On an 'Unvoiced' Application:
Operationalising the Responsibility to Protect in Myanmar

An Abstract

This thesis attempts to connect two subjects of significant controversies: while the responsibility to protect (R2P) remains a somewhat new concept in international relations and law, with prevailing uncertainties as to its precise scope and legal value, the widespread and systematic patterns of violence in Myanmar, often committed by the Burmese military regime towards the country's people, have caused significant debates in various international forums as to how to induce change in the state at hand. It is by merging the above two elements that the subsequent study seeks to cast light on either; indeed, the overarching research question of *how should the responsibility to protect be dealt with in the case of Myanmar* has been deliberately formulated to allow for an attempt at operationalising R2P, thereby inevitably also answering questions as to its scope and legal value. At the same time, the responsibility to protect represents a somewhat broad policy framework, to be applied individually and with varying results depending on the subject of application, which is why any such endeavour requires the selection of a concrete case study to result in tangible outcomes. It is precisely at this point that Myanmar enters the sphere, in that by deploying R2P to the country, the study will also help provide guidelines at to how to effect change in line with the concept's principles.

Drawing significantly on notions of Solidarists, Pluralists, Realists as well as Welsh School conceptions, the thesis first embeds the responsibility to protect into the wider academic debate on humanitarian intervention, and delineates the manner in which it has evolved to exceed the margins of this rather militarily interpreted instrument for the protection of people at risk. It then embarks upon a more comprehensive outline of the concept's precise scope and legal value by examining the relevant documents at hand, and subsequently relates the defined aspects for application to the conditions in Myanmar, in an attempt to determine the manner in which an implementation is deemed feasible. The results will demonstrate that the responsibility to protect does not fulfil the requirements for a legal norm in international relations, nor does a majority in the UN Security Council (SC) exist for concerted actions towards Myanmar by the international community in view of the concept. However, since most of R2P's principles are already fundamentally embedded into international law, it is the conclusion of this paper that these aspects can be upheld in bi- or other multilateral efforts beyond the SC in what may amount to an unvoiced application of the responsibility to protect.

In this context, a combination of carefully exerted targeted sanctions as well as a significant boost in development and humanitarian aid with simultaneous efforts at intensified cooperation will be defined as a promising way forward. Such initiatives should result in a number of dialogue-based mechanisms, involving the most relevant regional stakeholders, such as ASEAN, China, India and Japan, as well as international organisations, most notably the UN, and influential Western entities in form of the U.S. and the EU to seek a way out of the current, deadlocked environment. Particularly relief operations in the aftermath of the devastating cyclone Nargis with their unprecedented extent of cooperation between the Burmese regime and the outside world will be presented as an excellent opportunity to embark upon the above processes and ultimately seek change in the country in line with the aims postulated by the responsibility to protect.

MYANMAR

BHUTAN

INDIA

BANGLADESH

Dhaka

Barisal

Chittagong

CHIN
STATE

RAKHINE
STATE

Sittwe
(Akyab)

Ramree I.

Cheduba I.

Bay of Bengal

AYEYARWARDY
DIVISION

Preparis Island
(MYANMAR)

Coco Islands
(MYANMAR)

Andaman Sea

Guwahati

Shillong

Lumding

Imphal

Jorhat

Tinsukia

Putao

Shingbwiyang

Makaw

KACHIN
STATE

Myitkyina

Hopin

Katha

Bhamo

SAGAING

Mawlaik

DIVISION

Falam

Kalemya

Hakha

Shwebo

Monywa

Sagaing

Chauk

Pakokku

Minbu

MANDALAY

Meiktila

DIVISION

Magway

Taungdwingyi

MAGWAY

DIVISION

Pyinmana

Prome (Pye)

Naypyidaw

Myingyan

Mandalay

Maymyo

Taunggyi

SHAN STATE

Lashio

Namhkam

Lincang

Kengtung

Tā-kaw

Möng-Pan

KAYAH
STATE

Loikaw

BAGO
DIVISION

Henzada

Pathein

Pyapon

Bago

YANGON
DIVISION

Yangon

Thaton

Pa-an

Mawlamyine

Amherst

MON
STATE

Ye

KAYIN
STATE

Bilugyin I.

Mouths of the Irrawaddy

TANINTHARYI
DIVISION

Mergui

Mergui
Archipelago

Launglon Bok
Islands

Dawei

Kawthuang

Chumphon

Xichang

Dukou

Lijiang

Dali

Kunming

CHINA

Baoshan

Tengchong

Gejiu

Yuan (Red)

Jinghong

Pongsali

VIET NAM

Muang Xai

Houayxay

LAO PEOPLE'S
DEMOCRATIC
REPUBLIC

Chiang Mai

Lampang

Vientiane
(Viangchan)

Mekong

THAILAND

Khon Kaen

Nakhon
Sawan

Nakhon
Ratchasima

Bangkok
(Krung Thep)

CAMBODIA

Gulf of Thailand

Legend

- National capital
- Division or state capital
- Town, village
- Major airport
- International boundary
- Division or state boundary
- Main road
- Secondary road
- Railroad

The boundaries and names shown and the designations
used on this map do not imply official endorsement or
acceptance by the United Nations.

0 100 200 300 km
0 100   200 mi

This map is adapted by the International Crisis Group from Map No. 4168 Rev. 1 (January 2004) by the Cartographic Section of the
United Nations Department of Peacekeeping Operations. The administrative capital, Naypyidaw has been added.
The location of additional features is approximate.

i. *Table of Content*

KNU	Karen National Union
LDC	Least-Developed Country
NAM	Non-Aligned Movement
NLD	National League for Democracy
OECD	Organisation for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
PONJA	Post-Nargis Joint Assessment
PONREPP	Post-Nargis Recovery and Preparedness Plan
PM	Prime Minister
P5	Permanent Five (referring to the five permanent members of the UN Security Council, namely China, France, Russia the UK and the U.S.
R2P	Responsibility to Protect
SC	Security Council (sometimes also referred to as UNSC)
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
TCG	Tripartite Core Group
UN	United Nations
UNDP	United Nations Development Program
UNGOMAP	United Nations Good Offices Mission in Afghanistan and Pakistan
US	United States
WLB	Woman's League of Burma
WMD	Weapon of Mass Destruction

1.   On the Responsibility to Protect and Myanmar: Introducing the Subject

The notion of the responsibility to protect emerged at the beginning of the new millennium out of a fierce debate on the seemingly apparent contradiction between the concepts of humanitarian intervention and state sovereignty. It followed on a decade after the conclusion of the Cold War, during which intra-state conflicts had developed as new phenomena in international relations, with the United Nations (UN) having proved ill-equipped to respond properly, as the events in Somalia, Rwanda and the Balkans sadly evidenced. Indeed, the UN was born into an international system fundamentally influenced by two horrific World Wars, in which a primary preoccupation with conflicts between states seemed self-evident. From the very outset, it outlawed any use of force in interstate discords, except for in cases of self-defence or with authorisation of the Security Council, while also upholding the notion of non-interference into state's domestic affairs. Thus, the UN established an international system in 1945 which has since been mainly based on the principles of state sovereignty and non-interference.

However, in light of the above mentioned atrocities in the course of the 1990s and an apparent 'Capability-Expectations Gap'[1] (CEG) on behalf of the UN to deal with such crises effectively, it was then UN Secretary-General Kofi Annan, who at the 2000 General Assembly challenged member states by posing to them the following question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights?" (Annan, 2000, p. 48). Reacting to Annan's call upon the international community to seek a path of reconciling the two concepts, then Canadian Prime Minister Jean Chrétien announced the establishment of the International Commission on Intervention and State Sovereignty (ICISS)[2], "with a mandate to promote a comprehensive debate on th[eir] relationship [and] a

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[1] The term 'Capability-Expectations Gap' was first coined by Christopher Hill (1993) in relation to the EU's Common Foreign and Security Policy, in which he had identified a gap between the Union's capabilities, namely the conventional instruments of foreign policy but also such underlying resources like population, wealth, technology, etc., and the expectations (ambitions and demands) regarding its international behaviour, emanating from both within and outside the EU (Hill, 1997, p. 8). It seemed justified to also apply the terminology to the above challenges faced by the UN.

[2] The ICISS consisted of 12 Commissioners; jointly with Gareth Evans, President of the International Crisis Group and former Australian Foreign Minister, it was the Algerian Mohamed Sahnoun, Special Advisor to the UN Secretary-General and formerly his Special Representative for Somalia and the Great Lakes of Africa, who functioned as Co-Chairs of the Commission. The remaining ten Commissioners originated from countries as diverse as Canada, Germany, Guatemala, India, the Philippines, Russia, South Africa, Switzerland and the U.S.,

view to fostering a global political consensus on how to move from polemics towards action within the international system" (ICISS, 2001b, "The Establishment and Progress of the Commission" sec., para. 3); the report of which ultimately led to the coining of the term responsibility to protect.

In line with Annan's call, the ICISS's account deals with the "'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive - and in particular military - action, against another state for the purpose of protecting people at risk in that other state" (ICISS, 2001a, p. vii). It concludes that the perception of state sovereignty has shifted from of a Westphalian notion of *sovereignty as control* to a conception of *sovereignty as responsibility*, corresponding to the persistently mounting authority of international norms on human rights and the concept of human security[3] in a globalised world (Focarelli[4], 2008, p. 194). This interpretation contains both an internal and an external dimension, in that authorities are responsible for the protection of citizens and the promotion of their welfare towards the people themselves as well as the wider international community through the United Nations. The implication of the above is that, when "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" (ICISS, 2001, p. xi).

Three further documents of official character, dealing somewhat explicitly with R2P, were published in the following years, namely the UN Report *A More Secure World: Our Shared*

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with the ICISS having attempted to "fairly reflect developed and developing country perspectives, and to ensure that [it] represented (…) a wide range of geographical backgrounds, viewpoints, and experiences - with opinions, at least at the outset, reflecting the main lines of the current international debate. If [the Commissioners] could produce consensus among themselves, there was at least a chance that [they] might be able to encourage it in the wider international community" (ICISS, 2001, p. 2). In a further attempt to expand the debate and cover the broadest possible range of views, the ICISS held an additional eleven regional roundtables and national consultations in states, such as Canada, Chile, China, Egypt, France, India, Mozambique, Russia, Switzerland, the UK and the U.S..

[3] The concept of human security assumes that "public concern and policy choices should encompass the security of individuals, not just states, across the whole range of possible threats. Rather than being restricted to a relatively narrow list of atrocities (...), human security encompasses phenomena as diverse as HIV/AIDS, climate change, poverty, and water, food, and energy security" (Luck, 2008, p. 5). It is thus much broader in scope than R2P, but remains somewhat silent regarding specific policy tools and instruments.

[4] Carlo Focarelli is Professor of International Law at the University of Perugia and the LUISS University of Rome. He extensively discussed the ICISS report on R2P as well as the subsequent debates at the United Nations in his 2008 article *The Responsibility to Protect and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine*.

Responsibility of the High-Level Panel on Threats, Challenges and Change in 2001; the Report *In Larger Freedom: Towards Development, Security and Human Rights for All* of the Secretary-General in 2005; as well as the *2005 World Summit Outcome* of the High-Level Plenary Meeting of the 60th Session of the UN General Assembly in the same year. All of them treated the subject against the background of their specific context, thus modifying the substance of the concept in each case. This has not only caused uncertainty as to the precise content of R2P; it has also raised questions regarding the principle's legal authority in international relations and law. The subsequent analysis directly seeks to resolve these dilemmas, in that it attempts to examine *how the responsibility to protect should be dealt with in the case of Myanmar*. In striving to operationalise the model in practical terms, it is evidently indispensable to equally address the above impasses; indeed, it is prerequisite. At the same time, a concrete sample is required in any such endeavour, since R2P represents an overall policy framework, to be applied individually and with varying results depending on the respective study chosen.

In the ensuing analysis, the Southeast Asian country of Myanmar has been singled out to constitute the focus of the work. This seems a particularly suitable selection, as it was here that an actual attempt was undertaken to invoke the responsibility to protect in the Security Council. Following the devastating cyclone Nargis[5] and the government's evident aversion to allow international relief efforts into the affected territories, French Foreign Minister Bernard Kouchner proposed to impose the aid delivery on the Burmese regime through an invocation of the concept at the United Nations. Although the submission was ultimately scrapped, it caused a heated debate on the nature of the call and served its purpose of pointing to the magnitude of the humanitarian disaster, including its relation to

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[5] Nargis was a category-four cyclone, hitting southwest Myanmar on 2 and 3 May 2008 with 200km/hour winds. It caused severe destruction throughout the Ayeyarwady delta, in the former capital of Yangon as well as in parts of Bago division and Mon state. A 4-meter high wave inundated low-lying costal areas and swept tens of kilometres inland. Vast regions of agricultural land as well as hundreds of villages were eliminated on its path. An official 138,373 people died or went missing, although the actual death toll is estimated to be closer to 200,000. As many as 800,000 are believed to have been displaced, with some 2.4 million survivors having been severely impaired through the loss of family members, homes, food reserves or more generally their livelihoods. Almost the entire infrastructure of a territory of some 20,000km² was destroyed through the cyclone, including electricity, communication and transportation networks, health facilities and schools. The total damages and future economic losses have been rated at $4 billion, which equals 21% of the country's GDP in 2007. As such, Nargis constituted the worst natural disaster in Myanmar's recorded history and one of the most destructive cyclones of all times. The scale of devastation has been compared to the 2004 Indian Ocean tsunami (ICG, 2008a, pp. 2-3).

governmental failures. The consequent analysis, however, is not reduced to this singular incidence, although its graveness remains undisputed; instead, it examines wider patterns of abuse by the authorities in a country with a troubled history for much of the post-colonial period.

Indeed, the Union of Burma gained independence from the British on 4 January 1948 and was immediately confronted with ethnic strife for more autonomy from the Burman majority as well as communist insurgencies. A representative government was sustained until an army coup in 1962. The subsequent military-dominated regime led by the Burma Socialist Program Party (BSPP) maintained power for the following 26 years, with freedom of expression and association remaining largely denied and no free elections being held. Resistance to the leadership occasionally arose but was brutally crushed, such as in the case of student and worker demonstrations in the 1960s and 70s. Torture, political imprisonment and further human rights abuses were widely documented during this period, while severe guerrilla wars with ethic opposition groups persisted along the country's border. With an ever more deteriorating economic situation, rice shortages and popular discontent reached crisis levels by mid-1988. The murder of a student by police forces in the same year spurred student demonstrations, which were soon joined by monks, civil servants, workers and even policemen and soldiers across the country. On "8-8-88", hundreds of thousands took to the streets in their demand for an elected civilian government. The authorities responded with armed weapons, killing thousands of people. Just over a month later, the military announced a coup by the State Law and Order Restoration Council (SLORC), which changed its name into State Peace and Development Council (SPDC) in 1997. The situation evolved ever more violently and culminated in the killing of an estimated 10,000 people on the streets of Yangon by the junta's security forces, with thousands more being arrested. The SLORC asserted that elections be held as soon as peace and tranquillity was reinstated and, indeed, free polls ultimately did proceed in 1990, with a devastating victory for the opposition's National League for Democracy (NLD) under the leadership of Aung San Suu Kyi[6]. The military, however, refused to recognize the election results and further intensified its

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[6] Born 19 June 1945, Aung San Suu Kyi is a prominent Burmese politician and campaigner for democracy and human rights in Myanmar. For her non-violent struggle she was awarded the Nobel Peace Price in 1991. Suu Kyi is founding member of the above mentioned NLD, for which she has functioned as party leader. She was arrested prior to the 1990 elections and has ever since spent more than eleven of the past 19 years in some form of detention under Myanmar's military regime (BBC, 2009c, paras. 3, 4 & 39).

repressive policies, particularly towards members of the NLD of which numerous representatives were arrested or had to flee into exile; and some were reported to have died in prison. The regime widened its move against the opposition in 1999-2000, detaining or putting under house arrest many more members of the NLD's leadership, while equally intimidating its supporters at the grass-roots level (OSI, 2005, "Brief History" sec.).

In 1993, a military-controlled National Convention was established with the task to draw up a new constitution for the country; a process which formed the first of the junta's seven step roadmap towards democracy and concluded with a referendum on the draft version in May 2008 just days after cyclone Nargis had devastated the country. The Convention proceeded without the participation of the NLD, which withdrew from the talks in 1995 over protests on the lack of democratic principles and the predominance of the military in the envisaged new system (Moe, 2006, paras. 1-3). Due to the destructive impact of Nargis, the referendum was initially held in only two-thirds of the country, with the results allegedly showing an overwhelming 92.4% in favour with a 99% voter turnout. The worst-affected areas caught up on the voting two weeks later, although their outcome was rendered meaningless, as the required 50% threshold had already been achieved (BBC, 2008, paras. 3 & 6). The ballot was heavily criticized from both inside and outside the country; while Human Rights Watch labelled the results "as an insult to the people of Burma, [arguing] that "there [was] simply no way that 92% (…) would have voted 'yes' on a document that they [knew] very little about and that most [had] never read" (BBC, 2008, paras. 4 & 8), opposition groups reported that the election had been "full of cheating or fraud, [with] authorities and polling station officials in some villages [having] ticked the ballots themselves" (BBC, 2008, paras. 4 & 12). The adoption of the constitution concluded the fourth step of the above mentioned roadmap, with the remaining three stages comprising the organisation of a general voting for the legislative bodies, envisaged to take place in 2010; the convening of the legislative bodies in accordance with the new constitution; as well as the ambitiously formulated construction of a modern, developed and democratic nation by the state leaders, the government and other central organs, formed and elected through the parliamentarians (Win, 2004, "Introduction" sec.).

