Fiddling while Juba burns

Why did the implementation of the Responsibility to Protect doctrine in South Sudan from 2005 to 2018 fail?

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by

Kevin Culligan

k.c.culligan@umail.leidenuniv.nl

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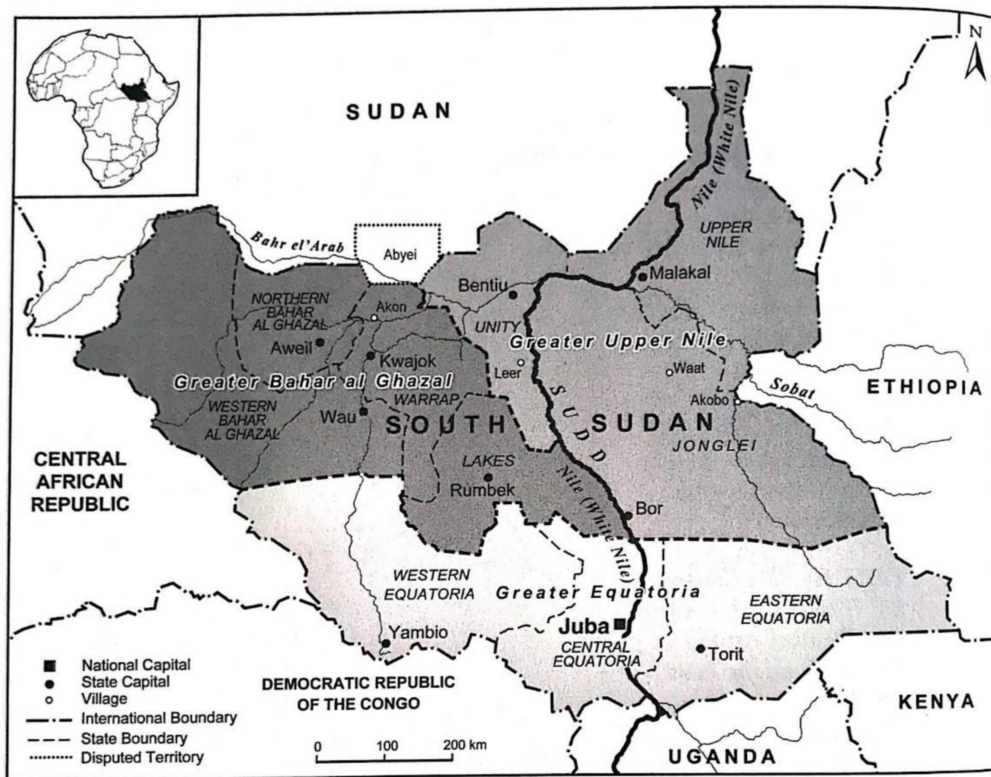

Figure 1: Map of South Sudan at independence in 2011 (Vertin 2018, viii).

Abbreviations

AU	African Union
ARCSS	Agreement for the Resolution of the Conflict in the Republic of South Sudan
AUCISS	African Union Commission of Inquiry on South Sudan
BBC	British Broadcasting Corporation
CAR	Central African Republic
CPA	Comprehensive Peace Agreement
HCSS	Hybrid Court for South Sudan
ICC	International Criminal Court
ICISS	International Committee on Intervention and State Sovereignty
IGAD	Intergovernmental Authority of Development
LRA	Lord's Resistance Army
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
P5	Permanent five members of the UN Security Council
PoC	Protection of Civilians
R-ARCSS	Revitalised Agreement for the Resolution of the Conflict in the Republic of South Sudan
RPF	Regional Protection Force
R2P	Responsibility to Protect

SAPG	Special Adviser to the UN Secretary-General on the Prevention of Genocide
SARP	Special Adviser to the UN Secretary-General on the Responsibility to Protect
SPLM/A	Sudanese People's Liberation Movement/Army
SPLM/A-IO	Sudanese People's Liberation Movement/Army-in-Opposition
SoFA	Status of Forces Agreement
SSDF	South Sudan Defence Force
SSP	South Sudanese pound
UNGA	United Nations General Assembly
UNOGP	United Nations Office of Genocide Prevention and the Responsibility to Protect
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan

Note for the Reader

<u>Sudan, South Sudan, and Southern Sudan</u>

This thesis will use the term 'Southern Sudan' for the ten southernmost states of Sudan that became South Sudan when discussing the area before that date. After independence, 'South Sudan' will be used. During both periods it may sometimes be simply referred to as 'the South'. Similarly, 'Southern Sudanese' will the demonym used before 2011 and 'South Sudanese after. 'Sudan' will be used to refer to the combined state both before and after 2011. 'Sudanese' will be the demonym used for both periods. During both periods it may sometimes be simply referred to as 'the North'.

<u>The Second Sudanese Civil War and the South Sudanese Civil War</u>

The South Sudanese Civil War will also sometimes be referred to as simply 'the civil war'. The Second Sudanese Civil War will never be referred to in this way, although it may sometimes be called the 'war with Sudan'.

Chapter 1: Introduction

"Man's inhumanity to man,

Makes countless thousands mourn!"

- Robert Burns (1784), *Man was made to mourn: A Dirge*

During the twentieth century, over 262 million people were killed by their own governments. This compares to approximately forty-four million who died in inter-state wars (Bellamy 2013, 487). Motivated by the multiple mass atrocities of the 1990s, the UN promulgated the Responsibility to Protect (R2P) doctrine in 2005 which aimed to prevent such atrocities from recurring. Despite this doctrine, the last fifteen years have seen these crimes continue apace. Almost nowhere is the failure of both a state and of the international community to prevent or arrest the perpetration of mass atrocities clearer than in South Sudan.

The question that this thesis aims to answer is 'Why did the implementation of the Responsibility to Protect doctrine in South Sudan from 2005 to 2018 fail?' This will be done by analysing the actions of South Sudan and of the international community under the three pillars of R2P (these will be discussed later in this chapter). Relating to the respective pillars, the following three sub-questions will also be explored:

- What measures did South Sudan take – before and during the South Sudanese civil war – to protect its population from mass atrocities?
- What assistance did the international community provide for capacity building and the prevention of mass atrocities before the outbreak of the conflict?
- Once the civil war had begun and mass atrocities were being committed, what tools did the international community utilise to stop further mass atrocities from occurring?

The remainder of this chapter will give some background on R2P, on its three pillars, and on South Sudan, as well as detailing the outline for the thesis.

<u>The Responsibility to Protect Doctrine: Background</u>

The international community was roundly criticised for failing to prevent the Rwandan genocide and the mass atrocities in the Balkans (Power 2002). By contrast, the NATO bombing of Kosovo in 1999 on the grounds of 'humanitarian intervention' caused great consternation as it was a unilateral use of force not authorised by the UN Security Council (Thakur 2016, 102-5).[1] The disparate responses to the mass atrocities of the 1990s prompted some to look again at how to balance the core principles of sovereignty and human rights. UN diplomat Francis Deng's coining of the phrase 'sovereignty as responsibility' as far back as 1996 represented this new thinking. This was recast as the 'responsibility to protect' by the International Community on Intervention and State Sovereignty (ICISS) in 2001 (Evans 2008, 35-43).

The ICISS (2001) made several recommendations regarding how to prevent and halt mass atrocities. In particular, it suggested that this 'responsibility to protect' contained three specific responsibilities: to prevent, to react, and to rebuild. It asserted that less coercive and intrusive measures should always be considered first, with the primary responsibility remaining with the state. Subsequent public debate on the recommendations and the negotiations on a doctrine saw many of the more controversial elements stripped out. These included that the five permanent UN Security Council states (P5) refrain from vetoing resolutions regarding the prevention of mass atrocities when their vital interests were not at stake. Also jettisoned were criteria to be considered before sanctioning military intervention and the 'responsibility to rebuild'. Nevertheless, the R2P doctrine was promulgated in the 2005 World

[1] Sheena Chestnut Greitens (2016, 265) defines humanitarian intervention as any military intervention which aims to protect fundamental human rights and provide emergency assistance in another country by undertaking operations aimed at suppressing conflict and creating security. This thesis proposal will generally use the term 'military intervention for humanitarian purposes'.

Summit Outcome Document which was assented to by all UN member states (Bellamy 2011, 21-5).

The entire R2P doctrine is set out in Articles 138-140 (United Nations General Assembly 2005, 31-2).[2] It is best understood through the three-pillar strategy for the doctrine's implementation which UN Secretary-General (UNSG) Ban Ki-Moon outlined in his 2009 report entitled *Implementing the Responsibility to Protect*. These three pillars are "the protection responsibilities of the state"; "international assistance and capacity building"; and a "timely and decisive response" (UNSG 2009, 10-27). Pillar I is based upon Article 138, which holds that "each individual state has the responsibility to protect its populations" from mass atrocity crimes. It specifically states that the mass atrocities concerned are "genocide, war crimes, ethnic cleansing and crimes against humanity" (United Nations General Assembly 2005, 31).[3] This pillar entails the state's role in the prevention of these heinous acts, including their incitement.

Pillar II – international assistance and capacity building – is based upon parts of both Articles 138 and 139. Article 138 notes the international community's role in helping states to fulfil their responsibilities and its need to support the UN in developing an "early warning capability". Article 139 also commits the international community both to helping states build capacity to protect their populations from mass atrocities and to assisting those states "under stress before conflicts and crises break out". Finally, Pillar III – a timely and decisive response – holds that if a state manifestly fails to protect its populations from mass atrocities, the international community has the responsibility to act. In such a scenario, the United Nations Security Council (UNSC) can authorise diplomatic, humanitarian, legal, economic, or military collective action to protect the populations of that given state (United Nations

[2] Please see Appendix I for Articles 138-140 in full.

[3] Please see Appendices II and III for Articles I-III of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide as well as Articles 6-8 of the Rome Statute of the International Criminal Court. These clearly define what constitutes the mass atrocity crimes of genocide, of war crimes, and of crimes against humanity. While ethnic cleansing does not have a clear definition in international law, acts associated with ethnic cleansing often constitute war crimes or crimes against humanity (UN Office on Genocide Prevention and the Responsibility to Protect 2014, 1).

General Assembly 2005, 31). The Pillars emphasise the role of states and the UN rather than civil society, especially given that non-state actors have little role under Pillar III.

South Sudan: Cycles of Hope and Despair

South Sudan emerged from the Comprehensive Peace Agreement (CPA) that ended the Second Sudanese Civil War. This incredibly lethal conflict – Peter Martell (2018, 159) estimates over two million died between 1983 and 2005 – was marked by frequent mass atrocities committed by all parties involved, including intra-South violence between different rebel groups. The war both created and exacerbated ethnic divides, with rebel leaders often instrumentalising ethnicity to garner support. This legacy of violence contributed to deep mistrust and suspicion between different groups within the South (Vertin 2018, 28-30). The Sudanese People's Liberation Movement/Army (SPLM/A) eventually concluded the CPA with Sudan in 2005, but neither party was committed to 'making unity attractive' (Vertin 2018, 84-6). A self-determination referendum held in January 2011 at the end of the six-year 'interim period' saw approximately 99% of South Sudanese voting to secede.

