.⁸⁷⁶ These factors should be seen as both enabling and constraining influences, helping to explain both the *how/why* and the *what*. The second stage continues to account for such ‘structuring factors’ but does so more directly within the context of the

⁸⁷⁵ See Alex Bellamy (2010) ‘The Responsibility to Protect – Five Years On’, *Ethics & International Affairs*, Vol. 24, No. 2, pp.143-169

⁸⁷⁶ This point should make clear that there is no suggestion that the overall process was pre-planned in the way it unfolded. As revealed below, the HLP processes merged into processes directed at the Millennium Review Conference to be held in September 2005

multilateral negotiations. Here documenting the form of R2P, including the framing strategies deployed within the negotiations, and the various necessary political compromises, all contribute to an analysis of the final text which opened this chapter. Clearly it is crucial that our analysis of the R2P paragraphs is based upon the way they were negotiated and how states viewed them; relying purely on a reading of the text would fail to accommodate member state variations regarding what the agreement meant and the significance they placed on it.⁸⁷⁷ However, aside from breaking-down how R2P was defined and redefined, key structuring factors relating to the way the member state negotiations unfolded were just as vital. For instance, changes to the format and the institutional venues used for negotiation changed the political dynamics at key points during the process, which in turn impacted upon the issues at stake, and the role and resources of the many actors involved. Many of these are the subject of extensive analysis in Part 1, and followed up where relevant in Part 2.

Though the argument is presented according to the two interconnected dimensions, the sheer complexity of the process inevitably means clarity is not easily forthcoming. It would be unrealistic and undesirable to attempt a detailed blow-by-blow narrative-driven explanation of the Summit process, particularly as existing accounts capture this sufficiently well already.⁸⁷⁸ Such an approach would unduly sacrifice analytical focus. Moreover, the specific argument adopted in this thesis ultimately matters because academics and policymakers interested in R2P, and constructivists in general, should aim to base their understanding of normative development on the processes which underpin them. No amount of advocacy commitment can substitute the knowledge this politically-focused approach can yield. This is particularly true when one considers the basis for the structured outcome argument, and the micro-process driven nature of the empirical research presented from Ch3 onwards. As shown previously, the dynamics of R2P's emergence into the 2005 negotiations was neither based upon any bandwagoning effect, nor a product of emulation. There was limited reason to believe agreement in 2005 was a realistic possibility.

⁸⁷⁷ Even though a reading of the text language does reveal the difficulties and compromises inherent in the agreement, see Ekkehard Strauss (2009) *The Emperor's New Clothes?*, Germany: Nomos

⁸⁷⁸ The best narrative account of the processes leading to the World Summit is by the Norwegian Institute of International Affairs (NUPI) (2006) 'A fork in the road or a roundabout? A narrative of the UN reform process 2003-2005', Oslo: NUPI

Indeed though the post-9/11 political context may have contributed to shaping the parameters of R2P, this was not a product of direct engagement by states in an R2P-focused process. Nor was there a sudden Damascene-like conversion by the large number of states referred to repeatedly in interviews as essentially opposed to the idea of an R2P.⁸⁷⁹ Thus, in many respects, subsequent disagreements over the meaning, application, and scope of R2P, reflect the state of agreement as it was laid down in 2005, in addition to a misreading – for whatever motive – of what the agreement really meant. It is for these reasons that the argument presented here offers a more convincing explanation of the factors which led to 2005. Because there lacked a progressive building-up of momentum, the dynamics were very different and therefore require a different kind of explanation. In fairness to Alex Bellamy, his account of R2P does at least acknowledge the importance of some vital factors, notably the adoption of R2P by the HLP and ILF, which he describes as ‘undoubtedly critical’ for elevating it onto the WS agenda:

Without this adoption, it is unlikely that the Canadian government and high profile ICISS commissioners would have succeeded in persuading governments to discuss the R2P, let alone include it in the final text.⁸⁸⁰

This point is entirely consistent with aspects of the structured outcome argument. However, the difference is that this line, rather than explored further, is limited within an understandable focus on the form of R2P which emerged. Despite Bellamy’s sophisticated account of the textual negotiations⁸⁸¹, it surely matters just as much that R2P depended upon these (ultimately non-state driven) factors, in addition to a process which unfolded in such a way that two key ambassadors – facilitators of the process no less – could describe R2P as having ‘snuck’ and ‘slipped by’.⁸⁸² Of course, it would be wrong not to make clear that once part of the negotiations, realising its inclusion in the outcome required immense hard work, and considerable negotiated narrowing and political effort. Likewise it does no harm to reiterate the point made by a Canadian official that Summits can provide excellent

⁸⁷⁹ Indeed this point was made in relation to the specific World Summit process with one senior P5 official commenting that the majority of states who signed up to R2P in 2005 did not really believe it (25 June 2010)

⁸⁸⁰ Bellamy (2009) *Responsibility to Protect*, p76

⁸⁸¹ Bellamy (2009) *Responsibility to Protect*, p83-95

⁸⁸² Such points were not reserved to Dauth and van den Berg but were made by numerous interviewees (3 August 2010, 13 August 2010, 22 October 2010, 12 May 2011)

venues to blow-through seemingly intractable opposition⁸⁸³, and that nor should we *necessarily* assume the agreement resultantly lacks legitimacy because of the dimensions identified here. As one centrally placed UK official suggested, a GA resolution endorsing the idea of sovereignty as responsibility was an important development, providing states with language they can at least ‘point to’ in the case of emerging R2P-related crises.⁸⁸⁴ But beyond this the outcome left many issues unaddressed, and considerable doubt about the degree of support even the limited agreement commanded.

That said, congruous with the point about legitimacy, some may question whether it matters how R2P was agreed when the important bottom-line is that UN member states ‘agreed’ to its inclusion in 2005. There is some truth in this position: those states that opposed the idea, or were reluctant to see such a development occur, took the compromises in other areas of the negotiations which came from acquiescing to/accepting its inclusion; actively participated in defining the norm in response to their concerns; and thus have to live with the consequences of the strategic foothold institutionalisation can now bring to advocates of the idea. However, considering what R2P was meant to achieve, this alone would represent a one-dimensional take on the nature of the agreement. As becomes apparent, the agreement was the product of ‘serious compromises’. As such, its meaning and its ‘practical consequences’ essentially reflect this.⁸⁸⁵ Resultantly, there is nothing in the agreement which should lead to the assumption that its meaning is set, that states cannot alter their positions, or that alternative normative ideas will not (re)emerge which do not suit the agenda as currently framed by R2P. Indeed, many alternative normative ideas were active during the 2005 negotiations and actively impacted upon the formulation of R2P. Certainly, emphasis on the textual negotiations alone would identify these points. But more fundamentally, it is in this respect that the structured outcome serves to expand our understanding of R2P’s development from a one-dimensional one to a multi-faceted, multi-dimensional one. If the question is: Does it matter how the R2P was agreed, that it was included not just because of the negotiations to define it, but also because of a series of factors relating to the characteristics of the process? Then the answer

⁸⁸³ A point previously made in Chapter 4, private interview

⁸⁸⁴ Private interview (13 August 2010): even if the depth of this commitment was very much open to question

⁸⁸⁵ Private interview with Canadian official (31 March 2010)

has to be an overwhelming yes. Furthermore, though forms of contestation should always be anticipated post-agreement, the dynamics of the process in this case actually enhanced the likelihood, even inevitability, that this would happen to R2P.

For instance, a product of the scale and content of the negotiations, a running sore throughout the negotiations was a feeling – among G77 and NAM countries – that their voices were either being ignored, or failing to shape the negotiations in the way they might have expected. Moreover, a developing-developed divide (to define it rather crudely) emerged cutting across the negotiations, but which became increasingly complex and difficult to manage with the arrival of John Bolton as US Ambassador in August 2005.⁸⁸⁶ At this point, the full degree of NAM and G77 fury at the direction the negotiations were taking became evident. The hundreds of amendments unleashed by the US in late August, sent the existing process – which had been generally based on a facilitator-led ‘perceived consensus’ approach – into crisis. A host of issues were reopened, with a curious resulting alliance of interest/convenience between the US and the members within NAM and the G77, including some of the GA’s most notoriously difficult (and vocal) members.⁸⁸⁷ As shown below, John Bolton’s impact on the Summit process is complex, and in the direct case of the R2P negotiations not particularly negative.⁸⁸⁸ However, his impact on the process was significant, and a central factor in helping to provoke a shift from facilitation to an alternative ‘core group’ (CG) driven-process with greater elements of line-by-line discussion.⁸⁸⁹ There is no doubt Bolton’s intervention was highly ‘provocative’⁸⁹⁰, but contrary to the idea that Bolton was simply the ‘evil agent’⁸⁹¹ who ‘declared open season for

⁸⁸⁶ This was a two-way street, with some Western countries - notably the US - increasingly concerned that their priorities were being lost in draft documents which placed too much emphasis on development, see below

⁸⁸⁷ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010) and based also on interviews with Allan Rock (Ottawa, 11 June 2009), John Dauth (London, 25 May 2010)

⁸⁸⁸ Interview with Allan Rock (Ottawa, 11 June 2009)

⁸⁸⁹ The core group was a smaller group of UN ambassadors and was introduced by the GA President Jean Ping in response to what was an increasingly fractious process, and rather ironic considering the accusations of a lack of transparency and influence, see Reform the UN (2005) ‘GA President to Convene Core Group to Negotiate on UN Reform’, 24 August 2005. It began with a membership of approximately 30 ambassadors, and was then broken down into a group of 15 during the last few days of the process, see: Reform the UN (2005) ‘Following Weekend Negotiations President Submits Latest Draft Text’, 12 September 2005

⁸⁹⁰ Interview with John Dauth (London, 25 May 2010)

⁸⁹¹ Evil agent was how one ambassadorial interviewee described the *perception* of Bolton’s role during the negotiations – a view which they absolutely did not share, believing the reputation unfair because Bolton was transparent, consistent and strict throughout the process, private interview and email. This is a view is shared throughout this chapter and runs contrary to the way Bolton is generally portrayed

other spoilers to reopen contentious issues⁸⁹², his intervention altered the dynamic of the negotiations because his 'ideological' opposition to the facilitator process struck a chord – not just with so-called 'spoilers' but across the membership.⁸⁹³ Considerable 'distrust' of the process had already built-up, with a general perception that the process served the interests of the 'well-connected' Western, and especially European 'progressive' states.⁸⁹⁴ On the other hand, the political dynamics of the developing-developed divide, which was undoubtedly a prevalent factor in terms of the overall negotiation package, was not simply one-way criticism directed at the rich. Western countries were just as exercised by what they regarded as a lack of engagement by the G77 and NAM in their own priorities, of which R2P was generally one.⁸⁹⁵ Unsurprisingly, interviewees consistently remarked that the apparent *reopening*⁸⁹⁶ of issues, and the effective end to facilitation, was inevitable anyway.⁸⁹⁷

It may appear somewhat premature to flag-up such points early on. But this brief insight into some of the key dynamics of 2005 demonstrates just how important understanding R2P's development in the context of the overall process really is.⁸⁹⁸ This is because, with the scale of the negotiation package enormous in its ambition, the process through the facilitator stage, the core group (CG) stage, and finally culminating in a 'take-it-or-leave-it' stage during the last 24 hours, all served – in various ways – to aid the path of R2P. It was certainly an issue of contention, increasingly so as the negotiations moved towards

⁸⁹² This is how Bellamy describes it (2009) *Responsibility to Protect*, p87

⁸⁹³ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 12 May 2011)

⁸⁹⁴ Private interview with UK official (22 October 2010)

⁸⁹⁵ Traub (2006) *The Best Intentions*, p370, private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010, 12 May 2011): in this regard this problem was exacerbated by the high-profile G8 meeting in Gleneagles in July 2005. As Mark Malloch-Brown described it, the pledges made at the G8 meeting caused problems for the broader negotiations because the development commitments at Gleneagles were 'completely discounted' by many of the G77 ambassadors which diminished their willingness to agree concessions elsewhere in the negotiations either because they had got what they wanted or because they didn't want to see them as relevant to the Summit negotiations (telephone, 23 June 2010): see also NUPI (2006) 'A fork in the road or a roundabout?', p55-6

⁸⁹⁶ Reopening is italicised because for states did not accepted the idea that the draft documents during the facilitation process were actually based on consensus, so thus they were never really 'closed'. Traub's account is somewhat different on this, see (2006) *The Best Intentions*, p369

⁸⁹⁷ Based on private interviews (3 August 2010, 13 August 2010, 22 October 2010), interviews with Allan Rock (Ottawa, 11 June 2009) and Dirk Jan van den Berg (telephone, 18 October 2010): for a nuanced argument see also Stephen Stedman (2007) 'UN transformation in an era of soft balancing', *International Affairs*, Vol. 83, No.5, p940

⁸⁹⁸ It should be noted that this argument becomes clearer as each layer is built-up throughout this chapter

conclusion, but in the overall context, there were simply bigger issues occupying the priorities of states. Aside from anger towards the process itself, the vexed longstanding issue of SC reform, the relative place of development issues, the Human Rights Council (HRC), and hard security issues relating to terrorism, and disarmament and non-proliferation, all helped to mitigate the reaction R2P might otherwise have received. As testified by the opening quotes of van den Berg and Dauth, and reiterated in interviews with officials, Allan Rock and many others, in the overall package of issues R2P was difficult, but was by no means important enough for member states to draw significantly upon their already limited capacity.⁸⁹⁹ Thus, through each of the three stages of the process the scale of the agenda was hugely significant, helping to ensure R2P was consistently part of the rolling draft outcome document. For this reason, Van den Berg is surely right to suggest that had this not been the case, R2P would ‘never have passed’.⁹⁰⁰

However, although the way the scale of the negotiations affected the priorities of state is clearly a vitally important explanatory factor, it alone does not reveal why R2P maintained a place in each and every draft outcome document. Other factors were just as important. For instance, a reverse benefit of the scale and structure of the negotiations was that it gave those states most committed to R2P the space and opportunity to prioritize it, in some cases above almost all other issues. Throughout the negotiations, R2P commanded the concerted support of Canada, the EU and a significant number of African states (notably Rwanda). Without this coalition, driven by Canadian ambassador Allan Rock, none of the structural factors mentioned would have mattered; R2P would have been lost effectively from the outset. That said, an additionally significant factor related to how the documents were drafted at various stages, and more specifically who was responsible for ‘holding the pen’.⁹⁰¹ With the strongest supporters of R2P continually pushing its inclusion, and other issues exercising many member states, R2P was facilitated by the fact that senior individuals within the Secretariat, working with the Office of the GA President Jean Ping, were predominantly

⁸⁹⁹ Interviews with John Dauth (London, 25 May 2010), Dirk Jan van den Berg (telephone, 18 October 2010), Allan Rock (Ottawa, 11 June 2009), private interviews (3 August 2010, 13 August 2010, 22 October 2010, 12 May 2011, email 25 July 2011): moreover, capacity limitations also affected P5 countries, the UK for instance was under pressure even after it had drafted in additional staff to cope with the demands of the negotiations, particularly as it assumed the EU Presidency in July 2005

⁹⁰⁰ Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

⁹⁰¹ This phrase was used by Allan Rock (Ottawa, 11 June 2009), and by Canadian official in private interview (31 March 2010)

responsible for drafting and updating the documents. Though these were undoubtedly based on the input of the facilitators and member states, the ability to influence the text on R2P was easier because of this approach – providing those supporters with a central focal-point for submitting language and proposed revisions to the text. This was particularly significant because a number of the individuals responsible were regarded as ‘allies’ of the R2P agenda.⁹⁰² Furthermore, undermining the idea the facilitator process actually reflected consensus, a 5/10 August draft document introduced language – at the request of one member state⁹⁰³ – recommending restraints on the SC veto, despite the prospects of the P5 agreeing to such a proposal was little more than zero.⁹⁰⁴ Although this specifically did not become a sticking-point or obstacle to future discussions on R2P⁹⁰⁵, it does reiterate the point that at various points during the process direct engagement with R2P was considerably less intensive than one might expect, and did not always reflect where states positioned themselves. Once the negotiations became more intensively-focused, the political prospects of R2P were further enhanced by the fact it was dealt with predominately at working-level rather than at the level of Permanent Representatives.⁹⁰⁶ It was at this level that the parameters of R2P were defined and redefined. With PR’s more exercised by other issues, R2P received limited ‘airtime’ within the Ambassadorial CG meetings which resultantly diminished the potential for R2P to be railroaded by high-level opposition. Additionally, however, one of the reasons why R2P was not generally a major issue was because of the skilful way it was packaged and kept narrowly focused by advocates. Even though the R2P formulation was defined by an extremely high threshold; was tightly tied to the SC; and crucially was heavily loaded towards primary state responsibility, as far as one UK official is concerned a central reason why R2P was achievable during the 2005 negotiations was because it was ‘packaged in different ways to different audiences’.⁹⁰⁷ Ultimately many states took away their own understanding of the agreement based on their own preferences, and on their understanding of how it had been presented or sold. Finally,

⁹⁰² Private interviews with author (31 March 2010, and private)

⁹⁰³ ‘E-gram to FCO London from UKMIS NY: Third Draft of Outcome Document’, dated 9 August 2005

⁹⁰⁴ *Revised draft outcome document of the High-level Plenary Meeting of the GA of September 2005 submitted by the President of the GA*, 5 August 2005, Future Document, A/59/HLPM/CRP.1/Rev.2 (10 August 2005)

⁹⁰⁵ Private interview (13 August 2010)

⁹⁰⁶ Private interviews with Canadian and UK officials (22 October 2010, 31 March 2010, email 25 July 2011); though as becomes clear Allan Rock was engaged throughout, including at the working-level discussions

⁹⁰⁷ This paragraph is based on private interviews with officials (3 August 2010, 13 August 2010, 22 October 2010)

when R2P did become a major sticking point towards the end of the process, the introduction of an alternative draft version of the outcome which the Secretariat – under Annan’s initiative⁹⁰⁸ – had been working on in anticipation of a breakdown in the process, dared Ambassadors to “take-it-or-leave-it”.⁹⁰⁹ With the ‘death-knock’ getting ever nearer, and many world leaders attending the Summit already in flight, the sense of urgency – complemented by crucial high-level engagement by Canadian Prime Minister Paul Martin with the most intransigent opponents – helped to dissipate the potential failure of the Summit outcome, and R2P’s place in it.⁹¹⁰

Each of the various elements of the argument presented to this point will be subject to greater scrutiny, and elucidation, as the chapter proceeds. Despite the complexity of the argument, with the various factors at work, it is not an unfair observation to suggest that the path of R2P unfolded far more ‘smoothly’ than anyone might have expected.⁹¹¹ That this was the case emphasises just how critical it is that R2P’s development is understood in its proper context. What should be clear is that tracing R2P according to the changes it underwent would inadequately relegate a series of causally significant factors relating to the structural characteristics of a process which began with the HLP and culminated with the Summit. Key factors of this process propelled R2P forward and towards agreement. Therefore, without embedding one within the other, neither aspect could singularly yield a satisfactory explanation regarding how R2P was agreed – considering its limited political traction in Ch4 – and in what form.⁹¹²

Because the agreement depended upon the factors outlined, many of which relate to the nature of the process, it is unsurprising many states would wish to revisit the apparent ‘consensus’ after the summit, or would display alternative understandings of what R2P meant. Even with the foothold of institutionalization, it is surely significant that states were

⁹⁰⁸ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

⁹⁰⁹ Interview with John Dauth (London, 25 May 2010) and private interviews, see Part 2

⁹¹⁰ Interviews with John Dauth (London, 25 May 2010), Dirk Jan van den Berg (telephone, 18 October 2010) and private interview with government officials/diplomats (3 August 2010, 13 August 2010, 22 October 2010, 12 May 2011, 25 June 2011, 31 March 2010, 19 May 2009)

⁹¹¹ Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

⁹¹² Particularly considering R2P’s limited political traction as revealed in Chapter 4

essentially ‘forced’⁹¹³ to take a position on R2P because of the way Annan was skilfully able to lock R2P into the Summit negotiations. This thesis suggests that this, and the overall argument, is indeed, significant; not just because of what it tells us about potential future compliance with R2P but because the various elements of the argument presented here and previously, were identified, and reaffirmed, through the use of high-level interviews allied to an extensive analysis of reams documentary material. This is especially relevant considering the likelihood that the structured outcome argument will be regarded by some as a contentious, and overly negative, contribution to the R2P debate. But with existing frameworks of normative development, and specifically the NLC, limited in their ability to explain the complex micro-dynamics underpinning the construction of R2P, it is vital that alternative explanations are sought and considered. The empirical work presented throughout this thesis, and which culminates here, is an important step in this direction.

Part 1: Explaining the *How* and the *Why*: Setting the International Agenda and the Structuring of the Outcome

We have come to a fork in the road. This may be a moment no less decisive than 1945 itself...we must decide whether it is possible to continue on the rules agreed then, or whether radical changes are needed.⁹¹⁴

In the history of R2P, Annan’s ‘fork-in-the-road’ speech of September 2003 was critical to its development. The failure/breakdown of the collective security system in the case of Iraq, sent numerous international relationships into crisis, and for many, challenged the relevance and efficacy of the UN.⁹¹⁵ This was certainly how Annan saw it. His own inability to prevent the unilateralist march to war instigated a period of introspective strategic thinking about the nature of the threats facing the world, and the UN’s place within it.⁹¹⁶ The fork-in-the-road speech built on Annan’s ‘I’m a multilateralist’ speech to the GA a year earlier⁹¹⁷ which – according to those involved – was about ‘drawing a line in the sand’ in front of

⁹¹³ Bellamy (2009) *Responsibility to Protect*, p95

⁹¹⁴ Kofi Annan ‘Statement by the Secretary-General’, A/58/PV.7, 23 September 2003, p3

⁹¹⁵ See Carnegie Council (2004) ‘Challenges to the UN: Sir Kieran Prendergast, Joanne J. Myers’, 19 February 2004

⁹¹⁶ See NUPI (2006) ‘A fork in the road or a roundabout?’, p12 and interview with Kieran Prendergast (London, 6 October 2009)

⁹¹⁷ Kofi Annan ‘Statement by the Secretary-General’, A/57/PV.2, 12 September 2002, pp.1-3

President Bush⁹¹⁸, with Annan reasserting his ‘continuing belief in multilateralism and collective security’.⁹¹⁹ Whereas in 2002 the effort was directed at trying to make the argument for international legality and multilateralism, the 2003 speech shifted in emphasis. It was about recognising the fractures Iraq had opened-up and asking states ‘now where do we go?’⁹²⁰ The linkages are clear, thus, as Kieran Prendergast suggests, the 2002 and 2003 GA speeches should be read as intellectual ‘companion pieces’.⁹²¹ Once military operations began in March 2003, attention shifted towards the development of initiatives in response to the analysis of the situation Annan and his staff were developing. It was out of these processes that the idea of a High-Level Panel (HLP) was born and subsequently announced within his 2003 GA address.

According to Kieran Prendergast the initial idea for a HLP was Annan’s.⁹²² There is little doubt however, that the DPA, and Prendergast personally, were strongly supportive and heavily involved, in its establishment.⁹²³ The core impetus underpinning the initiative was ultimately provided by the fallout from the Iraq war, ‘stemming directly’ from very public and undignified fallout within the SC as the UK and US attempted to agree a follow-up resolution to 1441, and the subsequent use of force despite the failure to achieve this.⁹²⁴ There was a dual-effect to this outcome. On the one hand, it led Annan to regard the marginalization of the Organization⁹²⁵ and the divisions between member states Iraq exposed, as evidence that the international system was indeed in ‘crisis’ and that, as a result, ‘radical changes’ might be required.⁹²⁶ On the other, the assessment that ‘all the china [had] broke’ meant his focus turned towards publically articulating the problems – as

⁹¹⁸ Email from Edward Mortimer (19 October 2010), French Ambassador Jean-David Levitte would remark to Mortimer that this was ‘the speech of the Pope to the Emperor’ (*‘C’était le discours du Pape à l’Empereur’*)

⁹¹⁹ Interview with Kieran Prendergast (London, 6 October 2009), Prendergast would make the argument that the SG ‘could not be expected to lie down in front of the leviathan and be crushed by it’

⁹²⁰ Interview with Kieran Prendergast (London, 6 October 2009)

⁹²¹ Email from Kieran Prendergast (28 June 2011)

⁹²² Interview with Kieran Prendergast (London, 6 October 2009), the HLP is generally attributed as a Prendergast idea, either way, there is no doubt he played a central role in its establishment

⁹²³ Indeed, Prendergast had contributed the specific ‘fork in the road’ phrase by drawing upon his interest in the poetry of Robert Frost, interview: for a clearer understanding of the DPA’s role in establishing the HLP see NUPI (2006) ‘A fork in the road or a roundabout?’, pp.13-23

⁹²⁴ Email from Kieran Prendergast (28 June 2011), the debates relating to this period are extremely complex, and fortunately not relevant to this thesis

⁹²⁵ See Traub (2006) *The Best Intentions*, p204

⁹²⁶ ‘Transcript of press conference by Secretary-General Kofi Annan at UNHQ’, 30 July 2003, *Press Release*, SG/SM/8803 and ‘Statement by the Secretary-General’, 23 September 2003, pp.2-4

he saw them – and challenging member states to decide which direction they wished to take post-Iraq.⁹²⁷ The attention directed at the UN, however negative, could be opportunistically exploited to ‘make something of it’.⁹²⁸ Annan’s rhetoric and proposals, in addition to those of the HLP, would certainly provoke some cutting, and justifiable criticisms from the likes of Ed Luck, Mats Berdal, and Michael Glennon⁹²⁹, but in terms of R2P’s development, this dimension of the decision to respond is a vital explanatory factor underpinning the structured outcome argument, and specifically the HLP’s place in it. Regardless of the criticism, the HLP, and the way it subsequently fed into the WS process – not by design it should be noted – was the vital opportunity R2P needed. It was also a clear example of Annan seeking to exploit an unexpected window of opportunity to address a whole range of peace and security issues facing the UN.

An additional but related event, which personalised the processes surrounding the HLP endeavour, and which fuelled the sense of crisis, was the targeted bombing of the UN Mission in Baghdad in August 2003. The death of the UN Special Representative Sergio Vieira de Mello and 22 others not only had a great impact on the personnel of the Organization⁹³⁰, but brought into sharper relief difficult questions – which were already being raised prior to the attack – regarding the UN’s role in the world; its relationship with the US; and the judgement of Annan in determining that the political context required the UN to engage in the way it did, as early as it did.⁹³¹ Indeed, according to Prendergast – who was himself opposed to the UN rushing into Iraq – there was majority support for a UN role in post-war Iraq, with individuals like Jan Egeland and Mark Malloch-Brown (whose influence would grow rapidly from 2004 onwards) apparently viewing it as an opportunity to show that the UN was ‘relevant’ despite the potential pitfalls of deploying to the country without any clear authority to match the responsibilities which would inevitably come with UN presence.⁹³² Thus, though the processes for establishing the HLP were already in motion

⁹²⁷ Interview with Kieran Prendergast (London, 6 October 2009)

⁹²⁸ See Annan quoted in James Traub (2006) *The Best Intentions*, p204

⁹²⁹ Ed Luck (2005) ‘How Not to Reform the United Nations’, *Global Governance*, Vol. 11, No.4, pp.407-414; Mats Berdal (2005) ‘The UN’s Unnecessary Crisis’, *Survival*, Vol. 47, No. 3, pp.7-32; Michael Glennon (2005) ‘Idealism at the UN’, *Policy Review*, No.129, pp.3-13. These criticisms are picked up below

⁹³⁰ See Traub (2006) *The Best Intentions*, p195-197

⁹³¹ NUPI (2006) ‘A fork in the road or a roundabout?’, p16 and see Traub (2006) *The Best Intentions*, Ch11

⁹³² Email from Kieran Prendergast (28 June 2011), on the debates within the UN regarding its role in Iraq see Traub (2006) *The Best Intentions*, p189-191

prior to the bombing, the issue of relevance was a key theme throughout 2003, and in this backdrop the HLP would become the focal point for the UN's response.

Development of the Panel's terms of reference, and the selection of personnel to implement/apply them, was conducted during the summer of 2003. Its full title: the *High Level Panel on Threats, Challenges and Change*, may have been 'rambling and obscure' for some⁹³³, but rather aptly summed up, in simple terms, what it was meant to do. It was tasked with identifying, and analysing, existing and future *threats* and *challenges* to international peace and security, before suggesting the kind of *changes* which may be necessary to 'ensure effective collective action'.⁹³⁴ Two of the key reasons why the HLP would become such an important vehicle for the aspirations of R2P related directly to this mandate and to its final composition. The first of these was particularly significant, because despite an expansion of the mandate to include economic and social issues/institutions⁹³⁵, such issues were only to be covered 'to the extent that they have a direct bearing on future threats to peace and security'.⁹³⁶

This was certainly a compromise on the even narrower security focus Annan and Prendergast had initially envisaged.⁹³⁷ Nevertheless, key planks of the narrative were consistent throughout. Most notably, the 'fork in the road' speech – drafted to contextualize the initiative – was very clear in setting-out the kind of thematic issues Annan wanted the HLP to address.⁹³⁸ For instance, an early initiative by the DPA led to the presentation of a Prendergast-commissioned paper to the May 2003 SC Retreat which was addressing the theme 'Meeting the new challenges to international peace and security: current experiences'.⁹³⁹ This paper captured one of the central issues Annan would address in his '03 speech: namely that the challenge posed by the unilateral Bush Doctrine to the UN

⁹³³ These are David Hannay's words in (2008) *New World Disorder: The UN after the Cold War: an Insider's view*, London: IB Taurus, p215

⁹³⁴ UN High-level Panel on Threats Challenges and Change (HLP) (2004) *A more secure world: Our shared responsibility*, A/59/565, 2 December 2004, p119

⁹³⁵ NUPI (2006) 'A fork in the road or a roundabout?', p14-15

⁹³⁶ HLP (2004) *A more secure world: Our shared responsibility*, p119

⁹³⁷ NUPI (2006) 'A fork in the road or a roundabout?', p15

⁹³⁸ Email from Kieran Prendergast (28 June 2011)

⁹³⁹ NUPI (2006) 'A fork in the road or a roundabout?', p12, and Security Council (2003) 'Letter from the Permanent Representative of Pakistan, Annex: Assessment of the work of the Security Council during the presidency of Pakistan (May 2003)', S/2003/826, 20 August 2003, p16

Charter, and how the 'unique vulnerability' which had led the US to develop such an explicit policy could be addressed within the multilateral system, most obviously through the SC.⁹⁴⁰ Prendergast's idea was to outline the basis for a 'grand bargain' between the US and other UN states specifically on the issue of intervention, specifically in relation to preventive action. This idea essentially focused on the role of the SC: it meant on the one hand the US would agree to refer to it any issue it regarded as (potentially) threatening either its own interests, or international peace and security more generally. This would thus give the SC in effect 'first refusal' at agreeing forms of engagement. Of course, this is arguably how the system should work in any case. However, the other side of the bargain was that if the US proved willing to accept such an arrangement the rest of the SC would have to be more prepared to intervene (not just militarily, but in various forms) at a 'much earlier stage than they were used to'.⁹⁴¹ Perhaps unsurprisingly the idea achieved 'no traction whatsoever'⁹⁴², partly because of its questionable political realism; partly because the atmosphere post-Iraq was so 'poisonous'⁹⁴³ that engagement on such a contentious issue was highly unlikely from both perspectives; and partly because as the Summit approached, divisions between member states, and within the Secretariat, over where the thematic focus should lie, would dilute the potential for a much narrower examination of hard security issues.⁹⁴⁴

That said, though the HLP would in effect address issues relating to poverty, the environment, and offer recommendations for change – including, for instance, to ECOSOC – this subtle expansion ultimately did not matter to R2P. The reality was that its terms of reference, embedded in the contextual explanation provided by Annan's GA speech, helped ensure that its eventual report would *have* to address – in some way – the issue of intervention for humanitarian reasons, and the use of force more generally. The Panel members certainly would not (or should not) have needed any reminding of just how associated Annan had become with the issue of humanitarian intervention, and thereafter R2P. His support was widely understood. Even if he did not explicitly *direct* the Panel's

⁹⁴⁰ Interview with Kieran Prendergast (London, 6 October 2009), 'Statement by the Secretary-General', A/58/PV.7, 23 September 2003, pp.2-4

⁹⁴¹ Interview with Kieran Prendergast (London, 6 October 2009), email (28 June 2011)

⁹⁴² Interview with Kieran Prendergast (London, 6 October 2009), email (28 June 2011)

⁹⁴³ Interview with John Dauth (London, 25 May 2010), this poisonous atmosphere would transmit into the World Summit process

⁹⁴⁴ NUPI (2006) 'A fork in the road or a roundabout?', p15

discussions of specific issues towards specific outcomes⁹⁴⁵, he did express his hope that the HLP would look at R2P and specifically ‘the issue of when this intervention is legitimate, who decides under what rules, under what circumstances’.⁹⁴⁶ Furthermore, whilst introducing the Panel, in addition to specifically referring to hard security threats like terrorism, WMD, and pre-emptive unilateralism, Annan made clear that the SC ‘still’ needed to ‘engage in serious discussion of the best way to respond to threats of genocide or other comparable massive violations of human rights’.⁹⁴⁷ In this respect, despite obvious tension regarding the relative place for development issues throughout the process leading to the WS, it did not necessarily negatively impact upon the place for R2P. Indeed, as mentioned above, the divisions which became so apparent over the agenda for the WS were advantageous: the considerable number of other issues exercising and raising the hackles of many member states aided the path of R2P.

As far as Canadian officials were concerned the HLP was the ‘game-changer’ R2P needed. With their inability to get R2P discussed within the UN, an initiative of this kind was gratefully received.⁹⁴⁸ In terms of Canada’s follow-up strategy, the HLP would ‘assist’ the already significant on-going efforts⁹⁴⁹, but would also become a key focal point for, and a contributing factor leading to, an accelerated R2P-focused diplomatic strategy. This was particularly true as the potential ‘opportunity’ of the Summit became increasingly apparent.⁹⁵⁰ Evidence of just how important the HLP initiative was to Canadian efforts was apparent in the ‘extensive contact’ made during the Panel’s working process.⁹⁵¹ Embedded within the broader advocacy campaign previously detailed, officials and ministerial figures would engage in more direct lobbying of the Panel’s staff and members.⁹⁵² Unsurprisingly R2P would be a central element of this lobbying. Aside from the efforts of Allan Rock and his

⁹⁴⁵ Interview with David Hannay (London, 9 March 2010) and NUPI (2006) ‘A fork in the road or a roundabout?’, p28

⁹⁴⁶ PBS Frontline (2004) ‘Ghosts of Rwanda: Interviews: Kofi Annan’, 17 February 2004

⁹⁴⁷ ‘Statement by the Secretary-General’, A/58/PV.7, 23 September 2003, pp.2-4

⁹⁴⁸ Private interviews with Canadian officials (19 May 2009, 31 March 2010)

⁹⁴⁹ Interview with Allan Rock (Ottawa, 11 June 2009)

⁹⁵⁰ Private interviews with Canadian officials (19 May 2009, 31 March 2010), see below

⁹⁵¹ Standing Committee on Foreign Affairs and International Trade (SCFAIT) (2004) ‘Evidence of Mr. Ferry de Kerckhove (Director General, International Organizations Bureau, DFAIT) and Mrs. Marie Gervais-Vidricaire (Director General, Global Issues Bureau, DFAIT)’, *Evidence*, 17 November 2004

⁹⁵² This would take place on an individual and collective basis, Interview with Allan Rock (Ottawa, 11 June 2009)

staff based in New York, and direct contact between DFAIT officials and the HLP's staff, Canadian Prime Minister Paul Martin, and Foreign Affairs Minister Pierre Pettigrew would also be involved in this process of direct engagement.⁹⁵³ Indeed, in the case of Martin, his meeting with the HLP at Rock's New York apartment reflected the strength of his commitment to the agenda which began from the moment he became Prime Minister.⁹⁵⁴ The way Martin – as Rock describes it – 'put his shoulder to the wheel' on R2P, by urging the HLP to endorse R2P, and then subsequently by becoming personally involved in the diplomatic negotiations late into the 2005 process, was described by one central official as 'hugely important' to the development of R2P.⁹⁵⁵ Furthermore, Canada would submit a specific R2P thematic non-paper to the Panel; in addition to mobilizing a HSN submission which included the language of R2P (see below).⁹⁵⁶

The HLP's establishment was thus vitally important to Canadian efforts to build support for R2P. Why this was the case related to two aforementioned factors. Its mandate, and the way Annan presented the initiative, meant it represented an invaluable opportunity to try and 'haul [R2P] back onto the agenda'.⁹⁵⁷ Despite differences over the relative place for development issues – a problem which would become much more pronounced in relation to the Summit agenda – the HLP put in place a more dedicated process for considering and proposing solutions to address threats to international peace and security, a point which, because of its significance, shall be returned to below. Explaining why the HLP was a game-changer, and why it represents the first key stage in the structuring leading to the Summit outcome, however, requires closer analysis. With the lack of traction R2P had garnered post-ICISS, it certainly seemed to represent – at first sight – an excellent opportunity to reinvigorate a stalling process in the midst of a toxic, rapidly changing international context. However, the impetus this political context provided is, on its own, an insufficient explanation considering that, within this context, the political dynamics of the R2P's

⁹⁵³ (SCFAIT) (2004) 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire', 17 November 2004

⁹⁵⁴ Interviews with Allan Rock (Ottawa, 11 June 2009), Paul Martin (telephone, 27 January 2010) and Canadian officials (19 May 2009, 31 March 2010)

⁹⁵⁵ Interviews with Allan Rock (Ottawa, 11 June 2009) and Canadian official (31 March 2010)

⁹⁵⁶ Government of Canada (undated) 'Non-Paper on The Responsibility to Protect and the Evolution of the United Nations' Peace and Security Mandate: Submission to the UN High Level Panel on Threats, Challenges and Change', Human Security Network (HSN) (2004) 'Submission to the Panel on Threats, Challenges and Change'

⁹⁵⁷ Interview with Gareth Evans (London, 25 May 2010)

development offered minimal reason to see any medium-term change in the prospects of its discussion within the UN, let alone its agreement. Additionally, as previous reform efforts and Panel/Commission initiatives have shown, there are no guarantees that they can or will be successful – even when they command the strong support of the SG.⁹⁵⁸ Moreover, criticisms of the way the HLP was presented; the selection of panellists; the content of its final report; and the way expectations were raised and (mis)managed throughout the process leading to 2005 only serves to complicate the picture further. What made the difference for R2P was that the HLP emerged as a credible vehicle for propelling R2P forward even with these varied criticisms. In addition to the mandate, what really made the difference were two additional factors. The first relates to how the HLP was composed, which crucially included Gareth Evans, the second to the unintentional way the HLP became the principal ‘linking mechanism’⁹⁵⁹ for embedding R2P within the proposed package of reforms outlined in Annan’s 2005 *In Larger Freedom* Report.

The Panel consisted of sixteen ‘eminent’ members – five selected from each of the P5 states, with the remaining eleven regionally representative.⁹⁶⁰ Collectively, the high average age of the participants, and their relative outsider status, was a source of some unease.⁹⁶¹ Interestingly on the latter point, a group of UN Secretariat staff would establish, in June 2004, what they called the ‘Low-level Panel’.⁹⁶² Based on a network of seventy professionals, most from across the UN system, their emphasis was not directed at broad thematic issues but was focused on making the UN ‘function better’, or, as the final report put it, many UN staff wanted ‘management reform [which meant] a comprehensive overhaul of the inner workings of the Secretariat to make it a more effective and efficient organisation’.⁹⁶³ Though clearly a very different idea, the fact that one senior UN official

⁹⁵⁸ See Ed Luck (2000) ‘Blue Ribbon Power: Independent Commissions and UN Reform’, *International Studies Perspectives*, Vol. 1, Issue 1, pp.89-104

⁹⁵⁹ This is Gareth Evans’ phrase, Interview (London, 25 May 2010)

⁹⁶⁰ P5 representatives were Robert Badinter (France); David Hannay (UK); Yevgeny Primakov (Russia); Qian Qichen (China); Brent Scowcroft (US). The remaining 11 were: Chair Anand Panyarachun (Thailand); Joao Clemente Baena Soares (Brazil); Gro Harlem Brundtland (Norway); Mary Chinery-Hesse (Ghana); Gareth Evans (Australia); Enrique Iglesias (Uruguay); Amre Moussa (Egypt); Satish Nambiar (India); Nafis Sadik (Pakistan); Salim Ahmed Salim (Tanzania)

⁹⁶¹ These points were raised in interviews, see also: NUPI (2006) ‘A fork in the road or a roundabout?’, p17-19, Hannay (2008) *New World Disorder*, p211-14

⁹⁶² I am grateful to Kieran Prendergast for this initial information (email, 11 June 2010)

⁹⁶³ Private email and Low Level Panel (2006) *Practical Steps to a More Effective and Efficient United Nations*

would describe this – even if somewhat loosely – as a ‘rival’ to the HLP was indicative of differences of emphasis regarding the relative weaknesses of the Organization, how they should be addressed, and ultimately how well equipped the HLP was to address questions regarding the internal operational processes and culture of the UN.⁹⁶⁴ But from the perspective of the HLP’s broader thematic focus, and for R2P’s development more specifically, the actual ‘real world’ membership of the HLP was at least seen as credible.⁹⁶⁵ The actual work of the Panel is addressed in better detail elsewhere, but what is clear from those with close knowledge of the process, is that the intellectual power, persuasiveness and constant energy of Gareth Evans – strongly assisted by David Hannay⁹⁶⁶ – was fundamental to its endorsement of R2P. In this regard, Evans’ characterization of his role is not simply an expression of the kind of vainglory one might expect of a politician, but a fair and accurate statement of his contribution:

I fought tooth and nail to keep the...thing alive. I’m not big-noting myself but if I had not been on that panel you would not have heard any more about R2P.⁹⁶⁷

There is little reason to believe had Evans not been on the Panel he would have been proved incorrect in making this statement. Indeed, interviewees repeatedly emphasised Evans’ influence at this stage of R2P’s development. For instance, one Canadian official’s deconstruction of this process placed Evans firmly as a central figure in the linkages between the pre-HLP efforts, the HLP itself, and the subsequent Summit process. This explanation went as follows: the HLP changed the dynamics for R2P follow-up, in key part because of the crucial appointment of Evans; without his appointment, R2P would not have been endorsed in the Panel’s report; without this endorsement, R2P would not (in all

⁹⁶⁴ Moreover, this idea was formulated in the midst of the oil-for-food crisis which engulfed the UN from 2004

⁹⁶⁵ NUPI (2006) ‘A fork in the road or a roundabout?’, p18-19. It included former Prime Minister’s (Panyarachun, Brundtland, Primakov, Salim), Foreign Minister’s (Evans, Iglesias, Moussa, Qichen), and other former, or current senior officials, parliamentarians, diplomats and military figures (Badinter, Baena Soares, Chinery-Hesse, Hannay, Nambiar, Ogata, Sadik, and Scowcroft). Additionally the work of the HLP was supplemented by a highly praised Secretariat led by Stanford Professor Stephen Stedman as Research Director, and Bruce Jones as his Deputy – both of whom would remain involved in the subsequent In Larger Freedom and World Summit processes. For a complete list of the Panel Secretariat see HLP (2004) *A more secure world: Our shared responsibility*, p121. Stedman and Jones, and the Secretariat more generally, were praised in interviews by Kieran Prendergast (London, 6 October 2009), Allan Rock (Ottawa, 11 June 2009), David Hannay (London, 9 March 2010), Gareth Evans (London, 25 May 2010), and private (3 August 2010)

⁹⁶⁶ This is despite initial strong mutual personal hostility between the two men, private interviews (25 June 2010, and private)

⁹⁶⁷ Interview with Gareth Evans (London, 25 May 2010)

probability) have found a place in Annan's *In Larger Freedom* report and therefore would not have been part of the Summit negotiations.⁹⁶⁸ Clearly this mirrors aspects of the analysis, and the structured outcome logic expressed here, which includes the observation that Evans' appointment was a vital factor *within* this explanatory framework. The difference, however, is that this thesis takes this line of argument even further. The emphasis on micro-process, and on the structuring logic which derives from this approach, not only equips us to better understand the form of R2P agreed in 2005, but represents a wholly distinct explanatory framework to existing constructivist explanations of normative development and potential compliance.