Not even a year before the cyclone hit the country and the constitutional referendum was held, Myanmar already attracted the attention of the world, in that on 24 and 25 September

2007, thousands of Buddhist monks took to the streets of Yangon, accompanied by dissidents and large crowds of supporters in what has been portrayed as "the strongest show of opposition to the ruling State Peace and Development Council (SPDC) in almost two decades" (ICG, 2008b, p. 2). Caused by an unannounced lift in official fuel prices on 15 August, the protests followed on weeks of escalating marches with a turning point on 5 September, when monks were beaten by pro-government vigilantes in the small town of Pakkoku. As the government failed to respond to demands for an apology, the release of political prisoners and a dialogue with the opposition, a newly formed monk association evoked a religious boycott of army officers and their families, with the daily marches in Yangon growing both increasingly strong and political. On 24 September, then, a significant number of NLD members and other political forces for the first time joined the monks in their protest on the streets. Two days later, the security forces began to intervene resulting in angry young men with sticks and bricks gathering at the street corners. The authorities reacted with a curfew and sealed off strategic points in Yangon. In the night between 26 and 27 September, several monasteries were raided and monks beaten up, with hundreds of them being taken to special detention centres. As the crackdown continued, police officers and soldiers, seemingly freed from restraining orders, used tear gas, batons, rubber bullets and live ammunition. According to official accounts, nine people were killed, eleven wounded and many more detained in special interrogation centres. Although the actual death toll has remained unknown, it seems likely that governmental figures severely underestimated the initial number of victims, and many more are assumed to have died from injuries sustained during interrogations and other occasions (ICG, 2008b, p. 3).

The above information is intended to provide a brief glimpse at the complexities of the relationship between the Burmese authorities and the wider population throughout the country's post-colonial history. Myanmar constitutes one of the most ethnically diverse states in the world (Smith, 2006, p. 20), with conflicts and ethnic insurgencies compromising its stability and security ever since independence. It is therefore that the military rulers have traditionally prioritized these notions in their political agenda. The outside world and particularly the West are viewed with scepticism due to the painful experiences of a colonial past and continuing threats emanating from Europe and the U.S.; however, the generals also feel alienated from substantial parts of the country's own population with their strive

towards uprisings, which has been further intensified since the military's devastating defeat in the 1990 elections (ICG, 2008a, p. 16). It is partly based on these factors that displacement of people from their land, forced labour and various other forms of exploitation have become common practice in a system "that generally treats the population as a free resource for the pursuit of national development goals" (ICG, 2008a, p. 28); and it is precisely at this point that the responsibility to protect relates to Myanmar. Indeed, the succeeding analysis will attempt to determine to what extent the authorities' abusive actions towards the Burmese people constitute crimes that justify an invocation of R2P, by that serving to answer the overarching question of how the concept should be dealt with regarding the country in question.

More specifically, this thesis is divided into two main sections: the first approaches the responsibility to protect itself, outlining with some detail how the concept has evolved. It embeds R2P into the wider theoretical debate on humanitarian interventions, in that it confronts Solidarist perceptions with notions of Pluralists, Realists and Constructivists as well as Welsh School thinking, and by that also provides an account for how the responsibility to protect has emerged to exceed the margins of a mere military dimension. Indeed, as it will be seen, it is Solidarist principles that form the core of R2P's assumed universal applicability of human rights standards and its interpretation of intervention by force, while Welsh School conceptions have inspired the expansion to also include efforts at prevention and reconstruction, as well as less coercive means of intervention. Ultimately, Realist and Pluralist concerns have equally played an influential role by diluting a stronger mandate for the concept during the discussions at the United Nations.

In the second part, the reached compromise regarding the responsibility to protect's scope is then put to an application in the case of Myanmar. It will be concluded that, although the criteria for an invocation are fulfilled, the lack of legal value of its constituting documents and the absence of an endorsement by the Security Council in this particular case deem an official implementation unfeasible. This, however, does not as such question the approach of this study, since much of R2P's substance is already fundamentally embedded into international law. It will therefore be argued that the concept's guiding principles can still be upheld - albeit in an unvoiced manner - in both bi- and multilateral efforts to help terminate the regimes' crimes towards the people of Myanmar. The way forward appears to be a

combination of carefully applied 'smart sanctions' and a simultaneous emphasis on a genuine engagement with the junta. The latter should materialize in dialogue mechanisms with established benchmarks, against which sanctions are gradually eased or strengthened in line with the displayed progress. Moreover, an unequivocal assistance package must be tied up, both to address the severe humanitarian situation in the country and to prove to the government that the international community is determined to escape the current, deadlocked environment.

For this to occur, however, a rethink is required on behalf of all relevant stakeholders with influence in Myanmar. While the U.S. ought to renounce its politically-charged approach towards the generals, recognizing that isolation and sweeping sanctions have been both ineffective and counterproductive, the Europeans will have to abandon some of their economic interests in the country. Finally, the relevant Asian parties, most notably ASEAN, China and India, should display a more pro-active approach towards the junta. This would include a willingness to take the lead in the international efforts to encourage the regime to improve its human rights record; it should, however, also comprise a readiness to join the Western sanctions regime. Post-Nargis relief operations, as it will be argued, provide an excellent opportunity for such adjustments, particularly regarding new mechanisms of cooperation.

2.   Explaining the 'Why': Some Methodological Considerations

The overarching research question of *how should the responsibility to protect be dealt with in the case of Myanmar* is of inherently multifaceted nature; in seeking to determine how the concept at stake should be related to the subject of analysis, the successive study acknowledges the pluralism of potential conclusions. Indeed, it has been a deliberate resolution to omit the articulation of a forthright application of R2P in the above question, instead favouring a much more broadly formulated 'to deal with', since it was far from certain at the outset of the investigation that the concept would in fact prove applicable to the chosen case study. By any standard, the responsibility to protect remains a comparably immature notion in international relations and law; its status continues to be subject of heated debates, with various sources alternately referring to as an "emerging norm" (UN, 2004, p. 66), a "political catchword" or merely "old wine in new bottles" (Stahn, 2007, p. 102). Moreover, R2P does not constitute a straightforward policy scheme, to be exerted consistently regardless of the respective circumstances at hand. As suggested in the introduction, it rather provides a varied and adaptable policy framework, which needs to be interpreted and defined according to the elementary conditions in the country of application. While it remains accurate that the underlying research question is formulated somewhat broadly and cautiously, it is in view of the above reasons that this seems the only justifiable approach to any attempted operationalisation of R2P at the present point of time.

For the aforementioned uncertainties and complexities regarding the concept's scope, it has been inevitable to include a comprehensive chapter on the responsibility to protect itself. The focal point here has been laid on the reactive features, although its overall scope is admittedly far more comprehensive[7]. Such preference is not only derived from a recognition that reactive and particularly military notions of humanitarian intervention have evidently provided the origins for the emergence of R2P[8], but is also based on the fact that aspects of

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[7] Although this distinction will be outlined with some detail later in this research, for comprehension reasons it appears reasonable to already point out that the ICISS initially divided R2P into three pillars, namely prevention, reaction and rebuilding, with the second unarguably being the most controversial one, as it is here that particularly coercive measures enter the sphere, ranging from economic, political and military sanctions to actual armed interventions.

[8] This apparent relation is made very explicit in the first sentence of the ICISS's report, as already the *Foreword* points out that "this (…) is about the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive - and in particular military - action, against another state for the purpose of protecting people at risk in that other state" (ICISS, 2001a, p. vii). Although the document

reaction, albeit with non-military elements, form the core of the analysis in the context of Myanmar. The indicated evolutionary process has been adapted for the underlying study, in that the theoretical chapter first provides an overview on the academic debate surrounding humanitarian interventions and the manner in which it has evolved to exceed the margins of a pure military dimension. The intention behind has been to embed R2P in its academic context and reveal the extent to which various scientific schools have contributed to its development, by that assisting in better comprehending the origins and scope of the primary conceptual structure. The consequent section then embarks upon a more explicit attempt to define with some precision the responsibility to protect's concrete substance. For the array of official reports dealing with the concept, as introduced in the introduction, it has appeared obligatory to approach and identify the margins of R2P; indeed, in any attempt to apply and operationalise the policy framework, it is of utmost significance to first clarify what it precisely comprises.

Based on such conclusions, the following part continues with an analysis of the circumstances in Myanmar, in that it seeks to establish whether or not the criteria for an invocation of the responsibility to protect seem fulfilled, while equally evaluating the legal factors at stake in this context. This approach seems only logical, since it is the performance of the criteria in relation to the conditions on the ground, jointly with the degree of the former's legal applicability which ultimately determine the specific dimension of implementation. And indeed, the thesis carries on with an endeavour to specify what policy sample of R2P's framework appears the most appropriate for the underlying conditions and their causes in the country, and ultimately how they should be applied to the case of Myanmar. This returns the analysis to the inception and closes the circle, in that it explicitly seeks to answer the original question posed. Since the responsibility to protect, as suggested above, provides a framework of loosely defined policy choices, it is in the nature of the study conducted that it attempts to conclude with a number of tangible policy proposals. For the complexities of the subject, however, the ultimate recommendations remain sufficiently

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argues to go beyond a mere focus on the notion of military intervention for humanitarian purposes - and it indeed does - it remains evident throughout the text that it is this aspect that constitutes both the point of reference and origin. Moreover, the initial predominance of such coercive features in the idea of humanitarian intervention will equally become apparent in the theoretical discussion on the emergence of R2P, in that it was from this basis that more comprehensive conceptions gradually evolved, thereby also influencing the responsibility to protect's incurrence.

broad to be adjustable to occurring changes in its environment, while still providing somewhat concrete guidelines on how to move ahead.

Methodologically, the succeeding investigation has been exclusively based on secondary research, as it neither seemed feasible nor perhaps required to conduct primary studies for the purpose of the examination. Although it is acknowledged that a degree of qualitative material derived from people directly involved in Burmese affairs would certainly have proved of value, the performance of research particularly in Myanmar is significantly complicated through its complex political environment. Indeed, numerous institutions and organisations with expertise on the country operate from abroad, causing the respective community to be somewhat spread. It is for this reason that any such endeavour in an around the state requires a substantial degree of preparation, which would considerably have exceeded both the financial means and time available for the thesis. At the same, the International Crisis Group (ICG)[9] has shown itself to be a valuable alternative in this context, as it has published widely on the complicated domestic and international circumstances regarding Myanmar, with such analyses being grounded in extensive field research. Indeed, the ICG impresses through teams of political analysts in or around the country, providing assessments based on information from the ground.

In addition, primary and secondary sources from various relevant international stakeholders have been consulted for the analysis, including the United Nations, several humanitarian agencies and international non-governmental organisations (INGOs), academic journals and governmental sources, to approach the underlying research question from as comprehensive an angle as possible. While material has been plentiful regarding the responsibility to protect, with a lively debate on scope and legal value proving both attractiveness and controversy of the subject at hand, comprehensive literature on Myanmar is somewhat scarce, particularly in the academic community; a phenomenon

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[9] The International Crisis Group is an "independent, non-profit, non-governmental organisation, with some 145 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict" (ICG, 2008b, p. 37). Its international headquarters are in Brussels, with advocacy offices located in Washington D.C., New York, London and Moscow. The ICG currently sustains twelve further regional offices, has additional local field representations in sixteen locations and is presently covering some 60 areas of actual or potential conflict on four continents. It finances its operations through funds from governments, charitable foundations, companies and individual donors, with its board comprising prominent personalities from the fields of politics, diplomacy, business and the media. Gareth Evans, former Australian Foreign Minister and Co-Chair of the ICISS, has functioned as its President and Chief Executive since 2000 (ICG, 2008b, p. 37).

which is likely to be attributable to the aforementioned difficult political environment. But also with regard to other sources, a lack of profundity is often identifiable, in that many have critically reported on the circumstances in Myanmar, and numerous documents exist highlighting the graveness of the living conditions for the people in the country, but few have actually attempted to comprehensively propose a way forward; indeed, the ICG is a pleasant exception to this rule.

The timeframe chosen concerning patterns of crimes committed by the Burmese authorities towards the people of Myanmar remains somewhat loosely defined. Although it is held in the introduction that severe human rights abuses have been identified throughout much of the country's post-colonial history, the focus of the responsibility to protect is inherently contemporary. Occasionally, it may be singular events that inspire discussions on a potential invocation, as in the case of cyclone Nargis and the regime's initial disregard of the humanitarian emergency; however, it is generally wider schemes of structural abuse requiring certain qualitative and quantitative dimensions to be identifiable, which are likely to be the cause for such debates. In fact, the definitions of crimes justifying the implementation of R2P remain equally silent on the aspect of time, instead rather focusing on the magnitude of the atrocities at hand. Furthermore, regarding the analysis of the international community's dealings with the military junta, a somewhat more precise timeframe is applied; indeed, punitive measures on behalf of the U.S. and the EU began as soon as in 1988, meaning that the previous 20 years provide the margins for an analysis of how effective Western sanctions have proved to be in relation to the aims postulated by the responsibility to protect. It is this examination that constitutes the basis for the conclusions reached and the resulting proposals for policy guidelines. Still, a particular emphasis is laid on rather recent events, since post-Nargis relief operations are believed to have presented a relevant case study of the complexities in the relations between the Burmese authorities and the international community. At the same time, a crucial opportunity has been identified in this context for both sides to seek a way out of the current, deadlocked environment, potentially paving the way for change in line with R2P.

All relevant stakeholders with substantial or potential influence on the situation in Myanmar have been somewhat considered in the subsequent analysis. These include the UN as the leading global body representing the international community at large; ASEAN as the most

significant regional player, which Myanmar has been a member of since 1997[10]; China and India, the two regional powers sustaining significant economic relations with the military regime; Japan, another economic powerhouse in Asia and Myanmar's largest donor; as well as the EU and the U.S. as the world's two most dominant economic and political players. Indeed, the main focus has been laid on the latter two, as they have unarguably taken the most principled stance towards the regime, applying sanctions with severe implications for the country in question. In that sense, they have attempted to bring about change in Myanmar, which is worth considering for the underlying analysis, as any application of R2P would equally seek to encourage adjustments to the domestic situation. It is therefore believed that this examination may assist in drawing relevant conclusions as to how to deal with the Burmese regime. Jointly, the EU and the U.S. are referred to as 'the West', although it is recognised that, whatever the West may be defined as, it would always be more comprehensive than this limitation. The reason for the opted simplification is of practical nature, as it is occasionally more convenient to refer to both equally in one terminology; it is however also owed to their economic and political relevance in international relations, for which it may often be held that their common position in fact amounts to the West's leverage in the discussions and deliberations on a global level.

On the country of analysis itself, a straightforward name policy has been adapted, in that the subsequent thesis generally refers to it as Myanmar in recognition of the approach taken by the UN and most governments other than those of the U.S., Canada and some European states. It is argued in line with the ICG (2008b) that this preference "is neither a political statement nor a judgment on the right of the military rulers to change the name" (p. 1). Still, the succeeding text occasionally features the term Burma, as a number of directly quoted authors have opted for a different policy in this respect. The refusal by some to recognise the regime's amendment is mostly based on the assumption that an unelected military

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[10] Myanmar's accession to ASEAN was surrounded by much controversy. Especially the EU and the U.S. exercised pressure on the organisation to resist granting full-membership status to the country, with a number of meetings, e.g. as part of the Asia-Europe Meeting (ASEM) having been cancelled thereafter. But also ASEAN itself struggled to define an approach to the generals following Myanmar's entry. A regional debate emerged on the question of how the organisation's principle of non-interference could be upheld when the domestic policies of a member state had evident negative repercussions for other associates; the issues of refugees, illegal immigrants and drugs proved particularly pressing in this context. A number of strategies were discussed ranging from 'constructive intervention' to 'flexible engagement' and 'enhanced interaction', the latter of which ultimately gained most support, allowing individual states but not ASEAN as such to comment on domestic policies of other members (McCarthy, 2006, pp. 6-7).

government lacks the legitimacy for any such step, although the pro-democracy movement itself has been comparably silent on how the country should be addressed, and there seems reason to believe that, even if the junta was ousted, the state would continue to be called Myanmar (BBC, 2007, para. 12). In fact, both words ultimately have the same meaning, in that Burma is a local corruption of Myanmar, with either being widely used within the country for a long time. The distinction merely appears to be that, while the former constitutes a rather informal mode, the latter represents the literary form often applied for ceremonial and official purposes (BBC, 2007, paras. 13-15).

3.   On the Emergence of R2P: Outlining the Theoretical Debate

3.1.   *Order versus Justice: The English School's Debate on Humanitarian Intervention*

The academic debate surrounding the notion of humanitarian intervention has over the past years been dominated by the so-called English School or the 'International Society' approach to international relations, which is particularly concerned with the relationship between order and justice as well as legitimacy and norm construction in the international system (Bellamy[11], 2003, p. 321). For English School scholars, this system consists of a 'society of states' with commonly agreed values, rules and institutions; or as Hedley Bull[12] (1977) outlined in his classical formulation, a society of states exists, "when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with each other, and share in the workings of common institutions" (p. 13). Bull went on to define three traditions of thoughts as relevant in explaining international politics, namely the realist or Hobbesian tradition, the rationalist or international society tradition, and the Kantian or universalist tradition. And although one may tend to be dominant at one point or another, all of them always co-exist and bear relevance at all times (Wheeler[13], 1992, pp. 463-4).

According to Bull (1977), the realist tradition is characterised through the perception of an enduring conflict between states in an international system without moral or legal rules to alleviate the effects of the prevailing anarchy; "ideas of morality and law, in this view, are valid only in the context of a society, but international life is beyond the bounds of any society" (p. 51). For Wheeler (1992), "this is the world of 'might is right': competing justice claims are decided by the vaguaries of power politics" (p. 464). The Kantian School, on the other hand, exchanges the notion of a 'society of states' with that of a 'community of humankind', "which exists potentially, even if it does not exist actually" (Bull, 1977, p. 25). It

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[11] Alex J. Bellamy is Professor of Peace and Conflict Studies at the University of Queensland. His research has centred on the normative aspects of the use of military force, especially the ethics and laws of war, peace operations and humanitarian intervention. In this context, he has also published books and articles, directly dealing with R2P, such as the most recent work *Responsibility to Protect* published in 2009 by Wiley & Sons.

[12] Hedley Bull (1932-1985) was Professor for International Politics and Relations at the Australian National University, the London School of Economics and Oxford University; he is considered to have been one of the leading members of the English School in International Relations, with his book "The Anarchical Society: A Study of Order in World Politics" having grown into a standard reference in the field (Kailitz, 2007, p. 60).