On 9 July 2011, South Sudan became the world's newest state. While it possessed major oil resources, it was also woefully underdeveloped. As Martell (2018, 4) points out, upon achieving independence it ranked near the bottom of almost all human development indices. Moreover, South Sudan is an incredibly diverse country with sixty-four different ethnic groups (Johnson 2016, 4). The UN recognised the new state's incredible fragility: in UNSC Resolution 1996, it authorised a peacekeeping force with an explicit mandate to assist the new government in fulfilling its R2P obligations towards civilians (UNSC 2011, 3-5). After an economic crisis caused by shutting off oil sales to Sudan and with various cliques within the SPLM/A jostling for power, the country erupted into civil war in December 2013.

This violence fell mostly along ethnic lines. War crimes, crimes against humanity, and ethnic cleansing were all intrinsic features of the conflict

(African Union Commission of Inquiry on South Sudan 2014, 296-9). The UN Special Adviser on the Prevention of Genocide Adama Dieng warned in December 2016 that there was a strong possibility that the violence could devolve into genocide, while in 2017 a man-made famine hit the province of Unity (Martell 2018, 260-1; UNSC 2016, 4-7). After multiple broken ceasefires and agreements, a revitalised peace deal was eventually agreed in September 2018 between the government, the biggest rebel faction the SPLM/A-In-Opposition (SPLM/A-IO), and two smaller opposition groups. Given the mass atrocities that were perpetrated throughout the conflict by both government forces and rebel groups, the South Sudanese government manifestly failed in its responsibility to protect its population. Despite the international community's efforts before and during the civil war, it was unable to either prevent or halt these terrible acts.

The Failed Implementation of R2P in South Sudan: Outline of the Thesis

This introduction – Chapter 1 – presented an overview of R2P as well as of South Sudan before and during the South Sudanese Civil War. Chapter 2 will review the existing scholarship on R2P and on South Sudan. Chapter 3 will focus on the methodology to answer the research question, detailing the toolboxes that will be used to answer the three sub-questions. Chapter 4 will examine the risk factors apparent when the CPA was signed in 2005. Chapter 5 will discuss Pillar I – the primary responsibility of the state to protect its populations – by scrutinising the actions taken by the South Sudanese government to increase or decrease the likelihood of mass atrocities before and during the civil war. Chapter 6 will explore Pillar II – international assistance and capacity building – through looking at the international community's actions before the outbreak of the civil war. Chapter 7 will then discuss Pillar III – a timely and decisive response – by analysing the measures the international community utilised to halt mass atrocities after the civil war had started. Finally, Chapter 8 will serve as a conclusion and assess what lessons can be drawn from the implementation of R2P in South Sudan for both the country and the doctrine moving forwards.

This thesis will cover the time period from the CPA on 9 January 2005 up until the peace agreement between South Sudanese President Salva Kiir and the leader of the SPLM/A-IO Riek Machar on 12 September 2018. While the mass atrocities that the thesis will focus on were perpetrated after the civil war had begun – from 15 December 2013 onwards – it is necessary to include the period since 2005 in order to examine the implementation of all three pillars of R2P in South Sudan. The end date in September 2018 has been chosen as the peace agreement saw a decline in the scale, intensity, and frequency of atrocity crimes (UNSC 2020, 10-12).

Chapter 2: Literature Review

"The ultimate aim of R2P is to persuade states to live up to the responsibilities inherent in their sovereignty and to assist them in doing so."

- Alex J. Bellamy (2015, 18), *The Responsibility to Protect: A Defence*.

Much has been written on R2P in the fifteen years since its promulgation. This chapter will delve deeper into the doctrine, exploring both its strengths and weaknesses. It finds that much of the scholarship is quite narrowly focused on Pillar III, especially on coercive military measures. This thesis will instead contribute to the literature by examining all three pillars in reasonably equal measure. This chapter will also detail some of the secondary sources on South Sudan that will be used in conjunction with primary sources in the coming chapters. Given that there is a paucity of works analysing the South Sudanese Civil War through the lens of R2P, this thesis will also fill this gap in the literature.

Literature Review: R2P's Strengths and Weaknesses

As mentioned in Chapter 1, the R2P doctrine has its origins in the idea of 'sovereignty as responsibility'. Alex J. Bellamy – one of the foremost scholars on R2P – suggests that this formulation implies that states' sovereignty is linked to their ability to uphold the rights of their populations and to refrain from oppressing those same populations. He also holds that the doctrine contains two overlapping strands. The first strand is concerned with persuading states to in fact fulfil their Pillar I responsibilities and that the international community will offer them assistance under Pillar II in doing so if required (Bellamy 2011, 8). Both Bellamy and Gareth Evans (2008, 56) place great emphasis on this strand of the doctrine, with the latter stressing that "above all,

R2P is about taking *preventive* action".[4] The responsibility to take such actions lies primarily with the state.

The second strand concerns the collective actions that the UNSC can authorise the international community to take if a state has manifestly failed to prevent mass atrocities or is in fact perpetrating them itself. This second strand is also focused on engendering the international community's willingness to act in the face of such atrocities. These collective actions can go as far as a military intervention for humanitarian purposes. However, Bellamy (2015, 14-5) notes that the doctrine does not obligate such an intervention in a mass atrocity situation. Indeed, the UNSG's 2012 annual report on R2P clearly states that while the international community cannot discount the possibility of using force, there is an explicit preference for "non-forcible measures" (UNSG 2012, 15). Indeed, the UNSC has only authorised military interventions for humanitarian purposes under R2P on three occasions: in Libya and Cote D'Ivoire in 2011 as well as in the Central African Republic (CAR) in 2013 (Bellamy 2015, 100-1).

R2P addresses three concerns which have frequently mitigated against collective action by the international community to prevent or halt mass atrocities. Firstly, it clearly codifies the situations in which a state's sovereignty ceases to be absolute and the primary responsibility to protect is taken up by to the international community (Pattison 2010, 3). The state must be committing or manifestly failing to prevent at least one of four specific mass atrocity crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. It does not cover other crises, even if they entail 'large-scale loss of life'. This is demonstrated by France's unsuccessful attempts to invoke R2P regarding Myanmar's neglectful response to Cyclone Nagris in 2008. While the Burmese government was undoubtedly manifestly failing to protect its population, the UNSC agreed that it did not warrant collective action under R2P because a mass atrocity crime was not being perpetrated (Barber 2009, 14-24). Evans (2008, 59-69) furthermore points out that these atrocity crimes must be committed on a 'mass' level to justify more coercive Pillar III tools being considered.

[4] Emphasis in original quotation.

Secondly, the R2P doctrine was agreed to by all UN member states in 2005. The UNSC has since unanimously reaffirmed the doctrine on four occasions and referenced it in dozens of resolutions. This indicates that the doctrine has at least been accepted in principle by the international community (Bellamy and Luck 2018, 38). Indeed, while there has been much scholarly and political critique of coercive actions taken under R2P, the relative inaction of the UNSC during the final months of the Sri Lankan Civil War as well as during the Syrian and Rohingya crises has also drawn criticism. This perhaps suggests that the R2P doctrine is beginning to be internalised as a norm for states and is beginning to "shape our collective expectations" of how the international community should respond during crises where mass atrocities are occurring or seem imminent (Bellamy 2015, 100).

Thirdly, the doctrine does not insist upon military intervention regardless of the mass atrocity situation at hand. The 2009 R2P report clearly expresses a preference for dialogue and persuasion while considering non-coercive collective action first (UNSG 2009, 22-3). Using the example of the genocide in Darfur, Evans also suggests that even in a situation where other options have been attempted and failed, a military intervention is not always warranted. This may be because either it is unlikely to succeed or there is a likelihood that it will be counterproductive (Evans 2008, 60-1). In addition, Serena K. Sharma and former Special Adviser to the UNSG on the Responsibility to Protect (SARP) Jennifer M. Welsh (2015a, 385-8) distinguish between several potential military measures available to the UNSC under Pillar III, only one of which is authorising a military intervention for humanitarian purposes.

However, R2P has also borne much criticism ever since the ICISS suggested the concept in 2001. Firstly, R2P has been critiqued because any potential collective action can be vetoed by any P5 state. The ICISS report (2001, 49-51) recognised that this was a concern, suggesting that the P5 refrain from utilising their veto powers in a mass atrocity situation where their "vital national interests were not claimed to be involved". As mentioned in Chapter 1, the idea of including such a provision was rejected in the negotiations over the doctrine. R2P therefore does not overcome the problem of actual or threatened

vetoes which greatly weakened the international community's ability to respond to mass atrocities in the 1990s (Pattison 2010, 6). The use of veto power is a weakness acknowledged by those supportive of R2P. In response, Evans points out that non-coercive policy tools can still be utilised even if coercive measures are not a plausible option, albeit to lesser effect (Evans 2008, 62-5). The issue of vetoing R2P collective actions has arisen again in recent years, especially with Russia's use of its veto power being a major factor in the UNSC's inadequate response to mass atrocities in Syria (Momani and Hakak 2016, 902-9).

Secondly, R2P will only develop from a doctrine to a norm if it tangibly influences states' behaviour. However, many states have not yet allowed their rhetorical commitment to R2P to affect their treatment of their populations in practice. Initially, some states claimed that they had not in fact promulgated an R2P doctrine. Rather they suggested that they merely voted in favour of continuing to consider creating such a doctrine (Bellamy 2011, 25). This was clearly prevarication at best and the vast majority of states have since accepted R2P, focusing instead on debates surrounding its implementation. Bellamy and former SARP Andrew C. Luck (2018, 38-47) try to argue that this acceptance entails that R2P is now an established international norm. Nevertheless, all too frequently states such as Syria and – as we shall see – South Sudan have failed to fulfil it.

Thirdly, R2P does not encompass a 'responsibility to rebuild'. This had been included in the 'responsibility to protect' in the ICISS report, but as mentioned in Chapter 1 this was also subsequently removed (Bellamy 2011, 9). Therefore, the focus of implementation of collective action under Pillar III tends to be short-term in nature. This can lead to a lack of emphasis on addressing some of the underlying risk factors which helped give rise to the mass atrocity situation originally. As Evans (2008, 148-9) notes, if states do not bear in mind a 'responsibility to rebuild' during and after implementing collective actions under R2P in a given state then mass atrocities will likely recur in that state.

Finally, R2P has also been criticised on the grounds that it imposes a Western conception of human rights upon other states. David Chandler (2004,

67-8) even suggests that the doctrine amounts a form of neo-imperialism, allowing stronger states to impose their will upon the weak. Those sympathetic to this view can point to examples including the military intervention for humanitarian purposes into CAR under Pillar III of R2P in 2013. This was not led by a global coalition but rather by France – CAR's former colonial ruler – as well as by several more powerful neighbouring states with close ties to France and their own interests in CAR (Marchal 2015, 168). This argument ignores the pivotal role that non-Western organisations, states, and individuals – in particular the African Union (AU) – played in R2P's creation. Nonetheless, many non-Western states remain wary of the doctrine's impact on state sovereignty, whether due to historic experiences of subjugation by Western powers or to avoid accountability for repressive behaviour towards their own populations (Mabera and Spies 2016, 208-17).