Evans' role in the linkages between the stages was thus crucial, even with the post-HLP shift towards a state-driven process which would inevitably, and massively, diminish his role and influence. But focusing on the HLP, Canadian officials regarded Evans' appointment as their 'best bet' for realising a foothold for R2P.⁹⁶⁹ Indeed this would prove to be the case, and was demonstrative of just why the structured outcome logic helps to better explain the changed dynamics of possibility. Achieving consensus within the Panel on the issue of R2P was certainly not easy. It drew significant resistance and scepticism, and there was certainly no desire among other members to have the idea foisted upon them.⁹⁷⁰ Nevertheless, Evans' influence throughout the Panel's work was extensive, even to the point where he and Hannay would be closely involved in the final drafting/editing of the Report ahead of the December publication.⁹⁷¹ His ability to overcome resistance, and his powerful influence on R2P, essentially reflected the force of his personality. According to Hannay, the discussion and agreement of R2P was 'entirely driven' by Evans, so much so that he:

...never for one second allowed us to forget that it was over his dead body that this was not going to get into our report...[T]hat particular issue was his baby and he ran forward with it clasped in his arms and carried it over the finishing line; and great credit to him.⁹⁷²

⁹⁶⁸ Private interview (31 March 2010)

⁹⁶⁹ Interview with Allan Rock (Ottawa, 11 June 2009) and private interviews

⁹⁷⁰ Email from Edward Mortimer (28 May 2010)

⁹⁷¹ Based on numerous interviews and NUPI (2006) 'A fork in the road or a roundabout?', p26: Hannay would describe Evans as the 'intellectual power-base of the Panel' who 'threw off ideas like sparks from a circular saw cutting through stone and sometimes made people feel that that was what he was' in (2008) *New World Disorder*, p213

⁹⁷² Interview with Gareth Evans (London, 25 May 2010)

Such sentiment was mirrored by others.⁹⁷³ For instance, Allan Rock would describe Evans' contribution as 'absolutely outstanding' but unsurprising considering his 'brilliance' and 'supreme ability'.⁹⁷⁴ Similarly, Australian Ambassador John Dauth attributed his effectiveness to, among other things, 'sheer energy' and an 'ordered mind'.⁹⁷⁵ The importance of Evans at this point of the process is, however, about more than the endorsement of R2P. Rather, his appointment; the chance to persuade his fellow panel members to back his conviction; the opportunity and platform which the HLP provided, all speak directly to Annan's role in structuring the first stage leading to the unexpected outcome of R2P. It is certainly the case that Evans, as a former Australian Foreign Minister and at the time an activist President/CEO of the respected International Crisis Group, had a profile and reputation beyond R2P. But the fact that he was so closely and prominently associated with R2P *had* to be a key factor in the eventual decision to appoint him. If the issue of intervention mattered so much – as it clearly did to Annan – there was arguably no one better equipped to speak on it, and no one better equipped to speak to a proposed solution which Annan was on record as strongly supporting. Even without clear evidence of a direct strategy to appoint Evans, it is undeniable that Annan not only established a vehicle with an appropriate mandate for addressing R2P, but loaded it with the individual most associated with it.

In setting the stage for the structured outcome argument in Ch4 the HLP was described as having an 'agenda-setting vehicular role'. Describing it as such served a dual-purpose in accounting for the role it played. On the one hand, the HLP represented the vehicle for Annan's broader effort to 'start a debate' in order to move beyond the divisions of Iraq.⁹⁷⁶ Accordingly, the HLP was tasked to focus on possible proposals for change with the intention to set the basis for discussion within the GA the following September.⁹⁷⁷ Quite

⁹⁷³ See also NUPI (2006) 'A fork in the road or a roundabout?', p26, 29

⁹⁷⁴ Rock's actual quote reads: 'Gareth is brilliant, supremely able, and you don't have to explain to him what to do or how to do it, he was absolutely outstanding', interview (Ottawa, 11 June 2009)

⁹⁷⁵ Interviews with Allan Rock (Ottawa, 11 June 2009) and John Dauth (London, 25 May 2010) who was once Chief of Staff to Evans during his time as Australian Foreign Minister

⁹⁷⁶ Interview with Kieran Prendergast (London, 6 October 2009)

⁹⁷⁷ The September 2004 timeframe was clearly expressed during Annan's announcement of the HLP in 'Statement by the Secretary-General', 23 September 2003, pp.2-4, see also Hannay (2008) *New World Disorder*, p216

clearly this was always intended as an agenda-setting initiative. On the other hand, the description was also a purposeful statement designed to emphasize the HLP's – albeit unintentional – function as the key mechanism linking it to an *existing* process which was to culminate with the 2005 Summit. When the decision was made to go ahead with the initiative in mid-2003 there was apparently little clarity about end-goals. As the Norwegian Institute of International Affairs revealed in their project on the reform process, the 'process [itself] was more important'; setting the agenda 'most important'.⁹⁷⁸ In a change which would greatly benefit R2P, and suit the thematic priorities of Annan more generally, the publication of the HLP report was pushed back to December 2004. The already tight time-frame for publication was certainly one reason for this shift. But ultimately Brent Scowcroft's acute observation that publishing in the middle of an American election-campaign would have been politically misguided was the key factor which initiated the change.⁹⁷⁹ Though apparently small, the amended later publication date proved to be a fundamental connect in the overall process, and why the HLP was such a vital linking-mechanism in the structured outcome of R2P. It meant the publication of the HLP report fed into pre-existing processes which had emerged out of the Millennium Summit Declaration.⁹⁸⁰ In fact, the HLP report did not just feed into these pre-existing processes, but actively altered and shaped them.

To understand why this was the case, it is necessary to be aware of the initial expectations for the "World Summit", and of the preparatory processes surrounding the formal decision of May 2004 to convene it.⁹⁸¹ The follow-up processes began in December 2000 when the GA requested annual reports by the SG directed at tracking progress 'towards implementation of the Millennium Declaration'. Crucially, the GA also requested that these reports be supplemented by a more 'comprehensive' quinquennial report of the SG, the first of which would be published in 2005.⁹⁸² In July 2002, follow-up mechanisms were further strengthened with the establishment of the UN Millennium Project tasked with developing a

⁹⁷⁸ NUPI (2006) 'A fork in the road or a roundabout?', p21

⁹⁷⁹ Hannay (2008) *New World Disorder*, p216: though as Edward Mortimer points out, there was some doubt about whether they could actually complete the report within the original timescale, email (29 August 2011)

⁹⁸⁰ *United Nations Millennium Declaration*, A/55/L.2, 8 September 2000

⁹⁸¹ UNGA (2004) 'Follow-up to the outcome of the Millennium Summit and integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic and social fields', A/RES/58/291, 6 May 2004

⁹⁸² UNGA (2000) 'Follow-up to the outcome of the Millennium Summit', A/RES/55/162, 14 December 2000

‘concrete action plan for the world to achieve the MDGs’.⁹⁸³ The final report of this Project would be presented to the SG in early 2005 and represent a key document for the development of Annan’s comprehensive five-year report. The final piece of the jigsaw – namely the Summit itself – was agreed during 2004. Step one was taken in May with the decision that the Summit would open the 60th Session of the GA, and would operate at the level of Heads of State and Government. Additionally, its thematic scope was also specified with agreement that this ‘major event’ would ‘undertake a comprehensive review of the progress made in the fulfilment of all the commitments contained in the Millennium Declaration, including the internationally agreed development goals and the global partnership required for their achievement, and of the progress made [towards] implementation...of the outcomes and commitments of the major UN conferences and summits in the economic, social and related fields, on the basis of a comprehensive report...by the SG’.⁹⁸⁴ The second step was the December 2004 agreement of the ‘modalities, format and organization’ of the Summit. This explicitly joined Annan’s comprehensive report to the process leading to the Summit by agreeing that it would provide the basis for the state negotiations after its publication in March 2005.⁹⁸⁵ To put it simply, the World Summit was primarily crafted as a 2000+5 *review* of the Millennium Declaration. However, with the changed political context, combined with the specific processes surrounding the HLP, the timeline leading to the Summit and the nature of the endeavour were altered in significant ways.⁹⁸⁶

There is no doubt the Millennium Declaration was a significant document which – despite understandable focus on the MDGs – covered an undoubtedly broad thematic agenda. Indeed, as Annan’s 2001 *Road map* for its implementation testified, the agenda was defined by seven key areas, including: ‘Peace, security and disarmament’; ‘Human rights, democracy

⁹⁸³ The Millennium Project was commissioned by Annan in July 2002, and was headed by Professor Jeffrey Sachs for details see: <http://www.unmillenniumproject.org/index.htm>

⁹⁸⁴ UNGA (2004) ‘Follow-up to the outcome of the Millennium Summit’, A/RES/58/291, 6 May 2004

⁹⁸⁵ UNGA (2004) ‘Modalities, format and organization of the High-level Plenary Meeting of the sixtieth session of the General Assembly’, A/RES/59/145, 17 December 2004

⁹⁸⁶ As was the name of the event which was formally described at the ‘High-level Plenary Meeting of the General Assembly’ but which would be labelled as the ‘World Summit’ in accordance with Mark Malloch-Brown’s strategy of ‘changing the conversation’, see below

and good governance’; and ‘Protecting the vulnerable’.⁹⁸⁷ However, the Millennium Declaration was reasonably understood by many as a document primarily focused on development, and particularly symbolic for its commitment to the MDGs. As such, it was also a reasonable expectation that any ‘review’ of what was after all just a *9-page* declaration would have focused on tracking implementation based on assessments of current progress towards what was agreed. But with the changed HLP publication date the unintended consequence was that its report would now feed into the processes summarised above – explicitly so once Annan recognised, and moved to exploit the opportunity. The dedicated follow-up processes from 2000 would merge into the dedicated HLP processes which began in 2003. Thus, two distinct, and initially separate, processes would consolidate in a way that very few could have expected. The peace and security-focused agenda of the HLP would both be propelled by ‘piggybacking’ onto these pre-existing processes, but would simultaneously alter the form and the objectives leading to what was now the same final destination. Practically speaking this meant the HLP report, *with* the report of the Millennium Project, would provide the basis for Annan’s comprehensive report in March 2005. Resultantly, this report, titled *In Larger Freedom*, was anything but a straightforward ‘review’ of the Millennium Declaration.⁹⁸⁸ On the contrary it would embrace almost all of the HLP’s proposals, including most importantly an endorsement of R2P. Thus, the agenda for the Summit was comprehensively expanded, the timelines redefined.

Despite provoking concern amongst the membership Annan’s willingness to exploit the unplanned changes to the design and structure of the process leading to the now World Summit, was a central element in the structured outcome of R2P. Justifying his incorporation of the HLP into his comprehensive follow-up report, Annan was clear that, in his view, a ‘point-by-point report on the implementation of the Millennium Declaration would...miss the larger point, namely, that new circumstances demand that we revitalize consensus on key challenges and priorities and convert that consensus into collective

⁹⁸⁷ In addition to ‘Development and poverty eradication: the MDGs’; ‘Protecting our common environment’; ‘Meeting the special needs of Africa’; and ‘Strengthening the UN’, see *Road map towards the implementation of the United Nations Millennium Declaration – Report of the Secretary-General, A/56/326*, 6 September 2001

⁹⁸⁸ Ref Herein “ILF”

action'.⁹⁸⁹ Annan had a point. As Ch4 demonstrated, with 9/11 and Iraq the international political context had changed dramatically. In such circumstances, it was almost inevitable that a review of the Millennium Declaration would be affected and shaped by this new context. It could not be conducted apolitically, particularly if Annan was right to suggest that these major events had 'upset the consensus behind the...Declaration'.⁹⁹⁰ That said, consistent with the above-referenced criticisms of Luck, Berdal et al, it is worth noting that the approach and rhetoric Annan and other senior staff adopted in relation to the Summit, would be hugely problematic – not just for member states who wished to focus more narrowly on development issues, but also from the perspective of historical and political context. Throughout the multilateral consultations the G77 and NAM would question the basis of Annan's approach, and argue against what they regarded as a dilution of the development agenda.⁹⁹¹ In a similar vein, as the process moved forward to consultations over *In Larger Freedom*, the NAM also endorsed the importance of development, arguing that, although it noted Annan's justification, it remained committed to the view that development issues should 'remain the centrepiece of the deliberations'.⁹⁹²

Meanwhile, once the process leading to the Summit became more integrated so the rhetoric used to frame it became increasingly ambitious. For instance, Annan would describe it as a 'rare' and 'once-in-a-generation opportunity'⁹⁹³ not least because:

[t]he UN must undergo the most sweeping overhaul of its 60-year history. World leaders must recapture the spirit of San Francisco and forge a new world compact to advance the cause of larger freedom'.⁹⁹⁴

⁹⁸⁹ Annan (2005) *In larger freedom: Towards development, security and human rights for all*, A/59/2005, 21 March 2005, p4

⁹⁹⁰ Kofi Annan (2004) 'Secretary-General, in message to meeting of Nobel Peace Laureates, seeks their support in efforts to confront current global challenges', *Press Release*, SG/SM/9584, 10 November 2004

⁹⁹¹ For instance, during informal discussions of the HLP report, the G77 would criticise it for diminishing the importance of development; question the 'conceptual underpinnings' of the Report; and attack the 'selective' approach whereby development issues were only 'examined...insofar as they affect or influence international peace and security', see 'Statement by Ambassador Stafford Neil, Permanent Representative of Jamaica to the UN and Chairman of the G77', 27 January 2005

⁹⁹² 'Statement by Mr. Rastam, Malaysia, on behalf of the NAM', 6 April 2005, A/59/PV.85, see also Traub (2006) *The Best Intentions*, p373

⁹⁹³ See e.g. 'September 2005 summit offers 'once-in-a-generation' chance for UN reform – Annan', 21 June 2005 and 'Better standards of life in larger freedom' now within reach, Secretary-General says in commemoration of 60th anniversary of UN Charter, *Press Release*, SG/SM/9963, 27 June 2005

⁹⁹⁴ Kofi Annan (2005) 'In Larger Freedom: Decision Time at the UN', *Foreign Affairs*, Vol. 84, No.3, p66

Such rhetoric, while consistent with the fork-in-the-road speech, was purposefully designed to ratchet-up the Summit's importance. The reference to San Francisco in particular was made more than once, and testified to the increasingly powerful influence of Mark Malloch-Brown who was appointed Annan's Chef de Cabinet in January 2005.⁹⁹⁵ As Prendergast recalls, Annan's call for a 'new San Francisco moment' was a 'Malloch-Brown-ism' which he never liked, not least because it was 'never going to happen'.⁹⁹⁶ Nevertheless, it was part of Malloch-Brown's overall strategy designed to change the conversation and to ratchet-up expectations. At the heart of this strategy were Annan's ILF report and the Summit itself. Indeed, in addition to the San Francisco symbolism the very name 'World Summit' was introduced by the Secretariat in order to package the ambition and importance of the agenda⁹⁹⁷. There is certainly strong reason to question the extent to which expectations were raised, and the way the process was framed. Invoking San Francisco was admirable; it was the UN's 60th anniversary year after all. But ultimately calling for it to be repeated in 2005 was not only a 'gross overstatement'⁹⁹⁸ which oversold the problems facing the UN – especially when we consider (and contrast with) the political context of 1945 – but was also likely to expose the Organization further by building-in unrealistic expectations from the outset.⁹⁹⁹

However, the point behind identifying the above criticisms is not about adding another voice to them six years on. In fact, contrary to an isolated analysis of the process, considering the *source* of these criticisms specifically in relation to the dynamics of the emergence of R2P, leads to a surprising alternative perspective. That is, the way the agenda for the Summit was defined, and the way Annan sought to ratchet-up expectations, actually

⁹⁹⁵ The appointment of Malloch-Brown, and the other changes to Annan's senior staff was not a clean or happy process see Traub (2006) *The Best Intentions*, pp.285-304

⁹⁹⁶ Interview with Kieran Prendergast (London, 6 October 2009): the phrase was first used by Malloch-Brown in Judith Miller (2005) 'Annan Planning Deep Changes in UN Structure', *The New York Times*, 17 January 2005, by Annan in 'In Larger Freedom: Decision Time at the UN', p66 and Tharoor in 'UN celebrates 60th birthday in San Francisco with eye on future reform', *UN News Service*, 24 June 2005

⁹⁹⁷ Email from Edward Mortimer (29 August 2011)

⁹⁹⁸ This phrase is lifted from Ed Luck's criticism of the 2003 GA speech, and especially the fork-in-the-road extract above because it seemed equally appropriate here: (2005) 'How Not to Reform the United Nations', p407

⁹⁹⁹ Though, as I point out in Part 2, one can understand the logic pursued by Malloch-Brown in particular. The sense of crisis engulfing the UN was intense, and as result one should not merely focus solely on the criticism of the San Francisco reference. Malloch-Brown's strategy to move the UN beyond crisis and get member states to agree new steps towards reform, largely worked

represented key enabling factors in the structured outcome explanation. Rather than damaging R2P's prospects, they aided R2P's path in two principle ways: 1) by contextually reaffirming the importance of the HLP and its changed publication date; and 2) by offering additional evidence as to how the structuring/structural elements of the process helped propel R2P towards agreement. For instance, that the HLP and ILF reports would provoke accusations of a Western security-driven bias was demonstrative of just how effective Annan was in ensuring that the thematic impetus for the establishment of the HLP became an essential part of the Summit negotiations. Even though the timeline change was initially unintentional, Annan's exploitative actions meant it became the principal vehicle for transmitting R2P from effective political stagnation to a live and active proposal in one of the most ambitious reform agendas the UN had ever embarked upon. Once the HLP endorsed R2P, Annan locked it into the Summit negotiations via ILF, doing so in the midst of further accusations that this report failed to reflect the input and positions of member states as expressed during the HLP consultation stage.¹⁰⁰⁰ As Annan remarked during its launch, ILF represented the 'programme of action' he had 'been working towards over the past two years'.¹⁰⁰¹ In other words the Summit was explicitly embedded in a post-2003, post-Iraq, timeline.

Thus, the initial objectives for the Summit were not just altered; they were transformed. Few could have predicted the integration of processes which took place. Considering the lack of member state engagement with R2P prior to 2005, and considering the fact that the task of defining the process described – and the agenda thereof – was so heavily the result of non-state input, the reasoning behind the structured outcome logic should be clear to see. R2P's political prospects were fundamentally transformed by the structuring of a process which in key respects was out of the hands of member states until negotiations commenced in April '05. Indeed, R2P's subsequent agreement was ultimately dependent upon the factors outlined. Had the Summit – and Annan's comprehensive report – proceeded as a 'mere review'¹⁰⁰² of the Millennium Declaration, it is not a stretch to argue that the political dynamics which had so far defined the development of R2P would *not* have

¹⁰⁰⁰ The HLP Report consultations prior to ILF took place from December 04 to February 05

¹⁰⁰¹ Kofi Annan (2005) 'Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters', *Press Release*, SG/SM/9772, 21 March 2005

¹⁰⁰² Annan (2005) 'Transcript of Press Conference', *Press Release*, SG/SM/9772, 21 March 2005

changed as they did.¹⁰⁰³ Moreover, had the ownership of the process been driven by states much earlier, it is similarly not a stretch to argue R2P would *not* have been agreed in 2005.

Additionally, the way Annan framed the Summit was equally significant. It did not greatly matter to R2P if Annan's invocation of San Francisco was misguided or overstated. Because such rhetoric was designed in accordance with the reform agenda Annan was putting in motion, it had the effect of building-in a sense of scale, significance, and other related pressures which filtered into the specific member state negotiations. It is true that once this stage began, member states took greater ownership of the process, and that, in any case, Annan's ability to actively engage was severely constrained by a series of scandals.¹⁰⁰⁴ However, the overall strategy outlined to this point – particularly from 2005 – provided the negotiating structure which conditioned, and influenced, the way states interacted and negotiated the Summit outcome. The expectations were undeniably high; the scale of the ILF proposals unprecedented. Indeed, the Summit process would cover an agenda far more than a 'review' ever would have, and was further pronounced by Annan's call that member states discuss his reforms as a 'package' (see below). It is certainly true, as one official commented that stakes as high as they were in 2005 can work for and against you.¹⁰⁰⁵ This was true here. With expectations so high there was always going to be a sense of deflation at the outcome, not least because of limitations in what states could reasonably achieve in such a short period of time. As a result a number of issue areas were widely, and rightly, seen as political failures.¹⁰⁰⁶

Alternatively, numerous breakthroughs were made which otherwise would not have been had the bar been set much lower. In terms of the *outcome* of R2P, such pressures worked very much in its favour. The pressure to achieve an overall outcome; the limitations on time;

¹⁰⁰³ As captured in Chapter 4

¹⁰⁰⁴ This was confirmed in numerous interviews (see footnote 1142), Annan was engaged in the process but to a far less extent than might have been expected, the oil-for-food scandal in particular drained the resources of the SG and his close team

¹⁰⁰⁵ Private interview (3 August 2010)

¹⁰⁰⁶ Foremost among these were the areas of terrorism and especially disarmament and non-proliferation: although not an issue which can be addressed here there is a more fundamental question about the utility of summitry as an approach for realising multilateral agreement, particularly when the agenda is so considerable. It is arguably unrealistic, and undesirable, to attempt to achieve political agreement in such important areas in this way

combined with considerable constraints on the resources states were able to commit to each individual proposal, all directly impacted upon the way R2P was negotiated. They, therefore, represent important tenets of the structured outcome explanation of how/why R2P was agreed. In the overall picture, R2P was simply less important and less significant than either other individual proposals or the thematic direction of the package overall. Certain states were able to prioritize R2P above other issues, not only because other states had their own priorities, but also because the overall developing-development fracture exposed by the HLP and ILF continued as a major source of general across-the-board antagonism and antipathy. This dynamic, for instance, meant the relative place of development (or rather the perceived dilution of its centrality) was a much more 'controversial' issue for the G77 (and NAM) than R2P was singularly.¹⁰⁰⁷

Indeed, R2P needed the development dimension of the negotiation package. Why? Because it diffused the focus and resources of states in a way that the space available for state advocates to push it towards agreement was greater than it otherwise would have been. As one centrally placed P5 official explained, had the balance of the negotiations moved too far towards peace and security, or had the process been directed from the outset towards a peace and security focused document (i.e. human rights, intervention, WMD, terrorism, disarmament), the sheer number of 'redlines' would have meant 'nothing would have come of it'.¹⁰⁰⁸ Of course, from a Western (and Annan's) perspective, it would have been politically untenable not to address such issues, particularly post-Iraq. There would have been a gaping 'hole' in the Summit outcome, symbolic of a collective failure to 're-centre' the international community had matters clearly central to the work of the UN, and to the priorities of many states, not been addressed.¹⁰⁰⁹ But, even though there was a feeling development issues had been comprehensively dealt with during the G8 meeting in Gleneagles, there was also recognition that any agreement in the peace and security area was dependent upon engaging more fully with the G77.¹⁰¹⁰ Particularly, as their concerns

¹⁰⁰⁷ Private interview (3 August 2010)

¹⁰⁰⁸ Private interview (3 August 2010)

¹⁰⁰⁹ Private interview (3 August 2010): That said, I do not wish to fall into the misguided trap that non-western, or developing states are not, or were not interested in security issues. Rather this is about the relative balance of the agenda being negotiated, and how development concerns relate to harder security issues

¹⁰¹⁰ See: Group of 8 (G8) (2005) *The Gleneagles Communiqué*, Gleneagles, 7 July 2005

over development were as much about process as they were about policy.¹⁰¹¹ So, an agenda overly focused on peace and security would have meant a much more intensive and difficult negotiation of the relevant issues, in which R2P would have red-lined and negotiated in a much more profound way.

However, somewhat paradoxically, within this broad dynamic R2P also benefited from the ambitious scope of the peace and security proposals. Building on the HLP, ILF included a proposed Human Rights Council (HRC); a new Peacebuilding Commission; SC reform (including expansion); proposals relating to disarmament and non-proliferation; agreement on principles for the use of force; a call for agreement on a process leading to a comprehensive convention on terrorism; as well as R2P.¹⁰¹² R2P was certainly a contentious issue, but by comparison was less problematic, less technical, less 'controversial'.¹⁰¹³ This was partly because of the way it was drafted, and sold to sceptics, but also related to the specific nature of the other issues.¹⁰¹⁴ The never-ending issue of SC reform was an important factor. It drained and distracted the 'attention' of a many states until it began to diminish in importance around mid-August when the possibility of agreement dissipated.¹⁰¹⁵ However, as the negotiations moved towards their most critical – and crisis-laden – phase from August onwards, the most demanding issues would become subject to more dedicated political negotiation.¹⁰¹⁶ Accordingly, the above-mentioned core group (CG) – introduced by GA President Jean Ping in response to a breakdown in the facilitator-driven process in late August – focused primary on seven 'priority' areas¹⁰¹⁷: development; UN secretariat reform; establishment of a HRC; establishment of a Peacebuilding Commission; disarmament and

¹⁰¹¹ Private interviews (3 August 2010, 13 August 2010, 22 October 2010): instance, the G8 was also regarded as an exclusionary not open process which exacerbated the previously mentioned problems relating to how development should be dealt with in the negotiations. Indeed, despite hope the G8 text could be 'cut and paste' into the outcome, this was simply not possible

¹⁰¹² For a summary of the proposals see the Annex 'For decision by Heads of State and Government', p77-87

¹⁰¹³ Private interviews (3 August 2010, 13 August 2010, 22 October 2010)

¹⁰¹⁴ Part 2 deals with this aspect of the negotiations

¹⁰¹⁵ Interview with Dirk Jan Van den Berg (telephone, 18 October 2010), also based on an FCO E-gram which revealed that towards the end of August the issue of SC enlargement was a 'diminishing distraction': 'E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP', dated 22 August 2005. Germany in particular was singled out as contributing 'almost nothing' to the negotiations because of their SC ambitions, private interviews (3 August 2010, 13 August 2010)

¹⁰¹⁶ The reasons for this breakdown are included in Part 2

¹⁰¹⁷ The effect of the core group on the R2P specific negotiation is documented in Part 2, however, the way the process was structured is highly relevant to the overall structuring of the process, and specifically the factors relating to scale and thematic focus

non-proliferation; terrorism; and R2P.¹⁰¹⁸ It is important that R2P was identified as one of the most problematic or ‘sensitive’ issues.¹⁰¹⁹ But equally important was the fact it was just one of *five* peace and security related items, in addition to the already discussed development issue. This is because within this cluster each area did not demand the same level of attention, nor the same degree of high-level/ambassadorial engagement. Of the five, R2P was well down the scale of importance. For instance, the HRC may have commanded the support many states, including the US, but was also a major bone of contention for many others. Like the Peacebuilding Commission, even *in principle* agreement was complicated by questions relating to future representation, and the scope of their mandates considering continuing aversion to further infringements on national sovereignty. As Dirk Jan van den Berg recalls, it was one of the ‘bigger issues’ he believes helps to explain how R2P proceeded through the negotiations.¹⁰²⁰ It was one of China’s ‘major concerns’¹⁰²¹, and subject to a concerted effort by a group of states set on ensuring its dilution¹⁰²². As a comparison of the final outcome document with the previous drafts (e.g. on the 6 and 12 September) shows, the volume and extent of changes made during the final month are clear to see.¹⁰²³ Indeed, its inclusion was only finally agreed – along with text on terrorism and the Peacebuilding Commission – in the very final chaotic stages of the process.¹⁰²⁴

Similarly, terrorism – a major priority of key Western countries – drained significant time and energy throughout without actually overcoming fundamental differences.¹⁰²⁵ Even more problematic were the negotiations around non-proliferation and disarmament. John Dauth, the Australian ambassador with the misfortune of having to lead the discussions in this area, could do nothing to prevent the ‘destruction’ of the **entire** section on

¹⁰¹⁸ UN (2005) ‘Daily Press Briefing by the Office of the Spokesman for the SG’, 30 August 2005

¹⁰¹⁹ Private interview (3 August 2010)

¹⁰²⁰ Interview with Dirk Jan van den Berg (telephone, 18 October 2010); one centrally involved UK official also referred to the HRC in this way, email (25 July 2011) and private interview (3 August 2010)

¹⁰²¹ Private interview with Canadian official (31 March 2010)

¹⁰²² This group included Russia, Egypt, Pakistan and others, see Traub (2006) *The Best Intentions* p386-387

¹⁰²³ Boxes 5.3 to 5.10 provide visual representations of the changes which took place across the entire process

¹⁰²⁴ By the end of the negotiations, the core group was meeting in the basement of the UN. As one ambassador described, text on these issues ‘came out of the bowels of the UN’ very late on (25 June 2010)

¹⁰²⁵ Private interview (25 June 2010); see Traub (2006) *The Best Intentions*, p385. Moreover, in an indication of just how ‘intensely personal’ the process became, a provocative statement by the UK ambassador led to a demand by Egypt that the meeting in question should be adjourned because of his ‘insult’, private interviews

disarmament and non-proliferation.¹⁰²⁶ There was no willingness by the states most involved in the disagreement (US, Egypt, Pakistan, Cuba, Venezuela, Iran) to avoid a head-on crash.¹⁰²⁷ To give a sense of just how damaging the final month was for this part of the text, it is worth illuminating how it changed between mid-August and the 14 September. Whereas on 5 August there were two-pages of text, by the 6 September the section was heavily revised, and almost entirely bracketed.¹⁰²⁸ In the 12 September drafts the section was empty save for its title, which was then subsequently removed from the final draft document on the 13th. In other words, during the most intensive period of the negotiations – during which the CG was specifically introduced to finalise key sections of the outcome text – the entire section was completely removed. Dauth’s description that this was ‘extraordinary’ hardly seems to do justice to what unfolded.¹⁰²⁹ But from the perspective of R2P, these set of issues help to understand its unexpected progression. R2P was not one of the issues which demanded much ‘airtime’¹⁰³⁰ even with its identification as one of seven priority issues. As Dauth observed:

...the focus was elsewhere. In the end we got R2P through because people were more exercised about other issues, like arms control and disarmament, like, in particular, issues relating to development assistance.¹⁰³¹

Moreover, although R2P would certainly undergo important changes throughout the process – including numerous during the final week – these would by no means be on the same level as changes made to other areas/issues. Without wishing to labour the point, with the agenda as it was, and the negotiations subsequently as stretched as they were, R2P’s relative importance diminished greatly. Indeed, this point was well made by one centrally placed P5 official whose observations not only highlighted how the HRC and disarmament issues were the two most difficult issues of negotiation which drained the most time and

¹⁰²⁶ Private interview (25 June 2010) and interview with John Dauth (London, 25 May 2010)

¹⁰²⁷ Interview with John Dauth (London, 25 May 2010), see also Traub (2006) *The Best Intentions*, p382: on this point Kieran Prendergast would describe the Summit process as like a ‘game of chicken between the radicals on both sides in which neither side was very worried about a head on crash’, (2006) ‘Interviews: Sir Kieran Prendergast’, *The Fletcher Forum of World Affairs*, Vol. 30, No. 1, p69

¹⁰²⁸ Bracketing denoted areas of the text not subject to agreement, or represented text which had been included at the request of an individual member/group of member states. For a sense of just how littered the documents would become it is worth reading through the draft documents from 5 August onwards

¹⁰²⁹ Interview with John Dauth (London, 25 May 2010)

¹⁰³⁰ Private interview with UK official (22 October 2010)

¹⁰³¹ Interview with John Dauth (London, 25 May 2010)

energy, but also pointed to the overall effect of these issues, and the ‘wider context’ more generally, on how R2P was actually negotiated. Because of the factors outlined, R2P was ‘certainly not one of the key dossiers which attracted a lot of high level attention’.¹⁰³² In practice, this meant that despite existing as a priority issue for the CG, its negotiation within that forum – when constituted at ambassadorial level – was extremely limited.¹⁰³³ Rather, R2P was dealt with predominantly at working-group/sub-group level, where its membership was more mixed; its work driven more by officials (desk officers, legal advisors, section Heads/Counsellors). Indeed, throughout the process R2P would be negotiated according to groupings of ‘variable geometry’.¹⁰³⁴ Allan Rock would almost always be present, as on occasions would other ambassadors during the facilitation and CG stages of the process. But in large part R2P would be shaped to a far greater degree by individuals below this level. Of course, variation in high-level attention should not imply that there was not real engagement with R2P, or that Part 2’s focus on showing the form of R2P that emerged, and for what reason, is not a hugely important part of understanding its evolution. In fact, Part 2 shows how this approach really did shape its form; how R2P required considerable changes; and thus should provide a clearer picture of how we can better understand its meaning. In most cases, those involved in negotiating R2P were committed to arriving at some form of consensus, or ensuring it was kept extremely narrow. Indeed, the ‘extensive’ nature of the discussions – particularly during the facilitator stage – are illuminated by the ‘serious compromises’ and linguistic complexity evident in the final paragraphs.¹⁰³⁵ Had there not been real engagement, the kind of changes made, and framing strategies deployed, would not have been as prevalent as they were.¹⁰³⁶

That said, it is almost undeniable that the scale of the agenda and R2P’s diminished place within it, the diffuse variations in state priorities outlined, and the general, and high-level, preoccupation with other issues, all helped insulate R2P’s path through the negotiations. Had R2P been part of a smaller, more focused, agenda, it would likely have been subject to

¹⁰³² Private communication with UK official (25 July 2010)

¹⁰³³ This point will be fleshed out in more detail in Part 2, but is backed up by interviews

¹⁰³⁴ Private email from Canadian official (1 November 2010)

¹⁰³⁵ Private interviews with government officials (31 March 2010, 3 August 2010, 13 August 2010)

¹⁰³⁶ Though as Part 2 picks up, and as mentioned in the opening to this chapter, during the facilitation stage proposals on individual items were often included at the request of one or a few member states. So the rolling texts are certainly important, but were by no means necessarily based upon consensus

much greater high-level scrutiny, and would have found its prospects for agreement much more laden with obstacles. In 2005, R2P was less prone to the kind of intense political attack which could have affected it in a more fundamental way. Moreover, even with daily interactions and discussion over the textual formulation, because states were stretched so thinly, their ability to become singularly exercised by R2P was massively reduced. Canada was able to make a choice to prioritize it above almost all else, but for those opposed or sceptical of an idea such as R2P, they also had to contend with similarly problematic proposals like the HRC and the Peacebuilding Commission, and working towards maintaining the central place of development in the overall package.¹⁰³⁷ Many states were forced to make their own choices about how they were going to commit their limited resources, and which issues they were going to prioritize in order to make use of any political capital they might have been able to call upon. In this respect, the fact there was often 'divisions of labour' in how many states sought to negotiate issues – not surprising considering the number of 'parallel discussions' that were continually in play¹⁰³⁸ – one should not have been surprised that R2P would find itself under greater scrutiny and more open to question post-2005. Indeed, this is especially true considering the description by two officials, from separate countries, that the almost daily grouping where R2P was discussed was primarily constituted of 'interested' nations or delegations.¹⁰³⁹ Of course, being 'interested' does not imply interest in a positive sense, it can equally mean interested in working against something. However, with the dynamics described throughout this section, the level of interest in R2P was reduced – particularly amongst those states which had long been sceptical and who might have wished, had the circumstances been different, to more actively work against its adoption. Alternatively, key supporters were able to push hard on its behalf, with less potential for its complete removal. As one European ambassador stated, aside from Canada and key African states, EU members continually 'hammered' R2P in meetings throughout the process.¹⁰⁴⁰ Thus, within the overall context, R2P's prospects were altered largely because the balance of influence tipped in favour of those most supportive of it.

¹⁰³⁷ This was a point made by Allan Rock (Ottawa, 11 June 2009) and in private interviews, see Part 2

¹⁰³⁸ Private email from Canadian official (1 November 2010)

¹⁰³⁹ Private interviews with Canadian and UK officials: both separately used the phrases 'interested nations' and 'interested delegations' (31 March 2010, emails 1 November 2010, 25 July 2011)

¹⁰⁴⁰ Private interview (25 June 2010)

At first reading, it may seem premature/out-of-sync to outline in such detail arguments clearly relating to the specific multilateral negotiations which began in April 2005, and which provide the essential focus of Part 2. Any sense of prematurity may also be emboldened by the fact that they have been introduced without having yet explained the nature and form of the HLP's endorsement of R2P, despite its central place in the overall argument. However, in a case like this one, where the processes are as complex as they are, and where the explanation of how R2P was agreed within these processes (structured outcome logic) is as unique and challenging as it is, the emphasis had to be explicitly directed at the latter. For this reason, this section has been – and will continue to be – purposefully focused on the various dimensions of the structured outcome logic. The sequencing of the overall process certainly matters greatly to our general understanding of R2P's progression. In a broad sense this chapter faithfully adheres to that. The detailed explanation of how the processes surrounding the HLP merged into the processes leading to the Summit is essentially about the importance of sequencing for understanding the development of R2P. The distinction, however, is that the interaction and fusing of the distinct temporal processes described in this case was identified *because* it represented a key constitutive element of the structured outcome argument. Had this chapter been presented as a chronologically-driven narrative, the ability to account for the key factors behind the 2005 agreement would have been lost in a sea of detail, and would have lacked any real logical or explanatory clarity. It would have provided information relating to *how* and *why* R2P was agreed in 2005, but have left it up to the reader to pick-out those elements most relevant to addressing these vital questions. This would have been most unsatisfactory, not least because such an approach would have undermined the very methodological basis underpinning the micro-process analysis which has driven the empirical work throughout. This approach has not been about gathering detail for detail sake, but about asking searching questions necessary to best understand what happened and why. The detail and answers these questions yield (through interviews and documentary analysis) provide the building blocks for the explanation.

Reiterating the importance of micro-process is relevant because, as previously argued, R2P's development is not easily explained by existing accounts of normative emergence/change. In particular, there is a lack of fit between R2P's development and the classic NLC outlined in

Ch1. It is certainly possible that an alternative, less detailed approach to tracing R2P, could be moulded to fit the life cycle model.¹⁰⁴¹ However, this would grossly oversimplify how scholars of IR should tackle the study of norms. However impressively the NLC packages the mechanisms of social construction evident in many normative changes – including in this one – R2P did not proceed, in any progressive linear narrative sense, according to the dominant mechanisms and motives which underpin the three-stages of norm progress. Its development was *sui generis* by comparison. Thus, describing R2P in such terms would paper over the complex dynamics identified in this and the previous chapter – dynamics which have been identified explicitly through the use of methods directed at focusing on the micro-processes of R2P's development.

It is from this unique exploration of process that the structured outcome argument derives. Designed to better explain how R2P became subject to a form of state agreement in 2005, it speaks directly to the central issue of just how/why R2P unexpectedly transitioned from an idea seemingly going nowhere fast, to one rapidly institutionalised within the forum not just most important to its future prospects, but which had proved most resistant to its advancement. Here Ch4 is particularly important. As it showed, the political dynamics exposed by post-ICISS follow-up were hardly defined by emerging political traction, or associated mechanisms of bandwagoning, emulation or normative cascade. Nor are they evident during the processes described in this chapter – hence the need for an alternative explanation. The structured outcome argument provides this. R2P was propelled to agreement, not under the power of a catalytic core group of states, but by a package of factors which artificially accelerated its development in a way which has (or *should* have) fundamental consequences for how we understand the form of R2P agreed; the extent of active or committed support for the idea (in other words the depth of its underlying normative foundations); and what we might expect in terms of future compliance.

The key factors which fall under the structured outcome label have been explored in detail throughout this section, and will remain – implicitly or explicitly – key themes throughout this chapter. But to summarise, this package includes: the vehicular role of HLP; the

¹⁰⁴¹ Like, for instance, a broad chronological narrative along linear lines

'piggybacking' of the HLP agenda onto pre-existing Millennium Declaration follow-up processes; the resultant vast thematic expansion of the Summit agenda, including the locking-in of R2P via Annan's ILF, and the elevation of the Summit's importance; and associated factors relating to the varied prioritisation of key issues, and constraints on available time and personnel resources. Additional factors are identified below, however it is important to explain why these have been covered here in Part 1 considering the need to ensure reader understanding, and the undeniable reality that many of them directly relate to the member state negotiations covered in Part 2 (particularly in terms of the effects they had).

What should be evident is that there is no easy way of unpacking the complex web of factors identified, and then repackaging them into a simple and straightforward argument. Because of its unique qualities, conceptualising R2P's development is a challenging endeavour. Nevertheless, in truth, the structured outcome speaks more directly to the how and the why of R2P's development, with the multilateral negotiations more directed at understanding in what form R2P was agreed. This approach is somewhat artificial in its separation, particularly considering Ch4's point that the argument should be understood in terms of *structuring* and not just structured. Indeed, the essence of the endorsement of R2P by the HLP, by Annan's ILF, and the substantive nature of the state outcome in 2005, can only be understood in terms of this structurally contextual setting. What the distinction between Parts 1 and 2 does, is it allows for a more focused analysis of the dynamics which underpin the outcome of R2P. Our overall understanding of its form and potential impact is certainly dependent upon the combination of both parts, but the separation allows for specific questions to be explored. In particular, the structured outcome is vital to the question of *what* form of R2P emerged because, as a framework, it reveals a series of factors which as a whole demonstrate how and why there was a complete change in the *state of play* as far as the political prospects of R2P were concerned. They did not guarantee the outcome; they did not *direct* states in how they negotiated the shape and definition of the specific text; nor were they singularly determinative of the direction and form of the outcome. But they did increase the chances of agreement by narrowing the options available to states; enabling and constraining *some* of the choices they were able to make;

diminishing R2P's relative contentiousness; and by limiting the possibility that either the discussion or agreement of R2P could be blocked *in entirety*.

The most revealing question is, if we hypothetically stripped these factors away, could we have expected to see GA agreement of R2P as soon as 2005? Considering the presentation of the argument from Ch4 onwards, the answer should be self-evident. This point certainly matters because of the way it challenges existing theoretical accounts of norm emergence – strengthening the need for an alternative explanatory logic. But more than that, if we accept the premise that without these factors R2P would not have been agreed in 2005 – or alternatively we accept, in a more limited sense, the position that the structured outcome factors were indeed crucial for realising the 05 agreement¹⁰⁴² – then we should be equally willing to accept that these factors should have consequences for how we understand the nature of the agreement. As the opening quotes imply, these considerations are entirely legitimate. Undeniably, our understanding *must* involve a close analysis of the multilateral negotiations. This is the point of Part 2, which shows just how vital a micro-process driven account of the textual negotiation of R2P really is. It allows us to fill in the gaps of indeterminacy which would otherwise be evident in a purely structural account. It shows not only how state actors operated within the negotiations, and within the structure outlined, but how – through their actions – they sought to make the structure work for them, and their policy objectives. In this regard, a range of evident mechanisms, skills, characteristics and roles help make sense of the R2P negotiations. These included: cognitive framing; strategic calculation and prioritization;¹⁰⁴³ diplomatic drafting skills; persuasion; networking, including the ability to *mobilize* existing support networks and structures;¹⁰⁴⁴ individual negotiating skills/experience; and, characteristics relating to the credibility, access and status of the actors involved (particularly those at the forefront of the discussions i.e. the norm proposers/attempted norm blockers). There should be no doubt that in order to arrive at a textual formulation most states could let pass – but not necessarily embrace –

¹⁰⁴² I accept that for some the idea that R2P could not have been passed in any form may now seem an excessively negative argument, or an irrelevant one considering the fact it was actually agreed as part of the Outcome document. This, though, would miss the point entirely, as I point out in the following paragraph

¹⁰⁴³ Evidence of strategic calculation and prioritization has already been clearly identified in the discussion of the agenda, and effects of, above

¹⁰⁴⁴ These can include governmental/departmental assets or state groupings/networks such as those within the UN

these factors were continually active. Nevertheless, this alone would not explain what made agreement possible, and moreover would relegate a series of considerations relating to what the structured outcome framework tells us about the nature of the agreement. Because the political dynamics underpinning R2P's development were not what one might expect, there are inevitable consequences for how we understand it. In particular, these relate to: the extent to which R2P's meaning is collectively shared and understood; the degree to which it was actually embraced as a normative idea, thus speaking to the normative foundations which underpin it; and the expectations we should resultantly have regarding potential compliance. Clearly these are heavily interconnected.