[13] Nicholas J. Wheeler is Senior Lecturer in the Department of International Politics at the University of Wales, Aberystwyth, and regarded as an adherent of the Solidarist wing in the English School (Krisch, 2002, p. 325). He has widely published on issues pertaining to human rights, security and intervention.

is their aim to replace the state system with a cosmopolitan world society; "the rules that sustain coexistence and social intercourse among states should be ignored if the imperatives of this higher morality require it" (Bull, 1977, p. 26). What really matters in international politics, the argument goes, are not the states dividing humans into different entities, but the transnational social bonds which connect individuals. "The interests of all humankind are the same; it is only ignorance or malevolence on the part of the ruling elites which stands as a barrier to the realisation of universal justice" (Wheeler, 1992, p. 465). Bull defined his society of states approach as a rejection against both the above traditions; in his view, the authority of legal rules, unlike in the realist claim, is acknowledged by states, as they are used as references to justify state conduct or for criticising each other's behaviour (Wheeler, 1992, p. 465). Kantian thinking, however, was rejected with respect to realist assumptions, as he identified a lack of sufficient solidarity among humankind so as to allow for the emergence of global principles of justice and human rights; thus, according to Bull, attempts to further specific notions of justice would ultimately threaten order among states (Wheeler, 1992, p. 467).

The above represents an apparent endorsement of Pluralist thinking over a more Solidarist approach, two wings which the English School has long been divided into: Pluralists assume that international society is based on the recognition of a variety of actors and allows for "the diffusion of power to peoples via the plurality of states", granting each nation and state the opportunity to pursue their own way of life (Bellamy, 2003, p. 323). Still, the state is regarded as the principal bearer of rights and duties in the international system, with individuals enjoying such provisions only insofar as the state allocates them; thus, individuals are considered objects instead of subjects in international law due to an assumed absence of agreements in the international society on what constitutes universal principles of human rights. In the global realm, such agreements are only possible on a minimum basis, most importantly the recognition of each other's sovereignty and the principle of non-intervention, with the overarching international order fundamentally depending upon their adherence. Indeed, as Wight (1977) argued, "it would be impossible to have a society of sovereign states, unless each state, while claiming sovereignty for itself, recognised that every other state had the right to claim and enjoy its own sovereignty as well" (p. 135). It is in pluralist thinking that states comply with the rules and norms of international society, also

because they regard these as having both moral and legal authority; an assumption which realists oppose arguing that states only accept such regulations, if it is in their national self-interest (Wheeler, 1992, p. 467). Solidarists, on the other hand, insist that state sovereignty enjoys no prerogative over humanity and that there is indeed such thing as universal solidarity connecting humans across the globe (Bellamy, 2003, p. 321). They draw an image of international society in which individuals are the ultimate members, making them legitimate subjects with rights and duties in international law; as Cutler (1991) has put it, "the most profound component of the [Solidarist] world view is the assumption that there is a universal standard of justice and morality against which the actions of states [and individuals] may be judged" (p. 48). Therefore, states are obliged to collectively intervene for humanitarian purposes in the affairs of another country in cases of extreme human suffering; and since universal standards for such atrocities exist, agreement is possible as to when abuses should trigger humanitarian interventions (Wheeler, 1992, p. 468).

Pluralists, however, fear for potential negative effects on order in the international system; considering the alleged absence of a consensus on guidelines for the practice of unilateral humanitarian interventions, they are concerned about the danger of states acting in line with their own moral principles, thereby threatening the overarching architecture (Wheeler, 2002, p. 29). As Jackson (2000) pointedly observed in a classical Pluralist case, "in my view, the stability of international society, especially the unity of the great powers, is more important, indeed far more important than minority rights and humanitarian protections in Yugoslavia or any other country - if we have to choose between those two sets of values" (p. 291). Even R. J. Vincent[14] (1987), usually rather considered a proponent of the Solidarist School, has warned against granting to individual states the right to humanitarian interventions, since this would "issue a licence for all kinds of interference, claiming with more or less plausibility to be humanitarian, but driving huge wedges into international order" (p. 114). Others have argued that it is the distribution of power that enables the strong states to enforce their culturally specific norms and values, e.g. human rights upon

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[14] R. John Vincent (1943-1970) developed his work in the context of the Pluralist-Solidarist framework established by Bull (under whom he also wrote his doctoral work), having attempted to escape the latter's concern with human rights law in the international society, namely that it would inevitably threaten the basic foundations of the society of states, i.e. sovereignty and non-intervention. As part of his 'basic rights project', Vincent aimed at paving the way for a global cosmopolitan culture with consensus on essential values. He was therefore viewed as an opponent of the Solidarist wing of the English School (Gonzalez-Pelaez & Buzan, 2003, p. 322).

the weaker ones, for which the principle of state sovereignty is the only means to protect themselves (Bellamy, 2003, p. 324); if the international community allowed humanitarian interventions to occur, it would accept that such activities were driven by "the cultural predilections of those with the power to carry [them] out" (Brown, 1993, p. 113). For Bull (1977), the critique of the notion of humanitarian intervention was based on the idea that any such action would have detrimental implications for human well-being in the long run, as the latter's protection and promotion is fundamentally depended upon the prevalence of order in the international system (p. 22); a perception which is referred to by philosophers as 'rule consequentialism': "the well-being of all individuals is better served by a legal rule that prohibits humanitarian intervention than by allowing it in the absence of agreement over what principles should govern such a right" (Mason & Wheeler, 1996, pp. 101-102).

Despite warning against granting individual states the right to intervene in other countries' affairs for humanitarian purposes, Vincent at least recognises such potential obligation in certain exceptional cases on the part of the international community at large. Jointly with P. Watson (1993) he argues that "states should satisfy certain basic requirements of decency before they qualify for the protection which the principle of non-intervention provides (p. 126). On other occasions, he became even more explicit by proposing that, in view of gross human rights violations by states, "there might fall to the international community a duty of humanitarian intervention" (Vincent, 1987, p. 127). Teson (1988) follows this line of reasoning as he argues that "a government that engages in substantial violations of human rights betrays the very purpose for which it exists and forfeits not only its domestic legitimacy, but its international legitimacy as well" (p. 15). Smith (1989), in a similar argument, explicitly refers to individuals as subjects in international law, in that he notes, "the rights of states rest on the rights of individuals. (...) A state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty" (p. 74).

There remains the question of the ultimate arbiter with the authority to invoke such coercive intervention in line with Solidarist notions, if the regime in question has violently disregarded its obligations towards the country's people. The judicial group of the so-called 'Restrictionists' argues that any intervention is unjustifiable under the UN Charter, unless it is explicitly authorised by the Security Council; an endorsement which can only be granted in

cases of threats to international peace and security, but not in reference to humanitarian norms alone. A 'Counter-restrictionist' position, which most Solidarists would tend to adhere to, has been expressed by Wheeler (2002); he argues that "there is support for a legal right of humanitarian intervention in both the UN Charter and customary international law. The contention is that the promotion of human rights should rank alongside peace and security in the hierarchy of UN Charter principles" (pp. 41-2). Here, reference is made to Charter Articles 1(3), 55 and 56, obliging member states to cooperate in the furthering of human rights[15]. While Teson (1988) derives from this an equal importance between the promotion of human rights and the prevention of international conflicts (p. 131), others have gone even further by claiming that, if the Security Council failed to authorise humanitarian interventions in light of gross human rights abuses, individual states should take on this responsibility themselves; Reisman and McDougal (1973), e.g. argue that if this were not the case, "it would be suicidally destructive of the explicit purposes for which the United Nations was established" (p. 414).

However, even in the latter case a number of criteria need to be satisfied for any humanitarian intervention in line with Solidarist thinking to be authorised; Wheeler (2002) has established four threshold conditions to be met prior to such invocation:

1. The circumstances have to qualify as a 'just cause'[16] or 'supreme humanitarian emergency'[17] situation, highlighting the exceptional nature of the considered atrocities;

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[15] More specifically, these articles state: (Art. 1) The purposes of the United Nations are (3) to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; (Art. 55) With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion; (Art. 56) All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55 (UN, 1945, Art. 55 & 56).
[16] The 'just cause' criterion is derived from 'just war theory', which attempts to specify conditions for judging if it is just to go to war as well as for how the war should be fought. Its origins go back to classical Greek and Roman philosophers like Plato and Cicero and were added to by Christian theologians like Augustine and Thomas Aquinas (BBC, 2009b, "Ethics of War" sec., para. "Just War"). Concepts as to what constitutes a 'Just Cause' for the application of military force have changed substantially, with Wheeler drawing on today's

2. Applying coercive mans must always be a last resort;

3. The proportionality of the implemented measures has to be guaranteed;

4. And, finally, a high probability must be identifiable that such means will lead to an improvement of the humanitarian situations. (p. 34)

If the above criteria are fulfilled, the argument assumes, intervening for humanitarian purposes has been provided with legitimacy. Nevertheless, Wheeler continues, it may occasionally be necessary to apply coercive means already before the beginning of such atrocities. Indeed, "if we wait until the emergency is upon us, it will become too late to save those who have been killed or forcibly displaced" (Wheeler, 2002, p. 34). Similarly, Bazyler has pointed out that the intervening states "need not wait for the killings to start if there is clear evidence of an impeding massacre". The challenge here, however, is, on the one hand, to determine what precisely amounts to 'clear evidence' and, on the other, to reconcile the apparent contradiction between the 'Just War' requirement as well as the necessity of quick action.

It may be somewhat surprising that the Wheeler list does not include any mentioning of humanitarian motives as a threshold criterion for the application of coercive means in humanitarian emergency situations. It is particularly realist thinkers that frequently refer to motives as determinant of the level of actual humanitarianism involved in an intervention, most often dismissing them outright as fundamentally based on national self-interest. The point of reference here, however, is the intervening state instead of the victims themselves; an approach clearly opposed by Solidarist scholars, whose focus of analysis remains a commitment to certain standards of common humanity, thereby centring their study on the people suffering under human rights abuses, while attempting to further the promotion of justice in world politics (Wheeler, 2002, pp. 37-8). Thus, as Teson (1988) has outlined:

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tendency to also include humanitarian purposes, e.g. in response to acts that "shock the moral conscience of mankind" (Walzer, 1977, p. 102).

[17] Wheeler himself coined the term 'supreme humanitarian emergency' by drawing on Michael Walzer's (1977) notion of 'supreme emergence', and applying it to decisions on humanitarian interventions. A 'supreme humanitarian emergency' then exists when "civilians in another state are in imminent danger of losing their life or facing appalling hardship, and where the only hope of rescue is outside military intervention (Wheeler, 2003, p. 173).

The intervenor must also employ means that are consistent with the humanitarian purpose. But unless other motivations have resulted in further oppression by the intervenors (...) they do not necessarily count against the morality of the intervention (...). The true test is whether the intervention has put an end to human rights deprivations. This is sufficient to meet the requirements of disinterestedness, even if there are other, non-humanitarian reasons behind the intervention. (pp. 106-7)

3.2. Realism, Constructivism and the Welsh School: Further Criticising the Solidarist Notion of Humanitarian Intervention

Realists tend to object to any legitimisation of unilateral humanitarian intervention on four different grounds (Wheeler, 2002, p. 29), some of which are similar to, or indeed overlapping with Pluralist notions: firstly, it is their belief that the alleged humanitarian concerns are naturally intended to obscure the actual aspiration behind, namely the pursuit of national self-interests. Franck and Rodley already argued back in 1973 that the authorisation of interventionist means for self-defence purposes under the UN was sufficiently vulnerable to abuse by states; thus, no additional mechanism should be established, allowing countries to further their particular interests against those of others with the legitimacy of manipulated UN principles (p. 290); secondly, it is very unlikely in Realist eyes that states will put in jeopardy the lives' of its soldiers and accept the significant economic costs often linked to military interventions, without its own vital interests being at stake in such an operation. Thus, the best-case scenario is a coincidental overlapping of the promotion of self-interest and an improvement of the humanitarian situation; thirdly, they insist that states always apply humanitarian principles selectively, which would be linked precariously to interventionist notions, if such operations were legalised. Indeed, as Franck and Rodley (1973) have reminded us, "one is not encouraged by the blatant failure of the international community or of states with the undeniable power to effect rescue to save Jews (…) to intervene with force on behalf of the Armenians (…) to rescue the Hutu of Burundi (…) to aid the Biafrans in their struggle for independence" (p. 288), and all these atrocities came long before those listed above in the course of the 1990s; finally and evidently linked to the second aspect, Realists tend to believe that a person's identity as a

citizen of a particular state forms the outer boundary of their moral duties, meaning there is no such thing as a responsibility to put an end to 'barbarities beyond borders' by risking the lives of a state's own people. Both citizens and their state are mutually dependent, in that the former "should be morally concerned only with the activities of their own state, and the latter is responsible to and for its citizens alone" (Parekh, 1997, p. 56); an argument most drastically expressed by Huntington (1992), who stated that "it is morally unjustifiable and politically indefensible that members of the [U.S.] armed forces should be killed to prevent Somalis from killing one another" (p. 338).

Beyond the Realist critique of humanitarian intervention, another grand School in International Relations has joined the debate, namely Constructivists. Although their links with the English School have been well-acknowledged[18], they have still put forward doubts as to the foundations of the Pluralist-Solidarist schism. While Pluralists assume international society to be an association for practical purposes, fundamentally based on the notion of mutual recognition, which permits states to follow their diverse interests[19], Constructivists believe in a 'mutually constitutive relationship' between states and international society, as part of which "different types of state have populated (and constructed) different types of international society" (Bellamy, 2003, p. 327). If one then accepts, as Constructivists do, "that membership of the society influences the identity (and hence the interests and values) of its members, the idea that an international society based on non-intervention allows diverse units to pursue divergent paths falls apart" (Bellamy, 2003, p. 327). It is for this reason that Constructivist writers tend to examine how the shifting global normative framework influences and shapes the exercise of humanitarian interventions, with the former in this view being composed of a dynamic pool of social relationships, representing a clear rejection of the 'logocentrism' in the Pluralist-Socialist schism. This 'logocentrism', according to Dunne and Wheeler (2004), has led to the English School's concern with such alleged oppositions as human rights or sovereignty; and intervention or non-intervention (p.

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[18] Tim Dunne (1995) has argued that the English School was the precursor to today's Constructivist approach in International Relations, with a number of Constructivists, including Wendt (1999), Ruggie (1998) and Finnemore (1996), having endorsed this assumption. Indeed, similarities in their approaches are evidently identifiable: e.g., as English School writers are concerned with the ways in which states construct international society, Constructivists investigate how structures create identities and interests, and thus influence conduct in international relations (Bellamy, 2003, p. 327).

[19] As Reus-Smit (2002) has noted, "the image here is of sovereign states with different identities and interests working to maintain a pluralist, practical association, the framework of which is a web of functional, procedural institutions" (p. 503).

17), while Constructivists distinguish between various further options beyond these fixed and contrasting poles.

Finally, it seems relevant to broaden the spectrum of this theoretical overview by including some of the Welsh School's[20] contribution to the debate, as they have cast important doubts on the comprehensiveness of the Pluralist-Solidarist debate; doubts which have proved to be of much relevance for the emergence of R2P, as will be seen in the next section of this chapter. Welsh School scholars reject the English School's state-centric approach to humanitarian intervention, arguing that today's threats to security tend to emanate more often from within states (see: Buzan, 1991; Thomas, 1987), and are regularly related to issues of statebuilding and economic development, rather than to required protection against military threats. Indeed, in their view so-called rouge regimes amount only to a marginal extent of the world's current humanitarian challenges, especially compared to daily catastrophes, such as malnutrition, poverty and diseases; it is therefore structural violence instead of organised military violence that poses the real danger nowadays (Bellamy, 2003, p. 329). Most contemporary English School writers, however, seemingly continue to apply Vincent's (1974) classic definition of intervention, also regarding humanitarian emergency situations:

> [An] activity undertaken by a state, a group within a state, a group of
> states, or an international organisation which interferes coercively in
> the domestic affairs of another state. It is a discrete event, having a
> beginning and an end, and is aimed at the authority structure of the
> target state. It is not necessarily lawful or unlawful, but it does break
> a conventional pattern of international relations. (p. 3)

Jointly with an exclusive focus on coercive interventions aimed at the authority structure of the target state, the definition also contests that such actions represent 'discrete events' with a clear beginning and end; both assumptions which Welsh School scholars classify as

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[20] The Welsh School is less of a wider approach to the study of International Relations as such; rather, it is considered as one of the dominant approaches to the field of security studies, arguing that in a fundamentally changed world after the end of the Cold War, any state-centric attempts to explain world politics can no longer be satisfactory. Indeed, some perceive this 'new world' as moving from the old Westphalian model to a newly emerging world society (Booth, 1991, pp. 314-5); a development which, at least from a security perspective, is viewed as advantageous, as such scholars tend to regard the state as the origin of much insecurity (Raureck, 2005, p. 4).

outdated, since they consider it naive to ignore the constant impact, particularly of strong states on events in far-away regions in an ever more globalised and intertwined world; just as it would in their view be similarly foolish to disregard the every-day influence of international financial institutions, such as the World Bank or the IMF, on developing countries and their humanitarian challenges (see: Williams, 2001). Therefore, Welsh School writers argue that the notion of an intervention being such 'discrete event' obscures the fact that the parties involved may for long have been implicated in a mutual relationship, and that any economic or diplomatic means also constitute forms of intervention, long before coercive activities are seriously envisaged. The difference between the latter two methods has been particularly emphasised by Jackson (2000), who classifies the former (diplomatic and economic means) as challenges to a state's autonomy, which is inherently incomplete in any case, while the latter (military actions) is considered a direct threat to a state's sovereignty (p. 251).

The English School's above indicated prioritisation of form over content of humanitarian intervention has been criticised as being a direct consequence of their state-centric world view of a society of states. If, however, one broadened the approach and acknowledged the intertwined character of today's international relations, with intervention going far beyond the pure application of military means, space has been provided for an inclusion of aspects like conflict prevention and post-conflict rebuilding; indeed, rejecting the notion of humanitarian interventions as discrete events then requires any justification of coercive means to be accompanied by such considerations (Bellamy, 2003, p. 331). It is precisely at this point that the concept of the responsibility to protect with its tripartite division into prevention, reaction and rebuilding enters the stage, thereby widening the debate beyond the margins of the much narrower notion of humanitarian intervention, as will be further outlined in the next section. The English School, however, classifies a supreme humanitarian emergency as a case of "state-sponsored mass murder and ethnic cleansing. The stress here is on the direct man-made nature of the problem and its immediacy, both of which lend themselves to military solutions. In this context, the link between the legitimacy of the intervention and commitment to prevention and rebuilding is weak" (Bellamy, 2003, p. 331).