Not Just About Military Intervention: Analysing All Three Pillars of R2P

There is an oversight in most criticisms of R2P, which has led to a gap in the literature on the topic. The above critiques are all essentially focused on coercive Pillar III measures, particularly on the possibility of military intervention for humanitarian purposes. This has meant that responses from those supportive of R2P have also revolved around this element of the doctrine. Evans (2008, 55-71) devotes almost an entire chapter to dispelling what he describes as "misconceptions" around R2P, mostly focused on military measures. Bellamy (2015, 112-49) similarly spends two chapters contesting criticisms of R2P as being either a disguise for increased Western influence or as being fatally flawed due to possessing double standards when selecting when to intervene militarily.

Consequently, the debate around R2P has often seen many of the old arguments surrounding humanitarian intervention recycled for a new era. Admittedly those advocating R2P have not always helped this situation. The ICISS report which originally conceptualised the 'responsibility to protect' allots more pages to discussing the 'responsibility to react' than the two sections regarding the 'responsibility to prevent' and the 'responsibility to rebuild'

combined (Bellamy 2011, 20). As will be seen in the following chapter, this over-emphasis on reaction as opposed to prevention is also apparent in the scholarly toolboxes used to analyse R2P's implementation. Even though both Evans as well as Sharma and Welsh emphasise that the state bears the primary responsibility to protect, they both – Evans to a lesser extent – focus on Pillar II and especially Pillar III measures.

Therefore R2P has rarely been critically assessed on its own terms. These are the three pillars of the state's protection responsibilities; the international community's duty to assist; and the international community's obligation to respond timely and decisively when mass atrocities are being perpetrated. Even in scholarly works examining the implementation of R2P in states such as Libya, the overwhelming focus is on the coercive measures employed (Hehir 2013, 137-40; Kuperman 2013, 105-7; Pape 2012, 50-2). Similarly, in the case of Syria most attention is paid to the lack of military intervention (Bellamy 2015, 146-7; Morris 2013, 1274-7). This thesis will take a more holistic approach in that it will examine the implementation of the doctrine in South Sudan in terms of all three pillars. The arguments for and against various aspects of the doctrine detailed in this chapter will inform the analysis in the forthcoming chapters.

Literature Review: South Sudan, 2005-2018

There are no comprehensive works examining South Sudan from 2005 to 2018 through the lens of the R2P doctrine, a gap which this thesis will fill. However, there are several recent monographs written by diplomats, journalists, and academics about the civil war. These touch upon aspects of the doctrine including the state's actions, the mass atrocities committed, and the international community's response. Martell's (2018) *First Raise a Flag: How South Sudan Won the Longest War but Lost the Peace* is an excellent history of South Sudan, with an emphasis on events before the CPA that is vital for understanding what subsequently transpired. Former Canadian Ambassador to South Sudan Nicholas Coghlan's (2017) book *Collapse of a Country: A Diplomat's Memoir of South Sudan* is another important resource, in particular

regarding relations in Juba between the international community and the South Sudanese government.

Ex-US State Department staffer Zach Vertin's (2018) *A Rope From The Sky: The Making and Unmaking of the World's Newest State* is another vital text. It particularly sheds light on the various peace negotiations between the belligerents from 2013 to 2016. Academic John Young's (2019) book *South Sudan's Civil War: Violence, Insurgency and Failed Peacemaking* is useful for the insight it gives into the workings of the SPLM/A-IO. Young is sympathetic towards the rebels while heavily criticising the role of the international community in general and the US in particular. He thus contrasts with Vertin – who is mostly supportive of US policy towards South Sudan – and Hilde F. Johnson, whose 2016 memoir *South Sudan: The Untold Story – From Independence to Civil War* details her work as the head of UNMISS from July 2011 to July 2014. Johnson is naturally mostly defensive of the international community's actions. There have also been several useful scholarly articles published on various aspects of the conflict, including a couple relating to R2P.

A limitation of this thesis will be a lack of access to primary sources. This is due to various factors. In particular, there has been consistent harassment of South Sudanese journalists with national newspapers shuttered and editors either arrested or forced to resign. Numerous foreign journalists were expelled, banned, or threatened as well (Martell 2018, 240-1). There are still some accessible South Sudanese news sources, including the *South Sudan News Agency* and the *Sudan Tribune*.[5] Their added value compared to non-South Sudanese media is somewhat limited though as they are both online news agencies based outside of South Sudan,. Foreign news sources including *Al Jazeera* and the BBC as well as UN documents will be used judiciously.

<u>*Conclusion*</u>

This chapter has discussed some of the main arguments for and against R2P. Some of these critiques are based on a flawed or narrow reading of R2P,

[5] The *Sudan Tribune* mostly covers Sudan, but its remit also includes South Sudan.

while others are shortcomings acknowledged even by the doctrine's proponents. Nevertheless, the literature had demonstrated that there is a gap in the R2P literature due to an over-emphasis on Pillar III. This thesis will instead study the implementation of all three pillars in the case of South Sudan to explain why the implementation of R2P in the state failed. Since there has been little scholarship on R2P in South Sudan, this thesis will also serve as an addition to the literature on the conflict.

Chapter 3: Methodology

"Atrocity crimes are not usually single or random events. Instead, they tend to develop in a dynamic process that offers entry points for action to prevent their occurrence."

- Office of the Special Adviser to the United Nations Secretary-General on the Prevention of Genocide (2014, 3-4), *Framework of Analysis for Atrocity Crimes: A tool for prevention*.

The thesis will use a within-case analysis research design because it is examining an important recent phenomenon in the international system – the implementation of the R2P doctrine – by studying one single case, that of South Sudan. This chapter will set out toolboxes in the literature on R2P that will be utilised to explain its failures in this case. These will serve to frame the policy options for atrocity prevention available to the state and to the international community under each of the three pillars. This chapter will also detail what toolbox will be used to ascertain the risk factors that were present in South Sudan which increase the likelihood of mass atrocities.

What Toolboxes are Best to Analyse the Three Pillars of R2P?

This thesis will use Evans' (2008, 79-174) toolboxes for analysing the actions taken by the South Sudanese state (under Pillar I) and by the international community (under Pillars II and III) before and during the South Sudanese Civil War. In his book *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Evans uses three separate toolboxes – the 'prevention toolbox', the 'reaction toolbox', and the 'rebuilding toolbox' – to discuss the range of policy options available to implement R2P. Each of these toolboxes has four distinct 'compartments' for different types of measures: political/diplomatic, economic/social, constitutional/legal, and security sector measures. Furthermore, each of the four sections in the 'prevention toolbox' is further divided between "structural prevention measures" and "direct operational measures". The former tend to be more long-term and emphasise

root causes, whereas the latter are more applicable to crisis situations where immediate action is required (Evans 2008, 86-7).

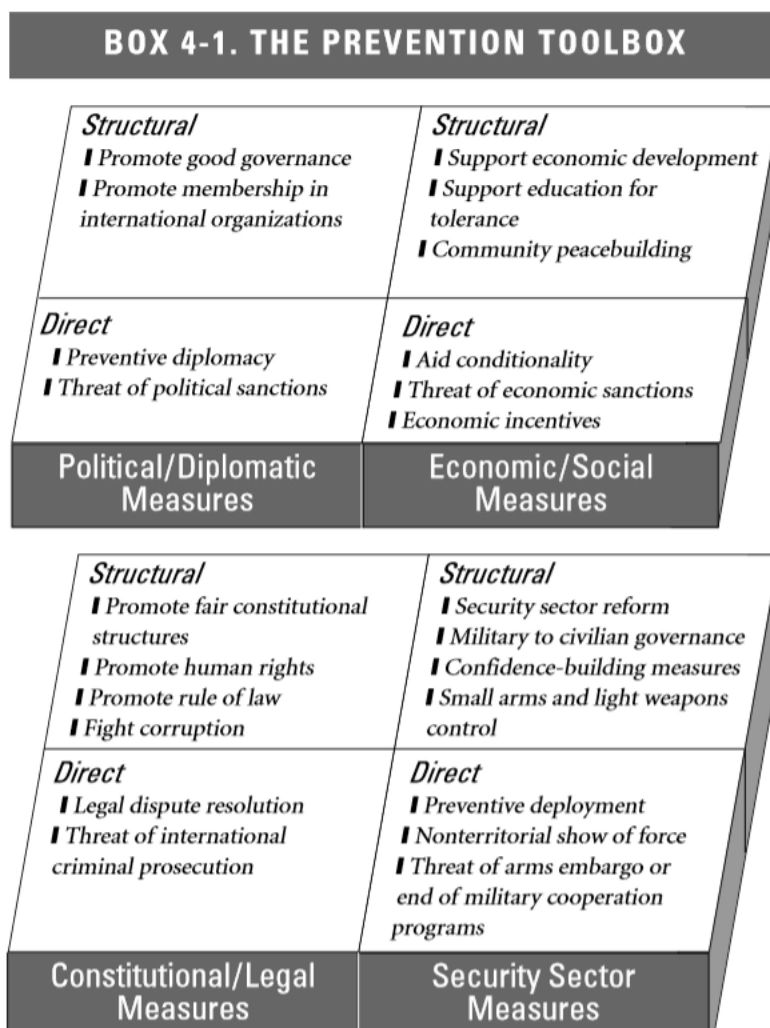

Figure 2: Evans' (2008, 87) 'prevention toolbox'.

Evans' toolboxes are imperfect models with which to analyse the implementation of the three pillars of R2P in South Sudan, as they have a slightly different focus. The inclusion of a 'rebuilding toolbox' is due to the 'responsibility to rebuild' discussed in the 2001 ICISS report. However, given that this is not covered by the R2P doctrine, it is outside the scope of this thesis and therefore this third toolbox will not be utilised.[6] While the 'reaction toolbox'

[6] However, some policy options in this toolbox such as transitional justice measures, disarmament, demobilisation, and reintegration (DDR), and security sector reform are

clearly fits those coercive and non-coercive collective actions under Pillar III, the 'prevention toolbox' contains some measures which are alternatively applicable to Pillar I or Pillar II depending on which party instigates them.