As mentioned above, one effect of the structured outcome was that it led to an artificial acceleration in R2P's development. The contrast between the lack of political momentum – symbolised by Canada's inability to gain *any* GA foothold – and its agreement in 2005, is stark considering subsequent claims made on the back of it. As shown in Ch4, the acceleration of this development was evident in the way Canada reacted to the establishment of the HLP and its merging into the process leading to September 2005. Despite, or rather because of, the lack of state buy-in, Canadian officials recognised the potential opportunity of this process. It changed the 'timeline' of Canadian advocacy, shifting it from a long-term track onto an accelerated fast-track where, by the end of 2004, officials would come to regard the HLP as just one stage in a three stage process.¹⁰⁴⁵ Put simply, Canada exploited the opportunity the structure provided to propel R2P forward in a way that they had previously been unable to do. In this regard, the focus and dynamics of their advocacy changed considerably. Diplomatic and government assets remained consistent in their focus on R2P, but were redirected and strengthened by realisation of a 'perfect' but unexpected 'opportunity to get [R2P] adopted in the context of a wider discussion on what the UN can do, and how it should reorganize itself to face new challenges'.¹⁰⁴⁶ Mirroring a previous point, the argument R2P was artificially accelerated does not necessarily delegitimize the outcome. The institutional foothold is potentially

¹⁰⁴⁵ Private interview with Canadian official (19 May 2009) and with Allan Rock (Ottawa, 11 June 2009)

¹⁰⁴⁶ Private interview with Canadian official (19 May 2009)

significant¹⁰⁴⁷. But it should qualify our assessment of its potential significance, not least because it has consequently contributed to a disconnect in the synchronisation between expectations and normative foundation. Contrary to the view of Ramesh Thakur, it would be quite wrong to suggest that the hypothetical question above is an ‘impossible counterfactual’, or that regardless of the factors identified, R2P was ‘a concept and a norm, whose time had come,’ and that we were ‘going to have it one way or another’.¹⁰⁴⁸ All the evidence suggested otherwise. Even Mortimer, who was fully aware of the agenda-setting effects of the HLP and ILF, was ‘very surprised’ R2P survived into the Outcome Document.¹⁰⁴⁹ This is a sentiment many will no doubt share. Indeed, it will likely surprise the reader that R2P was not as contentious as one, quite reasonably, might have expected it to be. Ultimately this point has emerged because of the structured outcome and the underlying methodological approach. As a framework for understanding R2P, it has helped expose a surprising paradox at the heart of R2P’s development. Namely, an idea which (based on its recent history) was expected to be too politically sensitive and controversial to win broad UN backing – even on a mid-term basis – was in reality far less contentious than could ever have been predicted. The textual formulation, and the way it was sold, certainly reveals evidence of desensitization. But this diminution was largely because of the factors inherent to the structured outcome. This paradox was well captured by Van den Berg whose initial reaction was one of ‘surprise’ that it went through so ‘smoothly’, but which was then immediately countered by the recognition that it did so because of the way the ‘bigger issues’ facilitated its path.¹⁰⁵⁰

Of course, the fact is, for better or worse, R2P was part of a UN resolution in 2005. But if we wish to make claims regarding its political significance, we cannot do so without building the factors identified here into our analysis. In this respect, the ‘acceleration’ point is particularly important. Because R2P was not primarily propelled by the concerted volition of states, but rather agreed in the context of a huge negotiation, there are real questions to be

¹⁰⁴⁷ In a progressive sense, but on the other hand the agreement may also prove to be a regressive step in the effort to address the issue of preventing mass atrocity crimes. In other words, one should not see normative developments in a teleological way

¹⁰⁴⁸ Interview with Ramesh Thakur (Waterloo, 22 June 2009)

¹⁰⁴⁹ Email from Edward Mortimer (19 October 2010), similarly David Hannay described the agreement as ‘one of the great surprises’, Interview (London, 9 March 2010)

¹⁰⁵⁰ Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

asked about the extent to which many member states genuinely embraced the idea. All states were active participants in the process, but a repeated suggestion during interviews with those involved, was that in reality a majority of UN states had not fundamentally shifted their position – particularly regarding the issue of potential forcible intervention.¹⁰⁵¹ As van den Berg argues, though there was considerable ‘shaping and reshaping’ of the text to make it more ‘palatable’, this did not mean states actually embraced it:

The concept as such has never been embraced in the sense of wow this is fantastic and we all should align behind it. No, that is certainly not the case.¹⁰⁵²

This point should apply just as much to R2P’s ‘strongest’ supporters considering the potential costs of seeing it through. But specifically in relation to the way the negotiations were defined and unfolded, one should not have been surprised that post-2005 considerable discontent would arise, not least in relation to questions about what the agreement meant, and what had fundamentally changed. A number of states were undeniably committed to pushing R2P into the Outcome, but a larger number agreed or acquiesced to its inclusion because of the effects of the structured outcome, and because many were convinced that it offered nothing new; did not expand or alter existing provisions or processes; and kept the international dimension of R2P narrowly curtailed. This (international) dimension, in particular, has since been plagued by a lack of clarity and specificity because of painful textual formulation of 2005 and a number of purposeful ambiguities or questions it left unanswered.¹⁰⁵³ These issues, however, are not purely the result of the textual negotiations. Part 2 certainly provides the analysis which allows us to pinpoint these issues with greater precision. For instance, the lack of specificity surrounding the international role reflected a lack of common consensus on what it should be, and a fundamental lack of support for a specific endorsement of international responsibility. But it is actually the structured outcome framework – working in *combination* with this textual analysis – which best explains the claims made here. In terms of normative commitment, it explains how many states could have adopted an idea they did not really want or believe in,

¹⁰⁵¹ This point was made in a number of private interviews, and was also suggested by Lakhdar Brahimi in email (6 November 2009), and by Kieran Prendergast in interview (London, 6 October 2009)

¹⁰⁵² Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

¹⁰⁵³ As one official described it, R2P was packaged in different ways to different audiences. This is central to the framing strategies at work during the negotiations (3 August 2010), see Part 2

and why, therefore, many would subsequently work either: in a more focused way to clarify its meaning according to the limited scope as they understood it; or would attempt to further narrow it, or even argue against its desirability altogether. Post-2005, the constraints which had defined the process – and enabled the R2P’s agreement – were no longer relevant.¹⁰⁵⁴ Indeed, the effects of the structuring, (*inter alia* the way it locked R2P into the agenda; relegated its importance in the overall context; divided the attentions and resources of states in how they were able to deal with the issue; and the way it led many states to politically calculate that passing a restrictive form of R2P would not fundamentally change the status quo but would actually aid their pursuit of agreement in other more important areas) raises an important question. Namely, why wouldn’t states, on their own terms, wish to guard against any expansion in meaning or expectations, or work towards reversing apparent ‘progress’ made in the context of a process where their ability to retain control was greatly reduced? Moreover, why wouldn’t there be major questions regarding the implementation of an idea which lacks specificity and which commands far more limited political support than its institutionalization implies? With any political agreement we should anticipate subsequent contestation over meaning, application, significance, and desirability. Indeed, whatever formulation states agreed upon, there was always going to be renewed contestation and post-hoc ambiguities/issues as real world crises emerged, and as some states and individuals sought to build-on, and further embed, the agreement. As previous chapters have also sought to emphasize, the very nature of the problem does not lend itself to easy solutions – especially so where the possible military intervention is concerned. That said, the structured outcome’s dynamics increased the likelihood of this contestation happening. R2P was always going to require long-term effort to successfully embed it, but with the process having dampened down controversy surrounding R2P, once the shackles were removed the controversy was only going to be reawakened.

Part 2: An “emerging norm”? Tracing the form of R2P from the HLP to the WS

¹⁰⁵⁴ It should be noted, however, that arguably more challenging issue for opponents or sceptics since 2005 is that the fact of institutionalization, even in its narrow state-centric form, provides words which can hurt them, and which are now much more difficult to remove

Setting up the argument in this way is particularly important because it raises some critically challenging questions relating to the substance of the HLP and ILF endorsements of R2P. Clearly the HLP's establishment, its endorsement of R2P, followed by Annan's subsequent reiteration in ILF, are central factors in the structured outcome argument. They represent vital cogs in the overall process and the how/why explanation this chapter has so far focused on. But the arguments presented thus far do not just speak to the how/why dimensions they also speak to the nature of the endorsements. So while the remainder of this chapter largely shifts in emphasis towards more directly understanding R2P's formulation, the structuring factors already identified remain constantly relevant to our understanding. For instance, in helping to explain what changed in terms of the political dynamics of R2P's development, the structured outcome raises questions relating to what did not change, or at least did not change as much as institutionalization implies. From this perspective, the driving logic of the arguments presented here questions the very basis of some of the 'Panglossian assertions' made by the HLP.¹⁰⁵⁵ There was a distinct lack of empirical fit between substantive claims and proposals made by the Panel and the political development of R2P documented throughout this thesis.¹⁰⁵⁶ Indeed, Michael Glennon's observation that 'because the panel gets the past wrong, it gets the present wrong' appropriately captures the sentiment of this claim.¹⁰⁵⁷ In simple terms the HLP's endorsement of R2P was clear:

We endorse the **emerging norm** that there is a collective international responsibility to protect, exercisable by the SC authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.¹⁰⁵⁸

The problem is that beneath the surface this seemingly straightforward statement was anything but. Rather than framed in terms of aspiration (even if the proposals were quite obviously aspirational objectives), the HLP's five-paragraph discussion of R2P was presented

¹⁰⁵⁵ Glennon (2005) 'Idealism at the UN', *Policy Review*, No.129, p12

¹⁰⁵⁶ Especially in Chapter 4

¹⁰⁵⁷ Glennon (2005) 'Idealism at the UN', p6, Glennon's article also challenges the empirical basis for the claims made by the HLP, see especially p7-8 and includes an interesting quote by Michael Ignatieff who wrote in 2003 there was 'no consensus in the system for any change' on intervention, p11

¹⁰⁵⁸ HLP (2004) *A more secure world: Our shared responsibility*, para.203, my **emphasis**. Along with the ICISS, ILF and WS R2P text, the relevant paragraphs of the HLP report can be found in full in Appendix 1

in quasi-factual language.¹⁰⁵⁹ Accordingly, the Panel's position was based on two principle assertions: 1) that there was a '**growing recognition** that the issue is not the "right to intervene" of any State, but the [R2P] of every State when it comes to people suffering from avoidable catastrophe' and 2) there was a '**growing acceptance** that while sovereign Governments have the primary [R2P] their own citizens...when they are unable or unwilling to do so that responsibility should be taken up by the wider international community.'¹⁰⁶⁰ In one respect, they were right to describe R2P as 'emerging', but such language should not imply R2P was emerging into existence under the steam of state interaction or consent. This is a subtle, but vital linguistic qualification. More problematic, however, was the fact that the use of this phrase was specifically directed, along with the 'growing acceptance' statement, at the international dimension of R2P. Just what prompted the HLP to suggest there was increasing state acceptance of such *responsibility* is not entirely clear. As the processes documented throughout have demonstrated, this dimension was always the most controversial; the area where agreement was least likely. Indeed, as shown below, the Summit formulation of R2P was based upon a clear avoidance of the phrase (or anything similar) 'collective international responsibility to protect'.¹⁰⁶¹ Such a phrase would have gone far beyond what many states wished to see, and implied consequences far beyond what many states were willing to accept. Moreover, as suggested in Ch4, the extent to which many states were willing to accept individual state responsibility can be convincingly qualified by recognising that this dimension can be seen as a way of actually curtailing, and guarding against, the international one.¹⁰⁶²

From this perspective, it is hard not to regard these elements of the HLP's proposals as ahistorical, and excessively optimistic. The HLP seemed to adopt a position based more on advocacy, than on analysis. The apparent clarity of language gave the lie to genuine differences of opinion, perspective and specificity within the Panel, and to evident negative continuities in state positions towards the idea of R2P. Revealingly, as Hannay commented

¹⁰⁵⁹ HLP (2004) *A more secure world: Our shared responsibility*, paras.199-203

¹⁰⁶⁰ With the international responsibility 'spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies' in HLP (2004) *A more secure world: Our shared responsibility*, para.201, my **emphasis**

¹⁰⁶¹ This point was explicitly made by a centrally placed P5 official (3 August 2010), see below

¹⁰⁶² Indeed, just as regional support for R2P could also been seen as complicating, and even a way of curtailing, international responsibility viz a viz regional problems or conflicts

in his account of the Summit process, the ‘proposed international norm of [R2P] was highly controversial, as the reaction to various speeches on humanitarian intervention had shown’.¹⁰⁶³ Because this observation of controversy is so convincing, it is unsurprising that the HLP’s framing of its support for R2P would, and should, be open to major criticism. No amount of repetition of international responsibility was going to make it a reality. However, as already argued, there is nothing inherently wrong with a Panel or Commission making proposals which are ahead of the curve – particularly if there is recognition they are likely to be diluted through political negotiation.¹⁰⁶⁴ Clearly the idea of R2P was not a ‘blue-sky’ proposal without any credible prospects. It commanded the support of a number of key advocates who, during its Summit formulation, were able to credibly embed it within existing processes and charter provisions in a way which emphasized concordance rather than radical change.¹⁰⁶⁵ Furthermore, the HLP matters as much as it does to our understanding of R2P’s development because its role as a central linking mechanism in the structured outcome helps explain those dynamics which *did* change to move it towards a form of state agreement. But in terms of the underlying political dynamics which *did not* change – i.e. those generally relating to the priorities and preferences of states – the HLP’s proposals represented a gross denial of the state of existing political consensus, or rather existing political disagreement and disunity. The HLP was not just ahead of the curve in its bold assertions relating to international responsibility, but was expressing a normative position out-of-kilter with the realities of international politics. Indeed, it is perhaps here that the utility of the structured outcome framework becomes most evident. Whereas the HLP is one factor in explaining how/why R2P was agreed, its proposed form of R2P was predicated on misguided assertions, as the limited 2005 agreement would testify. There is a clear contrast between the HLP as one of the factors which propelled R2P forward, and its influence on the actual transmitted form. This is an important point. Misunderstandings of what R2P is, and what it means for the protection of people from mass atrocities, have often been based upon (wilful or tardy) ignorance of process, and an unfortunate reliance upon the original ICISS formulation which in key respects the HLP replicated. Inevitably there were remnants of ICISS in the Summit outcome. But whereas ICISS was unique for its

¹⁰⁶³ Hannay (2008) *New World Disorder*, p272

¹⁰⁶⁴ See David Malone’s point in Chapter 4

¹⁰⁶⁵ But which opened up the question of what difference the limited agreement of R2P actually made

articulation of a transition from domestic to international responsibility, the Summit ensured R2P was not presented in such terms. The paragraph on the role of the international community might have covered a broad range of tools, but these were not embedded within an overarching responsibility framework akin to ICISS, the HLP, and Annan's ILF. Insofar as responsibility was present, it was of an entirely different character.¹⁰⁶⁶

Undeniably, the language the HLP adopted was collectively agreed. It was, after all, issued in their name.¹⁰⁶⁷ That said, with Evans such a driving influence, it is perhaps no coincidence that R2P was so powerfully articulated. With R2P seen as his 'baby' and the strength, or rather dominance, of his personality well-known, it is not a stretch to argue that the language spoke to the extent of his influence and skills than necessarily to the actual positions of states.¹⁰⁶⁸ That Evans and Hannay – R2P's two biggest supporters within the Panel – also spent time working like an 'editorial committee' on the final draft, only serves to strengthen this point.¹⁰⁶⁹ Winning agreement unsurprisingly, however, required considerable effort. There were inevitable differences of opinion, and necessary subtle changes from the ICISS formulation. As Hannay remarks, within the Panel there was 'a body of people who strongly agreed, and then there were a lot of people who had to be brought round to it'.¹⁰⁷⁰ Resultantly, the discussions were, as he describes, 'fairly sticky':

The anti-interventionists, Qian Qichen and Yevgeny Primakov, were pretty dubious about it. The developing world resistance to it was not very strong because people like Salim Salim were strongly in favour of it. As you might expect from a former Secretary-General of the OAU, he saw the case for it. So the developing country members of the panel were much less assertively against it than you would have

¹⁰⁶⁶ Indeed, US ambassador John Bolton would make this point very clear during the negotiations, 'United States Proposals: Responsibility to Protect', *Letter from John R. Bolton, The Representative of the United States of America to the United Nations to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005

¹⁰⁶⁷ Hannay remarks that 'in there end there was unanimity' on the inclusion of R2P, *New World Disorder*, p245

¹⁰⁶⁸ Interview with David Hannay (London, 9 March 2010). The general point about Evans' influence, illuminated in the section above, was repeatedly made in interviews. The clear perception was the inclusion of R2P was largely realised by Evans

¹⁰⁶⁹ NUPI (2006) 'A fork in the road or a roundabout?' p26, this point was raised in private interview by one ambassador who suggested that Evans and Hannay 'rewrote' many parts of the report. David Malone also describes the report as 'largely shaped' by Evans and Hannay in (2005) 'The High-Level Panel and the Security Council', *Security Dialogue*, Vol. 36, no. 3, p370

¹⁰⁷⁰ Interview with David Hannay (London, 9 March 2010)

expected. Enrique Iglesias was not interested in that; he was mainly interested in economic issues. The Brazilian [Baena Soares] was not very influential although undoubtedly he did not like the idea of intervention. So there was less of what I call the developing country push-back than has subsequently come about. But the main problem was with the Russians and the Chinese. But it was not by any means one of the most contentious issues.¹⁰⁷¹

It is interesting that Hannay describes R2P as not one of the most contentious issues considering how the Summit process unfolded. But this observation in the context of the HLP may also be a perception filtered according to how difficult it was for Hannay himself to support it.¹⁰⁷² Alternatively, the NUPI account suggests R2P was one of ‘four contentious issues’ with variations over ‘what it entailed’, and divisions ‘largely’ a developed-developing one.¹⁰⁷³ Similarly, Traub describes R2P as a ‘deeply contentious’ issue for the Panel.¹⁰⁷⁴ Either way, there was always going to be resistance and difficulty arriving at agreement on R2P, particularly for those who believed it was inextricably bound-up with the issue of humanitarian intervention. It is also interesting that the resistance of Qichen, Primakov, and Moussa could be overcome.¹⁰⁷⁵ But with Evans ‘playing the game very hard’; not consenting to trading R2P away during the discussions;¹⁰⁷⁶ and working to persuade the sceptics, a central thematic factor in appeasing potentially hostile resistance was ensuring R2P was explicitly tied to SC authorization. Mirroring the narrowing in Canada’s and Kofi Annan’s position, the report made clear that R2P was ‘exercisable’ exclusively by the SC. Lifting directly from ICISS, the solution to the issue of authorization for the use of force depended upon making the SC ‘work better than it has’ rather than finding ‘alternatives’ to it.¹⁰⁷⁷ The subtle distinction, however, is that whereas ICISS qualified this by at least considering

¹⁰⁷¹ Interview with David Hannay (London, 9 March 2010) and (2008) *New World Disorder*, p245

¹⁰⁷² Although Hannay does comment that ‘the Panel did not come easily to the decision to back’ R2P, p245

¹⁰⁷³ NUPI (2006) ‘A fork in the road or a roundabout?’ p30: it also says that R2P was ‘generally seen as a good thing’

¹⁰⁷⁴ Traub (2006) *The Best Intentions*, p235: this is an area where further research would seek further interviews

¹⁰⁷⁵ Evans believes that the ‘fairly passive’ backing for the proposals by Qian Qichen was the support which ‘mattered most’ for their future prospects, suggesting that ‘it is difficult to believe that, given the traditional strength of its concerns about non-intervention, China would have been quite as relaxed on this issue as it proved to be at the World Summit’, (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington: Brookings Institution Press, p45

¹⁰⁷⁶ Interview with Gareth Evans (London, 25 May 2010)

¹⁰⁷⁷ HLP (2004) *A more secure world: Our shared responsibility*, para.198

alternative mechanisms/options, the HLP ruled them out completely.¹⁰⁷⁸ This was consistent with what the political context could bear, both in terms of the reverberating legacy of the 1990s debates, and the more immediate post-9/11 fall-out with the invasion of Iraq and development of the controversial Bush Doctrine.¹⁰⁷⁹ But, at the same time, this product of political necessity was also symbolic for reaffirming the shift away from the central policy dilemma which had inspired Axworthy's creation of ICISS. Indeed, although an unsurprising reality, the harsh truth was that R2P was *not* placed so firmly in the hands of the SC because there was any expectation it was now better placed to respond, but because it was seen as the only possible road to political agreement.¹⁰⁸⁰ This may seem obvious. But the point is, however much it was the only, or even the better, option, the underlying motivation was designed to appease those who did not support any fundamental change in relation to the potential use of force. In this sense it spoke to lack of change in the international system, rather than to any significant transformation in either state positions or the SC's willingness or capacity to seriously engage with appropriate solutions. That R2P was sold and understood by many states during the Summit process as 'nothing new' where the role of the international community was concerned, is arguably indicative of this point.

With the secure binding of R2P to the SC, the HLP focused on developing proposals which could increase the effectiveness and legitimacy of its decision-making processes. First, the Panel articulated a *just cause* threshold broadly in line with ICISS, but with the addition of 'serious violations of humanitarian law'.¹⁰⁸¹ Although Byers is broadly correct that the Charter does not specify such threshold conditions in relation to the SC's capacity to act, such definition reflected the political need to keep R2P tight and narrow.¹⁰⁸² This was further evidenced by the subtle, but important tightening of what Bellamy describes as the

¹⁰⁷⁸ See Michael Byers (2005) 'New threats, old Answers', *Behind the Headlines*, Vol. 62, No. 2, p11-12 in relation to non-consideration of ideas such as uniting for peace, or 'regional compacts' rather than his misguided and ill-explained suggestion that 'the most effective change to the council's decision-making ability would be to combine the British and French memberships into a single, permanent EU seat'

¹⁰⁷⁹ For the HLP's response to the issue of preventive force, which it rejected, see HLP (2004) *A more secure world: Our shared responsibility*, p63 and Part 3 (pp.61-74) more generally

¹⁰⁸⁰ See for instance Yevgeny Primakov (2004) 'UN process, not humanitarian intervention, is world's best hope', *New Perspectives Quarterly*, 2 September 2004

¹⁰⁸¹ Bellamy (2009) *Responsibility to Protect*, p75

¹⁰⁸² Furthermore, in any case, the SC would maintain jurisdiction to act in accordance with its peace and security mandate, so the limitation is less restrictive than it implies, Byers (2005) 'New threats, old Answers', p10

‘preventive component’ of the just cause threshold through the reference to ‘actual or *imminently* apprehended’.¹⁰⁸³ ICISS did not refer to imminence. Second, in contrast to its bold and contentious articulation of international responsibility, the Panel added itself to the ever-expanding list of *just war* appropriations, albeit packaged under marginally different labels.¹⁰⁸⁴ Proposing that states adopt such *political* (i.e. not legal) criteria was, according to Hannay, part of an attempt to ‘systematise the consideration at the UN of the use of force’.¹⁰⁸⁵ They were, nevertheless, a contentious area of discussion,¹⁰⁸⁶ not least because of the almost non-existent prospects of P5 approval. Indeed, Hannay himself was initially ‘dubious’ but came round to the possible benefits of them even if he remained sure they were a ‘long shot’.¹⁰⁸⁷ The discussion of criteria in Ch3 remains relevant here. What is worth repeating briefly is that political agreement of such criteria was simply not going to happen,¹⁰⁸⁸ and even if agreement on criteria was possible, the benefits of them are inherently questionable.¹⁰⁸⁹ Third, the Panel may not have endorsed ICISS’s more elaborately packaged (and qualified) P5 ‘code-of-conduct’, but did outline proposals specifically in relation to voting within the SC. This included a system of ‘indicative voting’ which the Panel believed would ‘increase the accountability of the veto system’ because states would have to publically declare their voting intentions regarding a particular course of action.¹⁰⁹⁰ According to Bellamy this represented a ‘weaker constraint’ on the veto.¹⁰⁹¹ However, his reading of the report seemingly overlooked the Panel’s more straightforward proposal that the P5 individually ‘pledge...to refrain from the use of the veto in cases of

¹⁰⁸³ Bellamy (2009) *Responsibility to Protect*, p75; HLP para.207 (a)

¹⁰⁸⁴ The HLP’s ‘guidelines’ were: seriousness of threat; proper purpose; last resort; proportional means, and; balance of consequences, HLP (2004) *A more secure world: Our shared responsibility*, para.207

¹⁰⁸⁵ See (2004) *A more secure world: Our shared responsibility*, para.208, Hannay (2008) *New World Disorder*, p242

¹⁰⁸⁶ Interview with David Hannay (London, 9 March 2010)

¹⁰⁸⁷ Interview with David Hannay (London, 9 March 2010), he also described the criteria as ‘another one of Gareth’s [Evans] specialties’

¹⁰⁸⁸ In addition to the material presented in previous chapters, this point was made by officials involved in the process leading to the Summit in private interviews (3 August 2010, 13 August 2010) and by John Dauth (London, 25 May 2010). This point is picked up more specifically in the context of the negotiations below. See also David Malone who correctly predicted they would ‘doubtless be resisted’ by the P5 (2005) ‘The High-Level Panel and the Security Council’, p370, fn1

¹⁰⁸⁹ One relevant point, considering the purpose of the HLP’s proposed criteria, is made by Michael Byers who points out that they could actually ‘provide more excuses for non-action and delay’, Byers (2005) ‘New threats, old Answers’, p11

¹⁰⁹⁰ ICISS (2001) *The Responsibility to Protect*, para.6.21, HLP (2004) *A more secure world: Our shared responsibility*, para.257

¹⁰⁹¹ Bellamy (2009) *Responsibility to Protect*, p75-6

genocide and large-scale human rights abuses'.¹⁰⁹² In such terms this actually appears stronger than what ICISS proposed. In any case, both options were equally unlikely to win collective backing in 2005, or in the long-term.¹⁰⁹³

Finally, at Annan's insistence, the HLP was given the unenviable task of addressing the issue of SC reform.¹⁰⁹⁴ Much to the 'relief' of the Panel, Annan's late request for two reform options in part got the Panel 'off the hook'. From Hannay's perspective had the Panel been forced to arrive at one position on such a hugely contentious issue, it would have been 'dead on arrival' and 'taken the whole report to the bottom of the sea'.¹⁰⁹⁵ From this there are two, rather paradoxical points relevant to our understanding of R2P. The first is because R2P was bound so tightly to the SC, it is hard to avoid questioning how reform, or more accurately enlargement, would impact upon the effectiveness of its decision-making. It is hard to see how an enlarged, albeit more representative, Council of 24 could maintain even its current effectiveness.¹⁰⁹⁶ Weiss is surely right in arguing that decision-making would only be inhibited.¹⁰⁹⁷ Were such reforms to go ahead, R2P would not only be locked into an already imperfect body, but one which would be significantly larger, and likely to see its effectiveness decline. On the other hand, consistent with structured outcome, despite sensible observations that SC reform would undermine the Summit's overall prospects for success¹⁰⁹⁸ SC reform was one of those issues – particularly between June and July – which drained and distracted the attention and resources of states to the benefit of R2P.¹⁰⁹⁹

Unsurprisingly, scrutiny of the HLP report has been presented here predominately in relation to those areas of the report relevant to R2P. There is no reason to review, or critique all 101 recommendations made by the Panel. What is relevant is that while the

¹⁰⁹² HLP (2004) *A more secure world: Our shared responsibility*, para.256

¹⁰⁹³ As has subsequently proved to be the case

¹⁰⁹⁴ Annan was on-the-record in stating in his view the SC did not reflect the realities of the 21st century, and was consistent with the statements highlighted above around his 2003 GA speech

¹⁰⁹⁵ Interview with David Hannay (London, 9 March 2010)

¹⁰⁹⁶ This is despite the admiral statement by the HLP that SC reform 'should not impair the effectiveness of the SC', *A more secure world: Our shared responsibility*, para.249(c); for the proposals in entirety see paras.244-260

¹⁰⁹⁷ Thomas Weiss (2005) 'An Unchanged Security Council: The Sky Ain't Falling', *Security Dialogue*, Vol.36, No.3, p368, also Malone (2005) 'The High-Level Panel and the Security Council', p372

¹⁰⁹⁸ Malone (2005) 'The High-Level Panel and the Security Council', p371

¹⁰⁹⁹ Private interviews (3 August 2010, 13 August 2010), interview with Dirk Jan Van den Berg (telephone, 18 October 2010) and 'E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document', 22 August 2005

Panel was not directed by Annan towards specific proposals, there was intention on the part of its members to arrive at a report which Annan would be able to support, and to support strongly.¹¹⁰⁰ Any set of proposals are going to provoke criticism, but overall the Panel's report was seen as credible.¹¹⁰¹ This is particularly important because had the report been widely discredited, R2P could have been lost in an ensuing backlash. Despite the more vocal development-fuelled criticism, the report was broadly welcomed in positive terms and, crucially, strongly suited Annan's preferences.¹¹⁰² With the publication of the report in December 2004, swiftly followed by Annan's ILF report in March 2005, there was a broad shift in the characteristics and ownership of the process towards member states as they set about reviewing the proposals and formulating policy-positions in anticipation of their active negotiation from April onwards. From this perspective, the series of informal meetings held to discuss the HLP and Millennium Project reports, largely represented shadow-boxing ahead of the real process beginning in April.¹¹⁰³ Nevertheless, some important feedback and early R2P-related policy-lines were expressed during this phase.¹¹⁰⁴ According to the Office of the GA President, the reaction of states (who raised the issue) was broadly defined by 'two views':

One recognized the importance of this concept as part of an emerging norm of international law; the other cautioned against the concept in relation to its risks vis-à-vis the principle of sovereignty, territorial integrity and non-interference in internal affairs...¹¹⁰⁵

More specific recorded statements are hard to come by. However, from documents that are available both China and Russia would take the opportunity to lay-down early markers. Strangely, Russia would offer support for the use of force criteria but only because they

¹¹⁰⁰ Interview with David Hannay (London, 9 March 2010), NUPI (2006) 'A fork in the road or a roundabout?' p29

¹¹⁰¹ For positive reviews of HLP report see Anne-Marie Slaughter 'Security, solidarity, and sovereignty: the grand themes of UN reform', *The American Journal of International Law*, Vol. 99, pp.619-631 and Gwyn Prins (2005) 'Lord Castlereagh's return: the significance of Kofi Annan's High Level Panel on Threats, Challenges and Change', *International Affairs*, Vol. 81, No.2, pp.373-391

¹¹⁰² See Annan's note in UN Document A/59/565, 2 December 2004

¹¹⁰³ These meetings were held on the: 8-9 December 2004; 25 January 2005; 27-31 January 2005, 10-11 February 2005; 22-24 February 2005

¹¹⁰⁴ Please note, because these were informal meetings it is very difficult to get hold of relevant statements. They were not produced in plenary record format by the UN.

¹¹⁰⁵ 'Daily Press Briefing by the Spokesman for the SG and Spokesman for the GA President', 1 February 2005

should not be seen as limiting or inducing the SC to use force.¹¹⁰⁶ In other words they would change nothing. China, meanwhile, expressed reasonable scepticism about the theoretical and practical possibility of formulating criteria considering ‘differences in the causes of crises and their circumstances’.¹¹⁰⁷ This would prove prophetic, with no movement towards agreement in this area. Both countries, meanwhile, expressed strong views vis-à-vis the SC. For China, it was up to the SC to ‘carefully’ consider where interference may be necessary, and only on a ‘case-by-case’ basis. But Russia was even more vociferous, stating that interference could *only* be sanctioned by the SC. Particularly notable, was that while Russia was willing to accept that with authorisation mass atrocities ‘may serve as reason for interference by [the] international community’ they made no reference to the language of R2P but rather commented that the Charter required neither ‘revision or a *new interpretation*’.¹¹⁰⁸ This was an entirely consistent position throughout the negotiations.¹¹⁰⁹

By contrast, China directly invoked the language of R2P, but was arguably more hard-line in its position with repeated references to ‘basic principles’ of sovereign equality,¹¹¹⁰ non-interference and international law. Insofar as domestic responsibility was referenced, it was about reinforcing individual state sovereignty rather than ceding to, or accepting, a statement of international responsibility. Indeed, though China accepted that the UN must ‘pay attention’ to the problem of internal conflicts and find ‘remedies’ to help, it cautioned against ‘hasty judgement[s] that the State concerned is unable or unwilling to protect...and rush to intervene’,¹¹¹¹ It is important to flag-up these positions because they were largely consistent throughout the process. China would agree to R2P’s inclusion because greater policy priorities elsewhere were not affected by the negotiations on R2P. In other words, as far as China was concerned R2P stayed within the framework of its own preferences

¹¹⁰⁶ ‘Statement by Ambassador Andrey Denisov at the informal UNGA meeting on the reports of the High-level Panel on Threats, Challenges and Change and of the Millennium Project’, 22 February 2005

¹¹⁰⁷ ‘Statement by Ambassador Wang Guangya on the Report of the High-level Panel’, 27 January 2005

¹¹⁰⁸ See: Statement by Ambassador Andrey Denisov, 22 February 2005 and ‘Statement to the UN on the report of the High-level Panel on Threats, Challenges and Change’, 31 January 2005

¹¹⁰⁹ This challenges Bellamy’s suggestion that after August Russia followed China’s ‘deep reservations’ and began arguing against R2P by maintaining that ‘the UN was already equipped to deal with humanitarian crises’, *Responsibility to Protect*, p87

¹¹¹⁰ Jennifer Welsh points to the well-established pull of sovereign equality in an excellent article: (2010) ‘Implementing the Responsibility to Protect: Where Expectations Meet Reality’, *Ethics & International Affairs*, Vol. 24, No. 4, online edition

¹¹¹¹ ‘Statement by PR Wang Guangya at the informal consultations of UNGA 59th Session’, 22 February, and ‘Statement by Ambassador Wang Guangya on the Report of the High-level Panel’, 27 January 2005

based upon a combination of pragmatism (case-by-case), legality and maintenance of pre-existing prerogatives (SC authority), and on continuity of Charter norms which China understood in narrower, more traditional terms than many advocates of R2P would wish to see. Had there been an attempt to shape it in a more fundamental way it is likely China would have reacted to the crossing of its key red-lines. But because it did not, it actually served China's interests to facilitate its agreement. This should be kept in mind, because contrary to Bellamy's assertion that China would, during August, signal a 'change of heart' on R2P by announcing 'deep reservations', and contrary to his highlighting of President Hu Jintao's defence of a 'traditional understanding of the UN Charter' at the Summit itself as evidence of this shift, these facets of China's policy were always apparent and at no point did centrally placed interviewees describe any shift in China's position.¹¹¹² It is also relevant because it reiterates previous points about subsequent contestation, helping to explain just why China would continually emphasise the narrowness of the final four-crime formulation agreed in 2005.

The eventually narrow – but not necessarily commonly understood – formulation adopted in 2005 is a central factor (with the structured outcome) in explaining how/why R2P was agreed. But having completed the HLP report, expectations for R2P were not particularly optimistic.¹¹¹³ There were no guarantees R2P would transit *into* the Summit negotiations, let alone find its way through them. But as shown in Part 1, what made the difference was the way the HLP process merged into pre-existing processes leading to the Summit, thus linking the HLP to Annan's ILF report. As the process shifted towards member states, this transition was especially crucial, as Evans identified:

If the HLP report hadn't dealt with this it would have been dead. If Kofi hadn't picked it up in the next stage of the transmission belt it would have been dead. And then in the final stage it was much more the efforts of people like John Dauth and Allan Rock and Paul Martin.¹¹¹⁴

¹¹¹² Bellamy (2009) *Responsibility to Protect*, p87 and private interviews: indeed, this point was asked specifically of Canadian and UK officials during interviews and in subsequent emails (31 March 2010, 3 August 2010, 13 August 2010, 22 October 2010, email 21 November 2011), see below

¹¹¹³ As Hannay remarked: 'I think if we had had to take a poll the day we deposited our report as to which of our proposals would get through not many people would have thought that responsibility to protect would have', interview (London, 9 March 2010)

¹¹¹⁴ Interview with Gareth Evans (London, 25 May 2010)

In some respects ILF was arguably more significant for its effect on the structuring of the overall process than necessarily for the specific nature and form of its endorsement of R2P. Ultimately, though, there could not be one without the other. ILF had the principal effect of locking R2P into an ambitious, 'diffuse' agenda,¹¹¹⁵ the effects of which (as already described) made its path to agreement less complicated than anyone might have expected.¹¹¹⁶ Paradoxically, however, despite Annan's well-known support for R2P, its inclusion in ILF was not necessarily straightforward.¹¹¹⁷ On the face of it Annan was always going to support the endorsement of R2P. But in reality those tasked with coordinating the follow-up and drafting processes had other factors to consider. Not least the potential political prospects of an idea which they knew to be highly controversial and could have negative back-draft consequences for the SG's position.¹¹¹⁸ This was apparent to Canadian officials who, throughout each stage of the process, remained committed to lobbying hard on R2P's behalf. As Rock explained, having recognised that the process would proceed in 3 stages Canada's strategy for R2P involved asking itself 'how can we play?' In other words how could they maximise the chances for R2P's adoption in 2005.¹¹¹⁹ The means and approaches varied. But in general each stage was significant for revealing the primacy of individual agency – an important point in the context of the structured outcome argument.¹¹²⁰ For instance, during the HLP stage, Canada freely submitted an R2P-specific non-paper, backed up by extensive lobbying efforts on the part of its officials in Ottawa and at the UN. Such was the high-level commitment that Paul Martin would even meet with the Panel in New York where he was able to 'urge [them] to give it a prominent place among

¹¹¹⁵ Private interview (3 August 2010)

¹¹¹⁶ As Hannay writes: R2P 'was now placed fair and square in the centre of the negotiating arena, a matter no longer just for debate and discussion, but for decision', (2008) *New World Disorder*, p245

¹¹¹⁷ Private interviews with Canadian officials (31 March 2010, 19 May 2009)

¹¹¹⁸ This point is consistent with previous chapters where the role of Annan was addressed. It was also the perception of one individual involved who believed that the officials involved, like Robert Orr, were personally sympathetic but also had to consider the political prospects and consequences of including R2P, private interview (19 May 2009). Moreover, during the transition between the HLP to ILF there were differences within the Secretariat regarding the relative emphasis of security and development issues. This *may* also explain why something like R2P may have been less straightforward than expected

¹¹¹⁹ Interview with Allan Rock (Ottawa, 11 June 2009)

¹¹²⁰ The points identified here are important for demonstrating that R2P's progression through each stage was not defined by straightforward linearity

their recommendations'.¹¹²¹ This was backed-up during the ILF stage. Canadian officials would set about 'working on', and working with, key officials within the Secretariat responsible for the report and the transition towards negotiation.¹¹²² Most notably these included Robert Orr who, as Assistant SG for Policy Coordination and Strategic Planning, was responsible for the 2005 process, and acted as the principal member state contact¹¹²³ and the Stedman-Jones HLP team which Annan kept in place to aid with follow-up, and to draft the security-focused aspects of ILF.¹¹²⁴ Indeed, once any initial, albeit minor, difficulties surrounding R2P's inclusion were overcome, the structures put in place within the Secretariat were significant enabling factors. In the case of ILF, that Stedman and Jones remained in place helped ensure continuity and coherence¹¹²⁵ and meant Canadian officials could work to influence people they had already established contacts with during the HLP stage.¹¹²⁶ Perhaps more importantly, during the multilateral negotiations, Orr's influence would be a significant factor in terms of how the documents were drafted – especially during the very final stages. Canada would constantly feed language into those, like Orr, who were 'holding the pen' in order to keep the R2P section consistent.¹¹²⁷

Ultimately, ILF offered a reiterated but slightly amended endorsement of R2P. It reaffirmed, and symbolized Annan's long-standing support and his desire to see member states follow his lead by embracing it as a 'basis for collective [international] action'.¹¹²⁸ Acknowledging the 'sensitivities' around the issue, Annan's endorsement was strong and bold, but in other ways was more narrowly and carefully defined. Like the HLP, there was no reference – in any form – to 'alternatives' to SC authority. It had to work better, and one way of achieving that was for the SC to adopt principles to guide its decision-making.¹¹²⁹ Notably any mention of indicative voting, or any proposals relating to veto restraint were dropped – most likely

¹¹²¹ Interviews with Allan Rock (Ottawa, 11 June 2009), Paul Martin (telephone, 27 January 2010), private interviews (31 March 2010, 19 May 2009): the meeting between the HLP and Martin was held in Allan Rock's New York apartment, but on Canadian contact with the Panel more generally see (SCFAIT) (2004) 'Evidence of Mr. Ferry de Kerckhove and Mrs. Marie Gervais-Vidricaire', 17 November 2004

¹¹²² Private interview with Canadian official (19 May 2009)

¹¹²³ Private interviews with government officials (31 March 2010, 3 August 2010) see NUPI (2006) 'A fork in the road or a roundabout?' p41

¹¹²⁴ NUPI (2006) 'A fork in the road or a roundabout?' p41, see fn1039

¹¹²⁵ NUPI (2006) 'A fork in the road or a roundabout?' p45

¹¹²⁶ Interview with Allan Rock (Ottawa, 11 June 2009)

¹¹²⁷ Private interview (31 March 2010), see below

¹¹²⁸ Annan (2005) *In Larger Freedom*, p84

¹¹²⁹ Annan (2005) *In larger Freedom*, p43

because they would only complicate the already ambitious proposals on SC reform, and because they were even less likely to be adopted than the decision-making principles. Placing the SC at the heart of R2P was pragmatic and central to its political agreement six months later. But to reinforce this Annan would present R2P differently to that of the HLP. Partly designed to detach R2P's association with humanitarian intervention,¹¹³⁰ the use-of-force was dealt with separately in the chapter *Freedom from fear*, whereas R2P was positioned within a section on the 'rule of law' within the chapter *Freedom to live in dignity*.¹¹³¹ Certainly there was hope that this change would help to limit this association, and help make the use-of-force section 'less offensive to some member states'.¹¹³² But this was not the only reason for the change. During the drafting process for ILF the HLP's proposal that the composition of the Commission on Human Rights be expanded to universal membership was unanimously regarded as the 'weakest and least convincing' of all. With the idea of a new HRC being pushed by Louise Arbour and Danilo Türk, Malloch-Brown decided the report should be based upon a 'three-pillar structure' which, in institutional terms, would embrace the idea of a 'three council structure'.¹¹³³ Human Rights would join Development and Peace and Security as the three-pillars, with a newly established HRC based on peer review membership, joining the Economic and Social Council and the SC as the three councils.¹¹³⁴ Thus, to ensure balance, R2P was moved into the section on human rights whilst also having the beneficial effect of separating R2P and the use of force.

This also allowed Annan to keep his articulation of the normative dimension much cleaner. Indeed, with SC centrality the only pragmatic option, and the use of force guidelines a proposal he had long supported, but with little prospect of success, it was his normative

¹¹³⁰ Bellamy (2009) *Responsibility to Protect*, p76

¹¹³¹ Annan (2005) *In larger Freedom*, Chapters III and IV, by contrast the HLP report they were dealt with together

¹¹³² Email from Edward Mortimer (29 August 2011)

¹¹³³ Email from Edward Mortimer (29 August 2011), this is also backed up by Mark Malloch-Brown and has also been informed by a paper titled 'Rebalancing the principle organs of the UN' produced by then Assistant-SG for Political Affairs Danilo Türk, dated 15 December 2003. I am also grateful to one individual for emailing me a copy of this paper. It is also worth noting that in interview Malloch-Brown specifically referred to a paper, albeit a much shorter one, authored by Türk with the proposal for a HRC which he 'happily took up' (telephone, 23 June 2010)

¹¹³⁴ See Annan (2005) *In Larger Freedom*, chapters II, III and IV, on the idea of the three councils see paras.165, 166

statement of R2P where Annan was boldest. He certainly kept it tightly defined. For instance, it was to apply only to cases of ‘genocide, ethnic cleansing and crimes against humanity’ – a simpler, but nevertheless high-threshold formulation, which the Summit would subsequently adopt with the addition of ‘war crimes’. Annan would also strongly emphasize state responsibility, qualifying that it lay ‘first and foremost’ with individual states. Although essentially the same meaning as ‘primary’ responsibility, the implication was arguably stronger. But in other ways Annan was particularly direct. In placing R2P so firmly in the hands of individual states, he was clear that this responsibility did not simply mean within their jurisdiction, within their control, but actually spoke to their ‘duty’ and ‘primary *raison d’être*’ as a State. Because of this, if they failed (Annan adopted the classic ‘unable or unwilling’) the international role had to normatively and practically mean something. Hence responsibility would ‘shift’ to the international community.