3.3. A Newly Emerging Norm? Content and Discussion of the Responsibility to Protect

As suggested in the introduction, the term responsibility to protect was first coined by the International Commission on Intervention and State Sovereignty in a comprehensive and elaborate report on the subject at the end of 2001. Subsequently, three further documents emerged out of UN channels, dealing somewhat explicitly with this increasingly prominent concept: following the ICISS deliberations, it was the High-Level Panel on Threats, Challenges and Change, a Commission formed by then Secretary-General Kofi Annan with the task to submit an assessment of likely future challenges to peace and security in the world at large, which in its 2004 document *A More Secure World: Our Shared Responsibility* reiterated the notion of R2P by ambitiously referring to it as an "emerging norm" (UN, 2004, p. 66). Just one year later, Kofi Annan himself endorsed this terminology as part of his report to the General Assembly *In Larger Freedom - Towards Development, Security and Human Rights for All*, which followed on from proposals of the High-Level Panel and set out a reform agenda for the United Nations. The respective recommendations were consequently considered by the heads of state and government at the 2005 World Summit, who equally incorporated notions of R2P into the *Outcome Document* of their gathering. Thus, the responsibility to protect has been the subject of consideration in four divergent institutional settings within a comparable short period of time, perhaps indicating a degree of prominence which the concept has gained with the international community.

Still, uncertainty has remained as to what R2P precisely signifies, as all four texts draw a somewhat deviating picture regarding its content. Indeed, as Stahn[21] (2007) has pointed out, "a closer study of the relevant reports and documents reveals considerable divergences in opinion. Different bodies have employed the same notion to describe partly different paradigms" (p. 101). Thus, it seems required to attempt a clarification in this context by outlining in more detail how the two most relevant of the above texts, namely the ICISS report and the *Outcome Document*, seek to define the responsibility to protect. Such somewhat exclusive focus appears appropriate, as the former is arguably the most

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comprehensive and directly related work on the concept, thereby marking a point of reference for any of the subsequent deliberations, while the latter best represents the opinion of the international community and constitutes "the most authoritative of the four documents in terms of its legal value" (Stahn, 2007, p. 101).

Following above outlined Solidarist principles, the central idea of the ICISS's report is a shift away from the Westphalian notion of sovereignty as control to perceiving it more in line of a responsibility, "both external (towards other states) and internal (towards citizens), as a result of the dramatically growing impact of international norms on human rights and of the concept of human security" (Focarelli, 2008, p. 194). Domestically, such responsibilities require states to protect their own people from "avoidable catastrophe - from mass murder and rape, from starvation - but (...) when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states" (ICISS, 2001, p. VIII). In the latter case, 'military intervention for human protection purposes[22],' as thoroughly discussed in the preceding section, may in exceptional and extraordinary cases have to be implemented. Indeed, the link between R2P and the notion of humanitarian intervention is explicitly provided for by the ICISS report itself, which begins by highlighting that it deals with "the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive - and in particular military - action, against another state for the purpose of protecting people at risk in that other state" (ICISS, 2001, p. VII).

However, the Commission's newly-developed concept of R2P goes beyond the doctrine of humanitarian intervention in three fundamental ways: first, by altering the terminology from the 'right to intervene' to the 'responsibility to protect', the report attempts to change the focus to those in need of support, rather than approaching intervention from the perspective of the interveners; second, the Commission seeks to resolve the contradiction between sovereignty and intervention by introducing the concept of a shared responsibility, to be borne primarily by the individual state, but in cases of inability or unwillingness by the

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[22] The ICISS deliberately dropped the term 'humanitarian intervention' in favour of '(military) intervention for humanitarian purposes'. This change was particularly encouraged by humanitarian agencies and organisations, criticising the former for its alleged militarisation of the word 'humanitarian'. "Whatever the motives of those engaging in the intervention, it is anathema for the humanitarian relief and assistance sector to have this word appropriated to describe any kind of military action" (ICISS, 2001, p. 9). The Commission equally picked up perceptions of certain political circles, which had expressed concerns that "the use in this context of an inherently approving word like 'humanitarian' tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible" (ICISS, 2001, p. 9).

wider international community; third, the conceptual parameters of humanitarian intervention are expanded on by underlining that any successful response to mass atrocities needs to go beyond the aspect of reaction, in that it also incorporates notions of preventive engagement as well as efforts at rebuilding thereafter (Stahn, 2007, p. 103). While the first two aspects largely draw on a theoretical basis derived from previously outlined Solidarist conceptions, the third notion is evidently related to Welsh School influences, as it exceeds the margins of a purely militarily oriented interpretation of intervention.

Regarding the concept's foundations, a variety of sources is presented by the ICISS report in an attempt to provide it with a degree of legal value; these sources comprise:

1. Obligations inherent in the concept of sovereignty;

2. The responsibility of the Security Council under Article 24 of the UN Charter for the maintenance of international peace and security;

3. Specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;

4. The developing practice of states, regional organisations and the Security Council itself.
   (ICISS, 2001, p. XI)

The Commission assumes that limits to sovereignty already arise from the UN Charter and that, by signing, states acknowledge and accept the responsibilities connected to their sovereignty under the UN system. One of the key responsibilities in this context emanates from Article 1.3, in which all member states are called upon to promote and encourage respect of human rights and fundamental freedoms; an obligation which is further strengthened by later covenants (Seekings, 2004, pp. 2-3). Indeed, The ICISS report (2001) argues that "human rights have now become a mainstream part of international law, and respect for human rights a central subject and responsibility of international relations" (p. 6). The Commission then continues by highlighting some 'key milestones in this progression', namely the *Universal Declaration of Human Rights*; the four *Geneva Conventions* and the two *Additional Protocols* on international humanitarian law in armed conflicts; the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*; the two 1966

covenants relating to civil, political, social, economic and cultural rights; and the 1998 adoption of the statute for the establishment of an International Criminal Court (ICISS, 2001, p. 6).

This 'modern' notion of sovereignty, according to the Commission, has come to be widely acknowledged in the international community; indeed, its report holds:

> The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission heard no such claim at any stage during our worldwide consultations. It is acknowledged that sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. (ICISS, 2001, p. 8)

Thus, if these responsibilities are not lived up to, thereby causing or not preventing mass scale atrocities, it is in the nature of the concept of R2P that they shift towards the international community. Ideally, the emergence of crises would already be prevented by states' genuine commitment to addressing the root and direct causes of humanitarian disasters. In cases where preventive measures, which are described as "the single most important dimension of the responsibility to protect" (ICISS, 2001, XI), do not suffice anymore to avoid such catastrophes from mounting, the international community has the responsibility to react to the situation by applying means ranging from "development assistance to economic sanctions, but [which] can ultimately also take the form of military intervention" (Focarelli, 2008, p. 196).

For the latter to be authorised the Commission holds that "the Security Council should be the first port of call on any matter relating to military intervention for human protection purposes" (ICISS, 2001, p. 53). This wording is unarguably not particularly strong and, indeed, Stahn (2007) has pointed out that the ICISS "did not categorically exclude the possibility that the responsibility to protect might ultimately be assumed by the General Assembly, regional organisations, or coalitions of states if the Security Council fails to act (p. 104). In fact, the report itself rather explicitly suggests that in such cases a careful evaluation should be undertaken as to where most harm lies: "in the damage to international order if the Security

Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by" (ICISS, 2001, p. 55). The Commissioners have also established a number of threshold criteria, applicable to both the Security Council and the UN member states, in an attempt to define under what circumstances such authorisation of military interventions may indeed be envisaged; following largely Solidarist notions, as exemplified by Wheeler's list above, these comprise the following five, namely just cause, right intention, last resort, proportionality of means, and a reasonable prospect of success (Stahn, 2007, p. 104); of these five, the just cause criterion has been further subdivided into the following:

> serious and irreparable harm occurring to human beings, or immanently 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. (ICISS, 2001, p. XII)

For the significance of this particular criterion, the Commission goes on to further specify what the above precisely means; it argues that a just cause would typically be existent in view of the following circumstances:

1. Actions defined by the framework of the 1948 Genocide Convention that comprise large scale threatened or actual loss of life;

2. The danger or actual occurrence of large scale loss of life;

3. Various manifestations of 'ethnic cleansing';

4. Crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions and Additional Protocols and elsewhere, that involve large scale killing or ethnic cleansing;

5. Situations of state collapse with the potentially resulting exposure of the population to mass starvation and/or civil war; and

6. Overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or request assistance, and considerable loss of life is occurring or threatened. (ICISS, 2001, p. 33)

It is worth noting that, although the authors emphasise that the primary intention of any humanitarian intervention must be to prevent or end a humanitarian emergency, it remains willing to accept that intervening parties are likely to have other, rather self-interested motives. Indeed, as Seekings (2004) points out, "the ICISS also acknowledges that the costs and risks of an intervention 'may in fact make it politically imperative' for intervening parties to have more than simply altruistic motives" (p. 12); an acknowledgment which provides yet another linkage to Solidarist thinking as illustrated by Teson in the preceding section.

The *Outcome Document* of the World Summit in 2005 applies a somewhat different terminology when referring to R2P[23]. Unlike earlier documents, it no longer speaks of an 'emerging norm', nor is it as precise regarding conditions for military intervention as e.g. the ICISS report. Indeed, the former only refers to genocide, war crimes, ethnic cleansing and crimes against humanity as threshold criteria for an invocation of R2P as such, while failing to define any more specific factors for a resorting to coercive means in humanitarian crises situations. Moreover, it just implicitly takes up the distinction between the three different responsibilities to prevent, to react and to rebuild, dealing with each in rather individual terms and with divergent degrees of support. While the responsibility to prevent is merely

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[23] R2P is explicitly dealt with under the heading 'Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity' in Paragraphs 138 and 139 of the *Outcome Document*, which read as follows: § 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 organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out (UN, 2005, p. 30).

presented as a general appeal, the document's wording is more comprehensive with regard to reactive measures, albeit with limitations on the question of collective action through the Security Council under Chapter VII, with states barely reaffirming their 'preparedness' to take such action and exclusively 'on a case-by-case basis'; although precisely this provides an important linkage to the ICISS's report, in that the *Outcome Document* equally "leaves the door open to unilateral response through its 'case-by-case' vision of collective security and a qualified commitment to act in cooperation with regional organisations ('as appropriate')"[24] (Stahn, 2007, pp. 108-109). Finally, the responsibility to rebuild seems to cast even less shared support, as the assembled heads just conveyed their intention to assist states, 'as necessary and appropriate', in building capacity to protect their populations, and to help those endangered before crises and conflicts erupt (Stahn, 2007, p. 110).

The wording of the *Outcome Document* reflects a compromise achieved through an intensive bargaining process between member states with partly very divergent opinions on the subject. Indeed, as Focarelli (2008) has suggested, a considerable number of states at the gathering "were strongly against humanitarian interventions implementing the responsibility to protect doctrine and [at times] opposed it even if intervention should be authorised by the Security Council, [with some denying] that the responsibility to protect rule is 'emerging'" (p. 201). This was partly derived from fears that the concept remained too vague, making it vulnerable to abuse particularly by the strong states, while concerns were equally expressed concerning R2P's compatibility with the UN Charter, as there was supposedly no common responsibility for states beyond the protection of its citizens as well as the UN's mandate to safeguard international peace and security (Stahn, 2007, p. 108). Especially members of the so-called Non-Aligned Movement (NAM)[25] criticised that the most relevant of the three aspects of R2P was military intervention. For them, "the doctrine is nothing other than a mere expedient of the great powers to impose their interests and

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[24] A number of states, most notably the United States, insisted that collective action under the concept of R2P must not rule out action absent Security Council authorization. The U.S., e.g. argued that there "may be cases that involve humanitarian catastrophes but for which there is also a legitimate basis for states to act in self-defence" (Stahn, 2007, p. 109).

[25] The Non-Aligned Movement (NAM) currently comprises 118 developing countries and generally aspires to represent the political, economic and cultural interests of the developing world. Its origins are traced back to a meeting among 29 Asian and African states in 1955. In 1961, a number of criteria were laid out to determine the circumstances under which a state was eligible for membership; such conditions included non-membership in alliances or defence pacts with the major powers in an attempt to prevent its members from getting dragged into Cold War power games (BBC, 2009d, paras. 1-3).

values on the weakest states" (Focarelli, 2008, p. 202) in that, "on the one hand, [the concept] is aimed at reducing sovereignty in the name of universal humanitarian considerations and, on the other hand, it expands sovereignty itself in an interventionist sense, thereby only limiting the sovereignty of the weakest states while extraordinarily reinforcing that of the strongest ones" (Focarelli, 2008, p. 202). It is in the above fears that both Pluralist and Realist objections to the concept of humanitarian intervention, as comprehensively outlined in the previous part of this work, have been voiced in an official political discourse. Finally, a number of states questioned the legal nature of R2P and rather attempted to frame it in the context of a 'moral principle'; the U.S., e.g. displayed such tendencies by holding that "the Charter has never been interpreted as creating a legal obligation for Security Council members to support enforcement action in various cases involving serious breaches of international peace" (Focarelli, 2008, p. 204).

Particularly the wording of the *Outcome Document* and the intensive debate leading up to its conclusion raise serious doubts regarding the status of R2P. It is difficult to imagine how, "without support from states as a whole, an 'emerging norm' [could] 'emerge' and credibly be binding upon them" (Focarelli, 2008, p. 193). Indeed, it has been seen that R2P as a coherent concept does not only lack support from 'weaker' states apprehending the interference into their domestic affairs through 'stronger states', objections of some degree equally emanate from countries, such as the permanent SC members China, Russia and the U.S.. Others have argued in this context that the terminology 'emerging norm' is in any case both "overoptimistic and overpessimistic at the same time" (Stahn, 2007, p. 110). This is because various features have long been fundamental part of international law, with others remaining too innovative as to constitute an accepted practice. The latter includes the linking of human security with certain duties, namely a collective responsibility to act in light of severe violations of human rights. For Stahn (2007), "this is novel, [as] so far such duties have been derived (if at all) from the (rather vague) concept of solidarity" (Stahn, 2006, p. 115). As suggested above, however, an obligation to protect seemed unacceptable to many, leading to a dropping of this language during the negotiations for the *Outcome Document*. Yet, most other aspects of the concept do not appear to be as novel as occasionally claimed. Regarding sovereignty as responsibility, it is already since the 17th Century that attempts have been undertaken to safeguard people from arbitrary state authority; and especially

since the end of World War II with the adoption of the UN Charter as well as the emergence of key human rights instruments, this altered understanding of sovereignty has gained wide recognition (Stahn, 2007, pp. 111-112). Likewise, the tripartite division of the responsibility to protect has been linked to the multidimensional and multiphased peacekeeping missions of the 1990s, which were inspired by then Secretary-General Boutros Boutros-Ghali and his widely read report *An Agenda for Peace*[26]. Finally, the criteria for intervention, as established by the ICISS report, exhibit an even longer historical lineage, with at least four being fundamentally embedded into the already mentioned just war doctrine with its origins in classical Greek and Roman philosophy (Stahn, 2007, p. 114).

Yet, four aspects have been put forward to explain why, despite being so entrenched in already existing international law, R2P has still been interpreted as a major step in the protection of human rights: first, it was approved as part of the largest gathering of heads of state and government in history, providing it with a particular political force, also from states that had not previously been signatories of relevant conventions in this context; second, the prevention of genocide was linked to the prevention of other atrocities, namely ethnic cleansing, war crimes and crimes against humanity, thereby establishing comprehensive margins for prevention and reaction efforts; third, Paragraphs 138 and 139 at least attempt to provide for a set of tools, actors and procedures regarding a potential operationalisation of R2P; and fourth, the negotiation at the Summit brought to the fore a long smouldering debate, forcing policy-makers at the highest level to find agreement on the shifting notions of sovereignty as well as the need to prevent human atrocities. Indeed, it is worth noting that the respective conclusions on the concept remained part of the *Outcome Document*, while other controversial issues, including the proliferation of weapons of mass destruction (WMD) were ultimately dropped, perhaps again indicating a degree of genuineness and prominence which R2P has obtained with the international community (Luck, 2008, p. 3).

In what follows next, an attempt will be undertaken to operationalise R2P with respect to Myanmar by examining the extent to which the established criteria for the concept's

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[26] The report *An Agenda for Peace* by then Secretary-General Boutros Boutros-Ghali was commissioned by the Security Council in January 1992 and presented analysis and recommendations on how to strengthen and improve the UN's capacity to sustain world peace. The report was particularly significant for its definition of four consecutive phases of international action to prevent or control conflicts and the emphasis on the relevance of their coherence; the four phases comprised: 1. Preventive Diplomacy; 2. Peacemaking; 3. Peacekeeping; and 4. Peacebuilding (Global Policy Forum, 2002, paras. 1, 3 & 4).

application are fulfilled on the ground; an assessment which will ultimately also assist in defining the potential overall scope for such endeavour. Thereafter, the international community's experiences in dealing with the Burmese regime will be analysed in an effort to draw conclusions for how the relevant stakeholders should approach the country's leadership in order to effect change in line with principles postulated by R2P. For now, it remains to conclude that most of the academic schools presented in the preceding section have somewhat influenced the responsibility to protect. Indeed, Solidarist notions are evidently identifiable in some of its core assumptions, such as that human beings enjoy universally agreed rights, to be upheld by their respective state; and that if the latter does not live up to these responsibilities, it is the international community, potentially through military interventions to ensure the compliance with such legal obligations. Beyond that, Welsh School conceptions have inspired the concept's expansion beyond the idea of coercive humanitarian intervention to also include efforts of prevention and rebuilding, as well as more non-coercive means regarding reaction strategies. Ultimately, Pluralist and Realist concerns have equally been expressed, particularly by members of NAM during the negotiations of the *Outcome Document* at the World Summit, having contributed to a degree of emasculation of the principle in the final wording of the text.