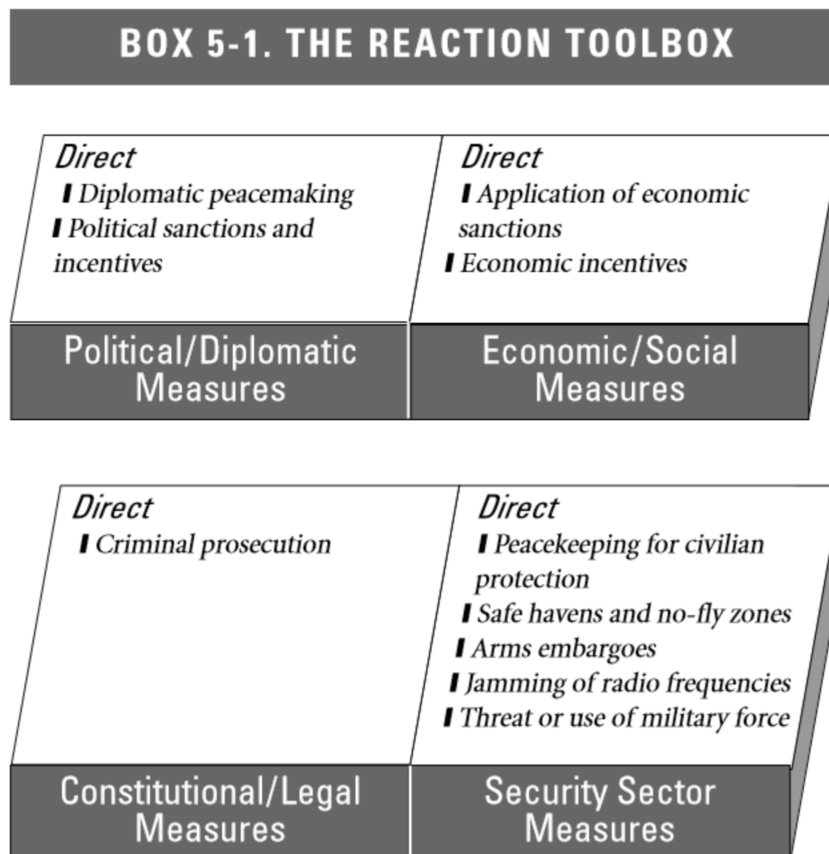

Figure 3: Evans' (2008, 107) 'reaction toolbox'.

This means that the 'prevention toolbox' can be utilised for both pillars. The Pillar I analysis in Chapter 5 will include any of the 'structural prevention' measures implemented by the South Sudanese state, while the Pillar II analysis in Chapter 6 will focus on efforts by the international community to build South Sudan's capacity to implement these and its assistance in doing so. The 'direct operational' measures for the most part are threats to utilise tools in the 'reaction toolbox'; however, Chapter 6 will also touch upon their use in the immediate

somewhat relevant to Pillars I and II in the case of South Sudan, given the mass atrocities perpetrated during the war with Sudan (Evans 2008, 150-66).

period before the conflict began in December 2013. While ideally there would be a clearer delineation between the toolboxes for Pillars I and II, when discussing the ‘prevention toolbox’ Evans (2008, 86) clearly states that regarding these tools “the primary focus is on what states at risk can do for themselves, by their own national effort and with their own national capacity”.

Many of the other major models which analyse R2P’s three pillars are also imperfect for similar reasons to those of Evans, only to a greater extent. Sharma and Welsh utilise a different approach to R2P with a greater focus on crime prevention. They suggest that this is more in line with the actual R2P doctrine, whereas many other authors and policymakers have often seen implementing R2P as trying to prevent ‘large-scale loss of life’. They argue that this has led to approaches which emphasise conflict prevention over atrocity prevention (Sharma and Welsh 2015b, 5-10). This crimes prevention approach is undoubtedly a useful contribution to the literature. In particular, they conceive of atrocity crimes “as having three dimensions: a perpetrator, a victim, and a permissive situation”. Any or all of these can be targeted by different prevention measures (Sharma and Welsh 2015a, 376-88). However, they mostly discuss actions that can be taken by the international community and in particular measures that are best suited to an escalating crisis or when mass atrocities are already being perpetrated.[7] This means that it is mostly incompatible with analysing Pillar I measures and of limited use for examining Pillar II measures, making Evans’ toolboxes a more suitable choice.

The UN itself has also devised R2P toolboxes. In his 2013 R2P report, the UNSG lists three key areas in which states can implement atrocity prevention policies. These are building national resilience; promoting and protecting human rights; and adopting targeted measures to prevent mass atrocity crimes (UNSG 2013, 7-15). The 2014 R2P report details Pillar II tools such as public and private encouragement; capacity-building; as well as assisting states to protect their populations through denial of weapons, civilian assistance, and peacekeeping and stabilisation assistance (UNSG 2014, 8-17). The 2012 R2P report focuses on Pillar III measures. These include mediation

[7] They focus on the policy tools of mediation, countering atrocity-justifying ideologies, referrals to the ICC, sanctions, and military measures.

and preventive diplomacy; public advocacy; fact-finding missions and commissions of inquiry; monitoring and observer missions; referral to the International Criminal Court (ICC); UNSC collective action including sanctions and authorising the use of force; and applying pressure through the United Nations General Assembly (UNGA) and the Human Rights Council (UNSG 2012, 7-10).

Overall, Evans' toolboxes allow for easier comparison between the measures taken under different or multiple pillars, while the toolboxes described in the R2P reports are not as closely related. However, the reports contribute greatly to an understanding of the policy options available under R2P, as well as in some cases giving greater detail than Evans does. For example, the R2P report (2014, 17) on international assistance describes peacekeeping as a Pillar II tool whereas Evans (2008, 120-5) suggests it is a reactive measure more suited to Pillar III. Given that UNMISS peacekeepers in South Sudan were carrying out their mandate both before and during the civil war, this thesis will discuss peacekeeping operations under both pillars.

The 2013 R2P report also lists six risk factors for mass atrocity crimes. These are a history of discrimination or other human rights violations against a particular population; the underlying motivation for targeting a community, as evidenced by ethnically-based divisive rhetoric for example; the presence of armed groups with the capacity to commit mass atrocities; particular worrying developments that facilitate the perpetration of mass atrocity crimes such as support for militia groups or increased arms imports; a lack of government capacity or preventive institutions to prevent such crimes; and the committal of atrocity crimes on a small-scale level (UNSG 2013, 4-7). Evans (2008, 74-6) also has five 'watch list criteria' for identifying whether a state is "one of 'R2P concern'" which mostly match the 2013 report, with the addition of good leadership and the receptivity of the state to outside pressure. Sharma and Welsh's (2015a, 374) seven key risk factors cover comparable areas. Finally, the UN Office on Genocide Prevention and the Responsibility to Protect's (UNOGP) 2014 framework outlines eight common risk factors. However, these mostly cover the same points as the 2013 R2P report albeit often in greater detail (UNOGP 2014, 10-24).

Conclusion

This chapter has clearly set out the methodology that will be used in the rest of the thesis. Pillars I, II, and III of R2P's implementation in South Sudan will be analysed using Evans' toolboxes, supplemented by the 2012, 2013, and 2014 R2P reports. This will seek to explain why the implementation of the doctrine failed in the state, with the catastrophic results that followed. Firstly however, the next chapter will utilise the risk factors listed in the 2013 R2P report – along with some of Evans' watch list criteria – to determine whether Southern Sudan was an 'at risk' area upon the signing of the CPA.

Chapter 4: Risk Factors for the Perpetration of Mass Atrocities in South Sudan

"Although it is impossible to draw a direct causal connection between the presence of specific risk factors and the occurrence of atrocity crimes, they are rarely committed in the absence of those risk factors."

- United Nations Secretary-General Ban Ki-Moon (2013, 4), *Responsibility to Protect: State responsibility and prevention*.

In 2013, the UNSG issued his annual report on R2P. This focused on Pillar I of the doctrine, the primary responsibility of states to protect their populations from mass atrocities. The report also details various risk factors that increase the likelihood of atrocities occurring in a given state and examples of triggers that can engender a rapid escalation of tensions (UNSG 2013). In the case of South Sudan, even when the CPA was signed there was ample evidence of these risk factors. This chapter will set out the risk factors present at the beginning of the 'interim period', including Evans' (2008, 75) point regarding the importance of good leadership.[8]

Risk Factors: Trouble Close to the Surface

As of early 2005 in Southern Sudan, there was both a history of discrimination or human rights abuses and an underlying motivation for targeting a community. The SPLM/A was the main armed group in the war against Sudan, but it was far from universally beloved by South Sudanese. Clémence Pinaud (2014, 197-8) describes how it was far more aggressive in areas from which it did not traditionally recruit soldiers. In areas controlled by militias aligned to Khartoum, it was even harsher towards civilians. Other ethnic groups in the South throughout the Second Sudanese Civil War were wary of

[8] Evans' (2008, 74) point regarding whether the state in question is receptive to external influences will be touched upon in Chapters 6 and 7.

the Dinka-dominated hierarchy of the SPLM/A. The Nuer harboured particular animosity due to then-leader John Garang's – who was a Bor Dinka – ruthless destruction of the mostly Nuer Anya-Nya II rebel group in the mid-1980s (Johnson 2016, 5; Martell 2018, 113-4; Young 2019, 5).[9] This Dinka-domination – alongside the authoritarian nature of the SPLM/A and Garang's vision of a 'New Sudan' over pursuing secession – was cited by Riek Machar (a Dok Nuer from Unity state) and Lam Akol (a Shilluk) in their attempted coup against Garang in August 1991 (Martell 2018, 133; Vertin 2018, 71).

Machar and Akol's forces – a mixture of largely Nuer defectors and the 'white army' traditional Nuer community defence militia – soon attacked the SPLM/A and territories under its control. This included the horrific massacres perpetrated against the mostly Dinka civilians of Bor and surrounding villages in late 1991. Approximately 2,000 were slaughtered, with Machar's forces and aligned groups committing mass atrocities including torture and rape. The SPLA responded with similar atrocities against the Nuer, including burning Nuer civilians alive inside a church in Ayod in Jonglei state (Giffen 2016, 589; Martell 2018, 133-4). The two groups continued this reciprocal pattern of mass atrocity violence, which contributed to a famine in Upper Nile state in 1993 (Human Rights Watch 1993). Vertin (2018, 66-71) describes these attacks as part of a decade of internecine ethnic warfare that "cemented a legacy of tribal hatred". In August 2011 Machar eventually apologised for the Bor massacre. As of 2005 though there had been precious little accountability for or acknowledgment of the atrocity crimes committed in intra-South violence. The 2013 R2P Report holds that this exacerbates the risk factor of a history of human rights abuses, as perpetrators enjoy impunity and victims bear grievances (UNSG 2013, 4).

During the war against Sudan there was also a lack of government capacity or protective institutions to prevent such crimes. Pinaud (2014, 198-9) notes that the SPLA had limited capacity to govern liberated territories centrally; instead, individual army commanders had great autonomy to manage the populations under their control. Meanwhile the Sudanese government which

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[9] Johnson refers to the Anya-Nya II being 'absorbed' into the SPLM/A (which she acknowledges had a strong Dinka component).

was nominally in charge had essentially no ability to administer these areas; garrisons were stuck in major towns being supplied from the air while the government attacked civilian targets (Martell 2018, 199-28). Yet in the years leading up to 2005 the major developments were not worrying, but rather they seemed to somewhat reduce the risk of mass atrocities. Aside from the CPA itself, in 2002 Machar mended relations with Garang and re-joined the SPLM/A (Giffen 2016, 859; Vertin 2018, 73). However, there was still an ongoing intra-South conflict between the SPLM/A and the mostly Nuer South Sudan Defence Force (SSDF). This was claiming more lives in the early 2000s than the war with Sudan (Young 2019, 7).

