**Introduction: Towards a Cosmopolitan Approach to Human Protection? A Critical Analysis of the Responsibility to Protect Doctrine**

**Methodology and Contribution to Existing Literature**

This thesis will contend that R2P can, in theory - and, to a more limited extent, in practice - be seen to have engendered a sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period, when assessed within the framework of Jürgen Habermas’ theory of constitutionalisation with a ‘cosmopolitan purpose’. This chapter will outline the decision to pursue this project’s research objective, explain how its overarching claim will be validated and, more importantly, assess its contribution to the existing literature on R2P and contemporary cosmopolitan theory.

With regards to the decision to examine the doctrine and its relationship with both cosmopolitan human protection and Habermas’ constitutional cosmopolitan approach, this is in part attributable to a long-standing and indefatigable curiosity with the dynamics of human rights and human protection. For example, and as will become evident in the course of this thesis, such dynamics are intimately bound up with discussions surrounding both cosmopolitan typologies, with cosmopolitan human protection re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes and Habermas’ constitutional cosmopolitan approach concerned with *institutionalising* human rights through directly establishing the legal status of individual citizens. In addition, and as will become clear, human rights and human protection have provided the cornerstone of the relationship manifest between R2P and contemporary forms of cosmopolitan theory.

Of particular interest, however, has been the increasing contentiousness, complexity and *importance* of human rights and human protection in post-Cold War international relations. For example, such dynamics have and remain to be prominent issues of political and moral debate, inextricably tied to discussions relating to the right of individual victims to protection and assistance, the host government’s duty to provide such protection and assistance, the international community’s responsibility to act in default and, in particular, outside governments’ right to intervene in the event of egregious human rights violations.[[1]](#footnote-1) As will be explained, R2P lies at the epicentre of the existing debate, with each individual state having the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity[[2]](#footnote-2) and, in addition, to *prevent* such crimes, including their incitement, through appropriate and necessary means. [[3]](#footnote-3) Furthermore, and should the host state manifestly fail to fulfil this primary responsibility, the international community has, through the UN, a residual duty to help protect populations from such violations of human rights and international humanitarian law.[[4]](#footnote-4)According to the 2005 World Summit Outcome document, this responsibility primarily takes the form of diplomatic, humanitarian and other peaceful means.[[5]](#footnote-5) However, and as clarified under Secretary General Ban Ki-Moon’s 2009 report *Implementing the Responsibility to Protect* endorsed by 180 of the UN’s 193 members, it also extends to the use of coercive enforcement measures under Chapter VII of the UN Charter, albeit as a means of last resort.[[6]](#footnote-6) In addition, and whilst focused on the responsibility of domestic states to resolve the root sources of armed conflict, R2P can, as will become clear, be seen to embody a theoretical consensus amongst member states pertaining to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, a nascent acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals.

Furthermore, the decision-making and enforcement process in relation to the protection of vulnerable populations - and thus the *primacy* of human rights concerns - remains both conflated with and, on occasion, superseded by a broad confluence of complex dynamics. As will be discussed, and despite the post-Cold War period witnessing the evolution of an interventionist discourse of human rights protection,[[7]](#footnote-7)endeavours by the international community and, in particular, the UN to halt mass atrocities in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo were offset by a multitude of factors. These included - but were not restricted to - the weaknesses symptomatic of Chapters VI and VII of the UN Charter, concerns with preserving the national integrity of autonomous sovereign states and efforts by UN member states to eschew military casualties. Compounded by the absence of a legally-binding and collective *obligation* to respond to egregious human rights violations, the monopoly possessed by the major powers over the use of military force for human protection purposes and, finally, the retention of veto power by the UNSC’s permanent member states, such caveats have come to encapsulate the lacuna between political rhetoric and political reality manifest at the international level. More specifically, they have enunciated the dichotomy between the UN’s increasingly normative commitment to human rights in the post-Cold War period and the weakness of its enforcement mechanisms.[[8]](#footnote-8) Whilst this thesis will argue that through its legal cogency, codification and incremental internalisation and invocation by UN member states, R2P has helped to *begin* to bridge this gap between political rhetoric and political reality, the implementation of the doctrine’s conceptual and legal principles remains contingent upon the inclinations, agendas and national interests of powerful states and, in addition, a broad confluence of complex and context-specific factors. In sum, therefore, and despite the progressive and evolutionary character of R2P, the international community’s increasingly normative commitment to human rights has yet to consistently translate into practice, with such rights hitherto only *incrementally* recognised and institutionalised at the global constitutional level.