4.   On the Responsibility to Protect in Myanmar: Relating the Subjects of Analysis

4.1.   Between Natural Disaster and Crimes against Humanity: The Question of Invocation

When French Foreign Minister Bernard Kouchner proposed the imposition of international relief efforts on the Burmese junta through invoking R2P in the Security Council following the military's reluctance to accept and cooperate with international humanitarian assistance in the aftermath of cyclone Nargis, his proposal met with substantial scepticism from various countries, senior UN officials as well as a number of relief agencies. The voiced criticism did not only centre around traditional Pluralist and Realist notions of non-interference in domestic affairs, as expressed by China and Russia; it also included concerns that these actions would jeopardize any still-possible cooperation from the generals, with humanitarian organisations additionally pointing out that attempts to drop supplies without an efficient support network on the ground run the risk of being inefficient or perhaps even counterproductive and dangerous (Evans, 2008, para. 3). The much more fundamental question, however, derives from scepticism as to whether or not the circumstances in the aftermath of the cyclone indeed fulfilled the criteria for an invocation of R2P.

It is at this point that a significant difference between the ICISS report and the *Outcome Document* of the World Summit takes effect: while the former, as suggested in the preceding section, explicitly refers to "overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened" (ICISS, 2001, p. 33), the *Outcome Document* is far more restrictive in scope, providing for R2P only concerning the protection of people from "genocide, war crimes, ethnic cleansing and crimes against humanity" (UN, 2005, paras. 138-139). This intentional exclusion of the above disasters from the World Summit text could not have been ignored, as indeed attempts "to reintroduce [R2P] by the backdoor (…) would [have strengthened] suspicion of Western motivations and reinforce cynicism of Western tactics [with] the counter-productive effect of damaging [the concept] permanently across Asia, if not more widely in developing countries" (Thakur, 2008, paras. 6 & 9). Gareth Evans (2008), Co-Chair of the initial ICISS report, was equally explicit in his warning by emphasizing that invoking R2P in this particular case would have led to the existing consensus on the

norm "evaporate[ing] in the global south. And that [would have meant] that when the next case of genocide or ethnic cleansing comes along we will be back to the same old depressing arguments about the primacy of sovereignty that led us into the horrors of inaction in Rwanda and Srebrenica in the 1990s" (para. 8).

However, if the actions of the generals, or the lack thereof, in the aftermath of Nargis constituted an act of crimes against humanity, as indeed a number of scholars have argued (see: Thakur, 2008), then the introduction of the concept in the Security Council as part of a draft resolution could have been envisaged, albeit with invariably little prospect of success. Yet, it is not the intention of this work to determine retrospectively what could have been done in the past; rather, this analysis attempts to examine how the responsibility to protect doctrine should be dealt with in relation to Myanmar under the existing circumstances. Accordingly, it is required to investigate the extent to which wider patterns of violence in line with genocide, war crimes, ethnic cleansing and crimes against humanity can be identified in the country, that would potentially justify the invocation of the concept in the underlying case study. In this context, Human Rights First (HRF), an American-based international human rights organisation, reports that both "rights groups and the United Nations have documented widespread and systematic human rights abuses by the Burmese junta against its own population since it seized power decades ago" (HRF, 2007, para. 6). Indeed, two years before Nargis hit the country, it was then Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, who described the human rights violations in Myanmar as "widespread and systematic" in that they are not "simply isolated acts of individual misconduct by middle- or low-ranking officers, but rather the result of a system under which individuals and groups have been allowed to break the law and violate human rights without being called to account" (UN, 2006b, p. 9). But also after the devastating cyclone, the regime's human rights record remained bleak, with some organisations arguing that the situation had further deteriorated in this respect (HRW, 2008, para. 1). The below list provides an overview of some of the reported and documented violations, without attempting to be exhaustive:

1. Forced replacement of ethnic minority groups. An estimated 2 million Burmese live abroad after fleeing from repression, violence as well as forced displacement by the military regime (HRF, 2007, para. 7). Between 1996 and 2002 alone, some 2500

villages were destroyed, relocated or otherwise abandoned in eastern Myanmar, having contributed substantially to the about 633,000 people who remained internally displaced in the latter year (Refugees International, 2006, p. 4).

2. Forced labour. The junta has exploited both displaced and relocated people for its so-called 'state sponsored' infrastructure and building projects; an act which has been described as "bordering on slavery" (Silverstein, 2006, "Human Rights" sec., para. 2). Additionally, peasants have on numerous occasions been forced to grow crops and provide food to the army, with their harvest and animals being seized and houses being burned in cases of refusal or failure (Silverstein, 2006, "Human Rights" sec., para. 2).

3. Child soldiers. Based on interviews by Human Rights Watch (HRW) with former soldiers, as many as 20% of the approximately 350,000 combatants in Myanmar are believed to be children between 10 and 18 years of age. This is the highest figure of child soldiers in the word, with numbers continuing to be on the increase. Army personnel often await the boys at train and bus stations, markets or other public places. Being threatened with jail in case of refusal and without the opportunity to contact their families, the children are then sent to army camps for weapons training, where beatings are common practice and punishments for escape attempts generally brutal (HRW, 2002, pp. 2-3).

4. Rape as a state policy. There are documented cases of the systematic use of rape by the military as a tool to intimidate and implant anxiety amongst both ethnic minority and anti-government groups. The report *System of Impunity* by the Woman's League of Burma[27] (WLB) suggests that woman and girls in both ethic states and central Myanmar continue to be exposed to rape by military personnel, including gang rape, murder, sexual slavery and forced marriage. Such acts prevail in civil war zones, but also in ceasefire and non-conflict areas, and are generally committed with impunity (PeaceWoman, 2004, paras. 2-3).

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[27] The WLB is an umbrella organisation, currently comprising twelve women' initiatives of different ethnic background from across the country. It was established in 1999 with a view to "work for women's empowerment and advancement of the status of women, and to work for the increased participation of women in all spheres of society in the democracy movement, and in peace and national reconciliation processes through capacity building, advocacy, research and documentation" (WLB, 2009, sec. "home").

5. Enforced disappearance, extrajudicial and custodial killings, as well as torture. 127 known murders of political prisoners were reported over the 20 years between 1988 and 2007 by the Assistance Association of Parents of Political Prisoners of Burma, with acts of torture also being widely documented, ranging from beating to so-called 'motorcycling', kneeling on broken glass or hanging by the arms or feet. These crimes have been particularly accounted for in the eastern Kayin state, where the army is engaged in a violent conflict with the so-called Karen National Union (KNU)[28] (AI, 2008b, paras. 1-3).

Various sources have defined the above acts as crimes against humanity, as specified by the Rome Statute[29] of the International Criminal Court. Particularly in the Kayin state, Amnesty International (2008a) reports, actions by the Myanmar army have comprised "widespread and systematic commission of violations of international human rights and humanitarian law on a scale that amount[s] to crimes against humanity" (sec. "Crimes against Humanity"). The International Human Rights Clinic at the Harvard Law School has reached a similar conclusion; in its 2009 review of official UN documents titled *Crimes in Burma*[30], the institute

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[28] The conflict is said to have its origins in the Second World War, when many Karens assisted the British Army in fighting against the invading Japanese, in return for which they were promised their own state. As this did not materialize following the end of the British colonial rule, the abovementioned KNU and its military wing, the Karen National Liberation Army, began their violent struggle for an independent Karen state. What started in 1949 has persisted until today and is referred to by some as the "the world's longest-running war" (Parry, 2009, para. 1). In the early decades, the KNU functioned as quasi-government in the controlled territories, namely the Irrawaddy Delta, areas north of Yangon as well as the entire Kayin state, in which it collected taxes and provided educational and health services. Since the 1990s, however, the Union has suffered a number of significant setbacks, including essential territorial losses, against an increasingly well-equipped Burmese military (Parry, 2009, paras. 1-11).

[29] In Art. 7(1), the Rome Statute defines crimes against humanity as "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" (UN, 1998, art. 7).

[30] In the 2009 IHRC report *Crimes in Burma*, "five of the world's leading jurists" (IHRC, 2009, p. 105) have commissioned an examination of the extent of "UN knowledge of widely reported human rights abuses in Burma in light of principles of international criminal law" (HRC, 2009, p. 5). They have focused on reported incidences in eastern Myanmar since 2002 regarding acts of forced displacement, sexual violence, extrajudicial killings and torture. For their findings, they did not rely on NGO sources, etc., but exclusively reviewed UN documents, such as UN General Assembly and Human Rights Commission resolutions, and the reports of a number of different Special Rapporteurs (IHRC, 2009, p. 5).

concludes that United Nations bodies have "consistently acknowledged abuses and used legal terms associated with [war crimes and crimes against humanity], including for example that violations have been widespread, systematic, or part of a state policy" (IHRC, 2009, p. 2). It is for this reason that the report classifies the atrocities in the country as "a *prima facie* case of international criminal law violations (…) that demands UN Security Council action" (IHRC, 2009, pp. 2-3).

In line with this reasoning, it would seem justifiable to argue in favour of an invocation of the responsibility to protect in the case of Myanmar. Still, uncertainty remains regarding the legal status of the concept, since none of the four documents referred to in the previous chapter de facto constitutes binding international law under the classic sources as established by the International Court of Justice (ICJ) in Article 38 of its Statute[31], although the *Outcome Document* can certainly claim to enjoy most legal authority. The latter is not only derived from the fact that, for the first time, it was states and not experts or office-holders who agreed on a joint formulation at the World Summit; it was equally remarkable that the Security Council in the operative part of its *Resolution 1674 (2006)[32] on the Protection of Civilians in Armed Conflicts* explicitly reaffirmed Paragraphs 138 and 139 of the *Outcome Document* (Schaller, 2008, p. 3). Thus, Stahn (2007) assumes that "the concept of the responsibility to protect may gradually replace the doctrine of humanitarian intervention in the course of the twenty-first century"; for now, however, R2P remains "in many ways still a political catchword rather than a legal norm, [requiring] further fine-tuning and commitment by states (…) for it to develop into an organizing principle for international society" (p. 120). Schaller (2008) takes a similar stance in this context, arguing that resolutions of the General Assembly, such as the 2005 *Outcome Document*, "may still contribute to the further development of international law in that they voice a legal opinion

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[31] Article 38 of the ICJ's Statute defines what constitutes sources of international law, to be applied by the Court in its rulings. In this context, the document states that the ICJ "shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law" (ICJ, 1945, para. 38).

[32] Resolution 1674 (2006) reserves a full, albeit short paragraph for a reference to the *Outcome Document* in which it *"[r]eaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit *Outcome Document* regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (UN, 2006, para. 4).

of states, relevant for customary international law, or by providing a stimulus for a certain state custom (p. 3).

Yet, the abstract option remains for the UNSC to address itself to R2P, despite the outlined doubts regarding the concept's legal value. Indeed, as it has been described above, the Council has already borne on the responsibility to protect in *Resolution 1674 (2006) on Civilians in Armed Conflicts*; it has also indirectly recalled it in *Resolution 1755 (2007) on the Situation in Darfur*, in which it reaffirmed both the World Summit *Outcome Document* and *Resolution 1674* in relation to the African country. Therefore, it would theoretically be conceivable for the SC to invoke the concept with a view towards crimes against humanity, war crimes, ethnic cleansing or genocide in a state regardless of the highlighted legal concerns. Yet, in practical terms and particularly in the underlying case study, this scenario can certainly be precluded. In fact, the previously described proposal by French Foreign Minister Kouchner was an obvious attempt in this direction. His ambitions, however, did ultimately not even materialise in the SC discussing the humanitarian crises in Myanmar, as particularly Russia and China opposed such initiatives on two occasions; the argument having been in line with both Realist and Pluralist notions that, although the humanitarian situation in the country was alarming, it was fundamentally a domestic affair, not posing any threat to international peace and security, and should therefore not be dealt with in the Council (Marcus, 2008, para. 5). Moreover, already a year earlier China and Russia had vetoed a draft resolution introduced by the UK and the U.S. that, in reference to the more general situation in the country, was intended to urge the military government to ease repressions and release its political prisoners.

The above seems to cast serious doubts as to a potential application of the responsibility to protect to the situation in Myanmar. Not only have considerable uncertainties been expressed regarding the concept's legal value, also the Security Council remains stalled over the country, prohibiting any concerted action on behalf on the international community. It is the position of this paper, however, that such interpretation would be misled; on the contrary, the fundamental embeddedness of most of R2P's provisions in international law, including the prominence of human rights and the resulting restrictions on state sovereignty as outlined in the preceding chapter, allows for a rather straightforward implementation of such aspects through uni- or multilateral efforts. While the invocation of military means

towards a sovereign state remains the exclusive authority of the UNSC, the general international law perspective concerning other coercive instruments, such as unilateral economic sanctions "is one of permissiveness within the limits of humanitarian and human rights law" (Schefer, 2007, p. 1). Indeed, particularly economic sanctions have often been viewed as a "liberal alternative to war" (Pape, 1997, p. 90), in that they allegedly bear the potential of leverage without the severe humanitarian consequences of a military confrontation. Although there is increasing reason to scrutinise such assumptions[33], measures of this kind have developed into a core element of some states' foreign policy (Haas, 1997, p. 74); a tendency most drastically reflected by the U.S., which in 1997 was unveiled by a UN report as having imposed unilateral economic sanctions on more than half of the world's population in 75 countries (Singh, 1999, para. 1). The above interpretation on R2P is equally backed by both the ICISS report and the *Outcome Document*, since neither, as suggested in the previous chapter, precludes the option of individual or groups of states living up to the responsibility to protect beyond the authorisation of the Security Council. For these arguments, it does not question the approach of this paper, if there appears to be no space for an official invocation in relation to the Burmese military regime. Indeed, for all the mentioned reservations and particularly the stalled positions in the UNSC, it seems required to apply whatever policies are deemed necessary without reference to a concept, which in the eyes of some is regarded as inherently coercive and does in the underlying case study not find unconditional support; its principles, however, can continue to provide guidance for states' conduct, in what could be referred to as an unvoiced application of R2P.

Clearly, the enduring atrocities in Myanmar are real and require immediate action on behalf of all relevant stakeholders with influence over the military junta. The appropriate formula,

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[33] Over the past two decades, economic sanctions have increasingly been utilised as a means to attempt resolving political disputes. Indeed, the in-text example on the United States has clearly illustrated how prominent such measures have become with a number of states. However, two simultaneous developments have started to undermine the assumption that these instruments represent a somewhat human alternative to conflict. On the one hand, years of experience and empirical research have revealed that sanctions are anything but consistently effective; on the contrary, there is significant evidence suggesting that they "almost never fully achieve their stated objectives, and (…) often fail completely, having little or no measurable impact on the behaviour of the targeted government" (Shagabutdinova & Berejikian, 2007, p. 60). On the other hand, mounting questions are being asked on the humanitarian consequences of sanctions. Regardless of their effect on the intended recipient, such measures have been seen to often harm precisely those groups they are intended to protect. Indeed, the repercussions tend to be suffered by "the civilian population in the target who are unable to protect themselves and often have little or no influence on the policies which sanctions are intended to change" (Doxey, 1999, p. 9).

as it will be argued in the next section, includes a combination of coercive means in form of targeted sanctions with a significant boost in more engaging measures, such as humanitarian and development aid under the responsibility to react. Although the latter are featured under preventive actions in the ICISS's initial report on R2P, this distinction is not upheld by the *Outcome Document*, nor has it played any relevant role in the academic deliberations on the concept (see: Focarelli, 2008, p. 196). In the same line, it is the position of this paper that, in practical terms, such distinction appears rather arbitrary. With regard to Myanmar, aid policies in combination with targeted sanctions are two sides of the same coin, in that they are intended to put an end to the ongoing crimes against humanity occurring in the country. Military intervention, as it has been strongly emphasised by the ICISS, can only be a last resort in exceptional and extreme cases. Two decades of often increasingly coercive means applied by the U.S. and the EU may seem a long time without substantial progress being achieved. Yet, deriving from this an imperative for armed intrusion seems severely misled, since the lack of advancement appears to have much to do with wrongly oriented policies by the relevant international stakeholders; nor would there be a majority for this initiative in the Security Council, the only institution to authorise such endeavours. Moreover, a realignment of the applied activities short of military means is still believed to prove valuable in an attempt to persuade the Burmese leaders to bring to a halt the committed crimes against the country's own population. The above in effect amounts to an endorsement of both Solidarist and Welsh School notions, in that the former's proposition of universally accepted and applicable human rights standards is upheld through an implementation of R2P; this, however, is not accomplished through such means as military intervention, which Solidarists are traditionally occupied with; it is the Welsh School's expansion on the margins of humanitarian intervention to also cover measures of 'economic intervention' as well as forms of engagement that have been defined as most appropriate for the underlying case study.

4.2. On Sanctions and Engagement: The Unvoiced Application of the Responsibility to Protect

Since the regime's violent crackdown on pro-democracy demonstrations in 1988 as well as its non-recognition of the democratic election results in 1990, the international community has been incapable of forging a consensus on how to deal with Myanmar. While regional

powers, such as India and China, have rivalled for influence in the country, and the continent's foremost organisation ASEAN first adopted a policy of 'constructive engagement' in line with its Realist and Pluralist principle of non-interference at the beginning of the 1990s (Zaw, 2001, p. 37), various Western stakeholders, including the U.S. and the EU have imposed sanctions on the military junta. Particularly Washington has since shown itself to be the strongest in its condemnation of the Burmese rulers, uncompromisingly demanding their surrender of power in line with the 1990 election outcome. Indeed, support of Aung San Suu Kyi and her National League for Democracy (NLD) party with the ultimate goal of bringing them to power has been described as the single paramount principle of American governments in relation to the Southeast Asian country, with democracy, human rights and narcotics forming the wider, overarching priorities; an approach reflecting evident notions of liberal peace assumptions[34]. Based on the hypothesis that real progress is subordinate to regime change, the U.S. has proved unwilling to promote reform or provide assistance under the current leadership in Naypyidaw[35] (ICG, 2008b, p. 13).