Despite representing the South in the CPA negotiations, the SPLM/A was far from the only armed group or militia in the south with the capacity to commit atrocity crimes. There was the aforementioned SSDF which despite their considerable size and territory held was excluded from the CPA negotiations, alongside multiple other smaller armed groups. Indeed, collectively the other groups outnumbered the SPLA – which had at most 40,000 soldiers in 2005 – and were also better armed (De Waal 2014, 355; Young 2019, 8). Martell (2018, 169-71) also emphasises the presence of the Lord's Resistance Army in Equatoria during this period, which was committing various atrocities including sexual slavery and forcibly recruiting child soldiers. Of the six risk factors listed by the 2013 UN Report therefore, there was at least some evidence for the presence of all of them as of 2005.

Finally, Evans (2008, 75) emphasises the aspect of leadership as countries with good leadership are often able to ameliorate existing tensions and prosper despite a lack of strong institutions. Most of the literature is critical of John Garang's leadership of the SPLM/A. While he achieved tactical successes and proved particularly adept at engendering foreign support, he ruled his movement in a thoroughly authoritarian manner. The SPLM/A emphasised militarism and had little internal democracy (Martell 2018, 129-30; Vertin 2018, 107-8). Johnson (2016, 5) is the rare author who praises Garang's vision of democracy and a 'New Sudan' without noting the contrast with how he ran the SPLM/A in practice. Aside from the aforementioned 1991 split, the SPLM/A also nearly split in December 2004 when Salva Kiir and others challenged him

on his "heavy-handed leadership" of the movement (Vertin 2018, 57). Nevertheless, Garang remained an inspirational figure for many in the South. With his death in July 2005, the leadership of the SPLM/A passed to Kiir who was generally seen as an ineffectual replacement (Martell 2018, 166; Vertin 2018, 62; Young 2019, 9). Machar was now second-in-command.

Conclusion

This chapter has demonstrated that in 2005 Southern Sudan was a high-risk country in terms of the likelihood of mass atrocities occurring there in the next few years. The abundant risk factors included a legacy of conflict which had included mass atrocities, the presence of armed groups with the capacity to commit such crimes, and an absence of government or human rights institutions that could act as inhibiting factors. It would now be a question of national leadership and of the role the international community could play in assisting the semi-autonomous Southern Sudan – then after 2011, South Sudan – to protect its population from mass atrocities. The actions of South Sudanese leaders and of the international community will be explored in Chapters 5 and 6.

Chapter 5: The Implementation of Pillar I of the Responsibility to Protect Doctrine in South Sudan

"'First raise a flag. Then we make a country'".

- Former General Joseph Lagu of the Anya-Nya rebel group speaking in 2011, quoted in Martell's (2018, 205-6) *First Raise a Flag: How South Sudan Won the Longest War But Lost the Peace*.

As discussed in the previous chapter, as of 2005 there was plentiful evidence of risk factors for mass atrocities in Southern Sudan. However, given the strong support of the international community and its considerable oil resources it was in a better place than many African states. Its government certainly had the opportunity to put atrocity prevention policies in place and fulfil its Pillar I responsibilities (Vertin 2018, 115).[10] This chapter will use Evans' toolbox (2008, 86-104) for the 'responsibility to prevent' as a framework to explore what measures South Sudan took to protect its population from mass atrocities before and during the South Sudanese Civil War.

Political/Diplomatic Measures

The political/diplomatic measures Evans (2008, 86-9) focuses on are membership of international organisations or regimes and ensuring good governance. The former is beneficial as it commits states to follow certain standards of behaviour and favours dialogue over violence to resolve disagreements. After independence, South Sudan was swiftly accepted as both a UN and AU member state. Furthermore, in November 2011 it joined the sub-regional Intergovernmental Authority on Development (*Reuters* 2011). But as of December 2013, South Sudan had joined very few international human rights treaties. Importantly in the context of R2P, in January 2013 it acceded to the Geneva Conventions and their three optional protocols. However, South Sudan

[10] The South's GDP per capita in 2010 was $1,600.

is not a member of the ICC – meaning that the court cannot investigate mass atrocities committed there unless the situation is referred to it by the UNSC – and it has not acceded to the 1948 Genocide Convention (International Committee of the Red Cross, n.d.).

Regarding good governance, there is essentially universal agreement in the literature that South Sudan abjectly failed on this front. Many African states after independence were characterised by neo-patrimonialism, whereby public goods and the spoils of office were used instrumentally by elites to aid their followers instead of for the overall good of society (Bratton and van der Walle 1994, 453-89). However South Sudan's neo-patrimonialism before and after independence had several unique features, not least of which was the parasitic kleptocracy by elites or anybody else with access to public funds stealing for their personal benefit (De Waal 2014, 348).[11] Martell (2018, 181-206) and Vertin (2018, 113-128) both devote entire chapters to discussing the brazen theft of the country's wealth by the SPLM/A.

By May 2012, Kiir – far from a stranger to this kleptocracy – estimated that $4 billion had been stolen from the state since 2005. While the South Sudanese government in 2012 and 2013 released ambitious plans to fight corruption and Kiir wrote to 75 top government officials asking them to return their ill-gotten gains, no concrete action was taken (Johnson 2016, 89). Such endemic corruption both demonstrates and exacerbates a lack of government capacity or protective institutions to prevent mass atrocity crimes. Corruption can increase the risk of mass atrocities as it corrodes a state's legitimacy and deepens grievances along existing divisions in society (Bellamy 2011, 105-6; Evans 2008, 88).

Economic/Social Measures

In terms of economic/social measures to prevent mass atrocities, Evans (2008, 91-2) especially emphasises supporting economic development. This reduces grievances that groups may hold towards other groups or the state itself.

[11] The other features were militarism; highly monetised government transactions; and a dynamic and turbulent system of patron-client relations.

It also increases the opportunity cost of becoming involved in armed groups or militia as there exist alternative legal sources of income. As of 2005, the South had incredible ground to make up. A million people were dependent on UN food aid for their survival and four-fifths of the population were illiterate. However it had one great advantage: oil deposits which amounted to roughly $12 billion dollars in revenue during the interim period. This was supplemented by approximately $1 billion in aid annually from non-governmental organisations (NGOs), bilateral donors, and the UN (Martell 2018, 169-76).

Due to the endemic corruption discussed above and extraordinary levels of defence spending, little of this wealth was spent on improving standards of living or even providing basic goods. Throughout the interim period the percentage of government revenue spent on education remained static and the proportion spent on healthcare actually declined. Any advances made on metrics such as primary school enrolment or infant mortality was down mostly to the masses of NGOs and international organisations in the country (Johnson 2016, 42-3). Martell (2018, 184) draws a clear link between the essential absence of the state in many people's lives and their reliance on their own people and associated armed groups for survival. There was a complete lack of any sort of social contract in South Sudan.

Constitutional/Legal Measures

Constitutional/legal measures that states can take to prevent mass atrocities include the promotion of fair constitutional structures (Evans 2008, 95-8). These provide a non-violent path for redressing grievances and protect the rights of vulnerable groups. Southern Sudan initially used the 2005 'Interim Constitution for South Sudan' which was part of the CPA. Young (2019, 12-4) details how in 2010 the SPLM/A brought other Southern political parties into the process for drafting a new transitional constitution for independence, only to exclude them after the referendum. Instead, SPLM/A loyalists wrote the constitution which other parties were unable to amend. It granted the president great authority with few checks and balances.

In a worrying development President Kiir used this authority in July 2013 to dismiss Vice-President Machar – having stripped him of his constitutional powers in April – as well as all other government ministers and deputy ministers (Vertin 2018, 177). Moreover, the 2010 national elections demonstrated the SPLM/A's disregard for democracy. De Waal (2014, 354), Johnson (2016, 13), and Vertin (2018, 104-5) agree that these elections were at best deeply flawed and at worst completely rigged. The SPLM/A pulled their candidate from the Sudanese presidential race while winning all gubernatorial and essentially all legislative seats in the South. This helped spark bloody rebellions in three different states.

Security Sector Measures

Evans (2008, 100-2) discusses the importance of security sector measures, especially security sector reform. Undisciplined armed forces can aggravate existing tensions and themselves commit atrocity crimes. Normally the end of a conflict sees the number of active soldiers reduced with disarmament, demobilisation, and reintegration prioritised. However, after the CPA was signed Kiir expanded the SPLA to hedge against Khartoum possibly reneging on the peace agreement. The 2006 Juba Agreement brought the SSDF into the fold, and smaller agreements similarly lubricated by cash from oil revenues did likewise with smaller rebel groups. This 'Big Tent' policy expanded the SPLA to 240,000 soldiers at independence, a sixfold increase on their numbers in 2005. Soldiers' pay was also doubled to $150 per month in 2006, before being increased again to $220 ahead of the referendum (De Waal 2014, 355-7).

Kiir's use of the army as a patronage system encouraged what De Waal (2014, 361-2) refers to as 'rent-seeking rebellions'. Army commanders would rebel and after a period of fighting they would re-join the SPLA in return for a promotion or other incentives. By 2011, this contributed to the SPLA having 700 generals, with the highest ratio of generals to soldiers of any country in the world (Martell 2018, 187-8). Nevertheless the SPLA did not have a monopoly on violence and conflict with armed groups – many of which saw atrocities

committed against civilians by both state and non-state actors – were a continuous feature of the period from 2005 to 2013 (Giffen 2016, 861-3).

The SPLA may have subsumed various armed groups as it expanded; however, it was far from an ethnically integrated national force. There was an ethnic imbalance within the army, with Nuer soldiers being a plurality due to the additions of various rebel groups. At the officer level this was not the case, with most positions being held by Dinka (Johnson 2016, 233; Martell 2018, 188; Young 2019, 19-21). The endemic corruption also impeded the army's integration. Many commanders were stealing their units' pay, instead preferring units based on ethnic group so that ethnicity could serve as an alternative motivation as well as a direct link to the commander. This contributed to the failure of three separate attempts to fully integrate the army (De Waal 2014, 361). Moreover, even when units were integrated soldiers preferred to deal with superiors of their own ethnicity and often resided at home with their own ethnic group instead of in barracks (Vertin 2018, 21-2; Young 2019, 21). South Sudan thus failed to implement security sector reforms that may have helped to prevent mass atrocities, instead possessing a bloated army lacking allegiance to the state.

Failure of a State: Mass Atrocities During the South Sudanese Civil War

As mentioned in Chapter 1, the South Sudanese Civil War was the culmination of a power struggle between Kiir and various disaffected elites, most notably Machar. It began with massacres of Nuer civilians in Juba from 16-18 December 2013 by elements of *Mathiang Anyoor*, a Bahr al Ghazal Dinka militia aligned with Kiir. Martell (2018, 220-6), Vertin (2018, 193-202), and Young (2019, 65-71) all detail how Nuer civilians were hunted house-by-house and killed. It is unknown how many died, with Martell (2018, 222) estimating several thousand.[12] The African Union Commission of Inquiry on South Sudan's (AUCISS) report (2014, 225) clearly describes the actions as being widespread, systematic attacks with elements of planning and co-ordination

[12] Young (2019, 73-4) criticises UNMISS for not counting fatalities and notes that the Nuer council of elders estimated that 20,000 Nuer were killed in Juba.

directed by entities or individuals associated with the state, thereby constituting crimes against humanity. In response, thousands of armed Nuer 'white army' youth rose up. Aligned with defecting – mostly Nuer – elements of the SPLA, the white army attacked Bor. These disparate forces similarly went house-to-house, killing Dinka civilians and burning houses to the ground (Vertin 2018, 205-6). The AUCISS report (2014, 227-9) also finds that crimes against humanity were committed by the 'white army' and the embryonic SPLM/A-IO in the first few weeks of the war.