It is true this formulation would not win the approval of states. The international dimension would be heavily qualified, with numerous evident caveats leaving many questions unanswered. Nevertheless, Annan’s ILF is arguably the most straightforward and well-packaged normative expression of R2P.¹¹³⁵ Crucially, it provided the starting point for multilateral negotiations by locking R2P into a process where its entire removal would be almost impossible to achieve. Clearly, therefore, Annan’s role was significant – as it was throughout the development of R2P. However, as mentioned in Part 1, one of the key effects of ILF and the framing rhetoric used by the SG and others – namely of elevating the scale and expectations for the Summit – emanated largely from an overwhelming sense of crisis which began to engulf the UN, and Annan personally, from 2004 onwards. A perfect storm involving the sexual abuse of refugees by UN personnel in the Congo; allegations of sexual harassment against the UN’s High Commissioner for Refugees Ruud Lubbers,¹¹³⁶ a deeply damaging investigation into the UN’s Iraqi oil-for-food programme;¹¹³⁷ and a mistaken response to a BBC interviewer’s question which resulted in headlines around the

¹¹³⁵ For all of the above see Annan (2005) *In Larger Freedom* para.135 and 7(b), p84

¹¹³⁶ Edward Mortimer would describe this scandal as a ‘nightmare’, interview (Oxford, 8 July 2009), see: Kate, Holt Leonard Doyle (2005) ‘Harassment, intimidation and secrecy – UN chief engulfed in sex scandal’, *The Independent*, 18 February 2005

¹¹³⁷ The Independent Inquiry Committee into the oil-for-food programme was established by Annan in April 2004 and was Chaired by former US Federal Reserve Chair Paul Volcker

world quoting Annan as describing the Iraq war as ‘illegal’,¹¹³⁸ engulfed the Organization and its SG. Such events challenged the credibility, transparency and accountability of both; for some signified a profound existential crisis; and provided considerable ammunition for long-standing critics of the UN to go on the attack.¹¹³⁹

The consequences of the overwhelming sense of crisis for understanding the development of R2P are, though, more mixed. It certainly left Annan floundering and under intense personal and professional pressure.¹¹⁴⁰ Annan and his staff were forced into crisis management mode, having to deal with regular attacks on his leadership; a failing US-UN relationship;¹¹⁴¹ regular reports of the Volcker Inquiry into the oil-for-food programme and deeply personal allegations surrounding his son’s involvement in it. Thus, unsurprisingly, Annan’s ability to engage directly in the Summit process was heavily curtailed.¹¹⁴² The accumulated sense of crisis also served to complicate and exacerbate an already difficult international environment. The timing of the Volcker Inquiry interim reports and a constant whiff of scandal did little to help keep the process, and member states, focused upon the reform objectives.¹¹⁴³ So in key respects the scandals limited the prospects for a successful outcome, which was already challenged by strained relationships within the UN since the invasion of Iraq, and a general sense of apathy towards the reform agenda as packaged by Annan.¹¹⁴⁴

¹¹³⁸ BBC (2004) ‘Iraq war illegal, says Annan’, 16 September 2004, Kieran Prendergast described the interview as Annan’s ‘great – but very understandable – mistake’, interview (London, 6 October 2009)

¹¹³⁹ The hostility was particularly strong from voices within the US with Annan’s illegal comment a key trigger for unleashing the wave of hostility personally directed at Annan. Indeed, most interviewees commented on the nature of the attacks which some UN officials was a pretext for ‘destroying the UN’

¹¹⁴⁰ For an excellent account of this period see Traub (2006) *The Best Intentions*, especially Ch19

¹¹⁴¹ Traub deals with the breakdown in the UN-US relationship, but see also Senator Norm Coleman’s call for Annan to resign on the same day the HLP published its report, ‘Kofi Annan Must Go: It’s time for the Secretary-General to resign’, *The Wall St Journal*, 1 December 2004

¹¹⁴² Based upon numerous interviews including Allan Rock (Ottawa, 11 June 2009), David Hannay (London, 9 March 2010), private (25 June 2010, 3 August 2010): see also NUPI (2006) ‘A fork in the road or a roundabout?’ p41

¹¹⁴³ For instance, the Inquiry released interim reports on the 3 February 2005, 29 March 2005, 8 August 2005, and two more extensive reports on the impact and management of the programme on the 7 September 2005, see Traub (2006) *The Best Intentions* p336-7 and Jeffrey Meyer et al. (2006) *Good Intentions Corrupted: The Oil-for-Food Scandal and the Threat to the U.N.*, New York: Public Affairs

¹¹⁴⁴ As one centrally placed ambassador commented, the need to improve relationships after the invasion of Iraq was an ‘on-going responsibility’, private interview, something Allan Rock also referenced (Ottawa, 11 June 2009)

Alternatively, the extent of the turmoil is directly relevant for understanding how the process as described in Part 1 was framed and defined, and is thus directly relevant to our understanding of their effects on the way R2P was negotiated. One important impact of the scandals was the way it led to major staffing upheaval within the Secretariat. Most important was the ascent of Malloch-Brown who set about applying his communication and management experience to try and use the reform process as a way of ‘changing the conversation’ away from crisis, towards change.¹¹⁴⁵ Though Malloch-Brown especially wanted to see significant management reform, and would not claim there was a clear strategy in place for proceeding towards the Summit, he was instrumental in how the process was packaged, and in trying to improve relations with the US administration. His hope – influenced by the idea of the ‘burning platform syndrome’¹¹⁴⁶ – was that ‘oil-for-food and the crisis surrounding Kofi’s leadership...was going to provide a moment where [states] would desert their blocking positions and narrow self-interest and combine around real reform’.¹¹⁴⁷

As such, ILF was at the ‘centre’¹¹⁴⁸ of this strategy of trying to change the conversation, and to transform the situation from a ‘defensive fight’ focused on ‘protecting’ Annan and the Organisation, into a serious process focused on reenergising the UN and moving forward.¹¹⁴⁹ For some, the ambition of trying to discuss such a huge number of proposals, defined by references to ‘San Francisco’ and the idea of adopting reforms as a ‘package’¹¹⁵⁰ was a mistaken approach. Why? Because genuine compromise would be necessary for success but was always unlikely, and because the narrative and scale would likely shape the subsequent

¹¹⁴⁵ Interview and emails from Edward Mortimer (8 July 2009, and emails 18 June 2010, 28 August 2011 interview with Mark Malloch-Brown: Malloch-Brown replaced Iqbal Riza as Annan’s Chef de Cabinet which proved to be an ascent in influence but also a step-down in the UN hierarchy from his position as Coordinator of the UNDP. His thinking was to ask ‘is there an opportunity we can cease out of this mess and can we kind of realign the debate to be about change rather than a criticism of the failings that obviously occurred’ (telephone, 23 June 2010)

¹¹⁴⁶ Malloch-Brown: ‘there are moments where the crisis burns so hard’ that ‘people are prepared to jump from the platform even if the ocean looks pretty uninviting just because you can’t stay where you are’, interview (telephone, 23 June 2010)

¹¹⁴⁷ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

¹¹⁴⁸ Email from Edward Mortimer (29 August 2011)

¹¹⁴⁹ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

¹¹⁵⁰ On Annan’s call for a package-approach see ‘The Secretary-General: Statement to the General Assembly’, 21 March 2005

perceptions of the outcome in a profoundly negative way whatever the outcome.¹¹⁵¹ Indeed, as it turned out, both of these proved partially correct. A package-approach was not embraced by states precisely because many were simply unwilling to compromise or negotiate in good faith. As it transpired, for a host of complex reasons, the multilateral system in this case lacked the necessary ‘lubrication’,¹¹⁵² to enable states to ‘find the consensus for change’.¹¹⁵³ It is certainly questionable that many states ever really bought into the imperative for change that Annan believed was so necessary, or even commonly understood the *fons et origo* of the crisis.¹¹⁵⁴ Add in the already documented divisions over the thematic scope of the proposals, and the previously described ‘distrust’ of the process¹¹⁵⁵ and it is easy to see why the reform effort ‘fell short’ of what Annan and Malloch-Brown had hoped for.¹¹⁵⁶ As Dauth suggests, Annan arguably ‘underestimated the rapid decline in any appetite for consensus in 2005’.¹¹⁵⁷ But even so, for all the criticisms and disappointments relating to process and outcome, one can at least understand the logic which underpinned Malloch-Brown’s approach, and there is no doubt it contributed to some important achievements.¹¹⁵⁸ But more importantly, with the remainder of this chapter turning to how R2P was formulated between April-September, what really matters for the argument is that for all the criticism and disappointments it was this very strategy which proved so vital to aiding/facilitating the outcome of R2P. By setting the bar so high – and there should be no doubt that it was – the dynamics described in Part 1 kicked into effect. And though the form of R2P was very narrow and heavily qualified (below), and based on the structured outcome logic was normatively far weaker than is often assumed, there

¹¹⁵¹ See NUPI (2006) ‘A fork in the road or a roundabout?’ p62-3

¹¹⁵² This point was made by a former ambassador at an event held under Chatham House rules

¹¹⁵³ Interview with Mark Malloch-Brown (telephone, 23 June 2010): Note consensus is a key word, because typical of the UN system, all issues had to be agreed on a ‘consensus’ basis. This is perhaps inevitable, particularly as alternatives like majority voting have their own major weaknesses, but is nevertheless important to keep in mind for understanding the process. Perhaps the clearest indication of the lack of acceptance of a package approach was the complete removal of the disarmament and non-proliferation section.

¹¹⁵⁴ And this assumes states believed there really was a crisis, as Traub writes ‘very few members seemed to believe, or perhaps care, that the UN had reached a “fork in the road”’ (2006) *The Best Intentions*, p335. Van den Berg suggested that in his view many states did buy into the need for reform, but once the proposals were on the table ‘old reflexes’ kicked in, interview (telephone, 18 October 2010) (see below)

¹¹⁵⁵ Interview with John Dauth (London, 25 May 2010)

¹¹⁵⁶ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

¹¹⁵⁷ Interview with John Dauth: As Dauth remarked ‘It was a bad year’ and not just because of specific factors relating to the Summit but also because of a declining security situation in Iraq, and the failed NPT review conference in the same year’ (London, 25 May 2010)

¹¹⁵⁸ Not least of which was that Annan was not ultimately forced to resign

should be little doubt that its prospects would have been significantly reduced had the negotiations been more limited.¹¹⁵⁹ As the Irish Prime Minister remarked if Annan had not ‘challenge[d] everybody to move from positions, you probably wouldn’t even have got what was agreed yesterday’.¹¹⁶⁰ There is of course that question of whether or not the accelerated development of R2P was, and will prove to be, beneficial to its future impact. In a similar vein, Malloch-Brown himself wondered if the ‘weak’ and ‘stripped down’ R2P language would do it ‘more harm than good’. But as he also pragmatically remarked, even a toehold can allow an idea or proposal to be built-up thereafter.¹¹⁶¹ The key point, however, is that any assessment of the ‘05 agreement; any assertions about R2P’s meaning and significance; any claims in relation to potential compliance; and any effort to build-on the ‘05 agreement, should be based upon understanding R2P not in isolation to the process, but fully embedded within it. Indeed, as Ch1 made clear, norm exogenization is a problem we need to avoid, not reinforce. Accordingly, to complete the overall explanation of R2P’s development, the final stage of this chapter turns specifically to R2P’s negotiation based initially upon ILF’s agenda-setting formulation.

The World Summit Negotiations

As should be apparent by now, the World Summit processes are highly complex. Though the analytical distinction between the how, why and what of R2P’s agreement provides an effective framework for understanding the political dynamics which underpinned its construction, it is clear that this untangling of the processes’ constitutive elements, although necessary, is somewhat artificial. These twin-dimensions certainly enable one to identify factors within the process relevant for addressing the propulsion, and form, of R2P. But before specifically addressing the formulation, it is important to reiterate the mutually constitutive relationship between these two dimensions. This relationship can be explained in the following way: (1) the propulsion of R2P depended in key respects upon the how/why factors identified throughout this chapter, but predominately in part 1. These, in accordance

¹¹⁵⁹ As argued throughout this chapter, without the structured outcome there is strong reason to believe R2P would not have been agreed in 2005

¹¹⁶⁰ This was in response to a question of whether Annan had set the ‘bar too high in terms of expectations’, UN (2005) ‘Press Conference by Prime Minister of Ireland’, Department of Public Information, 14 September 2005

¹¹⁶¹ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

with the structured outcome logic, help explain how R2P went from an idea unable to gain political traction within the GA, to one agreed within a rapid timeframe leading to September 2005; (2) the factors relating to the how/why are also directly relevant for understanding the form of R2P agreed in 2005. They did not simply help propel R2P towards agreement, but actually impacted upon the shape and parameters of the agreement because – for instance – of the way they impacted upon and conditioned the interaction, priorities and resources of states; and, (3) the formulation of R2P is *itself* a key element for explaining how/why R2P was agreed in 2005. The ways R2P was kept narrowly and tightly defined, and the specific ways it was framed and explained, were undeniably vital to understanding the unanticipated transformation its political prospects underwent. The relationship between these three elements may *prima facie* appear contradictory, but are in actuality entirely consistent. As stated repeatedly, the potential agreement of R2P in 2005 would have been greatly reduced had the factors captured by the structured outcome not been in place or impacted as they did. But equally even with these pressures bearing down on, and shaping, the negotiations of 2005, it was not given that R2P would emerge as part of the negotiated outcome.

The odds that it would be were certainly reduced, but the exploitation of the Summit opportunity depended upon agency. In this respect, this final section focuses on the multilateral negotiations which began intensively in early April and only ended the day before the Summit began on the 13 September. Even with the analytical separation described, this task is not made any easier. The intensive negotiations involved some 191 states, hundreds of individuals, at least 6 draft iterative outcome documents (4 of which were ‘official’ versions),¹¹⁶² with negotiations taking place across 4 key thematic

¹¹⁶² GA President Draft Outcome Document, circulated 3 June 2005; also released as Draft outcome document of the high-level plenary meeting of the GA of September 2005 submitted by the President of the GA, published 8 June 2005, A/59/HLPM/CRP.1; Revised draft outcome document of the high-level plenary meeting of the GA of September 2005 submitted by the President of the GA, 22 July 2005, A/59/HLPM/CRP.1/Rev.1; Revised draft outcome document of the High-level Plenary Meeting of the GA of September 2005 submitted by the President of the GA, 5 August 2005, Future Document, A/59/HLPM/CRP.1/Rev.2; Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005 submitted by the President of the General Assembly, A/59/HLPM/CRP.1/Rev.2, 10 August 2005; President’s Draft Negotiating Document for the High-Level Plenary Meeting of the GA of September 2005, submitted by the President of the GA, 6 September 2005; Draft Negotiated Outcome, 12 September 2005, 8am and 12.30pm; Draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005, A/RES/59/314, 13 September 2005

‘clusters’¹¹⁶³ covering dozens of specific issues and individual proposals, all of which required *consensus* agreement.¹¹⁶⁴ The mechanics of the process also exacerbate the complexity. Under the overall direction of the Office of the GA President (Jean Ping) the process was designed initially to be based upon facilitation. Appropriately this involved the appointment of 10 regionally representative ambassadorial facilitators¹¹⁶⁵ with additional support from selected Secretariat officials (or ‘resource persons’), and 5 politically-focused ‘Envoys’ of the SG tasked with helping to ‘promote’ the reform agenda.¹¹⁶⁶ The drafting of the documents – or as described above, those ‘holding the pen’ – was done in the name of the GA President, and obviously depended upon his input, that of his staff, the facilitators, and member states in a more direct sense.¹¹⁶⁷ But here the involvement of the Secretariat was particularly crucial. The scale of the reform agenda was always going to pose major challenges to the Office of the GA President, whoever occupied it. As such, the input, support and skills of key Secretariat staff, most notably Robert Orr, was an essential element of bringing the outcome to fruition – increasingly so as the process moved towards its final hours and the prospects for agreement became ever more fraught.¹¹⁶⁸ Indeed, this was certainly true after the process shifted from a facilitatory process to a more textually-focused process based upon the ‘core group’ structure.¹¹⁶⁹ As described above, this significant change to the process occurred after the arrival of John Bolton and his now infamous proposed amendments to the rolling draft outcome text on the 17 August.¹¹⁷⁰ These amendments totalled approximately 700 individual changes to the most recent rolling

¹¹⁶³ The clusters were: ‘peace and security’, ‘development’, ‘rule of law and protecting the vulnerable’ and ‘strengthening the UN’, see ‘Press Briefing by the Spokesman for the GA President’, 22 February 2005

¹¹⁶⁴ There was no mechanism available for majority voting on individual proposals, see ‘Modalities, format and organization of the high-level plenary meeting’, A/59/545, 1 November 2004

¹¹⁶⁵ On the role and selection of the facilitators see ‘Press Briefing by the Spokesman for the GA President’, 27 January 2005 and ‘Press Briefing by the Spokesman for the GA President’, 22 February 2005

¹¹⁶⁶ ‘Daily Press Briefing by the Office of the Spokesman for the Secretary-General’, 4 April 2005 and interview with Mark Malloch-Brown (telephone, 23 June 2010), on their effect see NUPI (2006) ‘A fork in the road or a roundabout?’, p52

¹¹⁶⁷ In a direct sense: member states sought to directly feed language to those drafting the documents, Canada was one of those countries who did so by submitting language on R2P – as did Rwanda in a publically circulated draft (see below), private interviews (31 March 2010, 22 October 2010)

¹¹⁶⁸ NUPI (2006) ‘A fork in the road or a roundabout?’ p55

¹¹⁶⁹ As stated in a previous footnote, the Core Group changed in size and approach as the process moved towards conclusion, by the final week it met in a smaller group of 12-15 as well as the original group of 30-32 ambassadors. Additionally the core group had numerous sub-group meetings on specific areas of the text, including R2P

¹¹⁷⁰ United States (2005) *Revised draft outcome document of the High-level Plenary Meeting of the GA of September 2005 submitted by the President of the GA*, dated 17 August 2005, 11.06am

draft outcome document (dated 10 August), and were reinforced by a series of ‘Dear Colleague’ letters further explaining policy positions of the US, including one on R2P circulated on the 30 August.¹¹⁷¹ The resulting effect was the negotiations of individual areas, including R2P as one of the seven priority areas described in Part 1, became much tighter and more concerned with formulating language on a line-by-line basis to overcome resistance; to foster greater consensus. In this respect, the argument that Bolton’s intervention precipitated a necessary and inevitable change to the process is directly relevant for how we understand R2P’s specific formulation through each of the draft outcome documents and each stage of the process. As becomes clear, until mid-August the language of R2P was under-developed and over-optimistic in relation to what a majority of member states were willing to accept. Here it is important to recognise that the production of the draft documents was an iterative process. They provided the basis for further negotiation and could not necessarily be seen as representative of agreement at the time they were released. It would be quite wrong to assume these iterations represented agreement or that the text on R2P was subject to ‘pre-Bolton’ agreement and fell victim to ‘post-Bolton’ disagreement. Particularly during the facilitator stage the draft outcome documents from the 3 June to the 10 August ballooned in size; became increasingly littered by specific member state, or regional grouping language; and saw the standard of diplomatic drafting reduce considerably.¹¹⁷² Moreover, contrary to the package approach Annan had hoped for – which theoretically should have contributed to some kind of bargaining dynamic – individual agenda items were dealt on an individual, disconnected basis which inevitably complicated the effort to develop an overall coherent document.¹¹⁷³ This was certainly partly a product of the difficult set of relationships between states, and the agenda-related issues already described. But it was also a problem with the facilitation process itself. Reiterating what one official remarked, until early-August the negotiations were in essence ‘shadow-boxing’ ahead of real thing which began thereafter. This may not have been ideal, but was how the process in this case unfolded. In this respect, the required specificity and detailed member state engagement with R2P to the degree that would be

¹¹⁷¹ Bolton submitted at least seven letters from the 29-30 August on the topics of R2P, the Peacebuilding Commission, UN Management Reform, the HRC, terrorism, development and the MDGs, see bibliography

¹¹⁷² On US criticisms in early August see ‘Statement by Ambassador Anne W. Patterson, Deputy United State Permanent Representative, on UN reform’, 2 August 2005

¹¹⁷³ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010), see also NUPI (2006) ‘A fork in the road or a roundabout?’ p54-55

necessary was not forthcoming. It was always going to be a contentious issue, and one which would require careful crafting. But with the facilitator process as it was, and with R2P relegated in relative importance because of the scale of the agenda, the corresponding language lacked the specificity and qualifications necessary to gain the acceptance of those states outside the group of state supporters R2P could rely upon. As Malloch-Brown accepts, it is entirely fair assessment to say that the facilitated process was not creating 'clarity of outcomes'.¹¹⁷⁴

This really changed after the intervention of Bolton and the move to a CG approach from the 29 August onwards.¹¹⁷⁵ Undoubtedly this phase brought many of its' own problems, for instance resulting in the production of draft documents 'scarred' by the addition of numerous brackets and marginal notes, adding to the sense of confusion and disconcertment.¹¹⁷⁶ But the combination of continuing GA open-ended/plenary discussions to address less contentious issues, and a core group (CG) structure (initially composed of 30 ambassadors, and a number of more informal sub-groups thereof) negotiating contentious issues on a line-by-line basis, meant the text would be more tightly crafted, and more representative of what states were willing to accept. Thus, within the process there was an important contrast between the drafts prior to the Bolton intervention (3 June, 22 July, 5/10 August) and those developed thereafter (6 September, 12 September, 13 September). The latter documents – negotiated on the basis of the so-called 'Ping 3' draft of the 5/10 August – better reflected the nuances of potential agreement between states on R2P. To reinforce this point, it is revealing that an update sent on the 22 August from the UK Mission in New York to the FCO in London stated that with '15 working days to go' the '*real negotiations* among key players start now'.¹¹⁷⁷ The phrase 'real negotiations' could not be more revealing. Rather than representative of any broad agreement it was understood by a leading UN member that negotiations relating to many key issues in the latest iteration of the outcome document had not ended but were actually moving towards an end-game

¹¹⁷⁴ Interview with Mark Malloch-Brown (telephone, 23 June 2010)

¹¹⁷⁵ 'Daily Press Briefing by the Office of the Spokesman for the SG', 29 August 2005

¹¹⁷⁶ Interview with Allan Rock (Ottawa, 11 June 2009)

¹¹⁷⁷ 'E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document', 22 August 2005 (my *emphasis*)

defined by greater emphasis on the detailed language of agreement.¹¹⁷⁸ Indeed, though this argument is consistent with Part 1's explanation of the structured outcome in terms Bolton's role in helping to spark the 'inevitable' shift from facilitation to greater line-by-line negotiation via the CG, it is suggested by some that in fact the intervention of Bolton served to unravel what had been 'agreed' previously. According to this position, R2P was one of a number of agreed issues which fell victim to the wider effects of the US position. Alex Bellamy expresses this kind of thinking:

The sting in the tail came in Bolton's proposed amendments to the wider UN reform project...The effect of...this...was to *destroy consensus* on the Ping document. Bolton's intervention declared open season for other spoilers to reopen contentious issues. As John Dauth, Ping's Australian facilitator, put it in late August, 'everyone is trying to reopen issues' that had been *agreed* over the previous month. The R2P *was among them*'.¹¹⁷⁹

On the face of it, the observation that issues were 'reopened' appears to have some merit: if the US saw fit to express its policy positions on a host of issues, and dissatisfaction with how they appeared in the draft outcome, then surely it logically follows that a number of other states would follow suit? It is certainly true that some states sought to exploit the described shift, not least because a line-by-line process would inevitably *have* to involve some of the more hard-line (what some call 'spoiler') states.¹¹⁸⁰ It is also true that the provocative nature of Bolton's intervention exacerbated the way some states would subsequently respond.¹¹⁸¹ But the idea Bolton's actions 'destroyed consensus' – in other words implying that consensus did indeed exist – and therefore the implication that this included a reopening of *agreement* on R2P, is deeply problematic. Indeed, in a host of ways this position underplays the underlying dynamics of the overall process, and underplays a number of more specific factors relating to why the change to the CG described in Part 1 was both necessary and inevitable, even if the way it happened was unquestionably unfortunate. Most of these

¹¹⁷⁸ This is true whether or not they were aware of the core group idea at that stage. As officials involved made clear, they fully understood that the facilitation process had to come to an end in order to allow greater elements of line-by-line negotiation, private interviews (3 August 2010, 10 August 2010, 22 October 2010) and email (21 November 2011)

¹¹⁷⁹ Bellamy (2009) *Responsibility to Protect*, p86-7 (my emphasis)

¹¹⁸⁰ Private interview (22 October 2010)

¹¹⁸¹ Particularly because of the US position towards the MDGs and development in general, a point made by Dauth in interview (London, 25 May 2010), and one Bellamy is right to recognise (2009) *Responsibility to Protect*, p86-7

dynamics were addressed above, but, because this issue is so central to how we understand the formulation of R2P, the argument is worth reiterating. Not least because the picture is far more complex and nuanced than Bellamy implies. As this section explained, significant resentment towards the process was building prior to the arrival of Bolton, with NAM and G77 members particularly critical of what they regarded as unfair limitations on their ability to influence the direction of the negotiations. To repeat what one European official described, the facilitator stage provoked a perception that it served the interests of a well-connected – predominately western – group of states, many of whom shared policy preferences of a more ‘progressive’ disposition.¹¹⁸² Though leading to a rather curious alliance with some of the more hard-line UN member states,¹¹⁸³ the fact was, from the perspective of its own interests, the US agreed the process was not enabling clear policy-lines to be incorporated into the text being formulated. In other words they believed the process was not producing documents that many states, could support because they did not contain enough language of actual consensual agreement.¹¹⁸⁴ Indeed, prior to Bolton’s arrival at the UN, his Deputy expressed a series of concerns relating to both the formulation of the draft document, and the way US ‘priorities’ were being addressed.¹¹⁸⁵ In this respect, US concerns were not a new development suddenly imposed upon the process by its abrasive newly arriving ambassador. Bolton’s apparently difficult personality and his well-known neo-conservative leaning likely filtered into how he negotiated and dealt with colleagues, but the broad thrust of his approach was in tune with the preferences of the US administration.¹¹⁸⁶ As Bolton put it, his aim was to ‘find a new process that would allow the

¹¹⁸² Private interview (22 October 2010): indeed, one official commented that at a meeting of the EU during the early stages it was suggested that Annan’s *In Larger Freedom* could have been ‘written by the EU’ such was thematic emphasis and content (3 August 2010)

¹¹⁸³ Private interviews (3 August 2010, 25 June 2010) and with John Dauth (London, 25 May 2010); see also John Bolton (2007) *Surrender Is Not An Option: Defending America at the United Nations and Abroad*, New York: Threshold Editions, p204-208

¹¹⁸⁴ For an account of this and details of a meeting between Bolton and Ping see *Surrender Is Not An Option*, Ch7, pp.194-219

¹¹⁸⁵ ‘Statement by Ambassador Anne W. Patterson’, 2 August 2005

¹¹⁸⁶ This point is important, not least because a number of interviewees felt Bolton was ‘playing his own game’. In some areas, most notably in relation to the US position on the MDGs, there is an element of truth to this: Bolton brought his own unique approach to the negotiations. However, on the specific point of the problems with the process Bolton’s position was supported by his boss Condoleezza Rice: see Traub (2006) *The Best Intentions*, p374, and Bolton (2007) *Surrender Is Not An Option*, p206-7

member governments to reach agreement on the specific words of whatever the Outcome Document turned out to look like'.¹¹⁸⁷

In many respects this is what happened. Whilst the introduction of the CG, particularly coming so late in the process, led to some major difficulties in trying to arrive at consensus across such a vast agenda, it did at least enable states to address issues on a more language-specific basis. As one Canadian official remarked, Bolton's amendments though a 'shock to the system' and viewed as an attempt to 'torpedo negotiations', the reality was line-by-line negotiations were always going to have happen at some stage. Thus Bolton's intervention 'merely kick started this process'.¹¹⁸⁸ But the CG was by no means a perfect innovation. It only dealt with the seven most contentious issues¹¹⁸⁹ – some of which occupied more time than others – and the line-by-line aspect of the negotiations certainly enhanced the ability of some states to be more difficult and destructive in their approach. But the most important point about this shift in the mechanics of the process was that it was not just necessary, but was a product of the weaknesses of the process prior to it. Quite obviously, this argument intensely complicates the misguided picture painted by Bellamy. The perception that existing consensus was destroyed, and that a reopening of already agreed issues was the key dynamic which followed the Bolton intervention, is representative of an overly simplistic understanding of the process. The story is vastly more nuanced than this. Because of the described problems with the facilitator process, a large number of states simply did not believe it was allowing them to influence the drafts in the way they wished, and nor was the process ensuring the draft text was crafted with the necessary precision.¹¹⁹⁰ This could only be rectified if the process switched towards the formulation of specific language that states could actually agree to, rather than be perceived to agree with. This distinction is subtle, but absolutely central to the transition which took place. To paraphrase a common idiom, the devil would be in the detail. In R2P's case, whether or not some hard-line opponents would seize upon the chance to more directly project their hostility, the inclusion of R2P in the outcome document really depended upon its language being framed

¹¹⁸⁷ Bolton (2007) *Surrender Is Not An Option*, p205

¹¹⁸⁸ Private email to author (21 November 2011)

¹¹⁸⁹ As selected by Ping, see Part 1 and 'Press Briefing by the Office of the Spokesman for the SG', 30 August 2005

¹¹⁹⁰ Private interviews (3 August 2010, 22 October 2010) email (21 November 2011)

and defined in such a way as to win over a far larger group of sceptical, concerned, or less-enthusiastic states and to ensure clear red-lines of the P5 and UN membership in general were not crossed. Even if some states were willing to accept agreement in return for progress in their own priority areas (e.g. development), that did not provide open-ended scope for how R2P was defined. In one sense, Bellamy's suggestion that 'a broad consensus about the phrasing of the world's commitment to the R2P [began] to emerge in early August' is correct.¹¹⁹¹ As shown below, the core elements of any potential agreement on R2P were broadly understood relatively early on: R2P would be about primary state responsibility; would speak to the legitimate concern of the international community in very limited circumstances, but would be tied to existing processes and imply no new obligations.¹¹⁹² Even with the factors identified by the structured outcome enabling its path, without adherence to these key elements agreement on R2P would not have been achievable. The problem with Bellamy's argument, however, is that by tying how R2P was formulated so closely to the perceived negative impact of John Bolton in 'tearing [the 5/10 August] consensus apart',¹¹⁹³ he misrepresents the status of the draft outcome document at that stage. Any consensus which was understood between states as to what the R2P agreement should broadly look like was not 'destroyed' as Bellamy suggests. Why? Because the 5/10 August draft did not actually satisfactorily capture the language necessary to ensure the expression of R2P was defined according to these core elements. It was not that this draft did not address some of the core elements that would lead to agreement, but more that it only did so in imprecise terms.

Put simply, whether Bolton had arrived or not, R2P in the 5/10 August draft would not have won the approval of states because it was not based upon consensus agreement. The language was too general, and crucially included some fundamentally challenging/problematic wording more demonstrative of a process which had involved too much shadow-boxing, and not enough close-quarter engagement. For instance: it included

¹¹⁹¹ Bellamy (2009) *Responsibility to Protect*, p85

¹¹⁹² This is based upon private interviews (3 August 2010, 13 August 2010, 22 October 2010, 13 April 2011, 25 June 2010), and an 'E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives on 29 April 2005', 3 May 2005. It is important to point out however that the negotiations were about how these broad elements could best be put in place in terms of the detailed language of the agreement

¹¹⁹³ Bellamy (2009) *Responsibility to Protect*, p85

references to ‘obligation’ in relation to measures short of Chapter VII; to ‘shared responsibility’ to take collective action; and a call for the P5 to ‘refrain’ from the use of the veto where genocide, ethnic cleansing and crimes against humanity were concerned.¹¹⁹⁴ For various reasons, *none* of these were going to win the support of a majority of states. So the perception that R2P was ‘reopened’ is only sustainable if it is used to describe how the shift in the process led to a more detailed effort to define the language of R2P *after* the Ping 3 draft of the 5/10 August. Unfortunately this is not what Bellamy is suggesting. The crucial distinction is that this was not a reopening of existing agreement/consensus but an ‘opening-up’ of a process to enable greater emphasis on the detailed language of difficult areas. Indeed, this is testified by press conferences given by the facilitators of the process around the 5 August and by the abovementioned internal UK update of the 22 August.¹¹⁹⁵ Speaking to the 5 August draft, the facilitators were clear in stating that it ‘represented a work in progress’, that ‘providing parameters’ for R2P was proving a ‘challenge’ and that the negotiations would continue to find ‘agreeable language...on matters relating to...[R2P]’.¹¹⁹⁶ Meanwhile, as far as UK officials were concerned, in describing the ‘real negotiations’ as starting ‘now’ they believed agreement on R2P was ‘within reach’ but was dependent upon ‘final negotiations supported by high-level lobbying in key capitals’ and that a ‘substantive result’ could be accepted by a majority of the NAM – where the most problematic resistance had come from – ‘subject to (potentially tough) negotiation of the fine print’.¹¹⁹⁷ Clearly the understanding was that that agreement did not yet exist, but subject to key conditions was achievable.

Tracing R2P’s formulation around the core elements identified dominates the remainder of this chapter. But to fully understanding this formulation it has been just as necessary to understand the dynamics of the process, how they changed, and how they impacted upon R2P’s status and development. The emphasis on the characteristics of the process has clearly overlapped with elements of the argument in Part 1. But this section has sought to

¹¹⁹⁴ *Revised draft outcome document of the High-level Plenary Meeting of the GA of September 2005 submitted by the President of the GA*, 5 August 2005, Future Document, A/59/HLPM/CRP.1/Rev.2 and Box 5.5 (FCO) (2005) ‘E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP’, 22 August 2005

¹¹⁹⁵ Both prior to the introduction of the core group

¹¹⁹⁶ UN (2005) ‘Press Conference on Summit Outcome Document’, and UN (2005) ‘UN officials preview possible outcome of summit on development, UN reform’, both 5 August 2005

¹¹⁹⁷ ‘E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP’, 22 August 2005

emphasize just how vital it is we understand R2P's agreed form in relation to the processes which enabled it to get to that point. In this regard, the change from a facilitator process based upon perceived consensus, to one with greater line-by-line negotiation through the introduction of a CG-structure, was one of the most significant direct changes to how R2P's language was crafted. While R2P remained a diminished priority in the context of the overall agenda, as one of the seven priority areas for the CG to address the dynamics of how it was crafted would shift gear. The initial negotiating basis for this new phase of negotiation would be provided by the 5/10 August draft, and then most importantly the 6 September draft thereafter. In terms of how the introduction of the CG impacted upon the development of R2P, the dynamics underpinning its formulation were broadly united by a considerable tightening of language. Inevitably – as with any political agreement – the scope for alternative *post hoc* interpretations would be very real in this case. Considering what R2P was designed to address, and the political dividing-lines between states, unanimity of meaning in relation to a complex set of specific issues was always unlikely. Indeed, as argued above, the structured outcome meant the inevitability of this increased.¹¹⁹⁸ But, based on a detailed charting of the development of the R2P language, after the described shift the draft documents post-5/10 August (6, 12 and 13 September) would undergo a series of highly significant revisions. These changes reflected the shift to line-by-line multilateral negotiation.

It would certainly be wrong to imply the process from the CG onwards was in any way clear, structured or satisfactory. The lateness of the transition to line-by-line not only blew Ping's optimistic aspiration of arriving at 'wide-ranging consensus' by the end of July,¹¹⁹⁹ but threw the process into chaos. One effect of this was that the September drafts would become increasingly littered by bracketing, and as the process moved towards the opening of the Summit on the 14th there was real danger that any outcome might completely fall apart. Things were so perilous that a document, removed of all brackets and any bracketed text states could not agree to,¹²⁰⁰ was only presented to ambassadors on a 'take-it-or-leave-it'

¹¹⁹⁸ Not always ideal/beneficial: sometimes this is a necessary element of political agreement; to avoid difficulties which are too great in order to prevent them undermining overall agreement

¹¹⁹⁹ 'Press Conference by GA President on September 2005 High-level Meeting', *Press Briefing*, 3 June 2005

¹²⁰⁰ Reform the UN (2005) 'Current Draft Outcome Document Reflects Key Omissions and Changes', 13 September 2005

basis by Annan and Ping the day before the Summit was to begin.¹²⁰¹ Resultantly, many areas of the text were cut-out (disarmament and non-proliferation the most high-profile casualty) or *brackets* around areas which had remained subject to difficulties were *removed* and simply presented to those resistant to accept the draft or not. This coordinated effort to avoid the destruction of the entire document helped dissipate strong Indian resistance to the name, and ultimately the inclusion, of R2P. But this is only one aspect of the story of R2P.

In another sense, the line-by-line approach – and increased bracketing of R2P which stemmed from it – was evidence of active negotiation to try and formulate a satisfactory outcome based on identifying those areas most resistant to agreement. Thus, the apex of R2P bracketing came in the 6 September draft as states began to zone-in on the more contentious issues of language.¹²⁰² In contrast to the facilitator-led process, unrealistic or more difficult references to the veto, to obligation, to international responsibility, and to the parameters of R2P were now subject to closer attention/engagement. In some cases, the solution would be easy to arrive at with others much more difficult. But more importantly, while the use of bracketing provided evidence of disagreement, they were also, paradoxically, evidence of a more concerted effort to arrive at more agreeable text, and thus were a by-product of a phase that was always going to be necessary, rather than necessarily representative of new areas of disagreement.

The revisions R2P underwent are detailed below, but can broadly be described in terms of: a *tightening* of the text (through the removal of unacceptable language); a reiterated *narrowing* of its scope (to ensure clear definition of R2P's parameters); and a *restructuring* of its presentation (to better capture the core elements for agreement). If one's ideational preference is strongly supportive of R2P, the development of R2P during this period may be seen as a progressive weakening. However, this would be mistaken considering the extensive explanation of the politics behind the transition to the CG documented

¹²⁰¹ This is picked up again below, but accounts of this confused last 24hours can be found in Bellamy (2009) *Responsibility to Protect* and Traub (2006) *The Best Intentions*, my account is also based upon numerous interviews including with John Dauth (London, 25 May 2010), and private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010)

¹²⁰² Note this was the first draft after the 5/10 August, so it is not surprising that the bracketing was most prevalent at this stage

throughout this chapter. There were very good reasons why R2P's language changed as it did, and moreover considering its political prospects prior to the processes surrounding the Summit, that agreement was possible at all should be regarded with surprised realism rather than idealised disappointment. Indeed, much of this chapter has sought to explain the dynamics of how/why R2P developed as it did, and as rapidly as it did. In so doing, two dimensions were referenced as being particularly important. First, the structured outcome packaged a series of factors which show how the odds for R2P's successful adoption were dramatically increased. Second, the formulation itself (the "what") was defined in such a way as to ensure agreement could be achievable. The core elements of this are tracked below, and in so doing leads to some rather problematic questions about just how significant the R2P agreement really is. Such questions relate directly to how R2P was defined and framed and are additional to the questions raised more specifically in the context of the how/why explanation. It should be clear, however, that the relationship between the formulation and the structured outcome logic is intensely interconnected. Put simply, the process is at the heart of each and every dimension of the overall argument.