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[34] The Liberal Peace Thesis has grown into one of the most predominant assumptions in International Relations; indeed, various authors have enthusiastically referred to it as "the most robust, 'lawlike' finding generated by the discipline of international relations" (Gat, 2005, p. 73); "probably the most powerful liberal contribution to the debate on the causes of war and peace" (Rosato, 2003, p. 585); or as coming "as close as anything we have to an empirical law in international politics" (Levy, 1988, p. 662). One of the most relevant authors in this context has been Michael W. Doyle, who in his 1983 paper on *Kant, Liberal Legacies, and Foreign Affairs* seeks to explain how liberal principles lead to a prevalence of peaceful relations between states in international affairs. Drawing heavily on Kantian thinking, Doyle (1983) argues that at a domestic level, the freedom of the individual as the guiding principle of the libertarian school of thought generates a threefold set of rights and institutions; these include *negative freedom* or freedom from arbitrary authority (e.g. a free press and free speech, equality under law, etc.); *positive freedom*, which is often associated with rights ensuring the opportunity for freedom (e.g. social and economic rights, etc.); as well as democratic representation, that is required in order to guarantee the two former (pp. 206-207). As regards foreign affairs, liberalism, according to Doyle (1983), assumes a state's freedom from foreign intervention, since it represents free and *morally autonomous citizens* based on their democratic manifestation of will. Thus, respect towards each other's rights forms the foundation of liberal international theory, which as a result enables citizens to engage in foreign interactions without state intervention (p. 213). The U.S. seems to have embarked upon a foreign policy based on such principles, in that it assumes the country's domestic conflicts and its destabilising international repercussions can only be coped with through political adjustments, such as an adherence to liberal notions of democracy, human rights, etc.

[35] Naypyidaw is the new capital of Myanmar. The move from Yangon, formerly known as Rangoon, to the new location some 400km in the interior of the country began in 2005. Precise reasons for the move have remained unknown, although it has been reported that the military required more space in strategically better positioned areas; something which congested Rangoon was unable to provide for. Others have suggested that Senior General Than Shwe sought to leave his mark on history, in that he built a new capital just like the old kings did. The military itself has explained the move with the central location of Naypyidaw, from which all parts of the country are described as easily accessible (Peck, 2007, paras. 4, 16-18).

First sanctions were imposed as soon as in 1988, when Washington suspended all non-humanitarian aid, banned any arms exports and blocked all assistance from the International Monetary Fund (IMF), the World Bank and the Asian Development Bank, just to further supplement such measures a year later by a withdrawal of the Generalised System of Preferences (GSP) conditions for imports from Myanmar, of the Export-Import Bank preferential financing for U.S. exports to the country, as well as of Overseas Private Investment Corporation (OPIC) financial services. In 1991, the American government equally terminated a U.S.-Burmese textile agreement, and imposed a visa ban for government and military officials as well as their families in 1996, with a further tightening of the latter in 2003. Additional restrictions were released in 1997 and 2003, most notably on all new U.S. investments in and any imports from Myanmar, the export of financial service provisions to the country as well as a freeze of all assets held by Burmese military or government officials and institutions in the U.S. (Pederson[36], 2008, p. 24).

The EU and its member states have equally emphasized the aspect of democracy in their relations with the country, while cooperating closely with the U.S. in an attempt to establish a strong front against the junta through censure and gradually escalating sanctions. In 1996, the first so-called *Common Position on Myanmar* was adopted, aimed at promoting "progress towards democratization and securing the immediate and unconditional release of detained political prisoners" (Pederson, 2008, p. 35); such *Common Positions* have since framed the EU's policies towards the Southeast Asian state. Punitive measures, however, also began in 1988, with the Europeans similarly suspending all non-humanitarian aid to Myanmar, and were intensified in 1991 and 1992 through an arms embargo and the termination of any military cooperation by withdrawing the European military attachés from the capital. The EU further complemented its policies with a visa ban for high-ranking officials and their families (which was tightened later to also incorporate tourist and transit visas as well as lower-ranking official and people in regime-affiliated organisations) as well as a moratorium on high-level bilateral visits to Myanmar in 1996. Just one year later, the

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[36] Morton B. Pederson is currently a Research Fellow at the Peace and Governance Program of United Nations University. Between 2000 and 2006, he worked as a Senior Analyst for the International Crisis Group in Myanmar, while also functioning as consultant on Burmese politics and development affairs for various other international organisations. He is the Co-editor of *Burma/Myanmar: Strong Regime, Weak State* and author of *Promoting Human Rights in Burma: A Critique of Western Sanctions Policy*. Pederson is presently working on a two-year research project titled "Engaging Myanmar: The Smarter Way to Human Rights (Lessons and Best Practices)" (Pederson, 2008, p. 297).

Union also suspended the preferential trade tariffs for Burmese agricultural and industrial products, while banning exports of 'dual purpose' goods and freezing assets of officials and regime supporters as of 2000. Ultimately, any new investment in state- and military-owned companies was prohibited in 2004 (Pederson, 2008, p. 34).

Although in light of the violent crackdown on peaceful protests by Buddhist monks in 2007 both the EU and the U.S. further intensified their punitive measures, making it "one of the tightest sanctions regimes in the world" (Pederson, 2008, p. viii), divergences in approach have emerged between the two stakeholders, with the Union increasingly declining all-encompassing trade and investment bans in support of 'smart sanctions'[37] towards the military regime and its support base. Since their 2002 decision to differentiate between 'political' and 'humanitarian' strategies, the Europeans have more proactively attempted to tackle the evolving humanitarian crisis in Myanmar. Overall, the Union's new approach is based on a three-track system, through which it seeks to combine increased dialogue, with limited sanctions and positive incentives (ICG, 2008b, pp. 15-16). This alleged indulgence of the Burmese regime as compared to the U.S. has been criticized as "half-hearted and disappointing", with the EU purportedly continuing to merely renew "existing ineffectual sanctions instead of striking the military regime at its economic core and forbidding the activity of European firms in the booming oil and natural gas industry" (GfbV, 2007, paras. 1-2). Indeed, Barry Desker, Singapore's chief negotiator in international trade talks during the 1990s, has followed this line of reasoning by holding that "the measures will probably not have any impact on the military (…) because EU leaders have decided to 'grandfather the most important investment' in the country (…), referring to the contracts signed by the French energy giant TOTAL to exploit the Yadana gas field in southern [Myanmar]" (Cronin, 2009, paras. 3-4). Despite an announcement by Sarkozy in 2007 that French companies would not invest further in the country, such already signed contracts as in the case of TOTAL remained untouched by these sanctions (Cronin, 2009, para. 5). Other critics have expressed their lack of comprehension towards Europe's comparably relaxed measures in

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[37] Smart sanctions have been described as "measures that are tailored to maximize the target regime's costs of noncompliance while minimizing the target population's suffering" (Drezner, 2003, p. 107). These means do not attempt to cause gross economic damage, but rather focus on restricting the margins of movement of the target government and its key constituencies. They are intended to strike the parties responsible for the wrongdoings, while seeking to avoid as much as possible any collateral damage. Examples in this context include asset freezes, travel bans or arms embargoes (Drezner, 2003, p. 107).

the finance sector, in which Burmese generals have thus far been spared from a ban on using Swift, the leading Belgian-based network for cross-border financial transfers (Cronin, 2008, para. 4). It is for the above reasons that The Burma Campaign UK, one of the principal campaigners for human rights and democracy in Myanmar, has described the EU's measures as "largely symbolic [and without] the effect or intention of applying severe economic pressure on the regime", instead calling upon Brussels to push through tighter targeted sanctions (The Burma Campaign UK, 2004, pp. 14-15 & 17).

Indeed, it remains true that sanctions can be an important tool to provide additional legitimacy as well as moral support to the forces in the country fighting for change; and they have also served their purpose to express emphatically to the junta as well as the international community at large in line with R2P how much relevance the West has attached to the generals' breaches of international norms and principles. Nevertheless, as the ICG (2004) points out, sanctions "have done little to change [the military's] will or capacity to maintain power and continue repressive policies. [They] have placed some constraints on the economy, but economic development is secondary to the generals' security objectives (national unity and sovereignty), which they believe would be undermined by giving in to demands for democracy (p. 16). In fact, despite its many policy failures as well as an ever tighter Western sanctions regime, the Burmese generals have maintained power since 1962, and there is nothing to suggest that their capability has been undermined in a way that would not allow them to proceed for the foreseeable future. Besides, this analysis is not about how induce a regime change in Myanmar, as the responsibility to protect is not occupied with the deliberate interference into the authority structure of the respective target state. Indeed, even with a view towards potential military interventions for humanitarian purposes, the ICISS (2001) has taken a clear stance in this respect by emphasising that such actions "should be restricted exclusively, here as elsewhere, to those situations where large scale loss of civilian life or ethnic cleansing is threatened or taking place" and is therefore not applicable to scenarios, in which "a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over" (p. 34). Thus, it remains the exclusive focus of this work to define a promising method to help sustainably terminate the regime's committed crimes against humanity towards the Burmese people.

In this context, it needs to be noted that the siege mentality of the country's highly nationalistic leaders may have been further reinforced by such international censure and sanctions as imposed by the Western states. Most of the Burmese officials have been described as "fiercely proud of Myanmar's historical resistance to imperialism and extremely sensitive to any attempt by foreigners to dictate its internal policies" (ICG, 2004, p. 17). Resisting to Western influences may therefore be seen as a highly honourable act; a tendency which appears to have been further aggravated by the European and U.S. failure to acknowledge the regime's progress in several areas, e.g. the ceasefire agreements signed with over a dozen ethnic nationalist armies, an increase in opium eradication efforts or the recognition of an HIV/AIDS crisis (ICG, 2004, p. 17). In fact, the consequential inclination towards isolation has potentially reduced the pressure on the generals, as the latter are provided with an external scapegoat to blame the apparent shortcoming on, while equally being able to avoid uncomfortable exchanges with critics that could result in a process of questioning the own perceptions of the realities in Myanmar. Besides, as their domestic opposition is publically backed by such mistrusted external forces like the U.S. and the EU, with the former seeking a regime change in favour of the NLD, the political reconciliation process within the country has been additionally complicated. Indeed, Home Affairs Minister Maj-Gen Maung Oo has been quoted in a cabinet meeting as calling upon his colleagues to remain cautious regarding the activities of the NLD in view of the upcoming elections in 2010, as "the party was backed by the U.S., British and French Embassies" (Moe, 2008, para. 17). The above constellations seem to have boosted the hardliners in the government at the expense of the more moderate voices seeking settlement and rapprochement, which has further deteriorated prospects for cooperation with both domestic and foreign stakeholders (Bünte[38], 2007, p. 6).

Moreover, the economic implications of the above described sanctions have generally been suffered by the wider population, at times indirectly through money printing, causing increased inflation rates; cuts in government social spending; or forced labour (ICG, 2004, p. 18); but also direct economic repercussions have been experienced, such as in the garment industry where 75% of all products were exported to the U.S. before Washington imposed

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[38] Marco Bünte works as Political Scientist at the Hamburg-based German Institute of Global and Area Studies - Institute of Asian Studies. His expertise comprises the fields of democratisation, decentralisation and political conflicts in Thailand, Indonesia and Myanmar (Spiegel Online, 2007, "Zur Person" sec.).

an import stop, with an estimated 750,000 people's existence being fundamentally threatened by the maintenance of this policy (Bünte, 2007, p. 6). Besides, the impact of Western 'smart sanctions' remains equally questionable, as members of the military regime continue to travel unrestrictedly to neighbouring countries, benefiting from partly excellent educational, health and shopping facilities, while at home they continue to be in full command of key industries, most notably the oil and natural gas sector. It is largely for the above reasons that the ICG has called on Western states to "refrain from imposing further punitive measures (…) and repeal sanctions that hurt vulnerable sections of the Burmese society" (Mizzima, 2008, para. 13). Indeed, although the institution has expressed understanding for any frustration about the generals' poor leadership record, it still maintains that "reinforcing the regime's isolation will do little to help resolve the country's complex social, political and economic crises" (Mizzima, 2008, para. 14).

However, in light of current human rights abuses or, indeed, crimes against humanity committed by the regime against the people, it would be unjustifiable to argue for a complete abandonment of the current punitive measures. Clearly, it remains important to express to the military leaders in line with R2P that international human rights conventions are binding upon them, and to the country's people that their situation has been acknowledged and is being acted upon. Still, the instrument of sanctions has to be applied with caution; all-encompassing measures at the level of U.S. policy, attempting to fundamentally weaken the regime and ultimately bring about a political change, are neither in line with the principles of the responsibility to protect, nor have they proven to be effective in limiting the regime's repressive policies. On the contrary, large parts of the population have been additionally impacted in their already dire economic conditions by the West's imposed restrictions. Therefore, it seems justified to join the ICG in proposing the abolition of economic sanctions affecting the livelihood option of the Burmese people, which particularly comprises import bans on garments, agricultural and fishery products, as these sectors are all "primarily on private hands and directly support millions of poor households (ICG, 2008, p. 26). Sanctions are generally more suitable in the oil, gas, logging and mining sectors, as it is here that the military's revenue basis lies. But even for these to unfold an impact, it would require especially the Europeans to renounce some of their economic interests in the country, such as in the case of French TOTAL.

However, the general population is still likely to be affected, as the government has proved to be willing to compensate for income losses through squeezing more from the people. When this happened last time in August 2007, it spurred the demonstrations by Buddhist Monks with the unfortunate consequences, as they have been outlined in the introduction. Therefore, the increasing focus by the Europeans on sanctions tailored towards certain individuals must generally be considered as positive, although a number of loopholes remain to be closed, such as a potential ban for regime officials to make use of the Belgian-based Swift system for cross-border financial transfers. Indeed, avoiding to treat the military as an institution or the government per se and instead singling out those who have been seen to antagonize progress and are responsible for human rights violations seems vital; by approaching the regime as a coherent entity, the ICG (2008b) points out, "sanctions have tended to unite those targeted against an outside world perceived as hostile and reaffirm their intensely defensive mindset" (ICG, 2008, p. 29). At the same time, if the officials are not affected by the punitive measures to the same extent, it may be more difficult to forge a consensus within the regime to reimburse for the decline in revenues by deducting further from the people.

However, any sanctions will ultimately only unfold their potential effect, if they are applied consistently by all relevant stakeholders. These would certainly include states, such as Thailand, China and India, which currently make up about 66% of Myanmar's international trade (GfbV, 2007, para. 4). Particularly China has a highly influential role to play, since "the Burmese government has been increasingly dependent on Beijing for financial support, interest free loans and military supplies, [making it] Burma's most important commercial partner" (HRF, 2007, "China and Burma" sec.). Encouragingly, China has occasionally indicated its willingness to exert influence over the generals; Ibrahim Gambari, the UN's Special Envoy to Myanmar, as well as Paul Sérgio Pinheiro, in his function as the UN's Special Rapporteur on Human Rights, e.g. are reported to have been granted access to Myanmar upon diplomatic pressure from China (Bünte, 2007, p. 7), and it was partly also owed to Beijing's intervention that post-Nargis relief cooperation with international agencies ultimately reached normal levels (ICG, 2008a, p. 11). Still, it remains unlikely at this stage that any of the regional stakeholders will give its consent to imposing sanctions on the Burmese leadership, although it may even so prove to be of value for the EU and the U.S. to

embark upon a genuine dialogue with ASEAN, China, India and Japan for the coordination of policies. This will not only increase the credibility and legitimacy of Western interests in the eyes of the military junta, but could also provide valuable insights into the psychology of the Burmese leaders. The rejection of punitive measures on behalf of the regional stakeholders in favour of a more engaging, dialogue-based approach may have a lot to do with economic and security interests; yet, it is perhaps also derived from a better understanding of how to deal with Naypyidaw after years of cooperation, mostly as neighbours or through ASEAN. Therefore, a joint forum should be aspired to, in which the relevant regional and international parties gather in an attempt to coordinate and streamline their policies, with delegates from the Burmese government equally participating, so as to ensure that a more dialogue-oriented format to tackle the country's challenges will gradually be established. As part of such meetings, a number of benchmarks could be defined in line with international human rights standards, against which the regime's action can be assessed and sanctions gradually eased or strengthened.

However, as a sign of good will for the beginning of such talks as well as in view of the dire humanitarian situation, especially in the aftermath of cyclone Nargis, it was the ICG (2004) to demand that both the EU and the U.S. "immediately and without further preconditions modify some of their sanctions policies relating to humanitarian assistance and other forms of support" (pp. 26-27). As cooperation with the generals proceeds and the defined benchmarks are met, Western governments should also be determined to not only ease punitive measures, but to tie up a package with increasing incentives and benefits accompanying the political and economic reform process (ICG, 2004, p. 27). If, however, talks fail to bring tangible results, the international stakeholders, ideally including the relevant regional parties, have to be equally prepared to increase their targeted sanctions, potentially ranging from constraints on military, state or crony companies' access to global banking services, such as foreign bank accounts and the Belgian Swift-system, to restricting the availability of personal business opportunities, shopping, health care and educational facilities for selected officials and their families (ICG, 2008, p. 29). Still, generally the focus of relations with the junta should be on engagement, as, in the words of the ICG (2004), "sanctions may be helping sustain military rule. The generals have learned to live with isolation, internal dissent and the economics of survival in a poor, strife-torn country. The

real threat to reactionary leaders is the modernity and development that might come from more involvement with the outside world" (p. 21).

4.3. *Rapprochement Between the West and Myanmar: Post-Nargis Relief Efforts as an Opportunity for Engagement*

Particularly post-Nargis relief operations have provided an interesting example of the complexities of both the regime itself and its relations with the Western world, while also, as suggested above, offering new opportunities for enhanced levels of cooperation between the two sides. It remains undisputable that the generals' immediate relief response in the first weeks after Nargis was deplorable; the government at first replied "with seeming callous disregard for the victims, imposing numerous restrictions on international relief agencies which put the lives and welfare of hundreds of thousands of people in jeopardy" (ICG, 2008a, p. 2). Quite typically, it prioritized its security and political agenda, pushing through the constitutional referendum within a week after the cyclone hit the country. However, the military's unsuitable reaction was also caused by its failure to fully understand the scale of the caused devastation as well as a mere overestimation of the state's capacity to deal with the atrocities, with its assistance efforts having been undermined by communication problems, petty corruption and incompetence (ICG, 2008a, p. 2). Additionally, then U.S. First Lady Laura Bush's public denouncement of the leadership and her call for democratic governance in Myanmar two days after the storm devastated the country further spurred the government's reluctance to cooperate with international efforts; jointly with the U.S.'s, Britain's and France's decision to send naval vessels with marines, military helicopters and amphibious landing crafts for the conduct of assistance operations and Australian Prime Minister (PM) Kevin Rudd's call to "smash down the doors" into Myanmar (Political Affairs, 2008, para. 2), these measures caused precariousness amongst the generals as to the interests of the Western stakeholders, contributing to their restrictive attitude on international relief efforts. Such scepticism was expressed by Home Affairs Minister Maj-Gen Maung Oo who suggested that American naval ships were denied access to cyclone survivors due to fears that "the U.S. military would find an excuse not to leave until after the 2010 elections" (Moe, 2008, para. 15).