In addition to the contention and complexity that surround the dynamics of human rights and human protection, a further justification for this project’s overarching research objective can be found in their increasing importance and relevance in the post-Cold War era. As intimated already, the immediate post-Cold War period was to witness the evolution of an interventionist discourse of human rights protection, with the responsibility of the UN’s permanent member states to promote international peace and security gradually ‘broadened in scope’[[9]](#footnote-9) and reconceptualised so as to include the protection and advancement of global human rights and international humanitarian law. This was reflected in the UNSC’s decision to sanction Chapter VII mandates in response to egregious internal human rights violations in Somalia, Rwanda[[10]](#footnote-10) and Bosnia-Herzegovina. Furthermore, and with its roots in the Security Council aide-memoire on civilian protection, Resolution 1674 re-affirming R2P, Ban-Ki Moon’s working group focusing on the UNSC’s commitment to protection[[11]](#footnote-11) and, in addition, the concept of collective human security contained within the report of the Commission on Human Security in 2003 and *A More Secure World: Our Shared Responsibility* released by the High Level Panel on Threats, Challenges and Change in 2004,[[12]](#footnote-12) the 21st Century has, according to Alex Bellamy and Paul Williams, witnessed the emergence of a ‘new’ politics of protection.[[13]](#footnote-13) This has been characterised by an explicit focus on civilian protection within the international community - with the UN Secretary-General and other arms of the Secretariat playing a particularly important role in establishing this focus[[14]](#footnote-14) - an *increased* willingness to authorise the use of force for human protection purposes, the emergence of regional organisations as ‘gatekeepers’ and the acquiescence of both activist and cautious states to respond to humanitarian crises through the UNSC and relevant regional organisations.[[15]](#footnote-15) In particular, and whilst contested by academics including Aidan Hehir,[[16]](#footnote-16) the military intervention in Libya in 2011 can be contextualised within this *new* politics of protection.[[17]](#footnote-17) This is evidenced by the fact that Libya represents the first time in history that the UNSC has authorised the use of Chapter VII measures against a functioning member state - without its consent - for human protection purposes.[[18]](#footnote-18) Relatedly, the codification and institutionalisation of R2P can also be seen within the context of this new politics of protection. For example, the doctrine constitutes both a doctrinal innovation and conceptual development[[19]](#footnote-19) within international law. Alongside its language of responsibility, this is encapsulated both by its *prima facie* elevation of human rights above state sovereignty in instances of genocide, war crimes, ethnic cleansing and crimes against humanity and its reformulation of state sovereignty in such a way as to link the right to non-intervention to the responsibility to protect the basic needs of one’s population,[[20]](#footnote-20) propagating a shift away from a ‘right of intervention’ of any state to a ‘responsibility to protect’ of *every* state.[[21]](#footnote-21) Thus, and as will be contended, R2P can be understood to reflect a theoretical consensus[[22]](#footnote-22) amongst UN member states to take the protection of civilians *more* seriously[[23]](#footnote-23) and, through its application, an *increased* sense of willingness within the international community to intervene in order to protect vulnerable populations. In addition, the doctrine embodies a *novel* and nascent international legal principle, establishing clear jurisdictional relationships and assigning specific roles and responsibilities to the wider international community in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. Finally, and as will be discussed, R2P’s incremental internalisation and, in particular, invocation by UN member states in response to the manifestation or ‘imminent’[[24]](#footnote-24) perpetration of systematic human rights abuses - with intervention in Libya subsequently framed through the prism of R2P - can once again be seen to reflect an increased willingness amongst UN member states to intervene in order to protect vulnerable populations and, in the process, an *additional* ‘step’ in the potential evolution of a customary international law concerned with the protection and advancement of global human rights in threshold-crossing situations.