After the massacres in Juba and Bor, the conflict shattered the state. Six out of eight SPLA divisions split along ethnic lines, with tens of thousands of mostly Nuer soldiers defecting (Vertin 2018, 206). For the entire duration of the civil war, mass atrocities were *the* defining feature. Martell (2018, 236-7) details how there was widespread use of rape as a tool of ethnic cleansing, with 70% of women who sheltered in UN bases in Juba having been raped during the war. Both sides recruited thousands of child soldiers, in some cases forcibly. These both constitute crimes against humanity. Over one hundred humanitarian workers were killed, with all parties at fault for this war crime (Human Rights Watch, n.d.). In 2017, government forces even created a famine in Unity state through blockading food and stealing aid (Martell 2018, 260-1).

Conclusion

South Sudan manifestly failed to protect its populations from mass atrocities; indeed, it perpetrated many of them. Despite the risk factors apparent when the CPA was signed, any measures to ameliorate these were ineffective at best. More often than not, government policies in fact increased the risk of mass atrocities, deepening ethnic divisions that had been created by the actions of many of the same elites in the intra-South violence during the war with Sudan. This led to the horrors of the South Sudanese Civil War, which led to 190,000 violent deaths and 193,000 further excess deaths (Checchi et al. 2018, 19-23). However, South Sudan did not descend into this brutal conflict in a vacuum. The international community was also present as events spiralled out of control.

Their actions under Pillar II of the R2P doctrine will be examined in the next chapter.

Chapter 6: The Implementation of Pillar II of the Responsibility to Protect in South Sudan

"The Security Council … decides the mandate of UNMISS shall be to consolidate peace and security, and to help establish the conditions for development in the Republic of South Sudan, with a view to strengthening the capacity of the Government of the Republic of South Sudan to govern effectively and democratically …".

- United Nations Security Council (2011, 3) Resolution 1996.

During the war with Sudan, the South received much attention from the international community. Due to the atrocities regularly committed against Southern Sudanese by the North, there was much sympathy amongst both humanitarian organisations and the UN overall for their plight and for the SPLM/A (Coghlan 2017, 13-16). The rebel group assiduously courted a heterogenous bipartisan coalition amongst US policymakers and politicians, ranging from evangelical Christians to the Congressional Black Caucus. The US played an important role – alongside its 'Troika' partners the UK and Norway as well as the Intergovernmental Authority on Development (IGAD) and its mediator General Lazaro Sumbeiywo of Kenya – in nudging both Sudan and the SPLM/A towards the CPA (Vertin 2018, 31-43; Young 2019, 36-56). This chapter will apply Evans' (2018, 86-104) toolbox for the 'responsibility to prevent' to the international community's actions, examining what assistance it provided under Pillar II of R2P for capacity building and the prevention of mass atrocities before the civil war. Due to the financial commitment involved, this was mostly conducted by the UN, NGOs, and Western bilateral donors. Regional states played a more minor role.

Political/Diplomatic Measures

After the CPA was signed, the international community faced an almost unique challenge in assisting Southern Sudan. While in other countries similar

peace agreements had allowed rebels to govern, in Southern Sudan there was negligible infrastructure or bureaucracy (Martell 2018, 165-6). The SPLM/A and the international community essentially had to build governance structures from scratch. The UN's efforts to do this through the United Nations Mission in Sudan (UNMIS) from 2005 to 2011 were seriously hampered by the strictures of the CPA, which called for 'making unity attractive'. Johnson (2016, 28-31) writes that this meant the international community refrained from supporting any "comprehensive programme covering the core functions of the state".

Government institutions such as an independent Central Bank and an effective, impartial civil service were not prioritised until the six months before independence. Moreover, the Southern Sudanese government rebuffed offers from neighbouring countries to send experts to build up some semblance of the capacity and institutional knowledge required to govern a state. While by 2011 some planning and budgetary systems were in place in the central government, bureaucratic systems such as they existed were heavily flawed and major positions in various ministries were still unstaffed. After the state gained its independence, the international community's attempts to assist in creating good governance were obstructed by rampant corruption, as discussed later in this chapter.

As the state descended into political crisis throughout 2013, the international community employed preventive diplomacy measures. Both Evans (2008, 89-90) and the R2P report on international assistance (2014, 9-10) note the usefulness of this at times of grave concern when risk factors for mass atrocities appear to be exacerbated by potential triggers, such as a struggle for power within the ruling party. As the head of UNMISS, Johnson (2018, 166-78) herself engaged with Kiir, Machar, and other leading figures in the SPLM/A in the turbulent months leading up to December 2013. Concerned about the possibility of ethnic violence, she also beseeched eminent persons such as former South African President Thabo Mbeki, Uganda's President Yoweri Museveni, and Kenya's Sumbeiywo to urge the leaders of the various party factions to reduce tensions. These various public and private efforts had some success, with Machar delaying a planned December rally until after the National Liberation Council of the SPLM met. However, the various political/diplomatic

measures employed to assist the South Sudanese government in increasing its capacity were ultimately ineffective, as individual motivations of political power directly mitigated against the work of the international community.

Economic/Social Measures

The international community focused heavily on addressing the economic and social disparities within South Sudan. As has been discussed in previous chapters, South Sudan was one of the most underdeveloped states in the world and was therefore – despite its newfound access to oil wealth, much of which was embezzled – heavily dependent on the international community for basic services. This assistance comprised approximately $1 billion annually between donors, international organisations, and NGOs. Martell (2018, 174) notes that in many ways these NGOs took over many of the functions of a state, motivated in large part by the immense suffering of the vast majority of South Sudanese.

While well-intended, this served to undermine the legitimacy of the embryonic state – as it inhibited the development of a social contract – while capacity development was not directed towards basic provision of services. Furthermore, a high proportion of international assistance focused on humanitarian rather than development aid. Even in 2013 43% of aid was in humanitarian assistance, a much higher percentage than in other underdeveloped states such as Afghanistan and CAR (Johnson 2016, 28-9). Evans (2008, 92-3) also discusses utilising economic and social measures such as supporting education for tolerance and community peacebuilding. Coghlan (2017, 95-100) highlights some actions taken in this area by the international community such as education about grassroots democracy in Upper Nile state. However, overall too little of the international community's efforts focused on increasing the capacity of the government to ameliorate the entrenched economic and social grievances which were a risk factor for mass atrocities.

The major effort of the international community to alter the systemic structure of South Sudan's economy was the 'New Deal Compact' that was being discussed between the government and – mainly Western – donor

countries in the last few months of 2013. This aimed to safeguard education and health spending from austerity measures required due to the recent self-inflicted oil crisis with Sudan (Johnson 2016, 92). A necessary precursor to the Compact was reforming the South Sudanese exchange rate, which had been fixed at 2.96 South Sudanese pounds (SSP) to the dollar since independence. The difference between this and the black market rate of 4.5 SSP allowed government officials to profit by 'reselling' the currency and effectively acted as a tax on aid. When the Finance Ministry and the Central Bank tried to implement a devaluation it was met with a backlash from politicians – many of whom were profiting from the current situation – and the Compact was never enacted. While this could not be blamed on the international community *per se*, it is notable that in consultations about the Compact South Sudanese identified inter-ethnic reconciliation as their top concern but this was not prioritised by donor countries when negotiating the agreement (Coghlan 2017, 107-12). Indeed, over eight years after the CPA meaningful progress on national reconciliation had yet to begin (UNSC 2013a, 3).

Constitutional/Legal Measures

Evans (2008, 98) highlights the damaging impact of corruption, which both weakens efforts to address economic grievances and eviscerates trust in government institutions. A major barrier to building state capacity in South Sudan was the endemic levels of corruption, the sheer scale of which was discussed in the previous chapter. Pre-independence, many members of the international community working within Southern Sudan were reluctant to raise concerns regarding this perfidy publicly. Having long being sympathetic to the SPLM/A and prioritising the coming referendum, concerns were frequently expressed but no action was taken even as the future leaders of an independent South Sudan systematically undermined its ability to become a viable state (Martell 2018, 194-5; Vertin 2018, 112). Johnson (2016, 50-6) personally pushed Kiir on several occasions to take action after independence was achieved, but this seldom resulted in concrete measures.

Even though the international community's attempts to assist the government in fighting corruption were rejected, it refrained from taking or threatening any more coercive actions to combat the kleptocratic governance system. It was not as if the international community did not possess leverage; South Sudan's most important international ally the US provided $1 billion in aid from 2011-13, while the 'Joint Donor Team' of Canada, Denmark, the Netherlands, Norway, Sweden, and the UK contributed over $400 billion bilaterally in the interim period alone. Yet they consistently neglected to condition this substantial support on instituting major governance and anti-graft reforms (Copnall 2014, 201-5).

As for promoting a fair constitution and human rights the international community was stuck between the South Sudanese government and human rights activists. The latter felt that UNMISS was not holding the government accountable, while the government quickly became disillusioned with the UN presence. They expelled some UNMISS human rights staff and Johnson herself was often referred to derisively by members of the SPLM/A as wanting to be 'co-president' of South Sudan (Johnson 2016, 97-101). Meanwhile UNMISS focused on increasing the capacity of the South Sudan Human Rights Commission through technical assistance, despite its impact being circumscribed by limited funding and hostile politicians. It also conducted training events with the government and the police force on the rule of law and on human rights (UNSC 2013a, 11; UNSC 2013b, 8). However, these had little tangible impact in the short-term as the government cracked down on independent media as well as on peaceful protestors, including the use of torture. Kiir also violated the constitution by dismissing and appointing governors himself instead of via the electoral process (Johnson 2016, 95-6).

Security Sector Measures

The UNMISS force was comprised of 7,000 military personnel, up to 900 civilian police personnel, and an accompanying civilian component which included expert technical human rights investigators. It was mandated to support peace consolidation (including long-term state-building and economic

development); to assist the government in reducing and resolving conflict; and to aid the government in increasing its capacity to provide security and rule of law. Furthermore, its mandate explicitly stated that it was to help the South Sudanese government in fulfilling its responsibility to protect (UNSC 2011, 3-5). However as Alison Giffen (2016, 865-8) notes, the fact that its responsibility to protect objective was in the context of assisting the government seemed to underplay the possibility that the South Sudanese state itself could be the perpetrator of mass atrocity crimes.

This was compounded by the mission's Protection of Civilians (PoC) strategy, which also underestimated the risk that state forces could commit such crimes while overlooking the possibility that splits within the SPLM/A could be a trigger for mass atrocities. Moreover, the UNMISS force only contained 3,500 infantry which meant a territory (km^2) to soldier ratio of 98:1, far less than comparable UN missions. The inhospitable terrain meant that UNMISS was highly reliant on air transport when deploying quickly to protect civilians, but it was without any military helicopters for over a year. Furthermore, its air assets were subject to strict landing requirements that made swift redeployment exceedingly difficult (Johnson 2016, 110-25).