Yet, ultimately cooperation between the international assistance agencies and the Burmese authorities did normalize, also as a result of ASEAN's decision to abandon its traditional passivity in favour of a more proactive approach, functioning as a bridge between the government and the aid community. The organisation displayed willingness to take the lead in coordinating the endeavours, by that supporting to overcome the junta's suspicion as to the West's intentions. China, which had experienced a similar catastrophe following the Sichuan earthquake, also proved to be vital in convincing the regime to follow its example by opening up towards international efforts (ICG, 2008a, pp. 2 & 11). By July aid flows and cooperation had reached a level which let UN Emergency Relief Coordinator John Holmes to conclude that "this is now a normal international relief operation (IRIN, 2008, para. 9); indeed, despite the rather negative media coverage of particularly the government's initial approach to the crisis, an analysis coordinated by the World Health Organisation (WHO) concluded that, taken as a whole, "the Burmese authorities were by far the greatest providers of medical assistance to its population after cyclone Nargis" (Jack, 2008, para. 1).

Such concerted efforts saw the establishment of an ASEAN Humanitarian Task Force and a Tripartite Core Group (TCG), the latter of which took charge of the Post-Nargis Joint Assessment (PONJA), an overall unprecedented institutional set-up[39], involving a number of international organisations and regional states. Particularly the TCG proved to be of much value for the overall coordination of relief efforts in the aftermath of the natural disaster. In fact, the mechanisms was viewed as so successful that ASEAN officials, international aid workers and UN representatives pressured the Burmese government to extend the process

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[39] The ASEAN Humanitarian Task Force was set up to lead and facilitate the international response to cyclone Nargis. The mechanism, comprising two representatives from each ASEAN state, was agreed upon with the consent of the Burmese government at the ASEAN foreign ministers' meeting on 19 May 2008, and paved the way for an ASEAN/UN-sponsored international pledging conference in Yangon on 25 May. The task force was assisted by an advisory board, including officials from the UN, World Bank, Asian Development Bank, International Federation of Red Cross and Red Crescents Societies (IFRC) as well as China, India and Bangladesh (ICG, 2008a, p. 8). To complement the task force on the ground, the Tripartite Core Group was created, comprising three representatives from each, the government, ASEAN and the UN, which during the first months after the catastrophe met at least once a week to "facilitate trust, confidence and cooperation between Myanmar and the international community in the urgent humanitarian relief and recovery work" (ASEAN, 2008, para. 1). As suggested above, the TCG took charge of the Post-Nargis Joint Assessment, a two-week detailed assessment conducted in mid-June and involving 250 experts and volunteers, including teams from the World Bank and the Asian development Bank (ICG, 2008a, p. 8).

to embrace all humanitarian and development projects across the country[40]. Beyond the more organisational dimension, it was largely the trust-creating effect of the mechanism that Western stakeholders described as having been very significant; indeed, Matt MacGuire, Cyclone Recovery Coordinator in Rangoon for the British Department for International Development (DIFD) argued in line with this reasoning when suggesting that "the TCG helped to build trust, coordinated the aid effort, and overcame obstacles like visa handling for humanitarian workers", with Andrew Jacobs, head of the regional development division in the EU's Bangkok office, similarly highlighting that "the TCG was extremely important because it helped generate confidence on all sides" (Jagan, 2009, pp. 1 & 3).

Apart from this trust-generating impact, the TCG also encouraged a much more substantial financial commitment on behalf of the international donor community towards the country's humanitarian and development needs, although caution continues to prevail regarding large-scale assistance especially for areas outside Nargis-affected territories. Yet, an estimated $70 per head was made available for survivors of the cyclone, which contrasts starkly to the annual $3 per head in aid normally allocated to the country (Jagan, 2009, pp. 3-4). Comparing such overall aid flows to those of the wider group of the least-developed countries (LDCs)[41], Myanmar is revealed as occupying a rather exceptional status; in fact, the Organisation for Economic Cooperation and Development (OECD) has calculated that, in 2006, Myanmar with the indicated $3 per person was granted less than any of the other 50 poorest countries in overseas development assistance, amongst those states with similarly repressive regimes, such as Sudan ($55/person) or Zimbabwe ($21/person). Overall, the average aid for these least developed states ranked at over $58 per capita, meaning the

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[40] In March 2009, the Burmese government indeed extended the mandate of the TCG by one more year. The mechanisms' efforts are now centred on the newly established three-year Post-Nargis Recovery and Preparedness Plan (PONREPP) (IRIN, 2009, paras. 1 & 7).

[41] The criteria for what constitutes a so-called least-developed country are defined by the Economic and Social Council (ECOSOC) of the UN in a triennial review and upon consultation with the Committee for Development Policy (CDP). Based on these criteria, the ECOSOC recommends to the General Assembly (GA) which countries it considers eligible for inclusion, the latter being the final arbiter in this context. Currently, three thresholds have been classified, namely (a) the low-income criterion derived from a three-year average of the gross national income (GNI) (under $745); (b) the human capital status criterion based on the indicators (i) nutrition, (ii) health, (iii) education, (iv) adult literacy; and (c) the economic vulnerability criterion, dealing with (i) population size; (ii) remoteness; (iii) merchandise export concentration; (iv) share of agriculture, forestry and fisheries in gross domestic product; (v) homelessness owing to natural disasters; (vi) instability of agricultural production; (vii) instability of exports of goods and services. To be added to the list, a country must satisfy all three criteria, while at the same time not exceeding 75 million people in population. There are currently 49 countries on the UN list of the LDCs; 33 in Africa, 15 in Asia and the Pacific, and one in Latin America (UN-OHRLLS, 2009, "About LDCs" sec.; "Criteria for LDCs" sec.).

country received an estimated twenty times less assistance from the international community than the medium LDC (Refugees International, 2008, para. 4). In the words of the ICG (2008), this has meant "twenty times fewer contacts with the government, twenty times fewer agencies and aid workers on the ground, and twenty times less investment in the reduction of vulnerabilities" (p. 15).

Clearly, the operational environment in Myanmar for any aid agency has remained difficult; yet, it would be wrong to assume that it fundamentally differed from other weak states. Rather, the elemental difference continues to be the exceptional politicisation of assistance, which further complicates the dealing with the government and thereby also confines aid work in the country. Indeed, for the past twenty years, particularly the U.S. has in line with liberal notions tended to treat aid as a gift, to be given in exchange for political reform. The primary miscalculation, however, has been that the Burmese generals, very much contrary to the people, do neither necessarily want nor need aid. Therefore, any attempt to utilize such support as a bargaining chip appears to be misled; it rather needs to be regarded as a device in its own right, valuable for improving the humanitarian situation on the ground (ICG, 2008a, pp. 30-31). In this context, Post-Nargis relief efforts with their new dimension of cooperation between the authorities and international aid agencies as well as increased levels of funding to the country have opened up new channels, providing a unique opportunity for a resumption of relations between the relevant Western stakeholders and the Burmese government. The success of the joint relief operations, significantly facilitated by such forums as the ASEAN Humanitarian Task Force, the TCG as well as PONJA, requires a reconsideration of overall aid policies towards the country. As John Virgoe, Southeast Asia Project Director of the ICG has pointed out, "the international community should build on the unprecedented cooperation between the Myanmar government and humanitarian agencies, [since] aid is valuable (…) for alleviating suffering, as well as a potential means of opening up a closed country, improving governance and empowering people to take control of their own lives" (Mizzima, 2008, para. 3), with Robert Templer, the institution's Asia Program Director, adding that "due to the limited links between Myanmar and the outside world, aid has unusual importance as an arena of interaction among the government, society and the international community" (Mizzima, 2008, para. 11).

Particularly since the military is currently undergoing a major institutional and generational transition, enhanced cooperation with a new leadership age may bear significant opportunities for meaningful change. Views within the regime towards relations with the West are not monolithic; the struggle over ideas and direction is real. Western support in the aftermath of Nargis may have temporarily strengthened the pragmatic voices in the government, with retrogressive developments still remaining possible (ICG, 2008a, p. 19). Indeed, it is of utmost importance that the forthcoming Burmese elite gains superior attitudes and experiences towards cooperation with the West, gradually building trust and a framework within whose margins broader change, particularly in the context of human rights, becomes feasible. On this path, aid can already play an important factor in developing human resources, cultivating a stronger civil society and, by that, also limiting the abuse of power; the latter of which has in the context of this country often been associated with crimes against humanity, as already outlined in the preceding section. This is because international aid organisations expose local staff to modern management styles and techniques through employing and training Burmese people, while also encouraging the establishment of grass-roots initiatives and providing citizens with a voice in local governance. The increase in civil initiatives over the past decade has been linked to a boost in aid programs, enabled through a change in attitude towards assistance to Myanmar on behalf of a number of foreign stakeholders. Such processes are evolutionary rather than revolutionary; they take time to develop, which may precisely be their strength in a system, in which any overt political opposition is immediately crushed, and where sustainable progress will fundamentally depend upon convincing army leaders that this course can advance without compromising the country's security and stability (ICG, 2008a, pp. 16-17). Moreover, aid organisations also bear much relevance for the protection of local communities from exploitation and the arbitrary use of power in another way; as José Ramos-Horta, Nobel Laureate and current President of East Timor, has pointed out in relation to Myanmar, "the people on the ground are no longer alone and at the mercy of the regime. You will have dozens, if not hundreds of international personnel as witnesses, as pressure" (The Irrawaddy, 2008, para. 17); similarly, Mark Duffield (2008), Professor of Development Politics at the University of Bristol, has argued that "the single most important factor in relation to the expansion of aid agency activity (…) is the protection that just the

presence of UN agencies, international NGOs and local NGOs affords communities otherwise subject to the exercise of unchecked personal power" (p. 37).

The current momentum in the aftermath of cyclone Nargis with the above described, unprecedented mechanisms of cooperation between the Burmese leadership and foreign stakeholder must not be missed. Clearly, the U.S. and the EU should be lobbying in this direction as much as possible. However, considering enduring sceptical perceptions towards both Western interests in the country and an allegedly biased United Nations organisation, the lead for such cooperative frameworks should be taken up by the Asian states, perhaps through ASEAN whose above described Humanitarian Task Force has already proved to be of much value for the international relief efforts. This assumption is confirmed by the ICG (2004), which has highlighted that "the generals do not have the same ideologically grounded suspicions about the motives of Asian countries. On the contrary, they believe key governments in the regions share their emphasis on national sovereignty, security and economic development, and have empathy with their situation" (p. 24). Additionally, the UN must continue to contribute its part, especially through the 'good offices'[42] and efforts involving regional entities, also to enhance its credibility in the eyes of the Burmese generals. Mechanisms, such as the Focus Group on Myanmar, comprising China, India, Indonesia, Myanmar and the UN, as well as the Secretary-Generals Group of Friends for Myanmar, a somewhat more comprehensive forum involving Australia, the EU Presidency, India, Indonesia, Japan, Norway, the Permanent Five (P5), Singapore, South Korea, Thailand and Vietnam, serve as good examples in this context.

Generally, it seems desirable to stretch an ample network of cooperation on various levels, comprising the Burmese authorities as well as all relevant international and regional stakeholders, since experiences with conflict resolution efforts in other parts of the world seem to have proved that multiple contact points at multiple levels is more effective an approach than limiting engagement to a single channel. This may be all the more applicable in the underlying case, as the picture of the regime's decision-making structures remains

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[42] The 'good offices' have been described as "one of the most vital roles played by the Secretary-General [comprising] steps taken publicly and in private, drawing upon his independence, impartiality and integrity, to prevent international disputes from arising, escalating or spreading" (UN, n.d. para. 4). This may take various forms, but can also amount to an institutionalized deployment, such as in the case of the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP) with headquarters in both Kabul and Islamabad.

blurred (ICG, 2008b, p. 32). A proposed Myanmar Aid Consortium, which would encompass the major bilateral donors, aid agencies and multilateral institutions in an attempt to streamline strategies, coordination, fundraising and monitoring of assistance clearly applies in this context; alternatively, a network of three complementary groups has been suggested, centring around the Secretary-Generals 'good offices' personified in Ibrahim Gambari as his Special Envoy to Myanmar. In this set up, Gambari is in charge of providing a focal point for the overall coordination of international efforts, while himself dealing with the national reconciliation process; in addition, a working group of influential regional countries with direct involvement in Myanmar would be established, integrating the Burmese generals into discussions on regional security and development. Finally, a so-called support group of engaged Western governments is envisaged to ensure that human rights remain on top of the international agenda, and to structure such inducements for change like sanctions and incentives as well as overarching humanitarian and additional aid programs (ICG, 2008b, pp. 31-32).

Yet, the current international aid structure in the country remains considerably incomplete, with several UN agencies, most notably the United Nations Development Program (UNDP) and the International Labour Organisation (ILO), operating under severely restricted mandates, while international financial institutions (IFIs), i.e. the World Bank, the IMF and the Asian Development Bank, continue to be absent. For this to change, Western stakeholders, most notably the U.S. would be required to reconsider their policies towards the country and release the above institutions from their imposed restrictions. Indeed, first steps in this direction seem to be under way, as a confidential paper by UN Special Envoy Gambari suggests. According to reports, the UN leadership will attempt to convince the Obama administration of relaxing its Myanmar policy, aimed at allowing for a return of the relevant IFIs and more development assistance being granted to the country. In this attempt, UN officials have confirmed, Gambari expects to build on the unprecedented relations between the Burmese leadership and the outside world after Nargis, while also hoping to encourage Western states to ease the access to foreign investment and support the formation of a so-called Economic and Social Forum for channelling money and coordinating international development efforts" (Lynch & Abramowitz, 2008, paras. 4-9).

5.   Addressing the 'How': Some Concluding Remarks on the Responsibility to Protect in Myanmar

The preceding analysis has attempted to conflate two subjects of substantial controversies: while the responsibility to protect continues to represent a new concept in international relations and law, with considerable uncertainties persisting regarding its scope and legal value, the dimensions of violence in Myanmar, particularly committed by the military regime towards the Burmese people have left the international community wondering how to effect change in a country with a troubled history for much of the post-colonial period. It is by merging both elements that this study has sought to cast light on either; indeed, the overarching research question of *how should the responsibility to protect be dealt with in the case of Myanmar* has been formulated to allow for an attempt to operationalise R2P, thereby inevitably also answering questions on the concept's scope and legal value. At the same time, the responsibility to protect constitutes a somewhat broad policy framework, to be applied and interpreted depending on the respective country of application, which is why any endeavour of the above kind requires the selection of a specific case study. This is precisely where the cycle closes, in that by deploying the concept to Myanmar this research has presented guidelines in line with the goals postulated by R2P on how to deal with the regime in Naypyidaw.

For the raised complexities, the conclusions drawn as part of this analysis have been both manifold and compound: on the responsibility to protect, the ICISS's report and the World Summit *Outcome Document* have been defined as representing the two most relevant of the array of papers dealing with the concept. While the former embodies the origins of R2P, delimiting most comprehensively its principles and foundations, and thereby providing a point of reference for any following deliberation, the latter is the most authoritative of all texts resulting from the consent given by the heads of state and government at what amounted to the largest UN gathering of all times. The *Outcome Document* was in patches formulated to deliberately set it apart from the ICISS's original report, such as with regard to the concept's scope of application. Indeed, the International Commission's envisaged margins for potential invocations were somewhat more comprehensive and would under certain circumstances also have encompassed cases of overwhelming natural and environmental catastrophes; a notion which the World Summit purposely omitted, in that it

limited R2P to war crimes, genocide, ethnic cleansing and crimes against humanity. It follows from this that French Foreign Minister Kouchner's attempt to deploy the responsibility to protect to Myanmar in the aftermath of cyclone Nargis was evidently unjustified, unless the regime's actions, or lack thereof, could have been asserted as constituting any of the above crimes.

The thesis' primary purpose, however, has not been to determine the legal value of any act retrospectively; it has on the contrary attempted to identify wider patterns of structural abuse by the Burmese authorities that would qualify for the invocation of R2P in the underlying case study. And indeed, it has appeared that various international organisations, including the United Nations have enduringly applied a terminology that strongly suggests the continuous occurrence of crimes against humanity in Myanmar. Particularly a study by the International Human Rights Clinic at the Harvard Law School, examining UN documents on the patterns of violence in the eastern part of the country between 2002 and 2008, has revealed stark support for such conclusions, in that it points to a "*prima facie* case of the existence in Burma of grave violations of human rights and international humanitarian law, including contravention of the prohibitions against crimes against humanity" (IHRC, 2009, p. 3), while also highlighting that "UN bodies have (…) consistently acknowledged abuses and used legal terms associated with these international crimes" (IHRC, 2009, p. 2), such as that violations have been 'widespread', 'systematic', or 'part of a state policy'.

Yet, although it might therefore seem justified to consider an invocation of the responsibility to protect, there continues to be uncertainty as to its legal foundation. Indeed, the preceding analysis has illustrated that none of above reports in fact features the required authority to establish international law under the traditional sources as defined by the International Court of Justice in Article 38 of its Statute; even the *Outcome Document* ultimately remains nothing more than a resolution by the UN General Assembly, which may contribute to the evolution of international law, but does not as such substantiate any. At last, the theoretical scenario of a Security Council enactment was incorporated; an institution which had displayed its attendance to refer to R2P on two previous occasions. In fact, this was precisely the aspiration of French Foreign Minister Kouchner when he proposed to enforce aid delivery on the Burmese junta following cyclone Nargis. But it was

revealed beyond doubt that any such step would be inconceivable, with both Russia and China protecting the leadership in Naypyidaw from any enforced action on behalf of the international community. It has thus been concluded that an envisaged official application of R2P in this case would neither be endorsed by international law, nor obtain the required support in the UN Security Council to be materialised.