Before outlining further the justification behind this project’s overarching research objective, it is important to explicate the decision to focus on *human protection*, as opposed to the lexicon of humanitarian intervention. In sum, this is in light of the former’s relationship with *prevention* and the principles axiomatic of cosmopolitan distributive justice which, as will become clear, provide a further important source of congruence between R2P and the cosmopolitan approach to human protection. Whilst humanitarian intervention incorporates a preventive element, for this author it remains a *military* intervention carried out by a state, group of states or international organisation conducted *primarily* - albeit but not exclusively[[25]](#footnote-25) - through the use of force.[[26]](#footnote-26) In contrast, R2P - intimately bound up with the evolution of a new human protection agenda - can be equated specifically with a politics of prevention,[[27]](#footnote-27) with its focus on a transition away from a ‘right of intervention’ of any state to a ‘responsibility to protect’ of every state a reflection of its endeavours to *transcend* the terminology of humanitarian intervention. For example, and as mentioned previously, the host state has the responsibility to *prevent* genocide, war crimes, ethnic cleansing and crimes against humanity, including their incitement, through appropriate and necessary means. [[28]](#footnote-28) Furthermore, the international community has a duty to encourage and help states to exercise their responsibility to protect, as well as to support the UN in establishing an early warning capability.[[29]](#footnote-29)In short, and bolstered by the establishment of the ‘three pillars’ - in particular Pillar Two - contained within Ban Ki-Moon’s 2009 report titled *Implementing the Responsibility to Protect[[30]](#footnote-30)* and, more recently, by the Secretary-General’s follow-up report *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*, the doctrine has elicited an international responsibility to help ‘prevent’ the conditions that lead to violent and intractable conflict within endemically weak and abusive states. In addition, and as will be discussed further, this responsibility has transcended the role of the international community in simply assisting domestic states in preventing the root causes of armed conflict, with R2P providing a *nascent* acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals in accordance with the principles axiomatic of cosmopolitan distributive justice. With regards to a *cosmopolitan approach* to human protection, meanwhile, this can be most closely associated with the work of prominent cosmopolitan theorists Robert Fine, Mary Kaldor and Daniele Archibugi who, as will be discussed, advocate a form of intervention predicated on cosmopolitan principles and are concerned principally with re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes. The rationale for speaking in terms of a cosmopolitan form of *human protection* - as opposed to humanitarian intervention - can, similarly to R2P, be found in the former’s relationship with the idea of prevention and, in particular, its tacit incorporation of the principles axiomatic of cosmopolitan distributive justice. For example, Fine and Kaldor both make fleeting reference to the use of preventive humanitarian measures, whether through the use of pre-emptive intervention in instances where intervening parties are convinced that crimes against humanity are imminent[[31]](#footnote-31) or through the ‘pre-war’ reconstruction of political authorities and civil society.[[32]](#footnote-32) Furthermore, and of particular relevance to this thesis, cosmopolitan human protection must incorporate principles of distributive global justice in order to remain fully consistent with broader cosmopolitan aims, more specifically those relating to the establishment of a condition of *public right* - in short, the fulfilment of a ‘cosmopolitan condition’ in which the fundamental right of *freedom* of all persons is effectively recognised - and the ‘entitled’ use of force in cases of egregious human rights violations.[[33]](#footnote-33) It is in this way, therefore, that a cosmopolitan form of human protection can be seen to be inextricably linked to the *prevention* of humanitarian crises andresolution of the underlying *causes* of structural violence within endemically weak and abusive states. Relatedly, and as intimated, the concept of cosmopolitan distributive justice provides a further important source of congruence between R2P and the cosmopolitan form of human protection. In short, cosmopolitan distributive justice is centred on the ‘human’ rights and freedoms that all individuals must possess if they are to have equal opportunities for a minimally decent life,[[34]](#footnote-34) with an inequality in the distribution of resources, in particular, undermining such opportunities and providing a key factor in the rise of global poverty,[[35]](#footnote-35) an underlying cause of protracted intra-state conflict in the post-Cold War period. As will be contended, through being coterminous with a politics of prevention, R2P has come to reinforce - albeit imperfectly - its relationship with the cosmopolitan form of human protection. In addition, and through tentatively bridging the lacuna between cosmopolitan distributive justice and the cosmopolitan typology, R2P has helped to enhance the veracity and credibility of the latter as a contemporary approach to international relations theory, with the language and rhetoric axiomatic of the doctrine countering criticism of cosmopolitan human protection’s predominantly *reactive* approach to the protection of vulnerable populations.