Before the civil war broke out in December 2013, UNMISS was mainly engaged in attempting to protect civilians in Jonglei. Here traditional cattle raids staged by the Murle ethnic group on either the Lou Nuer or the Bor Dinka and reprisals from those two groups had grown exponentially deadlier due to access to lethal weapons and ethnic divides stemming from taking opposing sides during the war with Sudan. One series of Nuer attacks on the Murle around Pibor in 2012 killed more than 1,000 civilians (Vertin 2018, 172-6), prompting a renewed government disarmament campaign. Due to pressure from UNMISS they initially prioritised voluntarily laying down arms and all three groups doing so simultaneously. However, when faced with resistance SPLA soldiers carried out numerous killings which helped spark an outright rebellion against the state by the Murle (Johnson 2016, 113-40). While UNMISS undoubtedly played an important role in protecting civilians on numerous occasions, throughout Jonglei from 2011 to 2013 atrocities were being perpetrated by actors including

the government which if they had been 'large scale' would have necessitated a response under Pillar III of R2P.

Conclusion

While the international community put major effort into assisting South Sudan to fulfil its responsibility to protect its population, the implementation of Pillar II measures was often somewhat misguided. Political/diplomatic measures were not prioritised early on and were met with resistance given that they threatened the power structure of the SPLM/A. Economic/social measures frequently focused on the short-term instead of building the capacity of the state itself. Constitutional/legal measures were usually blocked by the government as it threatened the neopatrimonialism system from which the elites profited. Finally, regarding security sector measures the UNMISS mission was not sufficiently equipped for its tasks and its small force was too thinly spread – focusing on having a UN presence in every state to assist with capacity building – to consistently fulfil the objective of protecting civilians (Giffen 2016, 868-9). However, its biggest obstacle was a usually uncooperative and frequently hostile South Sudanese government. As the 2009 R2P report noted, when faced with a government determined to commit atrocities and violations – whether small-scale or large-scale – that fall within the scope of R2P, Pillar II measures will have little impact. Rather, the international community needs to prepare the capacity and willpower to implement Pillar III measures should the need arise (UNSG 2009, 15). The following chapter will examine Pillar III actions on South Sudan during the civil war.

Chapter 7: The Implementation of Pillar III of the Responsibility to Protect Doctrine in South Sudan

"Diplomats said peace was [a] matter of perseverance, continuing dogged efforts to support a formula that had already failed over and over again. Critics said it was madness."

- Peter Martell (2011, 256), *First Raise A Flag: How South Sudan Won The Longest War But Lost The Peace*.

Initial efforts by the international community to halt the mass atrocities began within days of the massacres in Juba and the subsequent outbreaks of violence against civilians across South Sudan. With IGAD mediating, numerous ceasefires were signed and almost as quickly broken throughout 2014 and 2015 before Kiir and Machar eventually agreed to a peace deal in August 2015 (Vertin 2018, 224-80). However, violence continued between smaller groups and the government. The peace deal collapsed in July 2016 amidst more violence in Juba. IGAD began another major round of consultations in February 2018, with Sudan leading this newest peace initiative. A revitalised peace agreement between Kiir, Machar, and two other opposition parties was signed on 12 September 2018 (*Sudan Tribune* 2018; Young 2019, 206-13). This chapter will examine what actions the international community took under Pillar III of R2P to stop further mass atrocities from occurring in South Sudan from December 2013 to September 2018.

Political/Diplomatic Measures:

By January 2014, IGAD had taken the lead role in trying to mediate a peace agreement in South Sudan. The 2012 R2P report notes the important role that regional organisations can play in implementing non-coercive Pillar III measures such as mediation (UNSG 2013, 7). However, multiple authors argue that a major issue in the multiple Addis Ababa-based rounds of negotiations was the regional rivalries and conflicting strategic interests of the different IGAD

states (Johnson 2016, 272-7; Vertin 2018, 241-2; Young 2019, 118-24). Evans (2008, 182) warns of such a lack of a common vision and questionable neutrality when regional organisations take on implementing R2P; this severely hampered the lead mediator Ethiopian Ambassador Seyoum Mesfin's efforts.

There was also a simultaneous 'Arusha process' led by Tanzania and South Africa which focused on reconciling the different factions of the SPLM/A. There is disagreement in the literature regarding this 'second track'. Vertin (2018, 238-40) describes it as "ill-conceived" to try to bring peace to South Sudan through an "elite stitch-up". He also suggested it weakened the position of the IGAD mediators by allowing the belligerents to 'forum-shop'. Young (2019, 128-31) on the other hand suggests that more progress was made here compared to the Addis Ababa negotiations by the various parties on the outline of an agreement, albeit some of the solutions proposed were politically unrealistic. Coghlan's (2017, 176) assessment of the efficacy of the Arusha process is between these two poles.

Another major issue in the talks in 2014 and 2015 was whether to include other opposition parties, civil society, and the 'Former Detainees' who were aligned with the Garang wing of the SPLM/A. The scholarship generally agrees that it was an error to limit the talks after several months to the government and the SPLM/A-IO but differ on who was at fault. Johnson (2018, 266-71) blames the two major belligerents, while Young (2019, 124-5) does likewise but also notes that IGAD did not prioritise broader negotiations. Vertin (2018, 235-8) states that the US in particular – which played an important role behind the scenes throughout the negotiations – pushed for a multi-stakeholder process, but the government was obstinate and IGAD buckled.

With both parties dragging out the negotiations, in March 2015 IGAD itself wrote a draft Agreement for the Resolution of the Conflict in the Republic of South Sudan (ARCSS) and presented it to the two sides. With some minor alterations, severe international pressure induced Machar on 17 August and Kiir on 26 August – whilst declaring the government's major reservations – to sign the agreement (Vertin 2018, 269-80). This reinstated Machar as first vice-president with Kiir remaining president of a transitional government that would

last for thirty months. Other measures included an immediate ceasefire, provisions to unify the SPLA and SPLA-IO forces within eighteen months, sharing positions in the national and some state legislatures – in the worst-affected conflict states – between the various parties, a hybrid court to try those accused of atrocities, and a Joint Monitoring and Evaluation Commission to oversee the agreement's implementation (IGAD 2015).

Narrowly focused on power-sharing between different factions of the SPLM/A, the inherently fragile agreement did little to address the root causes of the conflict or the mass atrocity risk factors (Martell 2018, 245-7; Young 2019, 140). Moreover, Kiir almost immediately violated the agreement by creating twenty-eight states in South Sudan (the ARCSS had power-sharing arrangements based upon the existing ten states). Violence continued in Equatoria in particular, and Machar delayed his return to Juba until April 2016 out of fears for his safety (Coghlan 2017, 207-44; UNSC 2016, 23-4). Violence erupted between SPLA and SPLA-IO forces in Juba in July 2016, with the government attempting to kill Machar. Hundreds of civilians were killed or raped, with Nuer again being targeted by the government. With the façade of peace over, the war and associated mass atrocities continued unabated (Martell 2018, 248-56; Office of the High Commissioner for Human Rights and UNMISS 2017, 15-20). Eventually IGAD managed to reconvene the belligerents in February 2018, with Sudan leading the negotiations. A new deal was achieved in a few months, aided by regional developments that led IGAD states to pressure the government, the SPLM/A-IO, and other opposition groups to reach an agreement. However, the Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) signed in September 2018 again concentrated mostly on power-sharing (Young 2019, 206-13).

As for political sanctions, the international community did resort to these throughout the civil war but with little impact. In April 2014 the US, the EU, and Canada imposed sanctions against two generals each from the SPLA and the SPLA-IO. The UNSC itself sanctioned six generals – three from each side – in July 2015, followed by two more in July 2018 (UNSC, n.d.; Young 2019, 126). Both Martell (2018, 247) and Young (2019, 126) agree that these travel bans and asset freezes had no discernible impact on the conduct of the

war. Sanctioned generals had no need to travel abroad during a civil war and their wealth was less likely to be in overseas bank accounts than in cattle. In fact, many leaders saw being sanctioned as akin to a badge of honour. Vertin (2018, 278) partially disagrees with this, noting that a move by US diplomats at the UN to draft a new UNSC resolution with further sanctions on government individuals – rumoured to include Kiir and other top officials – alongside an arms embargo was critical in prompting the president to sign the ARCSS.

Economic/Social Measures

Economic/social measures were not a major part of the international community's efforts under Pillar III to prevent mass atrocities in South Sudan. In recent years, the use of targeted financial sanctions preventing a state from accessing financial markets has been highly useful when attempting to change that state's behaviour (Drenzer 2015, 755-64). However, no type of economic sanctions – or indeed incentives – were utilised by the international community. Indeed, the outbreak of violence saw an increase in funds from the international community into South Sudan due to the civil war exacerbating the already overwhelming humanitarian needs in the country. 3.1 million people had received assistance in the first eight months of 2014, with the international community spending approximately $900 million so far that year. It had become the largest humanitarian aid operation in the world (UNSC 2014, 6-16). By 2018, there was a $1 billion annual UN humanitarian operation in the country attempting to reach around 8 million people. While cutting off or reducing this assistance was completely unpalatable – the aid was keeping South Sudan from total collapse – it had the side effect of propping up a government which continued to commit mass atrocities, utterly "indifferent to the deliberate suffering of its own people" (Martell 2018, 255-9; UNGA 2018, 18).

Legal/Constitutional Measures

As mentioned in Chapter 5, South Sudan is not a member of the ICC. Therefore, the court cannot try South Sudanese for atrocity crimes committed

during the civil war without the case being referred by the UNSC, which has not occurred. However, Young (2019, 211) notes that the burgeoning possibility of a UNSC referral in 2018 helped encourage Kiir and Machar to sign the R-ARCSS. Rather, constituting a hybrid court has been the primary focus. The 2014 AUCISS report (2014, 300-1) first suggested the idea of such an AU-led legal mechanism. Both the 2015 ARCSS (2015, 43-5) and the 2018 R-ARCSS (2018, 62-5) included the creation of a Hybrid Court for South Sudan (HCSS) with primacy over national courts.

Both agreements put the onus on the AU to create the HCSS. It would have jurisdiction over the atrocity crimes of genocide, war crimes, and crimes against humanity, as well as other serious violations of international law or South Sudanese law. However, such a court has not yet been established. Indeed, Amnesty International (2019, 5-6) noted that the only accountability for any atrocity committed during the civil war was for SPLA soldiers who killed and raped aid workers at the Terrain Hotel in Juba in July 2016. This trial held by a military court only came about after serious international pressure and was criticised by Amnesty for a seriously flawed judicial process. In February 2018, UN human rights experts confidentially submitted a list of over forty names to the UNSC for potential prosecution for war crimes and crimes against humanity (UNGA 2018, 17-8). No action has yet been taken publicly on this.

Security Sector Measures

During the Juba massacres in December 2013, UNMISS was unable to fulfil its mandate to protect civilians "under imminent threat of physical violence" (UNSC 2011, 4). Vertin (2018, 195) criticises the lacklustre UN response, noting that its peacekeepers had "a reputation for inaction". This was in part because of the mission's limited resources and its countrywide deployment as discussed in Chapter 6. UNMISS forces in Juba were lightly armed and were mainly tasked with protecting UN assets and staff. The mission had as few as 120 spare soldiers who could possibly operate outside the UN's two bases. Instead, a decision was made to use the bases to protect fleeing civilians; by 18 December, 16,000 had taken shelter there.