Under different circumstances this realisation could potentially have challenged the overall approach of this thesis, or at least encouraged the finding that the concept remains inapplicable to the situation in Myanmar, without any lessons being learned regarding the question of how to deal with the Southeast Asian country. However, with significant parts of the responsibility to protect already being fundamentally embedded into existing international law, it has been underlined that these components can still be upheld in any bi- or multilateral effort to induce change in the country commensurate to such principles, notwithstanding the absence of a majority for concerted actions by the international community through the Security Council. This is particularly the case, since it remains legitimate under certain conditions for individual countries to apply punitive instruments other than military means in their bilateral relations, and both the ICISS report and the *Outcome Document* have implicitly approved initiatives in accordance with R2P beyond UNSC authorisation. In this context, a number of coercive measures short of military actions in combination with a comprehensive aid package under the responsibility to react have been defined as an auspicious way forward.

Indeed, the humanitarian atrocities are real; they are widespread and structural, and have been continuous for a number of years. In fact, The report *Crimes in Burma* by the above mentioned International Human Rights Clinic argues that "UN documents have included a range of human rights and humanitarian law violations since 1992" (IHRC, 2009, p. 6), although it remains far from certain as to whether such structural abuses originated only then. It is for these reasons that a resolute stance including coercive measures appears required both to emphasise to the Burmese leaders that international human rights law is binding upon them, and to the people in the country that their situation has been acknowledged and is being acted upon. At the same time, the ICISS report has explicitly accentuated that any military intervention can only be a last resort in very exceptional cases;

such conditions have not been deemed fulfilled in the underlying case study, as there continues to be reason to believe that a concerted and adjusted effort by all relevant international stakeholders with influence on the regime in Myanmar bears the potential of effecting change, in that such crimes against humanity as committed by the military junta can be permanently brought to a close.

The proposed and required sanctions, however, have to be applied with caution; blanket or all-encompassing measures à la U.S.-style with the ultimate goal of replacing the government have not only proved counterproductive, they are equally in evident opposition to the principles of R2P. The responsibility to protect is not occupied with the deliberate interference into the authority structure of the respective target state. Indeed, even with a view towards potential military interventions for humanitarian purposes, the ICISS (2001) has taken a clear stance in this respect by emphasising that such actions "should be restricted exclusively, here as elsewhere, to those situations where large scale loss of civilian life or ethnic cleansing is threatened or taking place" and is therefore not applicable to scenarios, in which "a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over" (p. 34). It is for these reasons that any sanctions under the responsibility to react can solely serve the purpose of coercively enunciating to the government in charge that it is gravely violating international human rights standards with patterns amounting to war crimes, crimes against humanity, genocide or ethnic cleansing, thereby attempting to effect a sustainable change regarding its policies in line with the goals of R2P.

At the same time, the ICISS (2001) has also acknowledged that "blanket economic sanctions in particular have been increasingly discredited in recent years as many have noted that the hardships exacted upon the civilian population (…) tend to be greatly disproportionate to the likely impact of the sanctions on the behaviour of the principal players" (p. 29). This assumption seems to be reflected in the conclusions drawn from the previous analysis on the effects of such measures in Myanmar: indeed, while the existence of an estimated 750,000 workers and their families in the garment industry only has been seen to be fundamentally endangered by the maintenance of the U.S. import ban on their products, the progressively tightened sanctions by the Western stakeholders have since their imposition in

1988 achieved little in persuading the regime to adjust its repressive policies towards the Burmese people. On the contrary, such measures may have somewhat eased the pressure on the leadership by presenting them with an external scapegoat to blame the country's deficiencies on. It is for the above reasons that this study has argued for a number of targeted or 'smart' sanctions, in that harm caused to the civilians at large remains within the narrowest margins possible, while the junta - and ideally specific personnel, who has been identified as obstructing progress - is directly exposed to the pressure of the punitive schemes. These moves would include targeting the junta's revenue core, based in the oil, gas, logging and mining sectors, with simultaneous efforts to provide those individuals in charge with such restrictions as travel bans, asset freezes, limitations on financial transactions, diplomatic constraints and others.

Initiatives of this kind, however, require the concerted effort by all relevant stakeholders, including Thailand, China and India, which together make up about 66% of Myanmar's international trade, as well as Japan as the country's largest international donor. It is only by joining forces that any targeted measures will ultimately have a realistic chance to unfold their potential impact. The generals' regional neighbours for now continue to offer everything from excellent educational and health facilities to shopping and banking opportunities, which has caused Western smart sanctions to have remained largely symbolic. However, the Europeans too are required to adjust some of their policies, in that economic interests need to be subordinated to the wider goals of R2P; this particularly applies to the oil industry, in which French TOTAL continues to sustain significant economic ties with the regime, while the Belgian-based Swift system for cross-border financial transfers is equally yet to ban governmental officials from using its network.

In order to better coordinate and debate their respective approaches to the challenge posed by the military rulers in Myanmar, both Western states and regional players may be well advised to seek the establishment of a dialogue-based mechanism, also with the participation of the Burmese authorities. Such concerted actions might additionally help increase the legitimacy of the EU's and the U.S.'s policies in the eyes of the junta, since the latter continues to regard their regional neighbours' stances and concerns as more obligating. As part of this forum, a number of benchmarks should be established, against

which to gradually strengthen or relax punitive measures depending on the progress displayed. Provided the existence of a coherently applied smart sanction package, these benchmarks could provide an actual incentive for the regime to adjust its policies to be more in line with international human rights standards, also because they manifest that improvements will actually have direct, positive repercussions for its own situation; an aspect which in the past has caused significant frustration on behalf the government, as substantial improvements, e.g. the signing of peace agreements with ethic minority groups were not sufficiently appreciated by the international community.

Any such sanctions, however, should be accompanied by a comprehensive aid package, which would require a significant modification of current Western policies. Indeed, the U.S. and the EU have substantially restricted aid flows to Myanmar over the past two decades, during which assistance to the country has tended to be held hostage to political considerations, in that particularly the U.S. has attempted to provide support in exchange for political reforms. Yet, the analysis has shown that the Burmese generals - quite contrary to the people of the country - neither need nor necessarily want Western assistance. It is therefore required to start viewing aid in its own rights, as it helps tackle the challenging humanitarian situation on the ground, while also opening up new channels for dialogue with a view towards the goals postulated by R2P. The generals have so far remained largely untouched by sanctions and isolation; the actual challenge for their repressive policies, including such crimes against humanity as described above are thus believed to emanate from engagement and cooperation. A significant boost in assistance channelled through a large number of international organisations released from their restricted mandates would expose local employees to modern management styles and techniques, while also encouraging the growth of grass-root initiatives. This in return is assumed to help in further developing human resources as well as cultivating a stronger civil society, thereby also limiting the abuse of power. At the same time, such organisations play a crucial role in monitoring the actions of the authorities; through their pure presence they function as arbiter and watchdog, in that they scrutinize state policies regarding potential crimes committed towards the people.

This thesis has revealed post-Nargis relief efforts as providing an excellent opportunity in this respect; not only have Western aid commitments reached unprecedented dimensions following the devastating cyclone, the delivery of such assistance has also witnessed new levels of institutionalised cooperation between the Burmese generals and the international community. Indeed, the ASEAN Humanitarian Task Force and its sub-mechanisms, the TCG as well as PONJA, have brought together a wide range of international stakeholders with influence on the situation in Myanmar; amongst those IFIs such as the World Bank as well as the Asian Development Bank which have not been present in the county for many years due to bans on their operations. This concerted effort by various players from Asia and the West, including the Burmese government has certainly opened up new channels for communication and may also have contributed to a slight rapprochement process between the country and particularly the U.S. and the EU. Such promising steps should be channelled into wider mechanisms for cooperation, as part of which assistance could be more effectively coordinated and trustful contacts grow in strength; and they must ultimately also incorporate the previously proposed forum for concerted sanctions policies, allowing for a new dimension of comprehension in the international efforts to effect change in Myanmar in line with the responsibility to protect.

For their particular legitimacy in the eyes of the junta as well as their substantial experience in dealing with Naypyidaw, the lead for these initiatives should be taken by the Asian stakeholders and most notably ASEAN. The West and international organisations like the UN remain essential as participants in any forum dealing with the challenges posed by the military rulers, and should themselves continue to commit their efforts to positively influence the developments on the ground. The emphasis in all actions, however, should be laid on a combination between targeted 'smart' sanction with established benchmarks as well as a comprehensive aid structure with varied forums of engagement and cooperation. This, the previous analysis has underlined, seems the most promising way forward in any attempt to live up to what may amount to the unvoiced application of the responsibility to protect. Indeed, the ICG (2008b) has pointed out that "the period without direct dialogue - in particular, 1990-1992, 1996-1999 and 2004-2007 - were when internal repression was the worst and international agencies faced the greatest obstacles on the ground (ICG, 2008b, p. 27).

Whether or not the above will prove a realistic scenario remains to be seen. The experiences of the post-Nargis relief operations may indeed play in important role, in that various stakeholders perhaps realised the prospects of effective and constructive cooperation. Additionally, the new administration in Washington appears to have set a new tone in its foreign relations. It has thus far embarked upon a less confrontational path than its predecessors, which is perhaps best reflected in the new approach taken towards Iran; a country which had previously been listed on Bush's infamous 'axis of evil'[43]. Instead, the Obama government has offered 'a new beginning' of engagement with the U.S., expressed in an unprecedented direct video message to the Iranians, in which he also suggested his preparedness "to speak directly to the people and leaders of the Islamic Republic" (BBC, 2009a, paras. 1 & 9). This seems to leave hope for a more general adjustment in Washington's foreign policy, with potential positive repercussions regarding its relations with Myanmar and the prospect of a new level of engagement and cooperation, notwithstanding the maintenance of a number of smart sanctions.

There also appear to be signs of policy modifications amongst the Asian stakeholders. Indeed, following the violent crackdown on Buddhist monks in 2007, the unity of disapproval allowed for a presidential statement from the UN Security Council, which amounted to the first ever 'concrete' action by the institution on Myanmar, as well a consensus resolution by the Human Rights Council, equally including China (ICG, 2008b, p. 5). If these represent first subtle signals of a more principled approach on behalf of Beijing remains to be seen. China has developed far-reaching ties with the Burmese generals over the past 15 years, as part of which it enjoys significant military benefits, such as access to ports and listening posts, allowing its forces to monitor military activities around the Indian Ocean and the Andaman Sea; it has equally expressed far-reaching interests in Myanmar's oil and gas reserves in an attempt to feed its insatiable appetite for energy (Green & Mitchell[44], 2007, p. 154). Beijing thus has a lot to loose from the imposition of sanctions on the junta in Naypyidaw.

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[43] Then President Georg W. Bush designed his 2002 State of the Union address to shift the political focus away from a battle with al-Qaeda to a potential confrontation with Iraq. He also named North Korea and Iran, who jointly with the former were referred to as "constitute[ing] an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. (…) In any of these cases, the price of indifference would be catastrophic" (Kessler & Baker, 2006, para. 6).
[44] Michael Green is Associate Professor of International Relations at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Adviser and Japan Chair at the Centre for Strategic and

At the same time, however, it is - similar to other neighbours - experiencing the spill-over effects of the humanitarian challenges in Myanmar through narcotics trade, human trafficking and HIV/AIDS. In fact, the U.S. Drug Enforcement Administration has estimated that 80 percent of all heroin produced in Southeast Asia originates from Myanmar, while the UN Office on Drugs and Crime has established direct links between the drug routes from the country and the manifest increase in HIV/AIDS rates in the border regions of the surrounding states (Green & Mitchell, 2007, p. 149). It is therefore that Chinese officials and the governor of the border province of Yunnan have reportedly put pressure on the SPDC to reform and address such pressing drug and health issues (Green & Mitchell, 2007, p. 155). This as such does not indicate a newly developed concern in Beijing about crimes against humanity occurring in its neighbouring country. However, if such events prove to have negative repercussions on China itself, the government seems willing to assert pressure on its counterparts in Naypyidaw; and as Myanmar remains the largest refugee-producing country in the region (United Nations High Commissioner for Refugees, 2006, p. 2), this scenario should not be categorically precluded. Green and Mitchell (2007) have concluded precisely for these reasons that "Burma's neighbours are beginning to recognize that unconditional engagement has failed" (p. 148). This may present an opportunity for the West to lobby the Asian stakeholders for a more concerted and somewhat tougher stance towards the Burmese regime. It is perhaps here that the EU enters the stage with its midway political approach towards Myanmar and its extensive diplomatic know-know, in that it may attempt to provide a linking bridge between both the U.S. and the Asian stakeholders.

For the responsibility to protect to evolve into a guiding principle in international relations and law, the UN and in particular its Secretary-General have to trigger a gradual clarification and expansion on the concept's scope and legal value. It remains to be ultimately elucidated in what way R2P constitutes a genuine innovation, as most of its elementary principles appear fundamentally embedded into existing international law; such process will ultimately also assist in more clearly demarcating its overall capacity. Current Secretary-General Ban Ki-moon seems to be firmly committed to these steps. Indeed, he has repeatedly emphasised that operationalising the new concept constitutes one of the commitments in his position at

International Studies (CSIS); Derek Mitchell is a Senior Fellow and Director for Asia at the CSIS's International Security Program. He is also in charge of the new Southeast Asia Initiative, the Centre's first program dedicated to the study of Southeast Asian affairs (Green & Mitchell, 2007, p. 147).

the top of the United Nations (Responsibility to Protect - Engaging Civil Society, 2008, para. 10), and has already acted on this promise by establishing the post of a Special Advisor with a Focus on R2P[45]. Moreover, Ki-moon has most recently published the report *Implementing the Responsibility to Protect* to be discussed at the next General Assembly gathering in September 2009, in which he has further attempted to substantiate paragraphs 138 and 139 of the *Outcome Document* at the World Summit. With a Secretary-General genuinely committed to the concept, optimism seems justified as to its future evolutionary path. However, even if it was ultimately concluded that in legal terms R2P represents nothing new, as its innovative elements do not find the required support within the international community, it would still provide a somewhat concrete policy framework as guideline for states to live up to their responsibilities under existing international law; its practical functions therefore remain undisputed. In the latter case, the preceding analysis may in fact provide a first illustration of how to potentially go about operationalising R2P in a specific case study.

On a conceptual level, most of the introduced theories have shown themselves to bear some degree of relevance for the preceding analysis. Indeed, Solidarist perceptions have provided the core of R2P's assumptions, in that they assume human beings to enjoy universally existent and applicable right as subjects of the international society, with states having the right to intervene in the domestic affairs of another state, if the latter has displayed an unwillingness or inability to live up to its responsibilities towards the country's people.

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[45] In August 2007, UN Secretary-General Ban Ki-moon sent a letter to the President of the UN Security Council, in which he proposed the creation of the position of a "Special Advisor on the Responsibility to Protect". It was approved by the institution in December of the same year as a part-time appointment at the Assistant Secretary-General level. Subsequently, however, objections emerged in the budgetary committees of the GA on the position's funding in relation to uncertainties about R2P's legitimacy. Based on such resistance, the title was changed into "Special Adviser to the Secretary General with a focus on the Responsibility to Protect". As the deliberations in the budgetary committees still brought no results, the mandate remains without funding from the UN (Responsibility to Protect - Engaging Civil Society, 2009, paras. 1 & 5). Nevertheless, the U.S.-American Dr. Edward C. Luck was presented as Special Advisor in February 2008. His primary task has been defined as assisting the General Assembly to continue consideration of the concept, as requested by the World Summit in 2005, in that he works towards a further conceptual development, while equally helping forge a consensus on R2P amongst states. Towards this end, Dr. Luck has been asked by the Secretary-General to jointly develop proposals through an extensive consultative process, to be considered by the UN members (UN, 2008, para. 1). In his report *Implementing the Responsibility to Protect*, Ban Ki-moon indicated his intention to propose a joint-office to incorporate the mandates of both, Dr. Luck as well as Dr. Francis Deng, Special Advisor on the Prevention of Genocide, who have already been working closely together on a revised early warning mechanism within the United Nations system (Responsibility to Protect - Engaging Civil Society, 2009, para. 9).

Solidarist conceptions are equally identifiable in the ICISS's original report on R2P in view of the latter's approach to the authorisation and legitimisation of military interventions for humanitarian purposes. However, the theory has its limitations regarding more comprehensive margins of interference, as it defines such endeavours to be 'discrete events' with clear beginnings and ends aimed at the authority structures of the target states, which has been classified as an inadequate approach to today's international relations in a globalised world with its intertwined nature of co-existence. Indeed, it is here that the Welsh School enters the sphere, which has expanded upon the boundaries of intervention, by allowing for an inclusion of prevention and rebuilding efforts, as well as rather non-coercive means of intrusion. Especially the latter have proved to bear much relevance for the preceding analysis with its emphasis on targeted sanctions and enhanced engagement towards the military junta in Myanmar. Realist and Pluralist beliefs have equally verified to be of significance for this study, as they have not only been displayed by a number of states, particularly the NAM at the World Summit, thereby contributing to an emasculation of R2P's substance in the final wording of the *Outcome Document*; they have also been identified in the traditional adherence to principles of sovereignty and non-interference demonstrated by various relevant Asian stakeholders in their relations with the Burmese generals.

Ultimately, it needs to be noted that particularly the U.S. has shown evident tendencies towards liberal positions in their approach to Myanmar. Indeed, Washington has continuously refused to cooperate with an undemocratic and authoritarian regime in Naypyidaw, with its policies aimed at enforcing an enhanced human rights record and ultimately inducing a regime change in favour of the opposition's National League for Democracy through ever tighter sanctions. It is here that liberal peace assumptions have been identified, in that U.S. administrations seemingly assume the situation in the conflict-ridden state with its destabilising regional repercussions to be fundamentally based on the lack of a genuinely established libertarian, democratic political system. Thus, liberalism would have been another theoretical framework in international relations, to be included in the considerations of the above analysis, especially since liberal scholars equally have a lot to say about the notion of humanitarian intervention (see, e.g.: Holzgrefe & Keohane, 2003). However, since the ICISS's report explicitly excludes any reference to democratic principles from an application of R2P, solely focusing on humanitarian aspects, the relation between

liberal peace conceptions with their emphasis on democratic governance, and the responsibility to protect would require a more in-depth analysis; something to be taken up in a potential follow-up research.

6.   Bibliography

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