Resultantly, the task of explaining R2P's development is immensely complex.¹²⁰³ The dynamics, dimensions, and layers presented throughout speak to a process not easily deconstructed. This complexity is, however, unavoidable. With many existing explanations of normative change rendered and applied in overly simplistic terms, and with many accounts of R2P over-optimistic in their outlook,¹²⁰⁴ the process-driven hypothesis provides a stronger basis for understanding R2P's form, and potential impact. Indeed, it is particularly interesting that despite the arguments around the structured outcome; despite immense pressures on states to agree an outcome;¹²⁰⁵ despite the exhaustive advocacy efforts of Canada et al. and all that went before the negotiations began in April 2005, the culmination of all this was a mere three paragraphs, totalling three-hundred words in length.¹²⁰⁶ But more problematic was that the content and tenor of these paragraphs was as blandly limited as they were. This is not to discredit the efforts of those supportive states who

¹²⁰³ One ambassador described the negotiations as 'intrinsically very difficult', private interview (12 May 2011)

¹²⁰⁴ Welsh (2010) 'Implementing the Responsibility to Protect', *Ethics & International Affairs*, online edition

¹²⁰⁵ Building expectations was of course part of the Annan/Malloch-Brown strategy, but their effect on those negotiating was well-articulated in interviews, see also 'Statement by Ambassador Anne W. Patterson on UN reform', 2 August 2005 and NUPI (2006) 'A fork in the road or a roundabout?' p46

¹²⁰⁶ These paragraphs opened the chapter, and thus will not be repeated here

worked tirelessly to successfully achieve the inclusion of R2P, but it is to say that some of the limitations on how far states were willing to go were too significant to overcome. Many of these limitations were clear early on. Canada had altered its framing of R2P post-Iraq in response to fears it could lead to increasing interventions, and was fully aware of how difficult selling the idea would be. Indeed, other key supporters like the UK, Rwanda, the EU, New Zealand, Sweden, South Africa, and France were all sensitive to the concerns R2P provoked and sought to actively address them through intergovernmental negotiation.¹²⁰⁷ Alternatively there was an equally vociferous group of hostile opponents to R2P who repeatedly spoke against it. This included Egypt, Algeria, India, Pakistan, Cuba, Venezuela, Jamaica, Belarus and Iran. Russia was also generally opposed, and like China would have been more than happy to have seen no reference to R2P.¹²⁰⁸

Because of characteristics of the process – particularly the reduced place of R2P – this opposition was somewhat tempered, although no less real. But more significantly, even though China and Russia were deemed unenthusiastic, their political distaste for the idea did not lead them to seriously or ‘actively’ threaten its inclusion.¹²⁰⁹ Certainly part of the reason for this was that both had bigger concerns elsewhere, notably in China’s case the negotiations around the HRC.¹²¹⁰ But more interestingly, the way R2P was framed and subsequently drafted, meant they had little reason to shift from grudging acceptance of its inclusion to outright opposition. It is important to recognise, however, that the position of both towards R2P was – according to one Canadian official – ‘consistently negative’ throughout. This matters because some have misunderstood how the shift to the CG after the intervention of Bolton impacted upon the positions of states, and China and Russia specifically. Perhaps inevitably – considering the described weaknesses in his account – Bellamy wrongly suggests that in late August China ‘signalled its change of heart on R2P and announced ‘deep reservations’ and that Russia ‘followed suit and began arguing against

¹²⁰⁷ For examples of how key supporters framed R2P throughout 2005 and into the negotiations see: Canada (29 January, 20 April, 12 July), France (19 April, 12 July), UK (19 April, 29 April, 21 June), EU (19 April, 28 July-2 August), New Zealand (28 July-2 August), all listed in bibliography

¹²⁰⁸ Private interview (13 August 2010)

¹²⁰⁹ Private interviews (31 March 2010, 3 August 2010, 13 August 2010, 22 October 2010)

¹²¹⁰ Private interviews (31 March 2010, 3 August 2010, 13 August 2010, 22 October 2010) and emails (25 July 2010, 25 July 2010): it is also worth repeating the point that officials interviewed were very clear that China at no stage altered its fundamental position on R2P, it may have spoken louder to its policy red-lines, but did not suddenly change its position

[R2P] itself'.¹²¹¹ This is a wholly misguided ascription, symptomatic of a failure to fully appreciate how the dynamics of the process worked prior to, and thereafter, the Bolton intervention. It was not until the process opened-up with the commencement of line-by-line negotiations that the full extent of these negative positions were 'fully articulated'.¹²¹² There was no change of heart. Their objections to R2P were well-understood throughout, but the transmission of them into the development of the draft text took on a different character only once the process changed. Moreover, this was not simply an issue exclusive to those of a hostile or less-enthusiastic disposition. As clearly expressed above, even the UK – one of the R2P's most influential supporters during the '05 negotiations – had policy concerns which were anything but trivial in nature. In this respect, this explanation speaks to the value of the methodological approach, and the packaging of the empirically-driven findings afforded by the structured outcome. But returning to how the formulation helped deal with the divisions R2P was always going to provoke, in the case of China and Russia so long as R2P did not cut across their existing P5 prerogatives, or imply new obligations or automaticity, then their reasons for getting especially exercised were greatly reduced. In actuality, this was also broadly similar where the other P5 were concerned. The US wanted to ensure R2P was not a legal commitment, did not imply obligation and that any reference to responsibility vis-à-vis the role of the international community was not of the same character as that of an individual state. These policy lines were best expressed in Bolton's 30th August letter which closely mirrored where the agreement would eventually end-up.¹²¹³ Meanwhile, the UK would most likely have accepted stronger language than ultimately realised, but this would still have been qualified by the same underlying foundations as the

¹²¹¹ Clearly my account is contrary to Bellamy (2009) *Responsibility to Protect*, p87, and Traub (2006) *The Best Intentions*, p373 (Bellamy's account is clearly influenced by Traub's)

¹²¹² Obviously this point is consistent with the argument throughout and is based upon a numerous interviews with centrally placed individuals. These individuals were explicitly asked about the suggestion of backsliding in the positions of Russia and China and were direct in stating clearly that this did not happen, that this was based upon confusion about how the process unfolded. The 'fully articulated' quote was made in a private email to the author, in a statement expressing clearly that there was no change in the position of these states (21 November 2011)

¹²¹³ Bolton 'United States Proposals: Responsibility to Protect', *Letter to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005. Indeed, Allan Rock described Bolton as 'helpful and supportive' on R2P, that even with the US making its position very clear discussing R2P with Bolton was not problematic and he was not going to prove an obstacle to agreement. Some also commented that the endorsement of R2P by the Gingrich-Mitchell Task force on the UN might have helped condition the US position, see (2005) *American Interests and UN Reform*, Washington DC: United States Institute of Peace

other P5, even if the level of political commitment was undoubtedly greater.¹²¹⁴ The main underlying difference between the P5 related to the issue of authorisation; neither the US, nor the UK, wanted to rule out the possibility of action outside the SC, whereas China and Russia wanted to specifically guard against any language which might leave this open. Even France was seen as more sympathetic to the China/Russia position.¹²¹⁵

This brief account of the P5 positions is not just about trying to understand where the five most powerful states in the UN system stood in relation to R2P. It is actually more revealing because it is one way of showing how key policy-lines filtered into, and shaped, the final outcome. The central challenge for those negotiating R2P was to overcome a series of dividing-lines which cut across the membership in various ways. This applied to supporters, sceptics and non-supporters alike. Each had their own red-lines and preferences for what agreement on R2P should look like – if it was to be agreed at all. It was the task of supporters to find ways to overcome such differences, while at the same time working to maximise the best possible outcome they could. From an advocacy perspective, this required a range of tools, strategies, forms of engagement, and carefully crafted framing tactics. From a negotiation perspective, this required an ability to draft effectively, a willingness to accommodate the positions and concerns of states, to adapt, to make changes and propose alternatives, to compromise including if necessary by diluting proposed language, and, if need be, to utilize strategic tactics and to directly challenge superficial or strongly resistant arguments.¹²¹⁶ In arriving at final agreement, all of these facets were deployed by those working in support of R2P. But as with any intergovernmental negotiation, what really matters are the individuals and states involved. Intergovernmental diplomacy is dependent upon individual agency. Although this complex process was subject to many structural factors, it was nevertheless an elite process involving senior representatives of individual governments. In this respect, the cause of R2P was greatly enhanced by the individuals, and state mechanisms behind them, fighting for its adoption. At the heart of this effort was Canadian ambassador Allan Rock. A politician by

¹²¹⁴ Private interviews (3 August 2010, 22 October 2010)

¹²¹⁵ Private interview (3 August 2010): post-Iraq this was not be seen with any great surprise

¹²¹⁶ This included 'making life difficult elsewhere' in the negotiations if necessary, private interview

trade, his tireless, fair-minded, unwavering tenacious commitment to R2P,¹²¹⁷ allied to a strong sense of possibility and what was needed to get the job done, ensured he was a formidable player and an ‘immensely popular’ ambassador at the UN.¹²¹⁸ On an individual basis, no-one did more to ‘extract’ those three R2P paragraphs from such a chaotic, difficult process.¹²¹⁹ Indeed, as former Canadian Prime Minister Paul Martin suggested had it not been for the efforts of Allan Rock it is highly unlikely there would have been any agreement on R2P¹²²⁰. Such an argument, while inevitably conditioned by the structured outcome, is entirely consistent with the emphasis on individual agency expressed throughout this thesis. The opportunities provided by the structured outcome depended upon their exploitation by key individuals involved in the process. Resultantly, Rock’s constant desire to explain, to reiterate, to address concerns, to win states over to the idea, meant his association with R2P would become extremely well-known. As Rock joked during interview:

Canada became highly associated with R2P, and when people saw me walking down First Avenue in New York they’d say “Uh oh, here comes another blast on R2P, let’s cross the street”.¹²²¹

Of course, as Rock points out, the association was with Canada. The combination of years of advocacy and a clear choice to prioritize R2P during the early stages of the Summit process meant Canada was always the leading state sponsor. This prioritization nevertheless came at a cost. It meant that by putting most of their ‘eggs in the R2P basket’ Canada would have to accept less involvement in other areas of the negotiation.¹²²² The upside was that it had the effect of ensuring the cause of R2P had the full backing, influence and negotiating resources of the Canadian government. This included the full engaged support of Paul

¹²¹⁷ Paul Martin in interview described Rock as an ‘idealist’ with a great interest in foreign affairs (telephone, 27 January 2010). It is also worth noting that one of Rock’s closest friends during his time in Ottawa was Lloyd Axworthy

¹²¹⁸ Praise of Rock was unanimous and glowing amongst interviewees. Paul Martin described him as an ‘outstanding ambassador’ and one of Canada’s ‘strongest ambassadors to the United Nations’ (telephone, 27 January 2010), Mark Malloch-Brown described Rock as one of the few ‘heroes’ of the process (telephone, 23 June 2010), while John Dauth pointed out just how rare it is for a politician to be a successful ambassador at the UN which Rock, in his view, clearly was (London, 25 May 2010)

¹²¹⁹ Interview with John Dauth (London, 25 May 2010)

¹²²⁰ Interview with Paul Martin (telephone, 27 January 2010)

¹²²¹ Interview with Allan Rock (Ottawa, 11 June 2009)

¹²²² Interview with Allan Rock (Ottawa, 11 June 2009), this did not mean Canada was not involved in many other areas of the negotiations but that the prioritization of R2P inevitably impacted upon the extent of this involvement

Martin. Backing-up his advocacy of R2P to the HLP, when the negotiations neared their end-point in early September, Martin would become personally involved on a bilateral basis to try and meet the criticism of some of the most resistant states.¹²²³ That it was Canada who was leading on this issue also greatly helped its cause. Certainly its advocacy since 2001 enhanced Canada's credibility as having a unique expertise and knowledge of the issue, and was genuine in its support. But such credibility also stemmed from the fact Canada was not an especially 'provocative' advocate, but was seen in more 'benign' terms. This was a factor which helped prevent R2P from becoming a high-profile red-flag issue for a swath of states already 'chronically infuriated' by many other issues.¹²²⁴ Had a state like the UK attempted to more directly lead on this issue, or had the US been more interested in the concept than it was, the negative connotations R2P had already taken on post-Iraq would have been more problematic. This is an interesting point, because despite taking on very different negotiating roles in relation to R2P, all three of these states were nevertheless critical to its agreement just as other states like China, Russia, South Africa and Rwanda were also critically important. But there is no doubt that Canadian leadership was, at all stages, central to its negotiation. During the early stages of the process, one clear advantage of Canada's early prioritization of R2P proved to be particularly important. Because of a lack of energy and engagement around the process, coupled with an acknowledged less than clear strategy for proceeding towards the Summit,¹²²⁵ a leadership and ownership vacuum emerged. With Canada's early mobilization, this gave it an important opportunity to assume a leadership role in a way many others were unable or unwilling to do.¹²²⁶

This exploitation of a weakness in the process was a major upside of prioritizing R2P, and with Canada able to count upon the backing of a number of supportive states, actually served to enhance the difficulty of removing R2P in entirety from the negotiation package.

¹²²³ Interviews with Allan Rock (Ottawa, 11 June 2009), Paul Martin (telephone, 27 January 2010) and private officials, see also Paul Martin (2009) *Hell or High Water: My Life In and Out of Politics*, Toronto: Emblem, pp.340-341

¹²²⁴ Interview with Allan Rock (Ottawa, 11 June 2009), as Van den Berg comments, Canada has a 'very good and positive reputation in the UN system' (telephone, 18 October 2010) a point which was generally made in interviews, even if some commented on what they regarded as 'huggy' tendencies in aspects of Canadian foreign policy, private interviews (13 August 2010, and private)

¹²²⁵ This is based on interviews including with Mark Malloch-Brown (telephone, 23 June 2010), see also Traub (2006) *The Best Intentions*, p335

¹²²⁶ NUPI (2006) 'A fork in the road or a roundabout?' p51-2

The most supportive states have already been mentioned. But with ‘collective help’ so central to any normative development, it is necessary to explain why some mattered more than others. Of the Western states the general role of the UK was deemed highly significant. As a P5 member, its engagement in the negotiations was inevitably broader than that of Canada. This was especially true once it assumed the EU presidency in July. Its role though was significant directly in terms of the effort to agree R2P, and in terms of the ‘bigger picture’.¹²²⁷ The UK may not have specifically *led* the negotiations on R2P but it was always a key ‘priority’ for the UK government.¹²²⁸ Resultantly, UK officials were almost always present and active in R2P-related meetings and were directly involved in defining its language and formulating lobbying and framing strategies to overcome resistance. Aside from its P5 position, the EU presidency provided an additional boost – and responsibility – to its engagement in the negotiations. There were undoubted complications with formulating EU positions on specific items of the agenda, but in respect of R2P the EU’s support was strong and clear from the outset. As one ambassador remarked, EU states ‘hammered’ R2P in meetings.¹²²⁹

But returning to the UK’s role more specifically, two interrelated points are particularly relevant to the overall picture of understanding R2P’s formulation. The first is that the UK’s commitment to R2P involved ‘high level lobbying in key capitals’ pursued on a ‘targeted’ basis. This included specific lobbying of the most difficult states – or ‘spoilers’ as the UK described them – up to the level of Ministerial engagement.¹²³⁰ This lobbying was essentially predicated upon the core elements necessary for agreement outlined above, backed up by a series of corresponding frames designed to emphasis what R2P was, and what R2P was not.

¹²²⁷ Private interviews (3 August 2010, 31 March 2010, 25 June 2010)

¹²²⁸ As officials themselves acknowledge leading was very much Rock’s role, private interviews (22 October 2010, 25 June 2010) see also ‘E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives’ dated 3 May 2005

¹²²⁹ Private interview (25 June 2010): See for example: ‘Statement by Mr. Hoscheit, Luxembourg, on behalf of the EU’, 6 April 2005, A/59/PV.85, ‘Statement at the Informal Thematic Consultations on Cluster III: Freedom to Live in Dignity, by Mr. Jean-Marc Hoscheit, Luxembourg on behalf of the EU’, 19 April 2005, Canada-European Union Summit (2005) ‘Joint Summit Declaration’, 19 June 2005, ‘Statement by Mr. Hoscheit, Luxembourg on behalf of the EU’, S/PV.5209, 21 June 2005, p27, ‘Statement by Emyr Jones Parry, S/PV.5225, 12 July 2005, p32, ‘Statement by Emyr Jones Parry, UK on behalf of the EU, at the informal meeting of the plenary to discuss the revised text of the Draft Outcome Document of the High-level Plenary Meeting’, 28 July-2 August 2005, ‘E-gram to FCO London from UK Post regarding UK bilateral meeting held with host Nation: A UN Member State’, dated 16 August 2005

¹²³⁰ ‘E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP’, 22 August 2005, private interviews (25 June 2010, 22 October 2010)

In terms of the effort to gain agreement on R2P, generally speaking there was broad consistency in how these frames were deployed and articulated by R2P supporters during the process.¹²³¹ But the second point which derives from this, is that even though this framing, and the negotiation of the fine print, means it is possible to explain in more specific terms what the form of R2P agreed really was (and this itself is distinct from how many R2P advocates understand and describe it) there was, nevertheless, significant variations in how even the most supportive states viewed and understood the agreement. This applied to how R2P related to pre-existing policy-lines and frameworks, and more overtly to the almost immediate commencement of post-agreement contestation over what states had committed to. In many respects, these represent two sides of the same coin. How states understood/presented the agreement subsequently was always likely to be *part*-conditioned by their own preferences. But this manifested itself in two principle ways. One, for some states, support of the agreement did not necessarily restrict them exclusively to its wording, or rather the specific commitment to the wording of R2P did not rule out alternative policy options even if those very options were explicitly bypassed by R2P. So for the UK, though it was committed to R2P's core elements, its support remained influenced by the framework provided by Blair's 1999 Chicago speech.¹²³² It might have failed to win any linguistic caveats which might have provided a foothold for future *unilateral* action à la Kosovo (i.e. without SC authorization), but that alone did not mean R2P overrode or ruled-out possible action under the doctrine of humanitarian intervention.¹²³³ The enactment of R2P may have been exclusively tied to SC authority, but for a country like the UK their support did not specifically rule out the use of an alternative framework for the purposes of addressing an R2P *situation*. This point may run contrary to the momentum which specifically drove R2P towards agreement, but it nevertheless necessarily complicates our understanding of its meaning and development. Not least, because it speaks to the very issue which originally motivated Axworthy's establishment of ICISS but which was left behind as the politics around R2P changed in response to the evident limitations of possible state agreement.

¹²³¹ As I explain below and see footnote 1284

¹²³² The UK's prioritization to realize agreement on R2P was described as 'consistent with' Blair's 1999 Chicago speech in (FCO) (2004) *The United Kingdom in the United Nations*, Command Paper 6325, London: TSO, p7

¹²³³ This distinction was carefully, but clearly expressed in private interviews (2 August 2010, 13 August 2010). I also touch on this in relation to the core element of SC authority below

Second, the extent of some state's commitment to R2P (and conversely for some their lack of support for R2P) led to statements after the agreement had been finalised which only served to confuse the agreed formulation, expose continuing disagreements over what the limited agreement really meant, and in some respects cloud the significant limitations inherent in the R2P paragraphs.¹²³⁴ Indeed, much of this, it has to be said, stemmed mainly from how advocates (in a more general sense) have sought to portray the agreement and significance thereof. To some extent this has helped maintain a certain momentum around the idea of R2P since 2005. But more problematically, the repeated blurring of how the '05 agreement was crafted has in other respects served to undermine the already limited, and shaky, normative foundations which underpin it. It is less clear just what the momentum around R2P is about, of, and for. This is a roundabout way of showing how despite the considerable efforts of key R2P supporters during 2005, there were not only important differences between them but that how R2P was subsequently presented has added to the sense of confusion and misunderstanding. It is therefore essential we ground our understanding of R2P in the processes leading to the Summit, including how supporters managed to facilitate agreement, and how major dividing-lines between all states were overcome. Indeed, by focusing on the detailed negotiation of R2P, it is hard to understand just how/why some states, and individual advocates from within public policy or academia, have managed to oversell the status and significance of the agreement in the way they have. That said, aside from the obvious explanation of ideational preferences conditioning one's position, one of the most significant problems is that the kind of detailed analysis of its construction necessary to arrive at a more grounded perspective of R2P has been distinctly lacking. Certainly this has not been helped by the limitations in IR theory mentioned previously – limitations which do not necessarily lend themselves to the kind of questions relating to *how* and *why* R2P was agreed, *what* the form this agreement took, and from that what this means in terms of significance and status.

¹²³⁴ An analysis of the Summit statements reveals numerous variations in how R2P was understood and articulated by states, see UN plenary records for the 14-16 September 2005, A/60/PV.2-A/60/PV.8 and indeed the subsequent GA Annual Debate on the theme 'For a stronger and more effective UN: the follow-up and implementation of the High-level Plenary Meeting in September 2005' from 17-23 September 2005, A/60/PV.9-A/60/PV.22

Linking these points to the efforts of key advocates may seem somewhat diversionary from the developing account of R2P's detailed negotiation. But in actuality, whilst recognising the absolute centrality of key states during '05, it is also necessary to strip away some of the layers surrounding state support (and opposition) in order to recognise there was, and is, a subtle distinction between understanding an individual state position (i.e. a detailed unit-level approach) and understanding how these individual positions – defined by a range of diffuse preferences, policy positions and red-lines – came together (or not) in the form of a *system*-level agreement through multilateral negotiation. There is, of course, an undeniable relationship between these two contexts and one should not read this in terms of an artificial separation between the two. But though it is essential to identify those differences between states which influenced the final agreement, including differences in emphasis even amongst the most supportive, and indeed to recognise that unit-level analysis can reveal how the diffusion of an international agreement can be distinctly filtered/alterd by the domestic policy context (and all that encompasses), these have to be understood in the context of the overriding emphasis of this research: namely of understanding the construction and negotiation of R2P as an *international*-level normative development. Certainly understanding how an agreement like R2P is transmitted into a domestic policy context will be well-served by a unit-level approach. Such approaches offer a more specific perspective of the dynamics which underpin normative diffusion and internalization on an individual basis, particularly enabling one to consider the impact of norms and agreements on that country's respective foreign policy. Indeed, there is real scope that a case-study driven unit-level analysis could complement the approach here, especially considering the implications of the structured outcome. A unit-level tracking of individual state positions could, for instance, include a fuller picture of engagement with R2P – perhaps including their 2005 negotiating strategy – and consider whether or not R2P is accepted, how it is understood, and its relative strength in the domestic context. It would also be entirely appropriate to consider, in a more focused way, how the strongest core element of R2P, namely primary state responsibility, resonates on an individual state basis. But such research agendas are most applicable to the post-agreement stage of the development of R2P. Why? Because any shift in the level of analysis towards a domestically-focused research agenda cannot occur *in vacuo*. The starting point has to be the international-level because any diffusion of R2P post-05 begins primarily *from* the international *to* the domestic

context. Without first understanding the construction of R2P which led to international agreement, there would be no basis for such a shift – what exactly would one be seeking to understand? This is why micro-driven analysis of R2P’s development is so crucial for determining what its collective meaning is, and thereafter what we might expect in terms of potential compliance. Moreover, it should not be lost that the idea of R2P emerged as a response to failings of the international community in collectively addressing mass atrocity crimes. International agreement on R2P was about trying to define what the role of the international community should be, and how it can better respond to, and prevent, such crimes from occurring. And though, as it transpired, the principle constitutive focus of R2P was directed at the individual state responsibility, this actually proved to be the case because the collective will of states was more about limiting the international scope of R2P. This kind of perspective can only come from tracing its international development and the micro-processes of its negotiation and agreement, and it is this very tracing which provides a better sense of the form and parameters of R2P.¹²³⁵

Of course, as implied, these kinds of issues would be irrelevant had R2P not been agreed in 2005. With Canada and the EU well-mobilized, and with key P5 members not exercised to the point of absolute opposition, its prospects were greatly enhanced. The combination of the structured outcome, the way R2P was specifically formulated, and the efforts of state supporters to overcome resistance are all part of the explanation. Crucially, however, in terms of the latter R2P was not a simply a predominately western-supported idea. It benefited from the ‘relative’ support of many African states, including most strongly South Africa and Rwanda.¹²³⁶ To use Bellamy’s word, a shift in ‘attitudes’¹²³⁷ had been developing within the region since the turn of the new Millennium, stimulated by the scars of the 1990s. The African Union’s Constitutive Act (2000) captured key elements of this shift, including the most important provision under article 4(h) of ‘The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave

¹²³⁵ Indeed, any wish to understand the role of multilateral system in the operationalization of R2P depends upon a detailed analysis of how it was developed in this context

¹²³⁶ The word ‘relatively’ was used by an official during a private interview and is important because despite general African support it was by no means regarded as being as strong as that of the Europeans, and moreover many African states held concerns which directly impacted upon the narrow formulation of R2P explained below (22 October 2010)

¹²³⁷ Bellamy (2009) *Responsibility to Protect*, p77

circumstances, namely war crimes, genocide and crimes against humanity'. Though the Act was notable for its antinomic contradictions¹²³⁸ that its overall thrust was about Africa trying to take more effective ownership of its problems meant it represented a significant step towards potential redress of failings long associated with the region. By 2005 the AU would more explicitly articulate its support for R2P through its adoption of 'The Ezulwini Consensus'.¹²³⁹ The endorsement within this document may have been distinct to what ILF proposed – and thus the HLP and ICISS before that – but nevertheless because it was willing to refer to the language of R2P and countenance action for the purposes of protecting people by the international community, the way the R2P *debate* was subsequently framed aided its prospects for political agreement.

In terms of overall leadership – or rather who was pushing most for the adoption of R2P – it was very much Canada and EU states which 'did the running'¹²⁴⁰. But within Africa, on an individual basis South Africa and Rwanda were particularly important for helping to shore-up regional support and indeed support for R2P in general. South Africa's ambassador Dumisani would emerge as a central figure in the negotiations as Chair of the CG, but his role throughout would be important to R2P.¹²⁴¹ Amongst African states, Dumisani was the leading figure in trying to reinforce and remind them that R2P was 'about us...about the lives of our continent' and not about the remote prospect of genocide in Western capitals.¹²⁴² As one official saw it, the sense R2P situations were most likely to happen in Africa persuaded a number of African states that some kind of international-level agreement on R2P may prove to be in their interest.¹²⁴³ That said, African support was also possible because of real pressures exerted upon their position stemming from the regional provision for collective action in the Constitutive Act, and the legacy of the Rwandan

¹²³⁸ The most notable of these contradictions is article 4(g): 'Non-interference by any Member States in the internal affairs of another', African Union (AU) (2000) *The Constitutive Act of the African Union*, adopted 11 July 2000

¹²³⁹ AU (2005) 'The Common African Position on the Proposed Reform of the United Nations ("The Ezulwini Consensus")', 7-8 March 2005

¹²⁴⁰ Based on private interviews (22 October 2010, 13 August 2010, 25 June 2010)

¹²⁴¹ Despite the view of some that Dumisani's personal 'instincts' lay elsewhere, private interview (22 October 2010)

¹²⁴² Interview with Allan Rock: As Rock – who was personally present at one key meeting of African states – explained the gist of Dumisani's 'powerful intervention' was that we are not 'going to find blood on the streets of Toronto...so let's not forget this is about us'. As Rock remarked, Dumisani's interventions on R2P as 'very effective' (Ottawa, 11 June 2009)

¹²⁴³ Private interview (22 October 2010)

genocide. The combination of these factors made it more difficult for them to not support it.¹²⁴⁴ On the latter, Rwanda's strong support and advocacy for R2P gave it an 'influential voice' in the negotiations – not just regionally but across the membership more broadly. Indeed, recalling the Rwandan genocide was a strategy used by advocates in general, including Canada, in order to make it very clear what R2P was specifically designed to address and why therefore it really mattered. But the fact Rwanda itself was so committed to the idea meant there was an 'unanswerable' moral weight to R2P advocacy.¹²⁴⁵

The combination of these two elements helped the progression of R2P not least because they helped reconcile perceptions R2P was a predominantly western doctrine with African interests and sentiments. They made it more difficult to oppose the inclusion of R2P in some form, and made it easier for advocates to sell the idea to African states. Even though the Constitutive Act predated the development of R2P, and thus did not include it in that form, because it recognized the need for action in extreme cases advocates were better placed to argue that agreement on R2P was in effect about 'going global' with a concept the AU had to some extent 'pioneered'.¹²⁴⁶ Whether or not many African states truly believed in the idea of intervention captured by Article 4(h) that it existed meant advocates could argue R2P was not simply concordant with the essence of the article, but effectively an extrapolation of it to the broader international context. When combined with other key framing strategies, particularly those designed to emphasize R2P represented 'nothing new', supporters had powerful tools for countering potential hostility. Moreover, because the Act had been signed by states particularly hostile to R2P – notably Egypt and Sudan – the ability of them to 'play games' during the negotiations, was that much more difficult. Certainly there is no doubt that Egypt was one of the most hostile states towards R2P (and many other issues), and that it projected this hostility in a challengingly negative way.¹²⁴⁷ But the effect of broad, albeit qualified African support for R2P; the strong committed support of Rwanda; and elements of *prima facie* consistency between R2P – as defined during the

¹²⁴⁴ Private interviews (13 August 2010, 22 October 2010)

¹²⁴⁵ It was the 'unanswerable' case R2P supporters could repeatedly call upon, interview with Allan Rock (Ottawa, 11 June 2009). One UK official also suggested the Rwandan genocide, along with the Constitutive Act, made many feel 'almost obliged' to support the inclusion of R2P in the Outcome Document, private (22 October 2010)

¹²⁴⁶ Interview with Allan Rock (Ottawa, 11 June 2009)

¹²⁴⁷ Interviews with Allan Rock (Ottawa, 11 June 2009), Dirk Jan Van den Berg (telephone, 18 October 2010), John Dauth (London, 25 May 2010) and private interviews (25 June 2010, 3 August 2010, 22 October 2010)

negotiations – and the AU’s own Constitutive Act, all *helped* to mitigate the extent of this opposition. Indeed, peer pressure was a generally evident dynamic throughout the negotiations – especially as the pressure to agree something intensified as the Summit approached.¹²⁴⁸

But like the discussion relating to differences between supporters of the R2P idea, the extent of African support was also qualified and defined by a specific conception of what the form and scope of R2P should be. In the Ezulwini Consensus, the AU’s expression of R2P was revealingly about the use of force, but was framed more explicitly in terms of an empowerment of regional organizations to take action. Such action ‘should’ be with SC approval, but could also take place with post-hoc authorisation. Additionally, the AU position was underpinned by a clear recognition that even though each state had an ‘obligation’ to protect their citizens, this should not be used as a ‘pretext to undermine the sovereignty, independence and territorial integrity of states’.¹²⁴⁹ These two elements would transmit into the Summit negotiations but not necessarily on a uniform basis. They manifested themselves differently according to the specific motivations, concerns and preferences of individual states. The inclusion of a reference to regional organizations in the outcome document was certainly strongly pushed by the AU. But for some states their concerns about the implications of R2P was more acute than others, and thus their motivation for specific language differed accordingly. So whereas including references to regional organizations was generally regarded by many states and advocates as ‘pragmatic’, the ‘right thing to do’ and an expression of something which ‘would happen anyway’¹²⁵⁰ – not least because of an increasing regionalization of peace operations – for others its inclusion was more important as a way of safeguarding against unwarranted or unwanted interference.¹²⁵¹ Within the SC, China and Russia were strongly supportive of a provision for regional arrangements recognising the threshold for action would be higher as a result, thus solidifying their preferences for a package of measures which ensured there was no built-in automaticity to any action pursued for R2P purposes. A more cynical reading may, however,

¹²⁴⁸ This pressure was even acknowledged by John Bolton (2007) *Surrender Is Not An Option*, p210

¹²⁴⁹ AU (2005) ‘The Common African Position on the Proposed Reform of the United Nations’

¹²⁵⁰ Private interview with author (3 August 2010) and interview with Allan Rock (Ottawa, 11 June 2009)

¹²⁵¹ As Bellamy points out for some states their main concern was to limit ‘council activism’ rather than accept a more ‘pro-active’ regional approach to protecting people (2009) *Responsibility to Protect*, p80-1, see below

see this support as less than a pragmatic recognition of geo-politics and more as a convenient way of avoiding/complicating the international role in R2P. Indeed, there are also similar concerns surrounding the operationalization of intervention under article 4(h) of the AU Constitutive Act and the reference to regional organizations in '05 formulation of R2P. With the international dimension of R2P qualified in important ways, it is important to consider how regionalism might impact upon the engagement and unity of the international community. Clearly, this is an example of how broadly accepted language can be underpinned by foundational fractures relating to the purpose of its inclusion, and once again emphasises why it is necessary to understand how numerous lines of demarcation were addressed through multilateral negotiation.

Indeed, the reference to regional organizations was not just pragmatic but was one of a *series* of qualifications or 'safeguards'¹²⁵² designed to reaffirm a continuing commitment to Charter principles in the context of real scepticism and unease about a proposed norm which some believed could lead to unjustified violations of them. But such safeguards raise new questions and concerns about what R2P meant and stands for. There was always going to be consequences down the line for/of a formulation which had to accommodate a range of alternative positions and preferences. This is certainly born-out by the approach adopted here. One of its principal advantages is that it has not only generated a new explanatory framework for capturing and understanding the dynamics underpinning R2P's progression, but also ensures that how we understand its form is based upon the detailed political negotiations. The combination of these two dimensions is important for two reasons. First, because the structured outcome framework differs considerably in terms of its 'fit' with existing established explanations of normative change, it helps (or should help) dispel the misguided propensity to view such change in linear, progressive and predictable terms. Troublingly, this propensity has plagued the characterisation of R2P and its development up to, and since, 2005. Without a sufficiently sophisticated academic analysis of the processes leading to the '05 outcome, a more general sense of momentum around the phrase, along with the continuing (misguided) ideationally-driven interventions of key advocates, has merely served to confuse what R2P means, and what it represents in terms of the

¹²⁵² 'Statement by Ambassador Allan Rock, Canada, at the informal thematic consultations of the GA, Cluster III: Freedom to live in dignity', 20 April 2005

development of international relations, and, more importantly, for protecting civilians. With the dynamics of the development up to 2005 anything but linear, progressive, or predictable, there is little reason to assume the dynamics of the post-agreement phase would not continue to be conditioned, qualified and shaped by those which propelled it to institutionalization. As already stated, in explaining the how/why, the structured outcome raises significant questions relating to the normative foundations underpinning the agreement; the extent to which it represents/signifies change; and therefore what operationalization we can really expect from an agreement subject to such questions. Second, not only were the dynamics of the agreement distinct, but so R2P's form was based upon a complex effort to overcome multiple competing preferences and interests. Indeed, the progression of R2P post-05 was never going to unfold in a linear fashion precisely because the formulation of it was subject to so many concerns and competing viewpoints. The abovementioned propensity to overstate R2P's development also stems from an insufficient emphasis on how these competing positions came together, or not, during the negotiations. Certainly this problem is partly symptomatic of a failure to apply the necessary tools for considering this dimension, and the dynamics which enabled the agreement. But it is also the result of advocacy – and appropriation. Advocates have tended to define R2P according to their own beliefs about its meaning and function which has distorted the more complex picture exposed by the negotiations, and by subsequent case-specific crises. Such advocacy is generally based upon a fallacy of wishful thinking. However strong one's moral, ethical, ideational or even egotistically-driven convictions may be, they are never a sound basis for reason or logic. It is for this reason that the dividing-lines which required the introduction of specific safeguards and cognitive frames in order to develop a more acceptable form of words are not – however challenging to the positions of advocates – 'thrust aside', but rather are central to the explanatory account of R2P's meaning.¹²⁵³ This effort to increase our understanding does complicate and confuse the picture in terms of potential compliance, but at least ensures any description of R2P is not driven by hope of what it should be, but rather by what is really is. In this respect, emphasising the dividing-lines is important because, put simply, the summit agreement was a compromise

¹²⁵³ This is taken from a quote by Thucydides *History of the Peloponnesian War*, Book IV, 108 (4): 'their judgment was based more upon blind wishing than upon any sound prediction; for it is a habit of mankind to entrust to careless hope what they long for, and to use sovereign reason to thrust aside what they do not desire'

aided/enabled by the specific characteristics of the process. Because of these factors the agreement was subject to a number continuing questions relating to R2P's meaning and status as an international norm. When one understands the alternative positions which had to be bridged, and the ways the text attempted to do so, it is much more difficult to dismiss continuing opposition, debate or concern as simply the product of 'misunderstanding'¹²⁵⁴ or overly simplistic accusations of 'buyer's remorse'. While elements of both are likely, the issues facing R2P are considerably more fundamental, and relate directly to how it emerged and was negotiated.¹²⁵⁵

That said, with the right tools it is possible to arrive at a clearer understanding of final form of R2P and the more solid elements of the agreement. The lines of demarcation, the series of introduced safeguards, and the temporal evolution of the draft documents are all part of the explanation. What emerges is a picture of R2P which is far less significant – at this stage – than often portrayed. The agreement did set-out a broad potential agenda under the R2P label, and did realise a significant statement of primary responsibility (arguably the most 'value-added' element of the entire endeavour). But in other ways the agreement poses more questions than answers to the issue of addressing mass atrocity crimes, the most fundamental of which are: what does it really change about the politics of this task, and what change – if any – does it really reflect? These are relevant questions particularly considering the oft-repeated references to a *collective international* R2P – the implication being that the agreement was clear about this dimension. In actuality, it was one of the most contentious and qualified areas of the text. The P5 was unwilling to accept any statement of responsibility/obligation, particularly as its authority was tied exclusively to collective action. Meanwhile, many states, especially those from within the NAM, worked to ensure that the international scope of R2P was heavily restricted. Indeed, it is most revealing, not least because it is so overlooked, that at no point in the R2P text does it refer to an "international R2P", and only once in paragraph 139 (dealing with the role of the international community) is the phrase R2P used at all, and only then it is used to emphasis

¹²⁵⁴ See Jennifer Welsh on Gareth Evans' belief that opposition to R2P reflects 'serious misunderstandings', 'Implementing the Responsibility to Protect', *Ethics & International Affairs*, online edition

¹²⁵⁵ The differences which existed between states were always inherent to the agreement with some addressed better than others, and some left purposefully unanswered or ambiguous in order to maintain a shaky consensus

continued GA consideration of it. Self-evidently this point is central to the question of just what are the characteristics of R2P as agreed in 2005, and therefore what are its characteristics as a norm? The core elements of the agreement were outlined previously, and will be unpacked in more detail here. But to do that it is worth emphasising/summarising some of the related characteristics which help portray the path to agreement, and additionally, why these were necessary.

Most important for understanding the core elements which defined the outcome are the general ways the agreement was framed and broadly understood by those involved. Specific safeguards and linguistic changes were iteratively introduced to ensure these core elements were sufficiently defined in language, and to maintain many of the more significant policy red-lines. Although targeted lobbying meant there was differentiation in how R2P was packaged to individual states,¹²⁵⁶ the formulation of the agreement was defined by some universally telling factors relating to what it was, and was not. The most important of these was the widespread recognition that the R2P text was a 'political statement'. It had no legal status of itself, and nor did it alter any existing provisions, processes or responsibilities. This may appear obvious – after all a GA resolution has no formal/binding legal status. But this statement is more significant because the substance of the text – and our analysis of its political implications – flow from this starting point. Indeed, it is bound-up with how R2P was framed (and defined). Central to this was the idea R2P neither represented, nor was itself, a new obligation or innovation. Of all the factors relevant to the complex explanation of the processes leading to the agreement, this is the most important in terms of its specific formulation. Supporters proved able to successfully convince a large middle-grouping of cautious states R2P did not reopen or redefine the Charter; did not impose new obligation(s); was not about creating any new rights/responsibilities 'from scratch'; but was about capturing what already existed in Charter or customary international practice. Furthermore, with R2P tied to the SC, emphasizing that R2P was not about adopting 'trigger(s)' or about providing a 'blanket cover' for international action was equally

¹²⁵⁶ In other words lobbying was designed by supporters to counteract specific issues or concerns, private interviews

important for the P5 and a large majority of GA states.¹²⁵⁷ The lack of operational/implementation automaticity was constantly emphasised, and the text specifically drafted according to this requirement. Thus, with R2P sold, defined and broadly understood as something which *did not* break new ground, it is ever more important to unpack its meaning as a political statement.¹²⁵⁸ It was hoped that packaging existing individual state responsibilities, albeit in an arguably more directly pronounced way than ever before, and by speaking to the legitimate role of the international community in working to support individual states and in some extreme cases to take sterner action through the SC, the R2P agreement would help make the atmosphere for dealing with such crimes more receptive than had often been the case. This is certainly how individuals involved characterised the agreement.¹²⁵⁹ These two dimensions were seen as potentially significant ‘go-to’ language for reminding states of their responsibilities and which may help change the ‘climate’ for international responses. But this change was more ‘cosmetic’ in political terms, than fundamental or catalytic.¹²⁶⁰

Indeed, this is unsurprising when one considers the (structured outcome) factors which helped propel R2P towards agreement, and when a focused analysis of its temporal formulation is applied. Because of member state divisions, the very nature of the intervention issue and the lack of momentum around the idea pre-2005, it was always doubtful that agreement would alter the fundamental politics of the debate. Crucially, the language of R2P was notable for what it did not do: it did not cut across existing P5 powers or oblige them to do anything; it did not significantly affect the balance between sovereignty and intervention; and did not change the existing legal framework. As one supportive individual involved in the negotiations suggested, both supporters and sceptics alike should concede that R2P ‘didn’t fundamentally change the international legal and

¹²⁵⁷ This is based upon a number of private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010)

¹²⁵⁸ It should be noted that this is obviously not the case for every state. As a reading of the World Summit leader’s statements shows, there was significant variation in how some states – particularly those most supportive of the idea – viewed its significance, see footnote 1310. But because achieving the agreement was more about winning the middle ground, and trying to arrive at a formulation which addresses many varied concerns, it was more broadly the case that many states signed up to the language of R2P ‘on the basis that it didn’t really change anything’, based upon private interviews (3 August 2010, 22 October 2010)

¹²⁵⁹ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010)

¹²⁶⁰ Private interview (25 June 2010), based also on ‘E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives on 29 April 2005’, see below

political balance on these sorts of issues'.¹²⁶¹ Inevitably, there are consequences which flow from this statement and the expanded argument thereof. Certainly concordance is often either necessary or beneficial for facilitating normative emergence and change. In this case, core framing was designed to show R2P was compatible and complementary with existing provisions and processes. So, for instance, by tying R2P to the SC they were able to argue R2P was not about expansion, but about recognising pre-existing authority to act under Chapter VII, in very limited circumstances where it really *ought* to be able to act, and which were also broadly consistent with emerging SC practice since the end of the CW. However, this being just one example of many ways R2P was crafted to guard against fear and scepticism by emphasising its fit with what already existed, leads to the previously-mentioned question about what defines R2P as a norm. Though there are many elements of the agreement to unpack, it is hard not to escape the conclusion that, at best, the agreement's value-added will stem from its statement of primary responsibility and its contribution to the way subsequent responses to specific crises *might* be framed and structured. However, there were/are no guarantees associated with this. And because R2P represented very little in terms of political and normative change, how states subsequently dealt with a specific (R2P-relevant) crisis would remain subject to the same kind of politics and pressures that have always existed. But considering the intervention dilemmas which motivated ICISS's development, that R2P was essentially agreed because it represented nothing new, surely means it a far less significant development than oft-portrayed.

Moreover, since 2005 significant effort has gone into trying to defining a broad R2P operational agenda.¹²⁶² Whether or not this is what the R2P agreement demanded,¹²⁶³ or that there are potential dangers of association between R2P and existing protection/prevention initiatives, there is no hiding from the crux issue of coercive intervention, and all the complex elements which flow from it. Indeed, if R2P was/is about trying to mobilize or catalyse international action, then the process leading to its agreement

¹²⁶¹ Private interview (22 October 2010)

¹²⁶² This was dealt with in the thesis introduction and include Ban Ki Moon's effort on implementing R2P, the appointment of Ed Luck as Special Adviser on R2P and the development of a Joint Office on genocide prevention and the R2P see Ban Ki-Moon (2007) 'Letter dated 31 August 2007 from the SG addressed to the President of the SC', S/2007/721, 7 December 2007

¹²⁶³ As already stated there were enough references to a range of tools, mechanisms and response activities for this to be expected

provided ample evidence of why expectations for this dimension should be particularly heavily qualified. This is especially so if the reference point is an apparent 'responsibility' of the international community. Despite repeated protestations to the contrary, international responsibility was not simply purposefully diffuse, but was, in many respects, purposefully avoided. It was under-developed precisely because there was minimal buy-in to any attempt at agreeing, let alone assigning or specifying, a clear endorsement of an international R2P. This becomes clear in the tracking of the specific formulation of Paragraphs 138-140 below. But without wishing to entirely discredit the potential prospects of R2P, it is nevertheless worth keeping in mind that the intentions around R2P were that it would represent something more fundamental than what actually transpired. Unfortunately, since 2005 troubling disconnects between expectation, and what we might reasonably expect from R2P, have opened-up and gathered momentum. Fuelled by advocacy, the tendency to overstate its development has relegated competing normative ideas – despite their continued strength and impact upon how we should understand R2P's place in the complex web of international normativity; underestimated the continuing complexity of determining policy responses to specific situations; and all too often overlooked just what the processes leading to 2005 actually reveals about how the agreement relates to the first two and R2P's 'operationalization'. Indeed, the overused propensity to seek and reference 'operationalization' without a more nuanced appreciation of the politics involved is not only of itself damaging, but also compounds the potential damage to R2P's future prospects each time a crisis comes along, or new effort to develop the concept is made, and exposes the controversies and limitations which defined its agreement.

Interestingly, none of this was lost on those actively involved in crafting the R2P text. As one Canadian official commented, with the text the product of serious compromises, it was understood that its 'practical consequences' would take many years to take effect.¹²⁶⁴ This was mirrored by other individuals involved. For instance, one emphasized the 'fragility' of the agreement, pointing to the inbuilt dilemma of its future use because of its 'marginal' impact upon the underlying politics. Essentially this meant if you deployed the language of R2P and it failed you devalue it, but if you do not deploy it for fear of the political and

¹²⁶⁴ Private interview (31 March 2010)

practical consequences it raises the question of what is the point of having it at all.¹²⁶⁵ Such questions were also buttressed by a straightforward recognition that however much they attempted to define an 'R2P situation' and the tools which might be applied to prevent it, at all stages R2P would depend upon political agreement as had always been the case prior to it.¹²⁶⁶

That said, because political consensus around the inclusion of R2P was difficult to extract, the crafting of the text took on far greater specificity as the process unfolded. Compared to the first draft on the 3rd June, the final outcome three months later was considerably more developed. This process was defined by a mix of dilution, conceptual narrowing and a tightening of language. From August onwards, R2P's linguistic structure began to assume a more coherent shape, and the extent of specific changes began to reflect the need to overcome member state dividing-lines. Indeed, these dividing-lines underpin our understanding of why the drafts altered in significant ways during the six month process. In particular, they speak to the series of safeguards and specific qualifications introduced to accommodate firmly held red-lines, but also to help allay the many 'middle-ground' concerns which were arguably more important to address for an outcome to be achieved. It is worth reiterating the point that the 2005 negotiations represented the first time R2P was an actively discussed agenda-item within the UN system. Rather inevitably therefore, its definition was always going to be contentious, and resultantly limited to maintain sufficient state acceptance. The characteristics of the negotiation of R2P were well captured by van den Berg. As he explained, its path was defined by significant 'shaping and reshaping of the text in order to make it palatable...to most member states'. This was backed-up by Rock's similar, but more broadly contextual, summation:

As January 2004 became September 2005 I went through a process in which some things were thrown overboard, others were diluted, still others were added that weren't originally intended in order to meet opposition, dull the criticism, make the thing more attractive, increase our chances of getting it accepted.¹²⁶⁷

¹²⁶⁵ Private interviews (31 March 2010, 25 June 2010)

¹²⁶⁶ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010): it is also important to point out that it is entirely possible - and reasonable - to be a strong supporter of R2P whilst also recognising that it is still a political agreement requiring political consensus to give it practical meaning

¹²⁶⁷ Interview with Allan Rock (Ottawa, 11 June 2009)

The dynamics captured by Rock are evident from a micro-perspective of the textual changes made during the negotiations. Some of these changes were *prima facie* very small, but were all part of an overall effort to ensure R2P was defined in such a way so as to reduce the prospects of outright opposition to its inclusion.¹²⁶⁸ Accordingly, unpacking the agreement reveals a number of interwoven layers. The first layer consists of the broad core elements of what the agreement should represent, which, as stated above, included: primary responsibility; the legitimate concern of the international community in very limited circumstances (the so-called four-crime formulation); a reiteration of existing processes; and no new obligations/responsibilities. The second layer relates more specifically to the three structural dimensions of R2P which built-upon these core elements. These consisted of: *primary state responsibility*; *the responsibility of the international community to help, support and assist individual states in realising that responsibility* and; *a preparedness to take collective action through the SC should peaceful means be insufficient*. Self-evidently these layers were heavily bound-up with the framing, advocacy and lobbying strategies deployed by supportive states. However, the structural dimensions are particularly important because they provided the framework from which the detailed language and safeguards stemmed. As already stated, it was not until August that the text began to take on the shape necessary to give meaning to the two layers described. But by the final outcome the language was significantly refined and tightened. Thus, it is the third layer where the real meat of the agreement can be found. Across each structural dimension a series of specific references, safeguards, inclusions (and deletions) were crafted and re-crafted to ensure R2P's substance matched how it was broadly framed. Some of these were evident in each draft outcome. For instance, collective action 'through the SC', the four-crimes of 'genocide, war crimes, ethnic cleansing and crimes against humanity', primary responsibility, and references to regional organizations and diplomatic/humanitarian/peaceful means were consistent lines in each draft from June-September. However, each of these would undergo significant specific and associated changes as the need to keep R2P conceptually narrow became increasingly acute. Indeed, the two most important aspects of this related to the parameters and authority for R2P's

¹²⁶⁸ This was particularly emphasised by one member state official who suggested many states took the position that if R2P did not fundamentally intrude on more important red-lines, they were willing to let it through: private interview (22 October 2010)

application. To keep the threshold-bar high, and the definitional scope of R2P ‘narrowly focused’,¹²⁶⁹ the four-crime formulation be one of the primary mechanisms for addressing member state concerns. Moreover, aside from significant increased repetition of the four-crime language, additional changes were introduced in parallel with the requirement for SC authority, but without treading on non-negotiable P5 prerogatives. These included introducing a higher test threshold of ‘manifest failure’ rather than ‘unable or unwilling’, the removal of any reference to veto-restraints, and a pragmatic (but significant) reference to the ‘case-by-case’ basis of SC decision-making which complimented regional consultation/cooperation. Furthermore, primary responsibility was strengthened to include the prevention of R2P-crimes. The international dimension was diluted to limit its responsibility, whilst at the same time its *primary* role of helping and assisting individual states to uphold their responsibility was strengthened. Finally, the agreement confirmed a clause locking-in future GA consideration of R2P.¹²⁷⁰

Charting the development of each and every specific piece of language would undoubtedly strengthen the picture and argument presented here. However, because of inevitable constraints, it would be impossible to include such an additional weight of narrative explanation.¹²⁷¹ Instead a briefer – but nevertheless committed – temporal account of the process from the initial draft in June, to the final outcome in September will provide a clearer sense of how the individual elements outlined developed into the overall composition of R2P. But to give full expression to this development it is vital that we situate

¹²⁶⁹ The full quote was as ‘narrowly focused as possible’, private interview (22 October 2010)

¹²⁷⁰ Though the clause of GA consideration was evident in each and every draft, both its position, and whether or not it should be temporally qualified, was not determined until September, see Boxes 5.3-5.10

¹²⁷¹ It is important to note that an additional analysis of the key elements of the text and debates around R2P would require at least an additional twenty thousand words. In preparation for this chapter a series of documents were produced to enable a better understanding of the development of the text through the negotiations. This involved analysing the ‘form and framing’ of the agreement, and specific analysis of individual parts of the text which were evident during the negotiations. These included: the ‘four-crime formulation’; the reference to ‘case-by-case’; ‘refrain from the veto’; the phrase ‘R2P’; ‘through the SC’; ‘prevention, incitement, international assistance/help’; ‘GA consideration’; ‘regional organizations/arrangements’ and ‘support for the UN Action Plan to Prevent Genocide/support for the mission of the UN Special Adviser’. An incomplete draft of the tracking-based analysis came to over twenty thousand words. Additionally, it is important to recognise that the research basis for this chapter, and these analyses, included over seventy thousand words of interview *extracts*; seventy thousand words of documentary *extracts* from relevant 2005 documents (including some released under FOI), and dozens of additional email exchanges designed to increase knowledge of very specific issues. A post-doctoral project would seek to incorporate this kind of rolling-narrative analysis into an expanded version of this chapter, likely in separately defined sub-sections

it within a sketch of the principal dividing-lines, concerns, preferences and interests which underpinned, shaped and propelled the negotiations. It is these factors – defined by a combination of long-standing policy divisions, legacies and beliefs, and more immediate, negotiation-specific positions – which set the backdrop, tone and basis, for what followed, and ultimately for what was agreed. In this case, particularly striking was just how largely unchanged many of the key the policy divergences between states were. The legacy of past debates and past crises, exacerbated by the potent, toxic post-911 context and the specific legacy of Iraq, not only helped frame the subsequent negotiations, but had a more fundamental pre-structuring effect on the positions of states.