Over the next few months, UNMISS similarly opened the gates of its various bases across the country to protect civilians when mass atrocities were being perpetrated as well as conducting patrols to rescue people hiding from violence. Within a few weeks, UNMISS was sheltering nearly 100,000 civilians. On 23 December the UNSC approved a reinforcement of 5,500 peacekeepers. However, as these were to be redeployed from other missions the process was slow and by mid-2014 only approximately 1,000 soldiers had arrived in South Sudan. Peacekeepers were sometimes even incapable of protecting the bases themselves. In April 2014 Dinka youths attacked the UN PoC camp in Bor while the SPLA stood by, killing fifty-one civilians before UNMISS forces could repel them (Johnson 2016, 186-223).

In May 2014, USNC Resolution 2155 altered the mission's mandate in light of the outbreak of conflict and continuing mass atrocities. Rather than working with the government to both assist in capacity-building and to protect civilians, it now called for UNMISS to prioritise the protection of civilians in general; monitoring and investigating human rights; and creating the conditions to enable the delivery of humanitarian assistance (UNSC 2014, 4-5). UNMISS was not authorised to come between the various belligerents, but it continued to work to protect as many civilians as possible from mass atrocities. By mid-2015, there were 250,000 people under the mission's direct protection in six different PoC camps, including 125,000 in Bentiu camp alone (Martell 2018, 231-3). After the signing of the ARCSS, the UNSC (2015, 6-8) increased UNMISS troop numbers to 13,000 alongside 2,001 police personnel and directed it to be ready to deter or respond to any future outbreak of violence in Juba. However, in July 2016 UMISS again were unable to do much more than shelter civilians – some 27,000 – in their bases. Even when alerted to the attack on the Terrain Hotel, no UN peacekeepers came to help (Martell 2018, 249-53).

An arms embargo is a common tool utilised by the international community when violence has broken out in a state. Evans (2008, 126) points out that these routinely have little practical impact; nonetheless their imposition does at least signal the international community's concern and desire to act. Young (2019, 126) accuses the US of being disinclined to push for this as they worried it would disproportionately impact the government. However, any

major moves to institute an arms embargo only occurred at the behest of the US. As mentioned earlier, the threat of an arms embargo alongside sanctions on top government officials helped induce Kiir to sign the ARCSS. After that peace deal had collapsed, the US again pushed for an arms embargo in December 2016 which would have limited the government's access to heavy weaponry and foreign helicopter crews. This proposal was blocked by the UNSC (Martell 2018, 257). The US eventually pushed an embargo through the UNSC in July 2018, having implemented its own several months earlier. Since Museveni vowed to ignore it, the actual impact of this belated embargo was limited (Young 2019, 205).

As for a military intervention for humanitarian purposes – which so much of the R2P literature focuses on – this was also not implemented in the case of South Sudan. Evans (2008, 141-6) suggests that any such military intervention should fulfil certain criteria.[13] These are that mass atrocities are being perpetrated or are imminent; that the primary purpose of the action is to avert mass atrocities; that it is a last resort; that proportional means are used; and that the consequences of inaction are worse than the consequences of action. It is debatable whether any such military intervention could have fulfilled such criteria, but it was never even examined. Vertin (2018, 254) notes that in 2014 after the ceasefire in the 'May 9 Agreement' was broken mere days later, Ethiopia made a brief push for resources and political backing for a regional military intervention. However, this was never seriously proposed. A Regional Protection Force (RPF) under the aegis of the AU and authorised by the UNSC was sent to Juba after the civil war escalated again in July 2016. Yet in truth this RPF of 4,000 men was a supplement to UNMISS' mission, as its mandate also involved protection of civilians. Furthermore, it entered South Sudan with the – begrudging – consent of the government (Young 2019, 177-8).

[13] There are no criteria for the use of force explicitly attached to the R2P doctrine.

Conclusion

The international community undoubtedly strove to fulfil its Pillar III responsibility to stop further mass atrocities after the outbreak of the conflict. However, rivalries, differing strategic interests, and a reluctance to even consider certain tools impeded the international community's efforts. Its diplomatic peace-making was hamstrung by a lack of coordination between the different states involved, while its political sanctions were essentially toothless. No economic sanctions were implemented by the UNSC, while despite countless instances of war crimes and crimes against humanity there has been no ICC referral and the AU has so far neglected to establish the HCSS. While UNMISS has continued to protect civilians within its limited resources, it took five years for the UNSC to institute an arms embargo and there was no real consideration of a military intervention for humanitarian purposes. Non-coercive Pillar III measures were frequently ineffective, while coercive measures were either belatedly utilised or never genuinely considered. Clearly, a comprehensive approach to halting the mass atrocities in South Sudan was not pursued.

Chapter 8: Conclusion

"It is our strong belief that this process and the peace agreement we have signed are the beginning of repair to the damage we have done to our country."

- President of South Sudan Salva Kiir upon the formation of the transitional power-sharing government, 22 February 2020 (*Sudan Tribune* 2020).

After the R-ARCSS was signed in September 2018, there were further negotiations between the various parties. The deadline to form a power-sharing transition government was pushed back twice, before Kiir conceded on the number of states and Machar consented to allow Kiir take responsibility for his security. The new government was formed on 22 February 2020 – signalling the end of the civil war – with a deal on the factions that would govern each of the ten states agreed in June (*Al Jazeera* 2020; *BBC News* 2020). While inter-communal violence as well as conflict between the government and smaller rebel groups is ongoing, the scale and instances of atrocity crimes have fallen significantly (UNSC 2020, 4-6). Yet this does not mean that the country is not at risk of seeing mass atrocities again. As discussed in Chapter 4, a major predictor of future mass atrocities is past mass atrocities and many other risk factors remain. Given this, what can be learned from why the implementation of R2P before and during the South Sudanese Civil War failed?

<u>*Moving Forward: Lessons From R2P's Implementation in South Sudan*</u>

It is clear from Chapter 5 that Pillar I was poorly implemented in South Sudan. For every action the government took to ameliorate the risk factors of mass atrocities, multiple measures were taken that in fact made such atrocity crimes more likely. Moving forward, greater action needs to be taken to institute good governance and eradicate corruption, which destroyed the faith of South Sudanese in their government whilst intensifying grievances. It is difficult to see this happening though. Corruption was not a bug or even a feature of the

country's system of governance: corruption was *the system* (De Waal 2014, 361).

When discussing the 'responsibility to rebuild', Evans (2008, 164-6) discusses the importance of 'managing transitional justice' to bring about reconciliation. This is also important under Pillar I for a country emerging from conflict. South Sudan needs to commit to such transitional justice, including by co-operating with the HCSS whenever it is formed and joining the ICC. It also needs to diversify its economy, implement genuine security sector reform including properly integrating opposition forces into a multi-ethnic army, and to remove the fusion between the SPLM and the state. With the leaders who led South Sudan into civil war and perpetrated mass atrocities retaining power, these major reforms seem unlikely. In a dissenting opinion from the main AUCISS report, Mahmood Mamdani (2014, 57) had recommended a policy of lustration. This would mean that all leading members of the government before the civil war would be barred from serving in executive positions in a transitional government. However, Kiir remains president of South Sudan and Machar is once again first vice-president.

Chapter 6 demonstrates that while the international community strove to support the South Sudanese government to build capacity and prevent mass atrocities under Pillar II, there were major issues with the implementation of such measures. Attempting to 'make unity attractive' ignored the overwhelming likelihood of independence as the international community refrained from assisting with capacity building of certain government functions that a state requires. The massive sums in development aid that were given to South Sudan – humanitarian aid should perhaps be excepted – could have been conditioned on genuine anti-corruption efforts, for much of this funding was simply pocketed. The UNMISS peacekeeping mission was understaffed – especially lacking infantry soldiers – and did not have the sufficient materiel to successfully conduct elements of its mandate to protect civilians (admittedly, these are perennial problems with UN missions). Most importantly however, UN missions cannot be predicated on the assumption that the government will be amenable to their work. UNMISS found itself frequently obstructed by the South Sudanese government, which routinely violated the mission's Status of

Forces Agreement (Johnson 2016, 144). Indeed, Coghlan (2017, 147-8) notes that Johnson's appointment as head of the UNMISS was in large part based upon her pre-existing relationships with top members of the SPLM/A. It was not anticipated that this relationship would turn so hostile.

Chapter 7 illustrates how the actions the international community took to stop further mass atrocities were haphazard at best. There was an overwhelming preference for less coercive tools. While as discussed in Chapter 2 this follows the R2P doctrine as it has been set out by the UN and understood by multiple scholars, in this case the possibility of coercive measures seemed to be almost entirely ignored. As laid out in Chapter 7, it is notable that when some more coercive measures like an arms embargo or political sanctions on top leaders were either eventually implemented or even discussed, it often spurred on breakthroughs in the diplomatic peace-making. Johnson (2018, 78-81) also points out that in South Sudan's border dispute with Sudan in 2012, it was the threat of the UNSC imposing sanctions on both parties that brought them back from the brink. While more coercive Pillar III tools may not be appropriate for a given situation, the case of South Sudan demonstrates that publicly entertaining their use can be just as powerful as actually implementing them. The R2P report on Pillar III concurs, noting that while coercive measures are not a favoured tool for implementing R2P their consideration at a minimum is part of a truly comprehensive strategy to prevent or halt mass atrocities (UNSG 2012, 15). However, this was not followed in South Sudan.

Conclusion

R2P does not come out of the South Sudanese civil war with its reputation burnished. There were numerous failures to implement various measures that could have contributed to either preventing the perpetration of mass atrocities or halting their occurrence after the civil war had begun. While it faced an incredibly challenging environment, unquestionably the international community could have done more and done better at multiple key stages. As Martell (2018, 264) writes, "the euphoria at claiming to 'birth' a nation led the international community down a dangerous path, where like extravagantly

indulgent parents, they poured every resource in without proper care as to how it was spent". However, the primary responsibility to protect under the R2P doctrine rests with the state. Therefore the majority of the blame for the failed implementation of R2P in South Sudan lies with the South Sudanese elites who started the civil war, who perpetrated the mass atrocity crimes during it, and who resisted most efforts by the international community before and during the conflict to avert the horrific events that transpired. If the state is to avoid slipping into another cycle of mass atrocities in the coming years, the main onus is those same leaders to fulfil South Sudan's responsibility to protect its populations.

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Appendix I: Articles 138-140 of the World Summit Outcome Document 2005.

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

Article 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.

Article 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 protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail 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.

Article 140.

We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

Appendix II: Articles I-III of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. Killing members of the group;
b. Causing serious bodily or mental harm to members of the group;
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. Imposing measures intended to prevent births within the group;
e. Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

a. Genocide;
b. Conspiracy to commit genocide;
c. Direct and public incitement to commit genocide;
d. Attempt to commit genocide;
e. Complicity in genocide.

Appendix III: Articles 6-8 of the Rome Statute of the International Criminal Court.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means 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.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare

are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.