The negotiations, not just around R2P, but in general, exposed what van den Berg insightfully characterises as the ‘self-propelling’ UN system which works to ensure ‘traditional views remain intact’. Unsurprisingly, the negotiations were anything but transformational. Concomitantly, for all its ambitiousness, the reform agenda ran into the ‘old reflexes’ held by many states.¹²⁷² Indeed, though the characteristics of the process helped dampen down the extent to which these disrupted R2P’s path, their effect on its shape and parameters are undeniable. These reflexes and legacies manifested themselves in numerous ways and for the first time since 1999/2000, states had an opportunity (unwanted for some) to give expression to them. But with all reflexes requiring a stimulus, R2P provoked specific concerns because it strayed onto objectionable territory for many states. Many of the most pronounced of these concerns stemmed from fundamental questions relating to sovereignty. Though R2P was about emphasizing individual sovereign responsibilities already expressed in existing legal instruments, the idea of expanding, transmitting, or assigning responsibility to the international community beyond existing Charter process and provision was an anathema for many.

Thus, a series of more specific fissures relating to the potential consequences of R2P branched from this central question about its international dimension. In broad terms, the Canadian officials had identified three principal fault-lines, or to use Rock’s words ‘three categories of opponents’. These included those concerned for their own regime security for

¹²⁷² Interview with Dirk Jan van den Berg (telephone, 18 October 2010)

fear they may be next in line for intervention; those who, despite being ‘well-governed and well-intended’, were worried about ‘leaving...discretion whether to invade to a small group in New York dominated by a few powerful states’; and then thirdly the P5 powers who dislike ‘the idea of attaching conditions or criteria to what is now an unfettered discretion to decide what to do and when’.¹²⁷³ Hence, there were many concerns about the impact of R2P on norms of non-intervention, non-interference, the UN Charter, territorial integrity and sovereign equality. For some, R2P was inconsistent and contradictory with such principles, and therefore undesirable, whereas for others R2P was unnecessary because sufficient scope for responding to mass atrocities already existed. In either case it was clear that any agreement of R2P would have to be carefully delineated. Additional offshoots of these concerns were equally problematic, and influential. With Iraq heightening long-standing sensitivities around unilateralism, R2P drew concern about its relationship with humanitarian intervention and about its potential use as a pretext for abusive interventions contrary to R2P’s apparent intentions. Concern about the politicization of dealing with human rights issues, and the militarization of responses to them – especially by the most powerful states – were high-up the list of concerns expressed by states. Indeed, the high/narrow threshold of the agreement was supplemented with detailed references to the international community’s ‘soft side’ role in working to *support* individual states precisely because of fears relating to an accelerated shift towards military action as the default, or ultimately inevitable eventual response to a specific crisis.¹²⁷⁴ Of particular concern was the potential slippery slope whereby R2P could be applied and then used to pursue military objectives driven not so much by the specific human rights abuses, but by strategic calculations relating to regime change. Moreover, nervousness about the relationship between R2P and the use of force was also a prescient reminder of the impossibility of detaching any crisis – however severe – from its political and strategic context. Here the doctrine of unintended consequences is an inescapable dilemma which was always likely to affect the future implementation and development of a norm like R2P.¹²⁷⁵ Indeed, these

¹²⁷³ Allan Rock (2005) ‘Reforming the United Nations: Canada’s Objectives for Change’, Notes for an address by Ambassador Allan Rock, Permanent Representative of Canada to the United Nations, 29 January 2005. These broad lines were certainly implicitly and explicitly backed-up in numerous interviews

¹²⁷⁴ Private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010)

¹²⁷⁵ There is significant evidence that the use of R2P in the context of the Libya crisis of 2011 has indeed impacted upon the subsequent reaction of the SC to the crisis in Syria. But rather than portraying it as purely a

problems are about more than operationalization. They speak more directly to the very principle of R2P, challenging the teleological assumptions associated with an idea intended to address mass atrocities. Hence, in response to these kinds of practical and ethical debates, another dimension of the agreement was about ensuring R2P did not define any automatic triggers for action, and was thus always underpinned by the pragmatic case-by-case qualification. Clearly many of these concerns were corollaries of each other, complicating the question of how R2P could help enable better responses to mass atrocities without setting-off alarm bells amongst those needed to accept agreement of it. Certainly underpinning these varied concerns were varied motivations ranging from genuine and reasonable scepticism, to more self-interested concerns for self-preservation. Indeed, it is important to not simply dismiss the range of concerns expressed as the product of misunderstanding, or cynical manipulation. Why? Because first, and most straightforwardly, it was these very concerns which led to a formulation focused on the ensuring the scope, parameters and clarity of R2P (which themselves were a constant concern) was narrow and tightly defined.¹²⁷⁶ Second, concerns about the consequences of a norm like R2P were also bound-up with more fundamental questions about the nature and development of international society. In this regard, normative contestation was a far more prominent factor in the negotiations precisely because R2P provoked questions about its potential effect upon norms of non-interference/intervention and sovereign equality. The crafting of such a state-centric formulation was about trying to limit this effect. Many states were willing to accept individual responsibility because it reaffirmed state sovereignty and limited the role of the international community. And with many fearing R2P as a method for further advancing a power-based hierarchy in international affairs it is unsurprising that states would seek to assert those above-mentioned norms in response.¹²⁷⁷

Ironically, however, this led to an uneasy settlement whereby one of the principal means for limiting R2P was to tie any related collective action to existing processes through the SC.

problem of implementation/operationalization, one should see both as more fundamentally exposing the basis and context of a norm like R2P

¹²⁷⁶ This is particularly important because the result of this too often fails to match-up to the many assumptions about what R2P means

¹²⁷⁷ Indeed as one prominent UN figure remarked in email, those suspicious of international action in favour of R2P will be more ready to proclaim their individual responsibility, if not necessarily implement it (private)

Despite a complex and ‘at times contentious’¹²⁷⁸ relationship between the GA and the SC this approach was a necessary evil for fear of the consequences of leaving the question of collective action open and ambiguous. Thus, Welsh’s use of the idiomatic expression ‘better the devil you know than the devil you don’t’ is an entirely appropriate descriptor of the dynamics in this case.¹²⁷⁹ However, the uneasy settlement this represented was about more than the GA-SC relationship. Tying R2P to the SC was but one measure designed to guard against the fears outlined above. It was complemented by the removal of any statement of an international-R2P, the introduction of ‘manifest failure’ to further tighten the four-crime formulation, and by other qualifications designed to ensure there was no automaticity or newly developed international obligations/responsibilities beyond helping states fulfil their own. The problem with all this, was that with states not wanting to see any expansion of Charter provisions and seeking to avoid the possibility of increased unilateralism, R2P was tied to the SC, which because of P5 opposition was itself unwilling to sign up to anything that might restrict or alter its pre-existing room to manoeuvre. Thus, from both the perspective of the GA and the SC the agreement was underpinned by consensus that R2P would not fundamentally change the status quo in terms of how the international community deals with specific crises. As stated, it was hoped that R2P as a political statement could ‘help in future debates on action at the hard end of the scale’ perhaps by making it ‘easier for the SC to fulfill its responsibilities and...promote burden-sharing’.¹²⁸⁰ But considering this chapter’s overall argument, this was optimistic at best. Moreover, although there was arguably no alternative to the SC (the consequences potentially far more damaging and politically impossible in any case) it did mean that the ICISS effort to elaborate on how action might be possible vis-à-vis the twin-dilemmas of Rwanda and Kosovo was left-behind by a political unwillingness to even consider the debate in this way.¹²⁸¹ Furthermore, compounding this uneasy mix were questions around R2P’s so-called

¹²⁷⁸ David Malone (2007) ‘Security Council’ in Weiss, Thomas G. and Daws, Sam *The Oxford Handbook on the United Nations*, Oxford: Oxford University Press, p118

¹²⁷⁹ Welsh (2010) ‘Implementing the Responsibility to Protect’, *Ethics & International Affairs*, online edition

¹²⁸⁰ This was an argument made by a UK diplomat in an ‘E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives on 29 April 2005’, 3 May 2005

¹²⁸¹ The impetus for the establishment of ICISS was not matched during the negotiations hence the direction of travel was overwhelmingly about limiting R2P’s scope impact rather than about genuinely debating how R2P might help address the problems which originally inspired it. It should be noted however that past events in Rwanda, Srebrenica were deployed by those involved in the negotiations, and supportive of R2P, to try and overcome differences between states, Private interviews, see also Strauss (2009) *The Emperor’s New Clothes?*, p13

‘emerging’ status as an international norm.¹²⁸² Accusations in this regard revolved around whether R2P had been sufficiently discussed and considered,¹²⁸³ repeated suggestions throughout the process that it did not command broad understanding or support particularly because the idea of R2P was not created within the context of the GA.¹²⁸⁴

This summary of the key dividing-lines between states provides a revealing sense of the obstacles facing agreement on R2P. Crucially, they demonstrate why the agreement was predicated upon the core elements previously identified, exposing what was possible and what might be possible if the fine print was precisely dealt with. Inevitably some of these cross-membership dividing-lines were easier to address than others – either because some were more fundamental than others or because the state(s) involved in resisting the idea were especially intransigent. Indeed, the latter point is significant because there was a recognised need amongst key supporters that there was a distinction between overt hostility and genuinely held scepticism and fear. Allan Rock was particularly alive to this distinction recognising that ‘respect and patience’ was necessary just as much as the specific changes to address the concerns expressed by states.¹²⁸⁵ Thus, in understanding the formulation it is vital to keep in mind that the effort to arrive at an acceptable solution depended upon a combination of form, framing and personal diplomacy. The process from April-September was about testing what consensus existed between states, and conversely the areas where consensus would be unachievable. In this regard the relationship between R2P’s evolving form, and the largely consistent frames deployed by supporters, is most important. As already stated, there was early diplomatic awareness of where common ground might lie as best-captured by an UK e-gram dated 3 May:

I argued that there was some common ground between (*the UK*) and many other UN members: (i) that Governments were primarily responsible for protecting their own

¹²⁸² HLP (2004) *A more secure world: Our shared responsibility*, para.203

¹²⁸³ Based on private interviews (3 August 2010, 22 October 2010) and: this line of argument was disputed by some supporters, see for instance ‘Comments by the New Zealand Representative, at the Informal Meeting of the Plenary of the High-level Meeting of the GA’, 28 July-2 August 2005

¹²⁸⁴ Private interview (3 August 2010)

¹²⁸⁵ Interview with Allan Rock: ‘I always felt that I had to show a great deal of respect and patience for these concerns among Ambassadors who were motivated in good faith’ recognising that if he was in their situation, in a world which was ‘vulnerable to global forces that favour the wealthy and the powerful I’d have hesitation, I’d want to define it as narrowly as possible, and that’s what we really tried to do, we tried to meet the genuine concerns of those who spoke in good faith’ (Ottawa, 11 June 2009)

civilians (ii) that there was a case for the International Community to act where Governments were incapable or unwilling to do so (iii) that, where tools at the disposal of the Security Council might be required (e.g. sanctions or use of force), these situations should be considered on a case-by-case basis – i.e. there could be no implied obligation to act.¹²⁸⁶

But even with these core elements pointing to where agreement might lie, consensus was ‘difficult to extract’ at all stages of the process.¹²⁸⁷ Quite simply the detailed language would affect the balance within, and between, each dimension. Therefore, the negotiations not only exposed the positions of states but also tested them as efforts were made to craft acceptable language. Consequently, the iterative production of the drafts should be viewed as an attempt to reflect perceived consensus¹²⁸⁸ whilst also providing a basis for subsequent negotiation.¹²⁸⁹ But with this difficulty, those attempting to facilitate R2P’s path needed to be flexible in their outlook, willing to accommodate change, and to back-up their support with carefully crafted cognitive frames. Apart from an early, limited and largely unsuccessful Canadian dalliance with human security as a way of selling R2P,¹²⁹⁰ the frames deployed by advocates were consistently strong in projecting R2P as ‘pro-sovereignty’ norm which ‘strengthened’ sovereignty rather than undermine it. This was consistent with the argument that R2P – either in terms of primary responsibility, or its qualified international dimension – represented nothing more than an extrapolation/reflection of pre-existing agreements. This was further reinforced by repeated assertions that aside from being *primarily* about individual states, R2P was about prevention, assistance and support rather than military intervention and/or unwarranted interference. Meanwhile, insofar as R2P was about enshrining the idea sovereignty could not be seen as an absolute barrier to international action – including under ChVII – repeated emphasis was placed upon the *four-crime*

¹²⁸⁶ ‘E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives’, 3 May 2005

¹²⁸⁷ This phrase is from Strauss (2009) *The Emperor’s New Clothes?*, p13, see also Traub (2006) *The Best Intentions*, p359-366

¹²⁸⁸ Albeit rather unsuccessfully as Part 1 of this chapter showed

¹²⁸⁹ This is an important point relating to the misunderstanding of the process tackled especially in Part 1. There was no settled consensus about the form and content of the R2P section until the last moments of the process. For instance, as an update by the GA Spokesman made clear the draft of the 6th September was both an attempt to reflect ‘the current state of play and...serve as a basis for further negotiations among Member States’, ‘Daily Press Briefing by the Office of the Spokesman of the Secretary-General’, 6 September 2005

¹²⁹⁰ Strauss (2009) *The Emperor’s New Clothes?*, p11-12, see also the use of human security in Canada’s (2005) ‘International Policy Statement – A Role of Pride and Influence in the World’, 19 April 2005, p11

formulation to try to limit the possibility of R2P being used for other purposes.¹²⁹¹ Indeed, though this formulation was prevalent throughout the negotiations of the text, the amount of times it appeared increased from just one reference in the initial June 3rd draft, to a total of six by the 13th September. This repetition was fundamental to the effort of ensuring the definitional parameters of R2P were narrow with a ‘very high threshold’.¹²⁹² Ultimately this was about trying to ‘conceptually and politically insulate’ R2P from controversies around Iraq, Afghanistan and Kosovo.¹²⁹³ Most significantly, any reference to R2P in the final text was *always* accompanied (read *qualified*) by the four-crime formulation. At *no point* did the phrase R2P stand alone, and even more revealingly, at *no point* was the R2P phrase used in relation to the role of the international community. Supporters had wanted the agreement to more directly state the international community had a R2P, but were unable to because of immovable NAM opposition to such an explicit statement.¹²⁹⁴ It is vital this is not overlooked, not only because there are consequences which flow from this reality, but because there were political reasons why such an inclusion was unachievable. Thus, the overall effort was about trying to package R2P as a ‘self-evident’ political development which to block/oppose would represent an effective endorsement of such gross crimes of genocide and ethnic cleansing.¹²⁹⁵

Effectively there were numerous mutually-reinforcing framing narratives around R2P. It was primarily about individual states. Was narrow in its application/parameters, but also necessarily broad in the potential range of tools available to help support and assist states to realize their responsibility. All this was bound-together by a reiteration of existing processes. International responses prior to ChVII were to be pursued ‘through the UN’ or to ‘support the UN’, with those towards the more coercive/non-consensual end of the spectrum firmly embedded within the auspices of the SC.¹²⁹⁶ Finally, reference to any

¹²⁹¹ Interview with Allan Rock (Ottawa, 11 June 2009)

¹²⁹² Interview with Allan Rock (Ottawa, 11 June 2009) and private interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010)

¹²⁹³ Private interview (22 October 2010)

¹²⁹⁴ Private interviews, one individual close to the negotiations was very explicit about the lack of any statement of an “international responsibility to protect” (3 August 2010, 13 August 2010, 22 October 2010)

¹²⁹⁵ Private interview (25 June 2010): this point was made on a number of occasions during interviews. It is also unsurprising therefore that running alongside this were numerous references to Rwanda and Srebrenica to try and bring states together on the inclusion of R2P, see Strauss (2009) *The Emperor’s New Clothes?*, p13

¹²⁹⁶ UN (2005) *World Summit Outcome*, paras.138-139

international responsibility was evident only in the pre-ChVII phase, and only then was assigned to the UN as an expression of a responsibility 'to help'. By contrast ChVII measures were defined merely by a 'preparedness' to act collectively, and only on a case-by-case basis. These limitations were unsurprising because ensuring the character of the international dimension was distinct from that of the individual state dimension was a priority issue for many member states.¹²⁹⁷ In light of the previously described divisions, this overall package was entirely necessary even if arriving at it was a complex affair. Indeed, from the outset the mere placing of the R2P section in the draft documents provoked concern. Through each draft R2P was situated in the section on 'Human Rights and the Rule of Law'. This had the benefit of detaching it from the use of force paragraphs¹²⁹⁸ but the reverse effect was that by situating it alongside the highly controversial human security and amongst human rights measures generally, concerns were raised that R2P would contribute to the politicization of international responses in this area.¹²⁹⁹ This did not mean, however, that the parallel negotiations on the use of force paragraphs were realistically separate from R2P.¹³⁰⁰ Aside from successful efforts to reaffirm pre-existing Charter provisions for addressing threats to international peace and security, the resulting paragraphs were revealing for the removal of any reference to the proposed criteria/principles for the use of force (Box5.1). It was certainly not surprising that within the negotiations they 'flew very briefly and very weakly'.¹³⁰¹

¹²⁹⁷ This was most explicitly made by the US in Bolton 'United States Proposals: Responsibility to Protect', *Letter to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005

¹²⁹⁸ The use of force paragraphs were situated in Part III of the draft outcome documents which were divided into four parts: I. 'Values and Principles'; II. 'Development'; III. 'Peace and Collective Security'; and IV. 'Human Rights and the Rule of Law'

¹²⁹⁹ See Strauss (2009) *The Emperor's New Clothes?*, p11-12

¹³⁰⁰ In the final outcome document the use of force 'under the Charter of the UN' was dealt with in paras.77-80

¹³⁰¹ Private interview (13 August 2010)

Box 5.1: Criteria/guidelines for the Use of Force through each Draft Outcome Document

3 June 2005: 47. We recognize the need to continue discussing principles for the use of force, as identified by the Secretary-General, and that such principles should be among the factors considered by the Security Council in deciding to authorize the use of force as provided under the Charter.

22 July 2005: 76. We recognize the need to continue discussing principles for the use of force, as identified by the Secretary-General.

5/10 August 2005: 56. We recognize the need to continue discussing principles for the use of force, including those identified by the Secretary-General.

6 September 2005: 67. [We recognize the need to continue discussing [principles] [criteria for consideration] for the use of force, including those identified by the Secretary-General.]

12 September 2005: 67. [We recognize the need to continue discussing criteria for consideration for the use of force, including those identified by the Secretary-General.]

13 September 2005: Removed

As Dauth remarks, criteria were never a serious proposition from 'day one'.¹³⁰² Canada expressed its support, including by explicitly tying the 'effective implementation' of R2P to agreement on guidelines.¹³⁰³ But ultimately it did not overcommit to a proposal which revealed too many unbridgeable variations in the positions and underlying motivations of states. Consequently, negotiations around guidelines oft-described as a necessary addendum to R2P were of nominal substance. France and the UK were more flexible.¹³⁰⁴ But by contrast, the remaining P5 were especially resistant to moves in this area, even if Russia attempted to appear 'virtuous'¹³⁰⁵ by expressing 'on the whole' support for the HLP guidelines so long as they did not 'compromise the [SC's] ability to take relevant decisions in specific decisions'.¹³⁰⁶ Essentially this position was a product of political calculation (aware that they were not going to be accepted in any case) and enhanced sensitivity post-Iraq to limit any moves towards unilateralism.¹³⁰⁷ In actuality, however, the differences between

¹³⁰² Interview with John Dauth (London, 25 May 2010)

¹³⁰³ Statement by Mr. Rock, Canada, 5225th meeting of SC, 12 July 2005, S/PV.5225, p31, see also: Pierre Pettigrew (2005) Notes for an address to the 61st Session of the Commission on Human Rights, 14 March 2005; Statement by Mr. Rock, Canada, 8 April 2005, A/59/PV.89, p27; Statement by Allan Rock, Canada, at the informal thematic consultations of the GA, Cluster III: Freedom to live in dignity, 20 April 2005.

¹³⁰⁴ The UK was the most open in continuing its advocacy of the framework laid-down by Blair's Chicago Speech, see (FCO) (2004) *The United Kingdom in the United Nations*, p63

¹³⁰⁵ This was how one P5 official described the curious Russian position which was nevertheless far more nuanced than described by Bellamy (2009) *Responsibility to Protect*, p85 (email, 23 September 2011)

¹³⁰⁶ 'Statement by Andrey Denisov, Russia on the report of the High-level Panel on Threats, Challenges and Change', 31 January 2005, 'at the informal UNGA meeting on the reports of the High-level Panel on Threats, Challenges and Change and of the Millennium Project', 22 February 2005, 'Statement', A/59/PV.87, 7 April 2005; 'Statement at informal UNGA consultations on the draft outcome document', 22 June 2005

¹³⁰⁷ Though often seen as being opposed to criteria because they might enable interventions rather than constrain them, apparent Russian support was about more than simple yes/no considerations. In this case, the overall context of Russia's position was designed to safeguard against any further erosions to the authority of the SC. Thus it repeatedly argued force could only be authorised by the SC or under the right to self-defence

the P5 are/were more subtle and indistinguishable than often-presented.¹³⁰⁸ All, for instance, were united by unwillingness to countenance triggers, automaticity or any changes which might constrain or enable their existing scope of action. Hence the UK position was about aiding the decision-making process in the context of a continuing commitment to case-by-case responses. China and the US were the most openly opposed to criteria and for similar reasons if not necessarily similar motives. Both argued that criteria could not be developed ‘in the abstract’¹³⁰⁹ whilst reiterating the SC’s pre-existing authority to determine an appropriate course of action in a specific case. China’s position was more acutely driven by a concern criteria might actually enable further subjectively-based interventions pursued outside the SC whereas for the US its opposition to criteria was consistent with a firm unwillingness to accept any constraints on its freedom to manoeuvre. There were also many other nuanced arguments both for and against criteria, with some of the more reasonable concerns/criticisms mirroring the previous analysis of ICISS’s proposals in this area.¹³¹⁰ But with the P5 positions as they were, with NAM opposition to even the 22 July proposal that states continue to discuss such principles, and with some GA positions only likely to

and in so doing sought to tie the proposed criteria to an effort to curb (US) unilateralism and the use of force in general. Indeed, Russia would even argue that the use of force section should be renamed ‘Principles on non-use of force’. So while it is very much open to question whether Russia really supported criteria – and very few really believed they did – it is nevertheless interesting to understand it in terms of the broader thrust of its efforts to narrow the scope of R2P, and to protect the prerogatives of the SC

¹³⁰⁸ This is perhaps especially true when one compares Russia and the US where the differences are often excessively polarised in characterisation. As Greenstock commented, if you ‘scratch beneath the skins of a Russian and American at the same moment you find them equally resistant to being constrained or vulnerable to global governance or multi-lateral action’. In other words, whereas Russia may generally wish to diminish the prospects for international interventions, and block any proposed mechanisms enabling action outside the SC (which would diminish its influence as a P5 member) it does not necessarily follow that it will bind itself in such a way (Chipping Norton, 8 June 2010)

¹³⁰⁹ This was a phrase used by the US, see: ‘United States Proposals: Responsibility to Protect’, *Letter from John R. Bolton to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005. Similarly, China argued that ‘it is both unrealistic and hugely controversial to formulate a “one-fits-all” rule or criterion on the use of force. Whether to use force or not should be decided by the Security Council in light of the reality of conflicts on a case-by-case basis’, ‘Position Paper of the People’s Republic of China on the UN Reforms’, 7 June 2005

¹³¹⁰ Unfortunately it is not possible to include a detailed analysis of the discussions around criteria/principles here. A four-thousand word analysis was drafted in preparation for this chapter and would be incorporated into a future extended publication of this thesis. However, in terms of discussion and member state comment, it is worth pointing out that documentary research revealed many countries expressed positions on the matter including: China (27 January), the USA (17 August), Russia (31 January, 22 February, 7 April, 22 June), Canada (29 January, 8 April, 20 April, 16 September), the EU (19 June), the Group of Friends for the Reform of the UN (6-7 May), San Marino (6 April), Liechtenstein (7 April), Poland (8 April), Malaysia (20 April, 1 July), the HSN (18-20 May), Norway (21 June), the NAM (29 July), the DRC (16 September), Pakistan (6 April); Algeria (6 April); Chile (6 April); Singapore (19 April) Bangladesh (19 April), Sweden (19 April) (see bibliography)

exacerbate P5 resistance, any textual reference to them was gradually eroded until their complete removal on the 13 September.¹³¹¹

With states unable to agree to even continue *discussing* criteria, it was no surprise that a proposal for P5 veto restraint was equally resistant to political agreement.

Box 5.2: The Veto Proposal through each Draft Outcome Document

3 June 2005: No mention

22 July 2005: No mention

5/10 August 2005: 119/120. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.

6 September 2005: [129. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.]

12 September 2005: Removed

13 September 2005: No mention

Unlike the criteria issue, this proposal was tackled within the direct context of the R2P section with associated language appearing in two drafts on the 5/10 August and the 6 September. But rather than representative of consensus, or even discussion of the idea, these inclusions are more interesting for what they say about the process than the substance. Even with the HLP's endorsement of the idea there was very little serious discussion not least because it was widely understood that the P5 would unanimously reject it. Indeed, as Rock commented, it was made clear to him 'very early on' by the US and the UK that the veto proposal was 'not going to happen'.¹³¹² There was some debate within UK policy-making circles about the idea, but ultimately the opposition outweighed any support.¹³¹³ Moreover, with China, Russia and the US 'adamant' there would be no

¹³¹¹ Box 5.1 shows how the text changed over the course of the negotiations. However, consistent with the arguments relating to the process through this chapter, it wasn't until the 6 September that the draft reflected the true state of play in this area. The brackets denoted a lack of agreement about the entire sentence, and because of there was no consensus there was no option but to remove it from the final draft on the 13th

¹³¹² Interview with Allan Rock (Ottawa, 11 June 2009), John Dauth (London, 25 May 2010): this was confirmed in private interviews with relevant officials/diplomat (3 August 2010, 13 August 2010)

¹³¹³ Private interview with author (22 October 2010): Within the FCO, debate on this matter opened up differences (rather crudely) between legal advisers on the one side, and (some) policy-makers and special-advisers on the other. The latter were apparently more receptive to the proposal, with the former apparently 'very conservative and very opposed'. But as a general policy the UK was always weighed against such a proposal, preferring instead to focus on achieving 'consensus through negotiation' as a 2008 R2P-related FCO project would put it.

movement any supportive voices within the GA were swimming against an impossible tide. All three were ultimately willing to allow R2P through because the formulation was based upon principles which did not fundamentally alter the existing state of play. In this regard, they were unwilling to accept anything which might undermine their P5 prerogatives, or impose additional obligations or responsibilities upon them. For the US especially, agreeing to R2P was acceptable insofar as it did not materially increase or decrease its national 'room to manoeuvre'.¹³¹⁴ Thus, on the record GA statements relating to the veto proposal are hard to come by with just a handful of states publically supportive of the idea.¹³¹⁵ Most vocally supportive were Switzerland, Peru and Costa Rica with all arguing the idea would strengthen the SC's implementation of R2P.¹³¹⁶

In these circumstances, the inclusion of standalone language inviting the P5 to 'refrain from using the veto' said more about the process than any emerging political traction amongst the constituency which ultimately mattered most for its agreement. In particular, the 5 August language was fed-into the draft purely at the request of just one member state demonstrating the above-described weaknesses in the negotiation process even at this late stage.¹³¹⁷ Inevitably, this language provoked an immediate response as demonstrated by an internal FCO email sent on the 10 August. This communicated 'concerns over the new language...on restraints on the veto' pointing out that 'other P5 will no doubt agree'.¹³¹⁸ Even more inevitably, the language was thereafter bracketed in the 6 September draft and then completely removed by the 12 September.

¹³¹⁴ Private interview (22 October 2010)

¹³¹⁵ That is, based upon the available records. Generally speaking there was differentiation as to what its purpose would be. On the one hand, a 'like-minded liberal constituency' were attracted by its application to extreme cases and because of a commitment to achieving a more rules-based international system regulating the use of force. Alternatively, there was another group whose attraction to the idea was based more on its potential to undercut/restrain a P5 prerogative and in so doing constrain the US. But these were very general positions. Private interviews: one official described the motives of the latter group as 'less pure' than the former (13 August 2010)

¹³¹⁶ See statements by Switzerland, 19 April and 20 September, Peru, 21 June, 12 July, 28 July, and Costa Rica, 16 and 22 September. Additionally Latvia and Slovenia also spoke in favour of limiting the veto in the four-crime cases, see 18 and 19 September respectively (full references in bibliography)

¹³¹⁷ 'E-gram to FCO London from UKMIS NY: Third Draft of Outcome Document', 9 August 2005: this was backed-up by interviews, although it was not possible to specify exactly which state (believed to be one of one of Switzerland, Peru or Costa Rica) who made this request. But it is a prime example of why understanding the process in the way presented throughout is the surest way of understanding the final outcome

¹³¹⁸ (FCO) (2005) 'Internal FCO Email', dated 10 August 2005

Thus, the veto proposals placed in the August draft were symptomatic of problems with the process. More specifically, its inclusion occurred during the phase where the facilitated management of the negotiating drafts really began to unravel. As explained above, this unravelling was fuelled by accusations the process was elitist, lacked transparency, and was failing to adequately incorporate/accommodate member state positions. Resultantly the ballooning drafts would become increasingly defined by specific member state, or GA grouping, language and in many policy areas would lack the specificity necessary to represent consensus between states.¹³¹⁹ It was not until the Bolton intervention that the negotiations took on elements of line-by-line negotiation through the CG, complementing continuing GA plenary discussions composed (dependent upon the issue) of a variable geometry of interested delegations. All this, combined with R2P's relegated place in the overall negotiation package, helps to explain why the effort to find 'agreeable language'¹³²⁰ did not take on the required precision or intensity until mid-August onwards. Moreover, without wishing to return to the broader negotiating dynamics, there was a sense amongst many sceptics/opponents that Russia would drive the dilution and eventual deletion of R2P from the outcome.¹³²¹ Clearly the latter did not happen, but once the negotiations moved into the final phase – however difficult and contested that path was – Russia would be a key player in a concerted (and at times hostile) effort to ensure the language addressed many of the concerns of, and divergences between, member states. With the introduction of the CG, the series of proposed US amendments,¹³²² and the 'diminishing distraction' of SC-reform,¹³²³ the last two weeks would see a flurry of activity.

Resultantly, many of the most significant changes to the text were made during the post-5 August phase. Thus, the 3 June,¹³²⁴ and 22 July drafts should be seen as early attempts at laying-down markers as to what the R2P section might look like, rather than anything more

¹³¹⁹ It is for this reason the importance of understanding the iterative rolling drafts in the context of the characteristics and dynamics of the process is reiterated throughout this chapter – particularly in response to the limitations in existing accounts of R2P's development

¹³²⁰ UN (2005) 'UN officials preview possible outcome of summit on development, UN reform', 5 August 2005

¹³²¹ Strauss (2009) *The Emperor's New Clothes?*, p12

¹³²² As already stated, these amendments were first introduced into the process on the 17 August with the circulation of the US' own version of the draft outcome document which was backed-up by the previously-mentioned famed 'Dear Colleague' letters sent by John Bolton

¹³²³ 'E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP', 22 August 2005

¹³²⁴ A formal version of the 3 June draft was released on the 8 June, both are essentially the same, as are the drafts of the 5 August (informal) and 10 August (official version): No significant changes in either case

fundamental. Certainly compared to the 6, 12 and 13 September drafts they were significantly different in terms of their structure, length, detail, and caveats. That said, they did include language which would remain throughout; sow important seeds for future development of the section; and additionally included language which captured just why detailed negotiation would eventually be required.

Box 5.3: R2P Extracts from the 3 June and 22 July Draft Outcome Documents

3 June 2005: "Responsibility to protect"

72. We agree that the responsibility to protect civilian populations lies first and foremost with each individual State. The international community should, as necessary, encourage and help States to exercise this responsibility. The international community also has the responsibility to use diplomatic, humanitarian and other peaceful means under Chapter VI and VIII of the UN Charter to help protect civilian populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. If such peaceful means appear insufficient, we recognize our shared responsibility to take collective action, through the SC and, as appropriate, in cooperation with relevant regional organizations under Chapter VII of the Charter.

73. We support the implementation of the UN Action Plan to prevent genocide.

74. We stress the need to continue consideration of the concept of R2P within the GA.

22 July 2005: "Responsibility to protect"

113. We agree that the responsibility to protect civilian populations lies first and foremost with each individual State and we accept that responsibility and agree to act in accordance with it. The international community, should, as appropriate, encourage and help States to exercise this responsibility. The international community, through the United Nations, also has the responsibility to use diplomatic, humanitarian and other peaceful means, including under Chapters VI and VIII of the Charter to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we recognize our shared responsibility to take collective action, through the Security Council and, as appropriate, in cooperation with relevant regional arrangements, under Chapter VII of the Charter, should peaceful means prove insufficient and national authorities be unwilling or unable to protect their populations. We stress the need to continue consideration of the concept of the responsibility to protect within the sixtieth session of the General Assembly.

114. We support the implementation of the United Nations Action Plan to Prevent Genocide and the work of the Secretariat to this end.

Notably, both drafts opened with a statement of individual state responsibility, albeit in more committal terms in the latter. With this dimension primarily what R2P was about, the associated language would be significantly developed thereafter this limited starting-point. Part of this strengthening and expansion would include the introduction of a more logical two-paragraph (individual state/international community) structure to the section from 6 September onwards. Until then however, the two dimensions would sit together in a single paragraph. But if individual responsibility would be where the normative statement of R2P would be strongest, the international dimension would be consistently more problematic. Defining this partly in terms of encouraging and helping individual states 'as appropriate' was least problematic/controversial and significant for the way the *first* statement of the

international community's role was about working in *support* of the state. Indeed, a strengthened version of this statement would remain in such a position through each draft, clearly demonstrating one aspect of the core supportive element that R2P through the international community was to represent.

Box 5.4: The 22 July Draft Compared with the 3 June

Responsibility to protect

~~72~~¹¹³. We agree that the responsibility to protect civilian populations lies first and foremost with each individual State-
and we accept that responsibility and agree to act in accordance with it. The international community should, as
~~necessary~~appropriate, encourage and help States to exercise this responsibility. The international community, through
the United Nations, also has the responsibility to use diplomatic, humanitarian and other peaceful means, including
under Chapters VI and VIII of the Charter to help protect civilian populations from genocide, war crimes, ethnic cleansing
and crimes against humanity. ~~If such peaceful means appear insufficient~~In this context, we recognize our shared
responsibility to take collective action, through the Security Council and, as appropriate, in cooperation with relevant
regional ~~organizations, under Chapter VII of the Charter~~arrangements, under Chapter VII of the Charter, should peaceful
means prove insufficient and national authorities be unwilling or unable to protect their populations. We stress the need
to continue consideration of the concept of the responsibility to protect within the sixtieth session of the General
Assembly.

~~73~~¹¹⁴. We support the implementation of the United Nations Action Plan to Prevent Genocide-

~~74. We stress and~~ the ~~need to continue consideration within the General Assembly~~work of the ~~concept of the~~
~~responsibility to protect~~Secretariat to this end.

Similarly there was a consistent place and acceptance of the international community's soft-side 'responsibility' in helping to protect populations – in accordance with ChVI and VIII¹³²⁵ – from the four-crimes. However, it would be a mistake to see this as a *prima facie* expression/endorsement of an international-R2P. In reality, this sentence was a revealing example of the inability to include any direct phrasal reference to an international-R2P at any stage during the negotiations. It was a statement of a responsibility *to help* to protect, not a responsibility *to protect* – a subtle, but nevertheless fundamental distinction. In practical terms, diplomatic, humanitarian and other peaceful means established a potentially broad spectrum of international responses. And as the drafts developed, this spectrum would be further expanded through the strengthening of additional references in relation to assisting individual states. But in normative terms, an early redline was imposed upon the draft which ensured the character, scope and application of R2P would distinctly differentiated across the two dimensions.¹³²⁶

¹³²⁵ 'In accordance' with Chapters VI and VIII of the UN Charter would be introduced from 6 September; prior to that the language was 'under' or 'including under' Chapters VI and VIII, see Boxes 5.3-5.10

¹³²⁶ Considerably more so than oft-presented

This sentence would remain in each and every draft from June onwards, albeit with one small but significant alteration. The July draft immediately tightened the meaning of this limited responsibility with the insertion of the 'through the UN' phrase. This effectively meant insofar as responsibility was invoked it was assigned to the UN rather than the more generic 'international community'.¹³²⁷ It also represented one of the principal ways of ensuring R2P was tied to existing processes as supporters argued it would be. This was also the case with the unquestionably more controversial reference to collective action under ChVII. Despite many concerns, and some intense opposition, this reference was evident in each draft document. Supporters were especially loath to calls for this to be dropped because without it the benefit of having R2P would be open to serious question.¹³²⁸ This was a 'key feature' which had to remain.¹³²⁹ Unsurprisingly though, the pay-off was that its place would lead to more specific and general safeguarding. Any thoughts of complicating the statement, particularly to accommodate or leave open the possibility of action outside the SC were overcome by the imperative to craft language designed to appeal to the nervous/sceptical. The priority was to especially reassure China and Russia that R2P did not impose extra responsibilities or obligations on the SC, and to convince the US that it did not affect its existing manoeuvrability. Thus, UK consideration for the insertion of a 'wherever possible' caveat was a political non-starter.¹³³⁰ The calculation was that it was better to have it this way than not at all.¹³³¹ But what it also meant was the references to 'shared

¹³²⁷ See Jennifer Welsh (2006) 'Conclusion' in *Humanitarian Intervention and International Relations*, p186

¹³²⁸ This point was made in numerous interviews (3 August 2010, 13 August 2010, 22 October 2010, 25 June 2010). It was also often pointed out that this was also about acknowledging something which essentially already-existed in that the SC already had the authority to decide what constitutes a Chapter VII threat

¹³²⁹ As a UK Mission update explained in early September 'Key features look like being preserved, including recognition that the principal responsibility to protect populations lies with states, and that when populations are not being effectively protected the international community can take "collective action" through the UNSC (i.e. including use of force). The EU has argued, with support from (*several other UN Member States*) **that the concept and in particular the last aspect should not be diluted**', 'E-gram to FCO London from UNMIS NY: UN Summit Outcome Document – SITREP 4 September', 5 September 2005

¹³³⁰ Private interview (3 August 2010): the US also expressed a view that action 'absent authorization by the SC' should not be 'precluded' arguing the text 'should not foreclose' the possibility that there 'may be cases that involve humanitarian catastrophes but for which there is also a legitimate for states to act in self-defence' in 'United States Proposals: Responsibility to Protect', *Letter from John R. Bolton, to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005

¹³³¹ Private interviews (3 August 2010, 13 August 2010, 22 October 2010): one UK official pointed out that there was some sensitivity about defining R2P in a way which suggested Kosovo was wrong. They did not want to completely shut the door on similar action in extreme circumstances, thus the 'wherever possible' caveat would be about accepting the general rule that SC would be required, but that there were possible exceptions. However, even the French were seen as being unlikely to accept such a defined caveat and it was certainly not

responsibility' in this context were always highly optimistic. This would consequently lead to its eventual removal from a sentence which would undergo numerous associated linguistic changes.

One major step in this regard was the July introduction of an ICISS-esque threshold-transition with the language of 'unwilling or unable' – a necessary but ultimately insufficient attempt to define the high-bar narrow threshold for international action. This complemented the consistent reference to regional 'cooperation', and the situating of the purposefully qualifying sentence stressing the need for continued GA consideration of the idea after the sentence on collective action. It is telling that both references would be strongly embedded throughout, including when the draft became littered with bracketing from 6 September onwards. And although in substance both were very different, they were also united by a common purpose of assuaging member state concerns. Regional organizations may have been a pragmatic, process-oriented and contextually-aware inclusion but was also one measure designed to guard against fears of interventions pursued by the powerful against weaker states, or decisions made on an apparently rash basis.¹³³² *Continuing* GA consideration meanwhile was something supporters 'wondered long and hard about' but accepted was necessary to counter concerns the GA had not driven R2P's development/creation, or had enough time to consider its potential consequences.¹³³³ Locating it after the most contentious sentence in every draft from July was therefore no coincidence, but was carefully considered with these concerns in mind. Indeed, there was some debate as to whether the sentence should be temporally qualified

going to win the approach of China/Russia and the many sceptics within the GA who wished to limit unilateralism not potentially enable it. That said, it is important to recognise that while consensus around R2P was that authorisation for collection action was tightly tied to the SC this did not shut-down policy-options outside of R2P. The doctrine of humanitarian intervention for instance was described in both consistent/complementary as well as distinct terms to R2P, and would therefore remain a continuing policy-option for those who had accepted its use in the past

¹³³² The place of regional organizations (referred to on 22 July as regional 'arrangements') was assured from the outset for reasons previously-identified. Indeed, the two references to Chapter VI and VIII ensured regional organizations/arrangements commanded a prominent and legitimate place in any further R2P-related processes/scenarios. This dimension was a key part of ensuring that regional organizations were involved in a problem before it got to the stage where further potential action may be necessary. As Rock points out this was entirely pragmatic, not least because it was the 'right thing to do' and would 'happen anyway' (Ottawa, 11 June 2009). This, though, was reinforced by the second, more contentious element relating to possible SC authorised action under Chapter VII. Here the reference to regional organisations was especially vital and was included just as much to address or dampen down concerns regarding external interventions

¹³³³ Private interview (3 August 2010)

as it was in the July draft¹³³⁴ but instead of this it would be expanded to better reflect concerns relating to its implications (Box5.7).

Box 5.5: R2P Extract from the 10 August Draft Outcome Document

10 August 2005: "Responsibility to protect"

119. We agree that the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity lies first and foremost with each individual State. We also agree that this responsibility to protect entails the prevention of such crimes, including their incitement. We accept that responsibility and agree to act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations to establish an early warning capability. The international community, through the United Nations, also has the obligation to use diplomatic, humanitarian and other peaceful means, including under Chapters VI and VIII of the Charter, to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we recognize our shared responsibility to take collective action, in a timely and decisive manner, through the Security Council, under Chapter VII of the Charter, and in cooperation with relevant regional organizations, should peaceful means be inadequate and national authorities be unwilling or unable to protect their populations. We stress the need to continue at the sixtieth session of the General Assembly consideration of the concept of the responsibility to protect.

120. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.

121. We support the implementation of the United Nations Action Plan to Prevent Genocide and the work of the Secretariat to that end.

These measures were part of the overall effort to shape the text so to command wider acceptance (if not support), and convince states R2P did not depart from existing practice, process or provision. At this stage, however, the drafts were out-of-kilter with the individual and collective positions of member states. The 10 August draft captured an uneasy combination of under-development in some areas, over-development in others, and an overall lack of detailed specificity. Although it is true each draft was to provide a basis for further negotiations, the 10 August draft was symptomatic of a stalling process in danger of derailing completely. Its release came just ahead of the most significant change in the entire process which as explained above was precipitated by the breakdown of the facilitator process amid a raft of criticisms and amendments proposed by the US. The veto proposal was particularly symbolic of process-related weaknesses, compounding the surprising inclusion of 'obligation' at the expense of 'responsibility', the continued place of 'shared responsibility' in relation to collective action and a continuing lack of sufficient

¹³³⁴ NAM's preference was to temporally qualify the statement by 'within the sixtieth session of the GA' in order to 'reflect a sense of urgency', see: 'Statement by Malaysia, at the informal meeting of the plenary on the draft outcome document of high-level plenary', 1 July 2005. With it ultimately not qualified in this way it is open to debate whether leaving it open-ended actually benefited the sceptical or opposing states more

parameterization.¹³³⁵ In this respect, the gap between the language and member state consensus was wider than at any point in the process.

Box 5.6: The 22 July Draft Compared with the 10 August

Responsibility to protect

~~113119.~~ We agree that the ~~responsibility to protect civilian~~ protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity lies first and foremost with each individual State ~~and we. We also agree that this responsibility to protect entails the prevention of such crimes, including their incitement.~~ We accept that responsibility and agree to act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility ~~and support the United Nations to establish an early warning capability.~~ The international community, through the United Nations, also has the responsibility obligation to use diplomatic, humanitarian and other peaceful means, including under Chapters VI and VIII of the Charter, to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we recognize our shared responsibility to take collective action, in a timely and decisive manner, through the Security Council ~~and, as appropriate, under Chapter VII of the Charter, and~~ in cooperation with relevant regional arrangements, under Chapter VII of the Charter, organizations, should peaceful means prove insufficient be inadequate and national authorities be unwilling or unable to protect their populations. We stress the need to continue at the sixtieth session of the General Assembly consideration of the concept of the responsibility to protect ~~within the sixtieth session of the General Assembly.~~

~~114120.~~ We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.

~~121.~~ We support the implementation of the United Nations Action Plan to Prevent Genocide and the work of the Secretariat to ~~this~~ that end.

Conversely, the August draft introduced language which would remain thereafter. Drawing on language circulated by Rwanda on the 29th July, the primary state dimension was significantly expanded with the addition of prevention/incitement as an inevitable element of R2P. This was supplemented with the commitment to help the UN establish an early-warning capability, thus strengthening the sentence on international assistance. The emphasis on such preventive measures was about placing squarely the R2P on individual states.¹³³⁶ It helped reinforce the idea R2P was pro-sovereignty rather than pro-interventionism. Unsurprisingly, prevention commanded wide support and was ‘securely in [the] text’ thereafter.¹³³⁷ But within this, that the specific incitement reference remained was somewhat surprising. Apart from the open-ended addition of ‘through appropriate and necessary means’ from 6 September onwards, it would remain in place despite US calls for

¹³³⁵ The facilitators reported on the 5th August (when the draft was initially circulated) ‘providing parameters for the concept of R2P was [proving a] challenge’, in ‘Press Conference on Summit Outcome Document’, 5 August 2005

¹³³⁶ Which was the element states were universally most able to clearly accept

¹³³⁷ As quoted in ‘E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP’, 22 August 2005

its deletion.¹³³⁸ But considering Rwanda's history with incitement prior to and during the '94 genocide, combined with the effects of the structured outcome and the fact the US was generally supportive of R2P so long as more fundamental red-lines were not crossed,¹³³⁹ this reference was ultimately not sufficiently provocative for the US to more vigorously pursue its deletion.

But like the veto proposal, the August incitement reference was revealing for what it said about the process and how the drafts were being formulated. While it is important to acknowledge the ways this draft introduced some elements necessary for moving towards the final form of R2P, it was clear that to command broader acceptance it would have to undergo a process of more detailed diplomatic negotiation of the specific line-by-line language. Indeed, the US position on incitement was expressed *after* it first appeared in the 5/10 draft because of the way it was fed into it through the facilitators. The US did so initially through the circulation of its own form of the draft document on the 17th and then in the R2P-specific 'Dear Colleague' letter of the 30th. These inputs came in the context of declining confidence/trust in the facilitator process as most vociferously expressed by the US and NAM. Thus, even though incitement would remain in the final outcome, this did not mean its initial inclusion was based upon pre-determined consensus. Rather, consensus

¹³³⁸ The US position was that the reference 'raised a problem...because of our traditional approach under the First Amendment to our Constitution', *Letter from John R. Bolton, to Ambassadorial Colleagues on the Responsibility to Protect*, 30 August 2005. The First Amendment (1791) reads: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances'. This traditional approach is significant in terms of how incitement relates to the power of government and the burden necessary to prove that inflammatory speech was *intended* to incite 'imminent lawless action'. For the US, its position was thus likely directed by a concern that the formulation in the Summit draft was far too loosely defined to be consistent with its own approach. Indeed, the First Amendment speaks in prohibitory terms – i.e. to prohibit the ability of Congress to inhibit the rights within it. This has been backed-up by the US Supreme Court through its Constitutional assumption of *freedom* rather than *restriction*; see for instance 1969 *Brandenburg vs. Ohio*. A legitimate concern therefore was that the reference to incitement could be deployed by governments to actually shut-down freedoms of press and expression as part of its primary responsibility to address the crisis on the ground. Thus, preventing incitement could be seen not just as a way of preventing further atrocities, but also a potential tool for their continuation

¹³³⁹ This was not a general approach of the US however. As Bolton writes he resisted pressure to outline US red-lines because he believed the outcome document also contained a 'considerable amount of junk than might not violate US red lines, but that we should not accept substantively' (2007) *Surrender Is Not An Option*, p204-5. This is perhaps one reason why even after the introduction of the Core Group Bolton was dissatisfied with the prioritization of seven issues as selected by Jean Ping, see: Reform the UN (2005) 'Core Group Negotiations Begin with New Document Expected on September 6th', 30 August 2005

would be determined once the process shifted towards an approach focused on extracting language which could more accurately reflect where consensus on R2P really lay.

Box 5.7: R2P Extract from the 6 September Draft Outcome Document

6 September 2005: "Responsibility to protect [civilian populations]"

127. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility to protect 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 should support the United Nations to establish an early warning capability.

128. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with [Chapter VI and VIII of] the Charter, to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, [we are prepared to take collective action] [we recognize our shared responsibility to take collective action], in a timely and decisive manner, through the Security Council, under [Chapter VII of] the Charter on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and [national authorities fail to protect their populations] [populations not be afforded protection]. We stress the need for the General Assembly to continue consideration of the responsibility to protect and its implications, bearing in mind the relevant provisions and principles of the Charter of the United Nations and international law [and the principle of non-interference in internal affairs of States]. [We note the importance of developing the capacity of States to exercise this responsibility and assist those which are under stress before crises and conflicts break out.]

[129. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.]

130. We fully support the mission of the UN Special Advisor for the Prevention of Genocide.

And so, resultant to the proposed US amendments and the introduction of the CG¹³⁴⁰ the most intensive phase of the negotiations yielded the most significant, and voluminous changes to the R2P section (and the draft overall). From the third week of August until the last hours before the Summit was due to open, the negotiations took on a character which was almost 'inhumane' in its intensity, rigour and complexity.¹³⁴¹ Drafts on the 6th and 12th September would undergo dramatic changes, both compared to the 10 August and to each other. This was despite the fact R2P remained conditioned by the overall context. Even with its identification as one of the CG's seven priority issues, it never commanded significant ambassadorial attention – a factor which helped diminish the potential for more concerted high-level opposition. Nevertheless, the differences around R2P were very real. The negotiations, pursued mainly in an R2P-focused sub-group and increasingly from the 1 September on a bilateral delegation-to-delegation basis, zoned-in on all the major issues of

¹³⁴⁰ Which, as stated above, complemented continuing plenary and sub-group negotiations, it is also important to keep in mind the structured outcome points about the relative place of R2P in the negotiations because even though the intensity of them around R2P increased after the Bolton intervention it remained a less contentious issue which thus demanded relatively less dedicated ambassadorial time

¹³⁴¹ Interview with Allan Rock (Ottawa, 11 June 2009), similar points were widely made in interviews

contention, exposing some of the differences between states as ‘fundamental’ in nature.¹³⁴² Accordingly, the period from the shift in the process at the end of August, and the fourth draft set for the 6 September was helpful in a number of ways. First, it helped ‘clarify’ what the ‘key differences’ between states really were. In so doing, the heavily bracketed 6 September draft at least provided a more solid ‘basis’ for the final week of negotiations.¹³⁴³ Second, this clarification emphasized just how much effort was still required: as one UK update commented on the 4th ‘no short-cuts [were] yet available’.¹³⁴⁴ Finally, the clarification of differences resulted in the introduction of: a clearer, more logical paragraph structure; and through the introduction of bracketing saw the first real linguistic identification of the political boundaries which would define the R2P agreement.

Box 5.8: The 6 September Draft Compared with the 10 August

Responsibility to protect civilian populations

~~119. We agree that~~¹²⁷. Each individual State has the ~~protection of~~responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity ~~lies first and foremost with each individual State. We also agree that this.~~ This responsibility to protect entails the prevention of such crimes, including their incitement, ~~through appropriate and necessary means.~~ We accept that responsibility and ~~agree to~~will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and should support the United Nations to establish an early warning capability.

¹²⁸. The international community, through the United Nations, also has the ~~obligation~~responsibility to use appropriate diplomatic, humanitarian and other peaceful means, ~~including under Chapters~~in accordance with [Chapter VI and VIII of] the Charter, to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, [we are prepared to take collective action] ~~[we recognize our shared responsibility to take collective action,]~~ in a timely and decisive manner, through the Security Council, under ~~[Chapter VII of]~~ the Charter, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and ~~[national authorities be unwilling or unable fail to protect their populations.]~~ [populations not be afforded protection]. We stress the need ~~to continue at the sixtieth session of~~ the General Assembly to continue consideration of the ~~concept of the~~ responsibility to protect. ~~— and its implications, bearing in mind the relevant provisions and principles of the Charter of the United Nations and international law [and the principle of non-interference in internal affairs of States]. [We note the importance of developing the capacity of States to exercise this responsibility and assist those which are under stress before crises and conflicts break out.]~~

~~120~~¹²⁹. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. ~~—]~~

~~121~~¹³⁰. We fully support the ~~implementation~~mission of the ~~United Nations Action Plan to Prevent Genocide and UN Special Advisor for the~~ work ~~Prevention of the Secretariat to that end. Genocide.~~

The introduction of the dual-paragraph structure was the most notable change from the 10 August. It was consistent with the framing of R2P and necessary to delineate its scope and narrow political differences. Crucially, it was significant for modelling R2P as a state-centric

¹³⁴² Reform the UN (2005) ‘Sub-Groups Report to Core Group on Status of Negotiations’, 3 September 2005

¹³⁴³ ‘Daily Press Briefing by the Office of the Spokesman of the Secretary-General’, 6 September 2005

¹³⁴⁴ ‘E-gram to FCO London from UNMIS NY: UN Summit Outcome Document – SITREP’, 5 September 2005

agreement and for the way it helped define the prospective future sequencing of R2P. Indeed, from this structuring the specific language of each dimension and how they related to each other would also become clearer. Ultimately, the two paragraphs were designed to appeal to the sceptical/nervous and were sequential in that the placing of each sentence spoke to how R2P would broadly apply in practice. The first paragraph was explicitly 'state-centric' and about 'rallying to the primary responsibility'.¹³⁴⁵ It was an acceptance of *the* responsibility of each individual state.¹³⁴⁶ This was reinforced – in the same paragraph and in the first sentence of the second paragraph – by statements relating to how the international community will work in *support* of the state, and work to *help* protect civilians. This ordering was designed not only for practical reasons but to ensure R2P was not seen in terms of a straightforward, or immediate transition to coercive measures. Further emphasizing this point, the 6 September draft also introduced a bracketed reference to the 'importance of developing state capacity' and for assisting states 'under stress' at the end of para.2. Revealingly this reference (which would remain in the final draft) was inserted after the sentences relating to collective action – thus ensuring the paragraph dedicated to the international dimension was bookended by an additional preventive-related statement. This meant any moves towards coercive collective action would occur if a series of prior measures progressing from the starting-point of an individual state's responsibility failed to address the problem, and only then in limited, extreme cases and according to processes that were legally and legitimately defined.¹³⁴⁷

But despite this structural sequencing, the sheer volume of bracketing demonstrated not just continuing nervousness around the idea, but more fundamental points of difference. Unsurprisingly, these revolved around the nature and extent of R2P's international dimension. A key part of the addressing some of these concerns would emerge during the final week as the long-standing concern about the parameters of R2P was more clearly addressed – the 6 September draft merely touched on this issue with the bracketed

¹³⁴⁵ Private interview (3 August 2010, 25 June 2010)

¹³⁴⁶ This commitment was made in much stronger terms in the 6 September draft with the statement that states accepted the responsibility and 'will' act in accordance with it. This strengthened the previous language where states would 'agree' to act in accordance with it, see Box 5.7 and 5.8

¹³⁴⁷ Of course this sequencing built-in a series of inevitable problems relating to achieving political agreement, not least whether primary state responsibility had indeed been exhausted. But nevertheless the priority was allaying concerns and avoiding defining triggers or a clear transition from primary to international responsibility

reference to 'civilian populations' in the R2P section title. This draft did, however, propose more politically realistic language for addressing those fundamental differences. Aside from the already-mentioned additions to the sentence on GA consideration and the bracketing of the veto proposal prior to its inevitable removal, the sentences on the soft-side and collective action role of the international community underwent significant changes. Though differentiated in substance, the controversy they provoked, and the extent of what states were willing to accept, both dimensions were underpinned by a widely held concern to ensure neither implied automaticity nor a responsibility of similar character to that of an individual state. This point was most clearly articulated by the US on the 30th August, but was a widely shared position.¹³⁴⁸ Many of the changes thus flowed from this position. Accordingly, the first sentence of para.128 replaced 'obligation' with 'responsibility', added the word 'appropriate', and the phrase 'in accordance with' in place of 'including under'. These changes were evidently designed to protect this position: appropriateness, however obvious, spoke to a need to ensure responses were driven by the specific circumstances involved; while ensuring soft-side measures were in conformity with the Charter strengthened the previous overly-ambiguous formulation. Meanwhile, the removal of obligation was the most significant change. States were willing to accept a responsibility to help as part of a more general acceptance that the international community should have a role to play in helping to address mass atrocities. But crucially this was about a broad willingness to accept R2P agreement as a political declaration, not a 'legal undertaking'.¹³⁴⁹ Indeed, considering a central strategy for winning over sceptics was to convince them R2P was about capturing what already existed, and not about defining new obligations or responsibilities *ex nihilo*, this change was one of the least surprising.¹³⁵⁰

¹³⁴⁸ Letter from John R. Bolton, to Ambassadorial Colleagues on the Responsibility to Protect, 30 August 2005

¹³⁴⁹ Interview with Allan Rock (Ottawa, 11 June 2009)

¹³⁵⁰ As quoted earlier in this chapter, a UK bilateral meeting with the US State Department was clear that a core element of any agreement on R2P was that there could be 'no implied obligation to act'. This was particularly strong in relation to collective action but was nevertheless a clear line which was not going to be crossed. Indeed, staying with the UK, the circulation of the 5 August draft immediately raised concerns in London at the use of the word 'obligation'. An internal email read: 'we would prefer "obligation" to revert "responsibility", as it was in an earlier draft. As R2P is still an emerging concept, we should not talk about obligations in a legal sense...We could possibly settle for "moral obligation", but not a legal one', 'Internal FCO Email', 10 August 2005

Consistent with this were the changes/proposed changes to the sentence on collective action. Much like the previous sentence, these were about further qualifying the international dimension vis-à-vis primary responsibility, maintaining the position that R2P did not expand upon existing international-related provisions, and did not imply automaticity. The latter of these was more directly addressed by the inclusion of the case-by-case provision. Revealingly, this was the first reference to a caveat which was not just widely supported throughout, but was always understood as a core element of any statement on the international role in R2P.¹³⁵¹ Understandably, it was regarded as ‘pragmatic’, the ‘right way forward’, and a necessary (but politically straightforward) element of what one ambassador described as the ‘hard-fought detail’.¹³⁵² It was especially important to the P5, with China most vociferously insistent,¹³⁵³ but was also necessary for achieving acceptance from all sides of the spectrum for ensuring there were no built-in triggers or any obligation to act. It would remain up to the SC to determine according to each specific case. Indeed, with the SC central to collective action, the most significant associated change was the bracketing of the over-developed statement of ‘shared responsibility’ and the removal of the ‘unwilling and unable’ transitional threshold.¹³⁵⁴ There was limited appetite for anything beyond acknowledgement of the SC’s pre-existing empowerment under ChVII – not from within the SC and certainly not from within the GA. Even then this provoked concern, with some more hard-line/opposed states wanting to avoid any reference to ChVII in the draft.¹³⁵⁵ Rather, the sentence was about describing how the international community should act, not that it necessarily would or was obliged to. Any such action would be through the SC, according to case-specific circumstances, a defined threshold and clear parameters. Clearly, preparedness to act is a very different, greatly reduced statement compared to shared responsibility. But it did, nevertheless, reflect the political boundaries R2P had to navigate; ultimately satisfying the majority preference for

¹³⁵¹ As referenced above a UK e-gram suggested that the case-by-case provision was one areas where there was ‘some common ground between [the UK] and many other UN members’ and meant there ‘could be no implied obligation to act’, ‘E-gram to FCO London regarding UK bilateral meeting with US State Department Representatives on 29 April 2005’, dated 3 May 2005

¹³⁵² Private interviews (3 August 2010, 25 June 2010)

¹³⁵³ China’s position was articulated as early as the 27 January 2005, and was subsequently repeated publically on 19 April, in its (5) June position paper, on the 21 June and throughout the intergovernmental negotiations

¹³⁵⁴ It is important to reiterate that bracketing [denoted disagreement/alternative proposed language]

¹³⁵⁵ Hence at this point it would be bracketed as an area of contention although ultimately supporters were able to maintain the reference to Chapter VII

ensuring the character of each dimension was sufficiently differentiated. Accordingly, ensuring the threshold for determining when collective action might be necessary was kept high represented the third major change to the sentence in the 6th draft. As demonstrated by the two bracketed options there was no agreement of the specific language at this stage.¹³⁵⁶ That said, the reference to national authorities ‘failing’ to protect was indicative of the direction necessary to ensure the overall formulation of R2P was as narrow, and tight as possible. Though the unwilling/unable language commanded support from a number of states the more significant middle ground – riddled with scepticism and nervousness – were more concerned to guard against unwarranted interpretation and abuses of R2P. And with this threshold one of the central determining factors (along with the four-crimes) for possible action there was insufficient willingness to accept language which spoke more to the *motivation* of individual states than to an evidence-based assessment of a specific situation.¹³⁵⁷

This issue would be addressed during the final frantic week of negotiation during which R2P’s language and parameters would undergo significant tightening as remaining sticking-points were progressively addressed. The 6th September draft was, therefore, one of the most symbolic points in the whole process. It captured the impact of shift in the negotiating dynamics: highlighting where progress was being made and where it was still needed¹³⁵⁸. Crucially it was seen as a step towards political acceptance of R2P¹³⁵⁹. More interestingly, it was regarded by the UK as ‘protect[ing] most of the substance of [R2P]’ – a statement

¹³⁵⁶ See Box 5.7

¹³⁵⁷ This was clearly expressed in interviews (3 August 2010, 13 August 2010): The need to rebalance the formulation by eliminating any reference to motive was an important task during the final week. Explicit and implicit criticism of the unable/unwilling language was, however, oft-made after the publication of the HLP report; see e.g. statements by China, 27 January, 7 June, Russia on 31 January and 22 February, and South Korea, 19 April (see bibliography). See below in context of the resolution of this language issue with the inclusion of ‘manifestly failing’ from 12 September onwards

¹³⁵⁸ Rather oddly, some accounts – most notably Alex Bellamy’s – seem to miss the significance of the 6 September draft. Considering its place here, this omission undoubtedly has negative consequences upon how they account for the development of R2P. As stated above, this draft provided the ‘basis’ for the remaining negotiations

¹³⁵⁹ A UK update of the 7 September remarked there were now ‘better prospects’ on R2P. It also provide a revealing insight into the effort to win over support describing how the sub-group chairs ‘wisely cut short discussion on R2P and have worked with key players, to bring together the supportive...with the – for different reasons – mildly sceptical or cautious. The resultant text is only slightly less good than in the previous version and should be difficult only for the most hardline’, ‘E-gram to FCO London from UKMIS NY, UN Summit, the final week’, 7 September 2005

particularly revealing for what it implies about what the substance of R2P really was.¹³⁶⁰ The final week was a deeply difficult one for the negotiations overall. The push for significant, vast changes across the entire package stretched a multilateral process, already suffering from an acute lack of 'lubrication', close to breaking-point. Concern amongst Annan's senior staff that the negotiations might collapse, or yield a heavily diluted outcome had been growing for weeks.¹³⁶¹ Annan's rhetoric increasingly spoke to these concerns, imploring states to negotiate in a collective 'spirit' and not to squander the opportunity to improve the effectiveness of the UN.¹³⁶² But to achieve formal adoption of the draft document on the 13th, the final negotiations were intense, complex, confused, procedurally unsatisfactory and a stark reminder of the limitations of multilateralism when faced with contentious issues. However, as made very clear in the discussion of the structured outcome, the sheer volume of contentious issues was to R2P's benefit. Though R2P would face an 'unforgivably' hostile last-gasp attack from India,¹³⁶³ its progress during the 6th-12th September was notably more positive than many other areas of the text.¹³⁶⁴ Intergovernmental diplomacy and CG/sub-group negotiations would intensify, and R2P would certainly be a part of these. But with other issues demanding more (ambassadorial) attention¹³⁶⁵ and because the language of R2P was carefully delineated to avoiding tripping fundamental cross-membership red-lines, its place in the outcome was far more assured.¹³⁶⁶

¹³⁶⁰ ...'including the legitimate international role in R2P, including readiness to use force, if necessary', 'E-gram to FCO London from UKMIS NY, UN Summit, the final week', 7 September 2005

¹³⁶¹ Annan for instance cut short his holiday to return to New York to support the negotiations, 'Secretary-General Returning to New York to Support Efforts to Ensure Successful Summit', SG/SM/10064, 30 August 2005, 'Talks to produce UN World Summit document going to the wire, Annan says', 7 September 2005

¹³⁶² See 'Successful Outcome at September Summit will be success for all, Secretary-General says in Statement to Core Group', SG/SM.10068, 31 August 2005, 'Annan 'very concerned' accord may not be reached on World Summit document', 9 September 2005

¹³⁶³ Private interview (25 June 2010)

¹³⁶⁴ A simple scan of the 12th September draft reveals just how many differences remained. This was also borne out by interviews, and also reflected in an update provided by Reform the UN (2005) 'UN Reform Negotiations See Progress but Obstacles Remain', 9 September 2005

¹³⁶⁵ R2P was discussed at ambassadorial-level through the core group on *very* few occasions. This is in contrast to a number of other issues, such as terrorism, disarmament and non-proliferation which were far more difficult to address as reflected in the final outcome

¹³⁶⁶ Because R2P was defined predominately at working group level in order to ensure it was tightly crafted, the need to call upon ambassadorial attention was thereby reduced. In effect R2P benefited from a combination of limited capacity and time for it to be a priority issue for the ambassadorial Core Group and the fact that this meant by negotiating it at a lower level the language was closely defined to appeal to the sceptics and nervous. It is important to note however, that on the few occasions R2P was discussed at CG-level it received a much more difficult ride

Box 5.9: R2P Extract from the 12 September Draft Outcome Document

12 September 2005: [Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity] [Responding to genocide, war crimes, and crimes against humanity]

127. 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 should support the United Nations to establish an early warning capability.

128. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN 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 of the United Nations and international law. We also intend to commit ourselves, as necessary and appropriate, to help states build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those which are under stress before crises and conflicts break out.

130. We fully support the mission of the UN Special Advisor for the Prevention of Genocide.

The focus for R2P during this week was directed at resolving the points of contention leftover from the 6th September, and to fortify the language most notably through significant additional parameterization. The veto language was finally removed; the sentence on helping states build capacity was un-bracketed but strengthened to entail an intended international commitment; the reference to ChVII was similarly un-bracketed, but was included within the context of a firmer commitment that collective action, through the SC, would be pursued ‘in accordance with the UN Charter’; the sentence on GA consideration was grammatically improved; the bracketing around ChVI and VIII was removed, enhancing specificity around the use of diplomatic, humanitarian and peaceful means; while the largely insignificant references to ‘civilian[s]’ were deleted.¹³⁶⁷

More importantly, the draft deleted the bracketed reference to ‘shared responsibility’, settling on a preparedness to take action – a clear expression for ensuring R2P reaffirmed existing process/provision. The threshold language was also finalised with the introduction of the phrase ‘manifestly failing’. Consistent with the thrust of the previous draft, the intention was to define a higher threshold based upon available evidence (so a greater burden of proof) rather than subjective judgements relating to the political motives of a

¹³⁶⁷ See Boxes 5.9 and 5.10

government.¹³⁶⁸ Ultimately, this would remain an issue dependent upon political agreement.¹³⁶⁹ But the fact that it was necessary to elevate the bar was symptomatic of concerns to limit R2P's potential impact on sovereignty, particularly from abusive or pretext-driven interventions.¹³⁷⁰ However, in the context of the described accumulation of safeguarding, and the inherent sequencing of the formulation, the potential impact was to make political agreement more difficult to attain not easier. In any case, manifest failure was the acceptable solution, and central to the overall formulation of R2P.¹³⁷¹

Box 5.10: The 12 September Draft Compared with the 6 September

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

[Responding to genocide, war crimes, and crimes against humanity]

127. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility ~~to protect~~ 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 should support the United Nations to establish an early warning capability.

128. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with ~~Chapter VI and VIII of~~ the Charter, to help protect ~~civilian~~ populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, ~~we are prepared to take collective action~~ ~~[we recognize our shared responsibility to take collective action]~~, in a timely and decisive manner, through the Security Council, ~~under Chapter VII of~~ in accordance with the UN 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 fail~~ are manifestly failing to protect their populations ~~[populations not be afforded protection]~~ 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 ~~relevant provisions and~~ principles of the Charter of the United Nations and international law ~~[We also intend to commit ourselves, as necessary and the principle of non-interference in internal affairs of States]~~. ~~[We note the importance of developing the appropriate, to help states build capacity of States to exercise this responsibility and to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those which are under stress before crises and conflicts break out.]~~

~~[129. We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.]~~

130. We fully support the mission of the UN Special Advisor for the Prevention of Genocide.

¹³⁶⁸ See Strauss (2009) *The Emperor's New Clothes?* p17, based also on private interviews, with one official making clear that the phrase was about ensuring sceptical/nervous states were convinced that action would be based upon 'clear evidence' (3 August 2010)

¹³⁶⁹ This was clearly expressed in an FCO project completed in 2008 which commented R2P 'requires political agreement and not just concrete evidence proof' in *Responsibility to Protect (R2P) Strategy Report – Final Report*, 2 October 2008, I am grateful to Andrew Rathmell for speaking to me about this project which he led (telephone, 12 January 2011)

¹³⁷⁰ The most articulate concern around this issue was expressed by South Korea – a supporter of R2P, see 'Statement by Ambassador Kim Sam-hoon at Cluster II Informal thematic consultations of the GA', 19 April 2005

¹³⁷¹ It is thus hugely problematic, and hugely unfortunate, that the unable and unwilling formulation is regularly used by advocates, the media and some states to describe the meaning of R2P. Indeed, R2P suffers from a general lack of understanding which is likely to undermine its future development rather than aid it

The 12th also maintained the separately numbered sentence relating to support for the UNSA for the Prevention of Genocide which first appeared in the previous draft.¹³⁷² This was an institutionally significant inclusion, not merely because it was included by R2P ‘supporters’ in ‘the interest of providing more direct support for the office’¹³⁷³ but because it has been subsequently used toehold for Secretariat developments.¹³⁷⁴ Having been established by Annan in early 2004 its status, and operational and normative mandate was commensurate with its embryonic development.¹³⁷⁵ As Méndez remarks, at that stage the Office was ‘experimental in nature’.¹³⁷⁶ Thus, during 2005 officials involved with the Office met with the process facilitators to provide their perspective on the wording being discussed.¹³⁷⁷ Accordingly, they expressed the view that the reference was potentially ‘helpful’, mainly because the existing mandate for the Office was limited and had ‘created difficulties’ in respect of budgets, access to meetings and status.¹³⁷⁸ The belief was that a GA resolution reference at this level would help address these issues in the future.¹³⁷⁹ Interestingly, however, though supportive of the reference there was also scepticism about potentially making the SAPG ‘responsible for implementing R2P within the UN’. Beneficially, the positioning and language of the sentence meant the Office was associated with R2P, but with sufficient ‘distance’ to help insulate its own mandate should R2P fail to ‘get off the

¹³⁷² Prior to the 6 September the July and August drafts included a sentence outlining state support for the ‘implementation of the UN Action Plan to Prevent Genocide and the work of the Secretariat to this end’

¹³⁷³ Based upon private emails (on 7 September 2011)

¹³⁷⁴ The most obviously relate to the establishment of a Special Adviser on the R2P, and resulting changes to the office of the Special Adviser on the Prevention of Genocide

¹³⁷⁵ Annan announced details of the Special Adviser position in the context of his Action Plan to Prevent Genocide, see ‘Risk of genocide remains frighteningly real’, Secretary-General tells Human Rights Commission as he launches action plan to prevent genocide’, *Press Release SG/SM/9245*. I am also grateful to Edward Mortimer who kindly provided diary extracts relating to the context of these announcements

¹³⁷⁶ Email from Juan Méndez (12 September 2011)

¹³⁷⁷ Private emails to author (15 September 2011, 9 January 2012, 10 January 2012): they also cooperated closely with OHCHR officials on the text wording. Slovenian ambassador Roman Kirn was singled out as the facilitator particularly important for the negotiation of R2P

¹³⁷⁸ The mandate at that stage was essentially the exchange of letters between the SG and the SC, see UN documents S/2004/567 and S/2004/568

¹³⁷⁹ This was backed up by a Canadian official who commented that the hope was that by ‘naming the special advisor directly in a Summit level document, you bolster the case for providing [them] with a budget’, private email (7 September 2011)

ground'.¹³⁸⁰ Equally, it left enough proximity for the Office to take some 'initiative when and if deemed useful'.¹³⁸¹

The most radical difference between the 6th and 12th drafts was the proliferation of references to the four-crime formulation. The latter added three additional references in the international-related paragraph, and a further one too one of the proposed section titles.¹³⁸² As Evans' recognises, the four-crimes was important for giving the 'impression of narrowness'. Indeed, although they are, to some extent, conceptually 'muddled' this was the intention of those negotiating R2P.¹³⁸³ The repetition was about attempting to allay concerns relating to potential abuses/misuses of R2P by narrowing the space for alternative justifications to flourish.¹³⁸⁴ From the outset the four-crimes was where R2P's scope was set.¹³⁸⁵ There was very little serious discussion regarding their substance either individually or as a collective. It was certainly recognised that three of the four were listed in the Rome Statute,¹³⁸⁶ and that with ethnic cleansing the odd one out there was some inclination to question whether it was sufficiently clear to be included.¹³⁸⁷ But this was never a serious debate, not least because there was a much stronger feeling amongst those actively negotiating (in favour) of R2P that the politics and recent history of the UN demanded an explicit reference to ethnic cleansing.¹³⁸⁸ Thus, from two distinct perspectives the four-

¹³⁸⁰ Private email (15 September 2011)

¹³⁸¹ Private email (15 September 2011): out of this developed the initial idea for a Special Adviser on R2P after an internal process designed to review UN capacity for R2P highlighted internal differences which also demonstrated that the SPAG was 'not best placed to pull off the internal discussions and decision making'. Ed Luck was appointed the first SP on R2P on the 21 February 2008. It is important to note that there are risks of linking the work of the SAPG and SAR2P but these cannot be explored here

¹³⁸² See Boxes 5.9 and 5.10

¹³⁸³ Interview with Gareth Evans (London, 25 May 2010)

¹³⁸⁴ Interview with Allan Rock (Ottawa, 11 June 2009)

¹³⁸⁵ It should be noted that war crimes was not part of Annan's ILF conception of R2P

¹³⁸⁶ United Nations (1998) *Rome Statute of the International Criminal Court*, A/CONF.183/9, 17 July 1998

¹³⁸⁷ One interviewee involved in the discussions described this as legal 'tiny-mindedness' (22 October 2010)

¹³⁸⁸ Private interview (22 October 2010): the most significant effort to change the formulation was made by the US. It sought to do so in two ways. First, the US argued for the inclusion of 'other large-scale atrocities' suggesting it to 'avoid legalistic debates about whether a particular situation constitutes, for example, genocide'. Second, the US wanted to 'clarify' the inclusion of war crimes. Its position on this was somewhat unclear in that some of its proposals included reference to war crimes and others did not. But, the proposed inclusion of 'other large-scale atrocities' was also designed to make clear that the R2P text did not 'cover all war crimes, but only those that are of sufficient scale to warrant such international attention' pointing out that this was 'in keeping with the approach in the Geneva Conventions themselves, which distinguish between "grave breaches" of the Convention, and other violations'. This was also a wholly understandable position. As Evans also pointed out in his observations, war crimes are capable of being committed by individuals, and can

crime formulation was helpful. It set the bar high and narrow – thus helping to limit concerns R2P could be used for other interventionist objectives – and ensured that a politically sensitive issue for the UN was acknowledged in relation to state responsibility and a qualified international role to respond. In truth though, the biggest concern was that the scope was not explicit enough in earlier drafts – particularly in relation to the international dimension. Therefore, the additional inclusions were about leaving little doubt about R2P’s meaning and application. Crucially, the use of the phrase R2P throughout this thesis, and in general, should actually be understood as a ‘R2P populations from genocide, war crimes, ethnic cleansing and crimes against humanity’. The phrase R2P was never left standing alone, as demonstrated by the final section title which adopted the four-crime formulation. In this regard, the situating of the additional paragraph references were significant for how they impacted upon the substance of the sentence they amended. Most notable was the four-crime reference added to the increasingly convoluted/caveat-ridden sentence on the collective action. This was designed to tighten-up the potential use of enforcement measures by keeping the definitional application of R2P narrow by binding manifest state failure to the four-crimes and the four-crimes only.¹³⁸⁹

Compared to the machinations occurring elsewhere in the negotiations, the text of the 12th September had progressed to a form suitable to command broad acceptance. African support remained strong, complementing the strong support of Europe and Canada. Importantly, in terms of the fine print most of the major sticking points – so necessary to command NAM acceptance of a ‘substantive result’¹³⁹⁰ – had been successfully addressed. Certainly in the context of the overall argument, future questions about the agreement’s meaning and significance would be unavoidable.¹³⁹¹ Nevertheless, even with the necessary structured outcome qualifications, and the post-05 gap between what states signed-up to and the perception of what they signed-up to, there should be little doubt that the

lack the ‘element of scale’. Nevertheless, no such change was made to the formulation in the subsequent drafts. Ultimately these changes were not made to the outcome, with the first particularly unsurprising

¹³⁸⁹ See Boxes 5.9 and 5.10 the addition of the reference to the GA consideration sentence was also significant because it stated clearly that it was about a concept which applied in a very narrow set of circumstances, and was not to be expanded or left open to possible expansion. The final reference (5) within the R2P paragraphs came with the addition of the four-crimes to the sentence at the end of para.2 on building state capacity

¹³⁹⁰ ‘E-gram to FCO London from UKMIS NY: UN Summit: Outcome Document: SITREP’, 22 August 2005

¹³⁹¹ Not least because of failures to adequately account for how R2P was agreed, and in what form, it is hoped this chapter will go some way to enhancing our understanding of the political negotiation of R2P

negotiation of R2P was one of the more successful areas of the text. The way differences were accommodated – with safeguards introduced and numerous changes made – was testament to the unwavering commitment and flexibility of key supporters. Through hours of negotiation, dozens of sub-group, regional and bilateral meetings, R2P arrived at a point in its development even the most optimistic supporter could not have predicted just months before.

There was, however, one remaining sting-in-the-tail. Throughout the negotiations R2P was subject to repeated outright hostility from a group of states deeply inflamed by the prospect of agreeing even limited language. China and Russia were ‘consistently negative’,¹³⁹² believing R2P to be unnecessary and undesirable but ultimately not sufficiently problematic to justify outright opposition.¹³⁹³ By contrast, Egypt, Jamaica, Pakistan, Cuba, Syria, Algeria, Venezuela, Iran and India were vociferously hostile to its inclusion.¹³⁹⁴ Here, as it had been throughout, personal diplomacy was necessary and important. The intervention of Paul Martin in the case of Jamaica, Pakistan, Algeria, Cuba and Chile helped address, to varying degrees, specific concerns.¹³⁹⁵ The most potentially damaging intervention, however, came from India on the penultimate day of the process.¹³⁹⁶ Although consistently opposed to the idea, and having invoked the issue of Kashmir to frame their concerns, their threat to block R2P altogether on account of opposition to the name/title was regarded with genuine shock.¹³⁹⁷ It was for this reason that the two titles in the 12th draft were both bracketed, which ultimately meant the inclusion of the entire section was open to question. After what John Dauth described as a ‘celebrated showdown’ between Allan Rock and Indian Ambassador Nirupem Sen, Canada’s effort to find a workable solution involved a number of

¹³⁹² Private email to author (21 November 2011)

¹³⁹³ Although Allan Rock would personally visit both the Chinese and Russian delegations to discuss R2P, the Russian resistance was the most pronounced of the two. Indeed Allan Rock would personally challenge the Russian legal attaché to define the substance of their concerns as the process moved towards its endpoint

¹³⁹⁴ These countries were identified in numerous interviews, as one ambassador commented with some understatement they were ‘not easy to carry’ (25 June 2010)

¹³⁹⁵ Interviews with Paul Martin (telephone, 27 January 2010), Allan Rock (Ottawa, 11 June 2009), and private (31 March 2010, 19 May 2009): it appears some of the resistance posed by Jamaica, Algeria and Pakistan and the generally sceptical rather than overtly hostile concerns of Chile was eased by the intervention of Martin, for a fuller account see: Paul Martin (2009) *Hell or High Water*, p338-341

¹³⁹⁶ It appears that the Indian objection was made at a meeting of the Core Group of 15 on the 12th September. The two bracketed options for the title in this draft were part of the effort to find a solution

¹³⁹⁷ Interviews with Allan Rock (Ottawa, 11 June 2009) and private individuals: one individual involved described the scale of India’s resistance as ‘tremendous’ (3 August 2010, 13 August 2010, 25 June 2010)

alternative headings some of which included dropping R2P altogether from the title (e.g. “Genocide, ethnic cleansing, war crimes, crimes against humanity”).¹³⁹⁸ Two of the options were those bracketed in the 12th draft. But despite this effort, the difficulty was exacerbated because the Indian Ambassador, in what Rock believed was some form of ‘gamesmanship’¹³⁹⁹ failed to ‘level’ with his colleagues during a critical point.¹⁴⁰⁰ Despite effort to establish whether he could accept Canada’s proposed alternatives, no substantive response was forthcoming. Sen was falling back on apparent ‘strict instructions’ from Delhi which meant he could not yet agree despite these instructions being revealed by diplomatic contacts as far less strict in reality.¹⁴⁰¹

Clearly the Indian broadside was a major challenge. However, because of other dynamics at play, the R2P section would emerge unscathed with *no* removal of R2P from the section title. Here the bigger picture ensured any last-minute opposition would be dissipated by the introduction of a clean document only on the morning of the 13th. Recognising that something had to be done the Secretariat – under the instruction of Annan and Ping – had overnight pulled together the working text of the draft and removed all language deemed unachievable, made a number of alterations based upon previous and continuing discussions with member states, and removed bracketing around some issues which states had failed to reconcile¹⁴⁰². The result for R2P was the removal of the remaining bracketing around the title¹⁴⁰³. The result for the overall negotiations was a text which was presented to states by Annan and asked to take-it-or-leave it. With world leaders arriving,¹⁴⁰⁴ and no

¹³⁹⁸ Interviews with John Dauth (London, 25 May 2010), Allan Rock (Ottawa, 11 June 2009): according to Traub five alternative names were developed, (2006) *The Best Intentions*, p385

¹³⁹⁹ Interview with Allan Rock (Ottawa, 11 June 2009)

¹⁴⁰⁰ Private interview (25 June 2010)

¹⁴⁰¹ Private interview (13 August 2010): There is some confusion about whether UK Foreign Secretary Jack Straw became directly involved with his ministerial counterpart. In any case the FCO was asked to make contact with the Indian government and it was during these contacts the UK established that Indian Capital-instructions were not as clear or strict as they had been led to believe. Allan Rock also asked Paul Martin to become directly discussed the matter with his opposite number Manmohan Singh, with this unsuccessful because Singh was already travelling to New York

¹⁴⁰² Based on interviews but for a more detailed account see Traub (2006) *The Best Intentions*, p388-391

¹⁴⁰³ The Indian delegation did not get back to Rock with an answer on the title so the decision was to ‘go with what we had’ and see if that was acceptable, interview (Ottawa, 11 June 2009)

¹⁴⁰⁴ Knowledge that some 150 leaders would be attending the Summit was an important factor throughout the negotiations, but especially during the final week, private interviews (3 August 2010, 13 August 2010, 31 March 2010), and ‘Remarks by Ambassador Anne W. Patterson, Acting US Permanent Representative to the UN, on UN Reform’, 16 June 2005

individual state willing to destroy the entire outcome, the GA duly accepted the adoption of the draft document¹⁴⁰⁵ thus enabling the adoption of the Summit Outcome on the 16th.¹⁴⁰⁶

¹⁴⁰⁵ *Draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005, A/RES/59/314, 13 September 2005*

¹⁴⁰⁶ *World Summit Outcome, A/RES/60/1, 16 September 2005*

Conclusion

Viewed through the prism of the NLC, and similarly broad frames such as that employed by the leading historians of R2P, the responsibility to protect could be considered an institutionalized norm moving towards general acceptance by the end of the 2005 World Summit. This thesis has attempted to challenge that reading of the normative development of R2P by conducting detailed research focused on the processes that led to the formation and development of the R2P negotiation structure and the eventual political outcome. The hypothesis that micro-process tracing would uncover a very different story to that portrayed in much scholarly literature has been sustained by evidence of continuing dissensus among those involved in its negotiation. That dissensus is evident in the failure of states to engage with the ICISS process, in the plurality of responses to the various international crises that framed the negotiation, and in the World Summit negotiations themselves which yielded a broad but normatively shallow agreement. Despite the significant investment by key entrepreneurs and governments and despite the considerable institutional support from the UK Secretary-General's Office the thought that R2P is a new norm, that the argument has "been won", or that consensus is now settled, is clearly overstated. The process leading to the adoption of the Outcome – which was *not* unanimous¹⁴⁰⁷ – was a stark reminder of the limitations of multilateralism, but also a statement of its importance and possibility. In many respects the process was unsatisfactory: the scale of the agenda was essentially unmanageable; the lack of membership buy-in to the approach was palpable; the failings with the facilitated Summit process, leading to a major shift in the process just weeks before the world's most powerful individuals were due to descend on New York, stretched already limited time and resources to breaking point. Considering how the process unfolded, it is not surprising that the last minute intervention of the Secretariat was required to undercut remaining hostility however undesirable, and symbolic, it was. Paradoxically, however, these factors were also to R2P's benefit. Its negotiation certainly required extraordinary effort and dedication. Without the enormous commitment of selected governments and

¹⁴⁰⁷ Contrary to the oft-claimed unanimity Cuba and Venezuela adopted reserved positions, with both explicitly criticising R2P, see: 'Statement by Venezuela', A/60/PV.8, 16 September 2005, 'Statement by Cuba', A/60/PV.8, 16 September 2005. Too often however the agreement is described as unanimous, or as a clear acceptance by all UN members. This clearly was not the case, not just because of the reserved positions of Cuba and Venezuela but because how that unanimity is described in relation to R2P often overstates what many other member states believed they were signing-up to

individual ambassadors/officials, there would not have been any clear acceptance of primary responsibility nor the recognition that the international community has a legitimate role and interest in trying to address the causes and symptoms of extreme crises. This commitment was clearly evident in the extensive reconstruction of the negotiation of the language provided herein. But equally important were the set of factors captured under the umbrella of the structured outcome logic. Without these, the rapid, unexpected development of the “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” would surely not have been possible. Of course, one might argue this is an irrelevant counterfactual. That in any case there was agreement on R2P and that it is this recognition which really matters. But this would represent a major denial of the implications understanding the process has for understanding the nature and significance of the agreement. Indeed, there can be no sustainable separation between the factors which helped propel R2P towards agreement, and the form it eventually assumed. These dimensions not only enabled agreement, but also contribute[d] to qualifying its scope and meaning. Thus, though the effort to deconstruct and then reconstruct the negotiation process has been an inevitably complex, the rewards it yields have been multitudinous.

Indeed, although the detailed account of the 2005 negotiation process is central to the overall thesis, the benefits of the adopted research approach are evident throughout. At each stage – from Axworthy’s willingness to lead on the issue of humanitarian intervention, through the changed political context precipitated by 9/11 and Iraq, and the difficult and unsatisfactory attempts to build support for R2P – the process-tracing methodology yielded numerous insights directly relevant to how we understand the agreement of R2P, and the development of international norms and agreements more generally. The findings are undeniably about the specific question of how and why R2P was agreed but the analytical weight of the thesis is, consequently, much deeper. It speaks, *inter alia*, to the importance of methodology, of grounding our insights in their proper historical context, and to ensuring empirical narrative is neither artificially separate from theoretical conceptualization nor defined by it.

The net effect is that the overall approach contributes important arguments across three interconnected dimensions. First, the empirical tracing of R2P’s political development

provides an important historical contribution to the existing literature. It is certainly the case that the findings confirm and reiterate, albeit in considerably greater detail, important facets of the story already prevalent in existing accounts. But the emphasis on *detailed* process-tracing also helped pinpoint where the empirical story offered new insights and/or departed from the established accounts of R2P's development. Indeed, as a general principle, the approach was always about maintaining rigour so the story was full, convincing and credible and thus could stand alone on its own terms. Resultantly, the empirical chapters delved into the micro-politics surrounding the effort to build support for R2P, the persistent obstacles to its development, and the unexpected transformation in its political prospects with the establishment of the High-level Panel and the merging of the processes leading to the World Summit. The research approach, however, was never about detail for details sake. Rather, the detail gave weight to the overall thesis arguments and vividly showed just why the agreement of R2P should be considered in far less glowing terms than is often the case. The most obvious example in this regard was the clear demonstration of how the constitutive dynamics of the structured outcome affected the development of R2P and why it should affect (and qualify) our understanding of its status, significance and potential impact. But though the explanatory power of the structured outcome derives from its ability to explain the unexpected transition in R2P's prospects, it was also clear that the structural characteristics which helped propel R2P towards agreement gain their meaning from the broader context in which they reside. In simple terms, the structured outcome was about packaging what changed for R2P considering the persistent underlying continuity of state opposition and indifference. Seen from this perspective, its conception depended upon tracing the entire process – from Axworthy's response to the intervention issue, to the agreement of the World Summit Outcome. The fading-out of the humanitarian intervention debate, the obstacles manifest in the ICISS establishment processes, the inherent issues with R2P report, the changed political context and subsequent formulation of the Bush Doctrine leading to the Iraq War, and the seemingly paradoxical positive impact of the latter on R2P's path to agreement, are all key elements of the broader context necessary to understand the conception and impact of the structured outcome. In each of these areas new or alternative arguments are made, with new details and insights introduced. But perhaps more important is how they are packaged to address the central research question. This is why the structured outcome is particularly

important to the overall picture. It derives from the process-driven methodology, but also speaks to limitations in key portrayals of R2P's development, in pre-existing theoretical frameworks of normative development, and has consequences for how we understand the significance of the 2005 agreement.

Indeed, the theoretical issues addressed by the thesis, and how its core arguments relate to the broader R2P policy debates, represent the second and third dimensions referred to above. As explained in the introduction and Chapter 1, the thesis makes some important claims about the importance of process and about how scholars should adapt their understanding of normative change. It also shows how the incorporation of a detailed understanding of process can provide a stronger basis for engaging with debates about the behavioural impact of norms and associated offshoots such as the political, ethical and normative implications of the agreement. More specifically, it is contended that a more detailed understanding of process has generalizable power as does – albeit in a considerably more qualified way – the concept of the structured outcome. Aside from the findings on R2P giving weight to these claims, the empirical findings also fundamentally question the amenability of a case like R2P to theoretical modelling. The findings question the extent to which one could, or would want to model such complex processes, and indeed whether it is possible to provide genuinely convincing theoretical models of normative change. Despite the original intention to use the Norm Life Cycle (NLC) as the theoretical framework its prominence and influence in the norm literature did not translate to its ability to account for the development of R2P. One could attempt to mould the story of R2P's development to a pre-existing conceptual frame like the NLC but this would represent selectivism of the worst kind. Put simply, the empirical findings did not support the reducibility of the process in such a way. The dynamics which underlay R2P's path to agreement were temporally and substantively distinct from those evident in, or implied by, the NLC. They thus required a distinct explanation. Hence, the alternative approach outlined in Chapter 1 was the introduction of a looser non-patterned conceptual framework designed to understand the specific development of R2P. Crucially, this framework was extracted from the empirical tracing rather than pre-determined in the abstract. This is not to say that it did not draw from pre-existing literature and concepts, but that their use was about serving a clear and specific objective.

In more precise terms, claims relating to the theoretical contribution of the research are necessarily varied. As already stated, the findings certainly take issue with the utility and desirability of non-case specific theoretical models or frameworks. It does not follow, however, that this undermines the importance of theorizing. Quite the reverse is true in fact. Addressing previously identified problems such as linearity and norm exogenization depend just as much on theorizing as they do upon empirical research. In order to advance our understanding of normative developments scholars need to continually refine the tools and concepts they use to explain such complex phenomena. The real issue is how this work is pursued. In this respect, the structured outcome may be R2P-specific in what it sets out to do but its development was also very much conceptual. It was developed to explain a vital change in R2P's prospects despite the seeming lack of change to the normative terrain or to the willingness of states to embrace the idea. By contrast, a framework such as the NLC projects a more progressive, linear, unidirectional trajectory onto normative development than was sustained by the empirical testing of the research hypothesis in respect of R2P. Thus, it is entirely possible that as well as highlighting these kinds of weaknesses, the structured outcome may represent a small contribution to the process of refining the way scholars approach the study of *negotiated* international norms. Its applicability to other cases would inevitably be context-specific and distinctly defined, but it may help address and package the impact of structural factors on the negotiation of international agreements.

This, however, is very much a small claim. The more significant claim is that the use of micro process-tracing can yield a more detailed understanding of potential compliance with international norms and agreements. In this case the empirical tracing has shown how this methodology can help mitigate theoretical pitfalls associated with broader frames, or abstract frameworks, and offers a more detailed, nuanced account of how R2P was agreed than currently available in the mainstream literature. In particular, the research approach helps mitigate the associated issues with exogenization by ensuring R2P's meaning and status is not taken for granted. It also addresses the propensity to view normative development in linear terms and directly challenges advocacy-infused biases which bestow an assumed meaning and teleological progressivity upon R2P. But as the introduction made very clear, addressing the research question of how we could account for the 2005

agreement was about more than theoretical considerations, or a detailed historical account of its development and negotiation, or critiquing existing accounts or claims which were so obviously problematic. These are all undoubtedly essential elements, but they collectively speak to the bigger issue of what the overall approach, and specific findings, say about R2P's status and significance within the context of broader policy debates. Here the findings of each chapter – and the conclusions drawn from them – do not add up to a positive picture. It is especially difficult to square the positive hype associated with the concept and the grand claims made by prominent figures like Gareth Evans with the explanation of how R2P was agreed presented throughout. Moreover, events since 2005 – most notably the on-going catastrophe in Syria – have only added weight to the critical nature of the thesis findings.

The most powerful concern with R2P is that it was (and remains) fundamentally non-transformational. Not only did the processes reveal a lack of change, but they also exposed a lack of member state willingness to change. The Summit negotiations were the clearest expression of the limited nature of R2P but this process essentially gave full expression to the lack of transformational dynamics which underlay its path to agreement. This was borne-out by each stage of the story. As the prehistory showed, the pronounced public and private debate around the issue of humanitarian intervention reached its apex point at the end of the 1990s. But any sense of high-level political momentum which had built-up – not least because of the efforts of Kofi Annan and the UK government – quickly dissipated in the face of harsh political realities. This was further evidenced by the detailed tracing of the ICISS establishment process in Chapter 3. Axworthy's unique political drive to respond in the way he did was all the more remarkable considering it operated against overwhelming indifference and lack of support for an initiative originally intended to be truly international in the state support it commanded. Significantly, this 'fading-out' of interest in the issue of humanitarian intervention preceded the shock of 9/11. The 9/11 terrorist attacks *exacerbated* the 'fading out' of interest in state willingness to discuss an idea related to humanitarian intervention but did not cause it. Inevitably, the ability to bring attention to the ICISS report was overwhelmed by other concerns in the post-9/11 context. As Chapter 4 showed, terrorism – and crafting responses to it – dominated domestic and international agendas. The result of this was not only a more difficult environment for an idea attached to

a policy debate which was already subject to a lack of momentum, but the implementation of regressive policies which undermined the concern for human rights protection which R2P apparently spoke to. Unsurprisingly, Canadian officials were unable to achieve any real traction for the idea within the UN or any real momentum in the intergovernmental advocacy they undertook on behalf of their Government.

Indeed, as Chapters 4 and 5 showed, the real and paradoxical change for R2P was precipitated by the Iraq War and specifically the breakdown in state relations it led to. Despite being oft regarded as a negative in terms of the development of R2P, Iraq actually represented the principle exogenous shock which enhanced R2P's political prospects. It provided the impetus for Annan's High-Level Panel (HLP) assessment of how existing international structures dealt with threats to international peace and security, and how they might be changed to address a raft of long-standing and emergent policy issues. In terms of the substance of R2P, the High-level Panel's proposals were essentially unrealistic and detached from the consistent underlying political dynamics. Despite its bold assertions – particularly those relating to international responsibility – there had been no significant change to the priorities and preferences of states. The normative character which defined its proposals was out-of-kilter with the realities of international politics and represented a gross denial of the state of existing political consensus, or rather, existing political disagreement and disunity. This was ultimately confirmed during the World Summit negotiations. The negotiated formulation of R2P captured the lack of underlying change that was a consistent factor in the processes of its development. Indeed, the politics surrounding R2P's desirability as a normative evolution in the nature of international responsibility was defined by continuity, not change. Disinterest, indifference and opposition to the idea of a collective international responsibility defined this continuity – hence the inability of R2P supporters to achieve any catalytic momentum which might yield more significant normative change. But ultimately, it was because of this lack of post-ICISS change that Iraq and the establishment of the HLP assumed the significance they did. The HLP became the institutional vehicle which helped propel R2P forward, and was the central 'linking mechanism' in the structured outcome explanation. In other words Iraq and the HLP helped explain the dynamics which *did* change in R2P's favour. R2P was propelled by a series of factors relating to the design and effect of the negotiation process rather than any catalytic

bandwagoning momentum. As Chapter 5 showed, in many respects states were compelled to take a position on R2P which they otherwise would not have been so willing to make. The odds of some kind of agreement on R2P increased dramatically. That said, though the dynamics underpinning R2P's path to agreement were altered and accelerated by the structural factors, the underlying politics of state reactions to R2P were much more consistent. Hence the Summit negotiations were about limiting its scope and recognising and reaffirming the status quo.

Nevertheless, the structured outcome does more than account for how R2P was agreed. The way R2P was accelerated towards agreement certainly helps explain the limited nature of the agreement but it also has additional consequences for how understand the significance and status of R2P. Indeed, the rapid, unexpected speed of R2P's development has only served to emphasize just how un-transformational the agreement was. Post-agreement contestation and questioning should always be anticipated, but in this case once the structural factors which propelled it towards agreement were removed a reopening of contestation and debate was even more likely. This is because not only was the formulation about ensuring R2P represented 'nothing new' – thus ensuring state responses to specific crises would remain subject to the same politics and obstacles – but because getting to the point of negotiation was never underpinned by normative change of the kind necessary to catalyse a more significant change in state behaviour. Although there has been continued effort to attribute R2P's existence – and the language of responsibility more broadly (despite pre-dating the R2P processes) – as evidence of changes to state behaviour and policy considerations, the picture is considerably more complex and considerably less positive. As stated earlier, the mere linguistic existence of R2P is not a sufficient reason to believe it has had any significant impact upon state behaviour/practice. Indeed, not only does the empirical tracing of the process challenge the idea that the agreement was going to positively impact upon state behaviour but complex cases in the period since 2005 – most notably Sri Lanka, Syria and Libya – have reaffirmed what the process-tracing always revealed. The gap between words and action is not just stark (perhaps more so than it has

ever been) but the selectivity, indifference and inaction which were key elements in provoking the development of R2P remain unaddressed.¹⁴⁰⁸

That R2P remains controversial is undeniable. Because of how R2P was agreed, because of the political connotations which continue to surround it, because each element of the limited agreement will inevitably remain subject to contestation and debate, its impact and utility is rightly open to question. Rather troubling, however, is that despite the numerous weaknesses identified by the process, and evident since 2005, – most notably the persistent underlying continuities in international responses to mass atrocities – the debate is now increasingly dominated and overwhelmed by the R2P label. Problematically, this dominance is despite R2P's non-transformational nature; is to the detriment of other alternative policy avenues; and is arguably negatively impacting upon the ability of the UN to act in certain cases. The agreement's limitations are so stark, the existing political context so continually resistant, the continuing failures of engagement so unchanged, that – to put it very simply – it cannot be 'all or nothing' for R2P. While the R2P lobby may continue to work to insulate the concept from harsh realities, academics and policy-makers should consider an alternative path. The debate needs to be re-energized in a way which is not beholden to, or dominated by, R2P. The lack of underlying change surely demands greater consideration of other alternative approaches for addressing the issues which motivated the development of

¹⁴⁰⁸ To be clear, selectivity and inaction are not *necessarily* always bad, or immoral. Addressing case specific crises inevitably means variation in responses are necessary and appropriate. Decision-making on any decision to act will always be bound-up with a range of considerations. Explaining non-action in particular is not always about cynical intentions or a lack of political will – the appropriateness of action exists in, and is defined by, this context. Moreover, as the empirical processes exposed, it would be a fallacy to think this can ever be edited out of the decision-making process. The political feasibility, let alone desirability, of greater specificity (for instance through the agreement of use of force criteria) was, and remains, an entirely unrealistic prospect. From a more general perspective, the consideration of ethical consequences needs to carry far greater weight in the debate about possible international action than is currently the case. As one wise former diplomat remarked 'feel good is much easier and more tempting than do good'. Indeed, future research would interrogate this thought based on the contention that insufficient time, resources, and attention are deployed in both the consideration and practical implementation of international responses. A central feature of such a project would focus on the consequences of both action, and inaction, without assuming one is necessarily more morally acceptable than the other. Similarly it would pay great attention to the importance of incorporating the temporal characteristics of a crisis, and of international engagement, into our analysis of the effectiveness and appropriateness of approaches utilized by international actors. It would also consider the political and practical consequences of the R2P agenda as it has developed since 2005. In this regard, the effort to emphasize the preventive dimension of R2P – in accordance with the three pillar approach crafted by Ed Luck – is arguably a misnomer which confuses the debate. Privileging the political continuity of R2P is intellectually weak if it means relegating or overlooking the more contentious aspects of the debate, most notably those relating to coercive measures, military action, and the lines relating to international responsibilities vis-à-vis sovereignty

R2P in the first place. In this respect, the empirical tracing of R2P's development represents a major contribution in that it details and pinpoints the limitations of the 2005 agreement by showing how they reflected continuity in the politics which underpinned it. Because of this pinpointing the limitations and lack of change evident today comes as little surprise. It is also significant in that the research question was never framed by inherent support for R2P. As the research unfolded it was certainly framed by an increasing concern at the portrayal of R2P in mainstream debate, but the overriding objective was to account for the development of R2P in order to consider its status and potential impact in international affairs. It is because of this that the findings anchor the thesis in critical terrain. The debate surrounding mass atrocities is not about R2P. It is much broader, and much more significant than that. R2P may well eventually offer greater utility as a policy agenda but based on the findings here this would require a significant departure from the existing state of play, and more significant changes to international society.

Difficult as it maybe for some to accept, understanding the origins and development of R2P and considering them in light of events since 2005, means it is hard to avoid the conclusion that very little has changed in how the international community responds to (potential) mass atrocity situations. Although cases like Kenya (2007) and Libya (2011) have been held up as successful action influenced or motivated by R2P, its influence on the action taken by international actors is far less clear-cut than suggested by some.¹⁴⁰⁹ There is no straightforward causal link between the mere existence of R2P and action *potentially* consistent with it. As demonstrated pre-R2P, the international community – and specifically the SC – have long had a range of tools at their disposal. The crucial point was that the kind of tools used, and the extent of their use, was dependent upon multilateral agreement. This is particularly relevant in the case of Kenya whereby the use of longstanding instruments of international engagement – most notably mediation – were attributed as a classic case of R2P in action. But as the prehistory showed, not only do such tools predate R2P but they have been deployed on a number of occasions by the international community in the effort to influence internal conflict situations relating to oppression or government negligence. At

¹⁴⁰⁹ See, for instance, Ban Ki-Moon's comments in relation to the SC's agreement of Resolution 1973 over Libya, in 'Statement by the Secretary-General on Libya', 17 March 2011, and Gareth Evans (2011) 'End of the Argument: How we won the debate over stopping genocide', *Foreign Affairs*, December 2011, Ramesh Thakur (2011) 'Libya: The First Stand or The Last Post for the Responsibility to Protect?', *e-IR*, 13 March 2011

the heart of the humanitarian intervention debates, the issue was never that the international community was prevented from acting per se or indeed that it never acted in response to internal crises. The issue was that it too often failed to act effectively *despite* the ability to do so, including in circumstances which might reasonably have benefited from more concerted international action. In the case of Kenya, and especially that of Libya, there is minimal evidence to suggest that R2P significantly altered the nature of international action, or the impetus for it. Nor is there any reason to believe that the action that was pursued would not have been forthcoming had R2P not existed. Moreover, an analysis of each crisis would likely lead to more significant questions about the effectiveness of the preventive mediation in Kenya, and the limited military action in Libya. In the former, current concern about imminent risk of mass atrocities provokes questions about just how successful, speedy, and sustainable international action in 2007 really was.¹⁴¹⁰ Similarly, in the latter, aside from inevitable concerns about the long-term future of Libya and post-conflict support by international actors, the unintended consequences of the crisis on the surrounding region threaten long-term stability and enhance the likely need for significant future redress.¹⁴¹¹

Problematically, however, there is a tendency amongst key advocates to selectively overstate R2P's impact in such cases, and to conveniently plead mitigation for, or overlook, those cases where R2P has failed to catalyse effective international responses.¹⁴¹² But such a strategy is both undesirable and unsustainable. The impact of R2P has been all too limited precisely because it was never designed to represent, nor provoke, significant change. Considering what is at stake, it would be quite wrong to privilege the concept's preservation over the need to consider alternative strategies. This is all the more pressing considering how the agreement was crafted. As Chapter 5 demonstrated, the 2005 agreement was political in every way. It offered no new obligations or responsibilities and contained

¹⁴¹⁰ On current concern about the situation in Kenya see the bimonthly bulletin by the Global Centre for R2P 'R2P Monitor', Issue 7, 15 January 2013, pp.9-10, Serena Sharma's forthcoming book should address questions relating to the events of 2007, in (2013) *Prevention and the Responsibility to Protect: The Case of Kenya*, Routledge

¹⁴¹¹ The effect of the Libyan conflict has been particularly felt in the Sahel region with policy-makers seeking to understand the threat and potential consequences as a result. See for instance European Parliament (2012) 'A Coherent EU Strategy for the Sahel', *Directorate-General for External Policies of the Union*

¹⁴¹² Aidan Hehir makes a similar point in (2012) *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, p11

numerous qualifying caveats designed to ensure existing processes and provisions were maintained. The agreement also maintained a distinct normative separation between the individual state and international dimensions of R2P. This is not to say that the language cannot offer a potentially useful way of framing individual state accountability. But R2P was intended to offer far more than this considering the origins of its creation.

Indeed, understanding the formulation of the agreement is so crucial because it helps understand why international responses to crises in Sri Lanka, the DRC, Syria and Libya support the critical findings of this thesis. The agreement incorporated a pragmatic recognition that responses had to be case-by-case – there was no obvious (or desirable) doctrinal solution to the complexities of international responses, particularly those of a more coercive nature. This was necessary, and entirely acceptable, but it also reinforced the multiple political obstacles and talking-points which would have to be overcome by diplomacy for action to be realized. And, as the proposed options move towards the more coercive end of the spectrum so the challenges to agreement inevitably increase. But complicating this was that the case-by-case reference was embedded in broader set of qualifying caveats which themselves spoke to a range of distinct underlying motivations. The net effect of this effort to narrow and qualify the agreement was to arguably make political agreement even more difficult– not least because the emphasis on primary responsibility can provide a powerful avenue for the avoidance of action at the international-level. Such issues have been on display in relation to crises in the DRC, Syria, and Sri Lanka. In differing ways these have demonstrated R2P's inherent weakness and failure to address the issues which had defined the humanitarian intervention debate. But at the heart of all has been the continued inability or willingness of the SC to effectively engage with a crisis or to agree potential solutions. The impact of R2P on the political process has also been clearly limited. For instance, in the 2009 case of Sri Lanka the loss of civilian loss and the alleged war crimes committed by the Sri Lankan government garnered a wholly inadequate response by the SC and international community more broadly. Moreover, the use of R2P – to pressure the Sri Lankan government or to catalyse international responses – was minimal to say the least. But on the few occasions when R2P was referenced its impact was essentially non-existent. Even more problematically its use was actually regarded in negative terms. As a recent UN Report explained:

[R2P] was raised occasionally during the final stages of the conflict, but to no useful result. Differing perceptions among Member States and the Secretariat of the concept's meaning and use had become so contentious as to nullify its potential value. Indeed, making references to the Responsibility to Protect was seen as more likely to weaken rather than strengthen UN action.¹⁴¹³

Interestingly, however, the Sri Lankan government was also defended, with some suggesting that its targeting of the Tamil Tigers was consistent with its R2P considering the history and record of the latter.¹⁴¹⁴ This debate invoked the concerns raised in Chapter 4 as to what action is consistent with individual state responsibility and to what degree the framework provided by R2P can be appropriated as a mechanism to justify government action inconsistent with the objective of protecting civilians. Meanwhile, the recent (on-going) case of Syria has once again emphasized how challenging political agreement is, and how civilians continue to suffer as a result of an inadequate understanding of how to respond to intra-state conflicts and the underlying inability of the international system to address them. The silence on R2P has also been undeniably deafening: a tragic indictment of just how little has changed. Indeed, rather than the positive implied by some, the 2011 Libyan intervention also spoke to the persistent obstacles to achieving political agreement within the SC, and reiterated some of the key concerns highlighted by the empirical tracing. In particular, concerns about the relationship between R2P and regime change remains an unresolved feature of the debate. This is despite the considerable effort to conceptually insulate R2P during the Summit negotiations by delineating its parameters, and qualifying its scope and application. Nevertheless, persistent concerns and suspicion relating to the motives of those either pushing for action or those arguing against it were all too prevalent over Libya, with China and Russia both especially animated by the potential precedential implications of the action.¹⁴¹⁵ And though the story of the intervention is far more complex than can be addressed here, that NATO (with Saudi Arabia and Qatar) expanded the limited No-fly Zone

¹⁴¹³ Panel of Experts on Accountability in Sri Lanka (2012) *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, 14 November 2012, p26

¹⁴¹⁴ See especially Ramesh Thakur (2009) "West Shouldn't Fault Sri Lankan Government Tactics", *Daily Yomiuri*, 12 June 2009

¹⁴¹⁵ See Joshua Hersh (2012) 'Syria UN Deliberations Haunted By Ghost of Libya Mission', *Huffington Post*, 2 February 2012

mandate laid-down by SC Resolution 1973 gave justified ammunition to those who doubted the intentions of the enterprise.¹⁴¹⁶ Unsurprisingly, this has contributed to exacerbating the already divided political climate, manifesting itself most clearly in the SC's inability to agree numerous resolutions relating to the situation in Syria. But perhaps more fundamental was that the impact of R2P on the underlying politics was negligible, with the Libyan episode most revealing precisely because of the way it illuminated the lack of change, the limited scope of the agreement and the persistent obstacles to a more consistent and engaged SC. R2P did nothing to change the SC's existing prerogatives and did not alter its pre-existing ability to act. In this case, the intervention was possible because of a convenient alignment of factors relating to the specific politics of the unfolding events.¹⁴¹⁷ There is limited evidence to believe R2P was the driving impulse to act. Resolution 1973 referred to the Libyan government's primary responsibility but made no link to the action taken by the international community.¹⁴¹⁸ This is not to say that humanitarian concerns and the rhetoric of Muammar Gaddafi were not part of the justificatory mix, but they existed within a broader set of more significant factors. In this case, regional sentiment combined with the geostrategic importance of Libya, the proposed limited nature of the engagement, and the history of the Gaddafi regime were more significant factors in explaining both the action taken by NATO and the SC abstentions of the BRIC nations. Indeed, the five abstentions – including most notably by Russia and China – spoke to a desire for 'distance' between themselves and responsibility for the action and was thus hardly a convincing example of the supposed power or acceptance of R2P.¹⁴¹⁹ But perhaps more significant was that the Libya case demonstrated the SC's ability to act if unique circumstances align but that the associated politics remain contested and hardly the basis to expect or anticipate future action. In the context of the immediate post-Cold War era, Resolution 1973 was hardly unique, and rather than solidifying or signifying R2P as a driving impulse, merely confirmed the status quo continuity which underpinned its development.¹⁴²⁰

¹⁴¹⁶ Security Council 'Resolution 1973', 17 March 2011

¹⁴¹⁷ For a good summary of the politics of Libya see Hehir (2012) *The Responsibility to Protect*, pp.12-20

¹⁴¹⁸ Security Council Resolution 1973 (2011), 17 March 2011, p1 see also Jennifer Welsh's discussion of the significance of this in (2011) 'Civilian Protection in Libya: Putting Coercion and Controversy back into RtoP', *Ethics & International Affairs*, Vol. 25, Issue 3

¹⁴¹⁹ See Harvey Morris 'Bric abstentions point to a bigger battle in the UN', *Financial Times*, 18 March 2011

¹⁴²⁰ See Simon Chesterman (2011) "'Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya', *Ethics and International Affairs*, Vol.23, No. 3, pp.1-2

This status quo speaks to the continued predominance of ‘expediency’ over ‘humanitarian need’.¹⁴²¹ As the negotiations traced in 2005 clearly demonstrated, at the heart of the agreement on R2P was maintaining existing P5 prerogatives and explicitly avoiding any sense of obligation or acceptance of an international responsibility to protect. It is highly likely the SC will endorse action in the future consistent with the ethos of R2P or humanitarian intervention, but this is very different from a SC being driven to act by R2P and does little to address the issues and inactivity which motivated its development. The ability of the SC to be selective was always built-into the agreement, partly through pragmatism and, in the wider context of the linguistic caveats, as a way of guarding against the move towards an international system many states were simply unwilling to accept.

In this regard, the foremost contribution of this research has been the detailed unpacking of the agreement to expose its constitutive core elements. Vitally, this unpacking was based upon an extensive charting and exposition of the formulation of the language based upon the development of the text, including the changes made, and why they were made. In particular, this exposition revealed pronounced differentiation between the two dimensions of R2P. Contrary to any alternative bold normative claims, there was no straightforward expression or acceptance of an international or collective responsibility to protect. There was an acceptance of a responsibility to help, and an acknowledgement that further measures by the international community may be necessary if the circumstances are extreme enough to warrant it, but only then within the parameters of legal process. In effect, this international dimension restated tools and processes already available to the international community, and particularly the SC (ones which have been progressively developing since the end of the CW). It was about capturing what already existed. Hence the agreements’ value-added should be understood more fundamentally in terms of the recognition of individual state responsibility rather than anything else. But to pre-empt an important – but ultimately futile – counterargument, one might ask what the difference is between what is described here and the idea the agreement was to use Annan’s words, ‘acceptance of the responsibility by the international community to protect in situations

¹⁴²¹ Hehir (2012) *The Responsibility to Protect*, p20

where Governments fail, or are unable or unwilling to protect their own citizens'.¹⁴²² This, however, would be based far more upon ideational preference than on actual understanding of how and why the agreement was crafted as it was. It would have, and has had, the effect of raising/distorting expectations, of reawakening fears amongst the many nervous states about what the R2P is/was really about, and in so doing not just threaten its future development, but make future regression a more likely prospect. In any case, fundamentally it would misrepresent/overstate the extent of member state agreement. As shown throughout this thesis, the development of R2P into the negotiations was defined not by any bandwagoning dynamic but by a series of structuring factors.¹⁴²³ Once part of the negotiating agenda, the dynamics shifted to an engagement designed to limit its scope, to speak to the nervous middle ground, to ensure it did not represent anything new or fundamentally alter existing interpretation of what the Charter already provided for. Such dynamics were matched by numerous amendments, changes and deletions designed to ensure the core elements of R2P were defined with sufficient precision to give them meaning, and limit the potential space for alternative interpretations. Attempting to dismiss the negotiated distinctions, subtleties, and changes identified here as mere semantics, should be pursued only at one's peril. However frustrating it may be for some, the R2P of the Summit Outcome is not the R2P of the ICISS Report, of the HLP Report, of Annan's ILF, or what some advocates wish it, and will it, to be. We should thus avoid characterising it as such or risk threatening its already questionable utility. But conversely, if we recognize R2P was sold, negotiated and agreed *not* as an *ex nihilo* agreement but as an extrapolation of pre-existing processes and provisions, we are not only better placed to unpack its core elements to understand future (domestic/international) compliance, but are also better equipped to develop a research agenda predicated upon the development of methodological tools applicable to all aspects of normative change and agreement. Indeed,

¹⁴²² Annan also praised the 'clear acceptance by *all* UN members that there is a *collective R2P* civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity'. Obviously as pointed to above, all members did not accept this, making this statement factually incorrect. The more important point however is the language used by Annan in both of these examples, just days after the Summit had closed, seemed to suggest the agreement was clear and explicit in expressing an international R2P. Additionally, his use of the language of 'unwilling and unable' was also problematic. It was absolutely not part of the agreement, and contrary to what one advocate suggested to me, is not just a paraphrase of 'manifestly failing'. For Annan quotes see: Kofi Annan (2005) 'A Glass at Least Half Full', *Wall Street Journal*, 19 September 2005; 'UN, Congressional Black Caucus Share Commitment to Africa's Rights, Progress, says Secretary-General in Washington DC, remarks', SG/SM/10123, 23 September 2005

¹⁴²³ Note the word *structuring*, again to emphasize the previous point about structure and agency

one of the principal revelations about this research has been that even with constructivism well-established in IR, understanding the formation, meaning and impact of inter-subjective meanings requires a more developed willingness to ensure that an engagement with process underpins all stages of the analytical endeavour. This requires commitment, as well as an epistemological and methodological tool-box commensurate with the underlying social process-driven ontology. But it is worthwhile. Moreover, to dispel an oft-expressed myth, process is not ignorant of outcomes: process is about outcomes. The distinction is that process helps guard against misguided or overly-optimistic assumptions of meaning too often used to prioritize impact. This is invaluable where R2P is concerned, and so, having developed such an approach here, the foundations of a more nuanced understanding of R2P and normative developments have been laid. The task now is to build on them.

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Appendix 1: R2P from ICISS to World Summit

“The Responsibility to Protect”: Report of the International Commission on Intervention and State Sovereignty (December 2001)

SYNOPSIS

THE RESPONSIBILITY TO PROTECT: CORE PRINCIPLES

(1) BASIC PRINCIPLES

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unable or unwilling to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

(2) FOUNDATIONS

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. Obligations inherent in the concept of sovereignty;
- B. The responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- C. Specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. The developing practice of states, regional organizations and the Security Council itself.

(3) ELEMENTS

The responsibility to protect embraces three specific responsibilities:

- A. **The responsibility to prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
- B. **The responsibility to react:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- C. **The responsibility to rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

(4) PRIORITIES

- A. **Prevention is the single most important dimension of the responsibility to protect:** prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.
- B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

THE RESPONSIBILITY TO PROTECT: PRINCIPLES FOR MILITARY INTERVENTION

(1) THE JUST CAUSE THRESHOLD

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently like to occur, of the following kind:

- A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
- B. **large scale 'ethnic cleansing'**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

(2) THE PRECAUTIONARY PRINCIPLES

- A. **Right intention:** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
- B. **Last resort:** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
- C. **Proportional means:** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
- D. **Reasonable prospects:** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequence of action not likely to be worse than the consequences of inaction.

(3) RIGHT AUTHORITY

- A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.
- B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

- C. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.
- D. The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.
- E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:
 - I. consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and
 - II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.
- F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscious-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

(4) OPERATIONAL PRINCIPLES

- A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
- B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.
- C. Acceptance of limitations, Incrementalism and gradualism in the application of force, the objective being protection of a population, not a defeat of a state.
- D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
- E. Acceptance that force protection cannot become the principle objective.
- F. Maximum possible coordination with humanitarian organizations.

“A More Secure World: Our Shared Responsibility”: Report of High-Level Panel on Threats, Challenges and Change (December 2004)

2. Chapter VII of the Charter of the United Nations and external threats

193. In the case of a State posing a threat to other States, people outside its borders or to international order more generally, the language of Chapter VII is inherently broad enough, and has been interpreted broadly enough, to allow the Security Council to approve any coercive act or omission at all, including military action, against a State when it deems this “necessary to maintain or restore international peace and security”. That is the case whether the threat is occurring now, in the imminent future or more distant future; whether it involves the State’s own actions or those of non-State actors it harbours or supports; or whether it takes the form of an act or omission, an actual or potential act of violence or simply a challenge to the Council’s authority.

194. We emphasize that the concerns we expressed about the legality of the preventive use of military force in the case of self-defence under Article 51 are not applicable in the case of collective action authorized under Chapter VII. In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible States, and much more besides, which may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent. The question is not whether such action can be taken: it can, by the Security Council as the international community’s collective security voice, at any time it deems that there is a threat to international peace and security. The Council may well need to be prepared to be much more proactive on these issues, taking more decisive action earlier, than it has been in the past.

195. Questions of legality apart, there will be issues of prudence, or legitimacy, about whether such preventive action *should* be taken: crucial among them is whether there is credible evidence of the reality of the threat in question (taking into account both capability and specific intent) and whether the military response is the only reasonable one in the circumstances. We address these issues further below.

196. It may be that some States will always feel that they have the obligation to their own citizens, and the capacity, to do whatever they feel they need to do, unburdened by the constraints of collective Security Council process. But however understandable that approach may have been in the cold war years, when the United Nations was manifestly not operating as an effective collective security system, the world has now changed and expectations about legal compliance are very much higher.

197. One of the reasons why States may want to bypass the Security Council is a lack of confidence in the quality and objectivity of its decision-making. The Council’s decisions have often been less than consistent, less than persuasive and less than fully responsive to very real State and human security needs. But the solution is not to reduce the Council to impotence and irrelevance: it is to work from within to reform it, including in the ways we propose in the present report.

198. The Security Council is fully empowered under Chapter VII of the Charter of the United Nations to address the full range of security threats with which States are concerned. The task is not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has.

3. Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect

199. The Charter of the United Nations is not as clear as it could be when it comes to saving lives within countries in situations of mass atrocity. It “reaffirm(s) faith in fundamental human rights” but does not do much to protect them, and Article 2.7 prohibits intervention “in matters which are essentially within the jurisdiction of any State”. There has been, as a result, a long -standing argument in the international community between those who insist on a “right to intervene” in man -made catastrophes and those who argue that the Security Council, for all its powers under Chapter VII to “maintain or restore international security”, is prohibited from authorizing any coercive action against sovereign States for whatever happens within their borders.

200. Under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), States have agreed 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. Since then it has been understood that genocide anywhere is a threat to the security of all and should never be tolerated. The principle of non -intervention in internal affairs cannot be used to protect genocidal acts or other atrocities, such as large -scale violations of international humanitarian law or large -scale ethnic cleansing, which can properly be considered a threat to international security and as such provoke action by the Security Council.

201. The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and now Darfur, Sudan, have concentrated attention not on the immunities of sovereign Governments but their responsibilities, both to their own people and to the wider international community. There is a growing recognition that the issue is not the “right to intervene” of any State, but the “responsibility to protect” of *every* State when it comes to people suffering from avoidable catastrophe — mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community — with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies. The primary focus should be on assisting the cessation of violence through mediation and other tools and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force, if it needs to be used, should be deployed as a last resort.

202. The Security Council so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly or not at all. But step by step, the Council and the wider international community have come to accept that, under

Chapter VII and in pursuit of the emerging norm of a collective international responsibility to protect, it can always authorize military action to redress catastrophic internal wrongs if it is prepared to declare that the situation is a “threat to international peace and security”, not especially difficult when breaches of international law are involved.

203. We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.

B. The question of legitimacy

204. The effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy — their being made on solid evidentiary grounds, and for the right reasons, morally as well as legally.

205. If the Security Council is to win the respect it must have as the primary body in the collective security system, it is critical that its most important and influential decisions, those with large-scale life-and-death impact, be better made, better substantiated and better communicated. In particular, in deciding whether or not to authorize the use of force, the Council should adopt and systematically address a set of agreed guidelines, going directly not to whether force *can* legally be used but whether, as a matter of good conscience and good sense, it *should* be.

206. The guidelines we propose will not produce agreed conclusions with push - button predictability. The point of adopting them is not to guarantee that the objectively best outcome will always prevail. It is rather to maximize the possibility of achieving Security Council consensus around when it is appropriate or not to use coercive action, including armed force; to maximize international support for whatever the Security Council decides; and to minimize the possibility of individual Member States bypassing the Security Council.

207. In considering whether to authorize or endorse the use of military force, the Security Council should always address — whatever other considerations it may take into account — at least the following five basic criteria of legitimacy:

(a) ***Seriousness of threat.*** Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large -scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

(b) ***Proper purpose.*** Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(c) ***Last resort.*** Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(d) ***Proportional means.*** Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

(e) ***Balance of consequences.*** Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

208. **The above guidelines for authorizing the use of force should be embodied in declaratory resolutions of the Security Council and General Assembly.**

209. We also believe it would be valuable if individual Member States, whether or not they are members of the Security Council, subscribed to them.

...

256. ...We see no practical way of changing the existing members' veto powers. Yet, as a whole the institution of the veto has an anachronistic character that is unsuitable for the institution in an increasingly democratic age and we would urge that its use be limited to matters where vital interests are genuinely at stake. We also ask the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses. **We recommend that under any reform proposal, there should be no expansion of the veto.**

In Larger Freedom: Towards Development, Security and Human Rights for All: Report of Kofi Annan, Secretary-General of the United Nations (March 2005)

E. Use of force

122. Finally, an essential part of the consensus we seek must be agreement on when and how force can be used to defend international peace and security. In recent years, this issue has deeply divided Member States. They have disagreed about whether States have the right to use military force pre-emptively, to defend themselves against imminent threats; whether they have the right to use it preventively to defend themselves against latent or non-imminent threats; and whether they have the right — or perhaps the obligation — to use it protectively to rescue the citizens of other States from genocide or comparable crimes.

123. Agreement must be reached on these questions if the United Nations is to be — as it was intended to be — a forum for resolving differences rather than a mere stage for acting them out. And yet I believe the Charter of our Organization, as it stands, offers a good basis for the understanding that we need.

124. Imminent threats are fully covered by Article 51, which safeguards the inherent right of sovereign States to defend themselves against armed attack. Lawyers have long recognized that this covers an imminent attack as well as one that has already happened.

125. Where threats are not imminent but latent, the Charter gives full authority to the Security Council to use military force, including preventively, to preserve international peace and security. As to genocide, ethnic cleansing and other such crimes against humanity, are they not also threats to international peace and security, against which humanity should be able to look to the Security Council for protection?

126. The task is not to find alternatives to the Security Council as a source of authority but to make it work better. When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success. By undertaking to make the case for military action in this way, the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion. **I therefore recommend that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force.**

IV. Freedom to live in dignity

...

129. When it comes to laws on the books, no generation has inherited the riches that we have. We are blessed with what amounts to an international bill of human rights, among which are impressive norms to protect the weakest among us, including victims of conflict

and persecution. We also enjoy a set of international rules on everything from trade to the law of the sea, from terrorism to the environment and from small arms to weapons of mass destruction. Through hard experience, we have become more conscious of the need to build human rights and rule-of-law provisions into peace agreements and ensure that they are implemented. And even harder experience has led us to grapple with the fact that no legal principle — not even sovereignty — should ever be allowed to shield genocide, crimes against humanity and mass human suffering.

130. But without implementation, our declarations ring hollow. Without action, our promises are meaningless. Villagers huddling in fear at the sound of Government bombing raids or the appearance of murderous militias on the horizon find no solace in the unimplemented words of the Geneva Conventions, to say nothing of the international community's solemn promises of "never again" when reflecting on the horrors of Rwanda a decade ago. Treaties prohibiting torture are cold comfort to prisoners abused by their captors, particularly if the international human rights machinery enables those responsible to hide behind friends in high places. A warweary population infused with new hope after the signing of a peace agreement quickly reverts to despair when, instead of seeing tangible progress towards a Government under the rule of law, it sees war lords and gang leaders take power and become laws unto themselves. And solemn commitments to strengthen democracy at home, which all States made in the Millennium Declaration, remain empty words to those who have never voted for their rulers and who see no sign that things are changing.

131. To advance a vision of larger freedom, the United Nations and its Member States must strengthen the normative framework that has been so impressively advanced over the last six decades. Even more important, we must take concrete steps to reduce selective application, arbitrary enforcement and breach without consequence. Those steps would give new life to the commitments made in the Millennium Declaration.

132. Accordingly, I believe that decisions should be made in 2005 to help strengthen the rule of law internationally and nationally, enhance the stature and structure of the human rights machinery of the United Nations and more directly support efforts to institute and deepen democracy in nations around the globe. We must also move towards embracing and acting on the "responsibility to protect" potential or actual victims of massive atrocities. The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. We must move from an era of legislation to an era of implementation. Our declared principles and our common interests demand no less.

Embrace the "responsibility to protect" as a basis for collective action against genocide, ethnic cleansing and crimes against humanity, and agree to act on this responsibility, recognizing that this responsibility lies first and foremost with each individual State, whose duty it is to protect its population, but that if national authorities are unwilling or unable to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect civilian populations, and that if such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required.

A. Rule of Law

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134. Nowhere is the gap between rhetoric and reality – between declarations and deeds – so stark and so deadly as in the field of international humanitarian law. It cannot be right, when the international community is faced with genocide or massive human rights abuses, for the United Nations to stand by and let them unfold to the end, with disastrous consequences for many thousands of innocent people. I have drawn Member States' attention to this issue over many years. On the occasion of the tenth anniversary of the Rwandan genocide, I presented a five-point plan to prevent genocide. The plan underscored the need for action to prevent armed conflict, effective measures to protect civilians, judicial steps to fight impunity, early warning through a Special Adviser on the Prevention of Genocide, and swift and decisive action when genocide is happening or about to happen. Much more, however, needs to be done to prevent atrocities and to ensure that the international community acts promptly when faced with massive violations.

135. The International Commission on Intervention and State Sovereignty and more recently the High-level Panel on Threats, Challenges and Change, with its 16 members from all around the world, endorsed what they described as an “emerging norm that there is a collective responsibility to protect”. While I am well aware of the sensitivities involved in this issue, I strongly agree with this approach. I believe that we must embrace the responsibility to protect, and, when necessary must act on it. This responsibility lies, first and foremost, with each individual State, whose primary *raison d'être* and duty to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required. In this case, as in others, it should follow the principles set out [above].

2005 World Summit Outcome:

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

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

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help 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.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.