Further to the increasing contentiousness, complexity and importance attached to the dynamics of human rights and human protection in the post-Cold War period, the *limits* of contemporary cosmopolitanism and, more specifically, the caveats attached to both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach provide another rationale for this project’s overarching research objective. For example, and as will be discussed, both the ethical and institutional variants of the cosmopolitan approach to human protection fail *in practice* to offset the possibility of military intervention being employed as a smokescreen for the pursuit of economic and political objectives apposite to powerful states. In addition, and as intimated, cosmopolitan human protection adopts a primarily *ad hoc* approach to the perpetration of large-scale human rights atrocities, whilst there is incredulity amongst realists, liberals and liberal nationalists over the scope and demands coterminous with its vision of criminal justice. Finally, the gap between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms has underlined how the UN has yet to move *comprehensively* in a cosmopolitan direction, qualifying the prospective fulfilment of Habermas’ overarching cosmopolitan objective. This claim has been re-affirmed by the potential for states to manipulate the innovations and commitments contained within the UN Charter in order to pursue their own nefarious political and economic objectives which, alongside the continued retention of veto power by the UNSC’s permanent members, has run antithetical to Habermas’ linear and *teleological* assessment of the constitutionalisation process. In contrast, and alongside its correspondence with a politics of prevention, R2P has amplified the relevance of the cosmopolitan vision of criminal justice - concerned with safeguarding the rights and interests of individuals and the concomitant duties placed upon external agents to protect such rights and interests when they are violated in threshold-crossing situations - a consequence of its codification and application at the international level and, furthermore, the normative language and rhetoric paradigmatic of its legal and conceptual principles. In addition, and as will be articulated, the doctrine provides a normative and, to a lesser extent, empirical framework through which concerns relating to the self-interested and potentially neo-imperialist inclinations of powerful states can begin to be subjugated. In both respects, therefore, R2P has helped to address the weaknesses symptomatic of a cosmopolitan approach to human protection. Moreover, through its locus as an emerging and constitutive legal norm that establishes clear jurisdictional relationships and assigns specific roles and responsibilities to the wider international community in instances of genocide, war crimes, ethnic cleansing and crimes against humanity - consolidated by the space the doctrine occupies at the high end of the *norm cascade* spectrum - R2P has come to tentatively advance Habermas’ constitutional approach, helping to begin to bridge the gap between political rhetoric and political reality manifest at the global constitutional level. In the process, and as will be discussed, R2P has, in both theory and, to a lesser extent, in practice, offered a prospective footing for the constitutionalisation and grounding of *cosmopolitan* humanitarian norms.

Alongside the increasing contentiousness, complexity and importance that surround human rights and human protection in the post-Cold War period and, in addition, the caveats attached to both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach, the primary motivation to pursue this project’s overarching research objective has come from the fact that cosmopolitan theory has - in the context of international developments as R2P - remained both under-developed and cursorily assessed.[[36]](#footnote-36) Conversely, debates over R2P’s moral and legal efficacy have yet to be *comprehensively* tied in to discussions pertaining to such contemporary forms of cosmopolitanism. In short, no author has as yet undertaken a robust and critical appraisal of the relationship between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. With regards to the former, it is important to first acknowledge that academics have alluded to the cosmopolitan moral tenets intimately bound up with the doctrine. Karina Sangha, for instance, contends that R2P is centred upon the cosmopolitan premise of ‘moral universalism’, with moral duties conferred on states to protect human rights and, in the instance that they fail to do so - and given the existence of universal moral principles - these responsibilities are transferred to the wider international community.[[37]](#footnote-37) Furthermore, Johan Alberth and Henning Carlsson highlight the ‘cosmopolitan tendencies’ prevalent in the 2005 World Summit Outcome Document, with R2P understood to constitute an expression of cosmopolitan morality in light of both the primary responsibility of the state to secure the safety and rights of its own population and, furthermore, the broader perception of the state as the *guarantor* of the rights of individuals.[[38]](#footnote-38) In addition, they explain how R2P has helped to reconceptualise the principles of internal and external sovereignty, the former in view of the limitations placed on the actions of states within their territories and the latter in light of the secondary responsibility conferred on states to uphold and engage in human security, thus eschewing their autonomy in relation to the wider international community.[[39]](#footnote-39) Garrett Brown and Ali Bohm, meanwhile, and further to the sentiments of Alberth and Carlsson, argue that the requirement of ‘responsible sovereignty’ under the auspices of R2P is predicated on cosmopolitan principles, with a primary responsibility conferred on political regimes to respect and protect the human rights of their individual members which, if contravened - and in accordance with a cosmopolitan ethics of assistance - yields an international duty to provide military help to those in need.[[40]](#footnote-40) Brown and Bohm have also stressed the limits of the relationship between R2P and the concept of cosmopolitan distributive justice, [[41]](#footnote-41) underlined by the former’s failure to *systematically* acknowledge the role of influential global actors and, in particular, powerful states in widening global inequalities and social exclusion and, more importantly, to provide *recommendations* on how such conflict-inducing conditions could potentially be subverted. In summary, then, these scholars have touched upon the ideas of universal and collective responsibility, the reconceptualization of state sovereignty and the cosmopolitan vision of criminal justice, all of which constitute *prima facie* aspects of R2P and which, as will be discussed, are coterminous with a cosmopolitan approach to human protection. However, and aside from Brown and Bohm’s discursive reference to cosmopolitan distributive justice, no academic has as yet discussed or debated the cosmopolitan moral tenets underpinning R2P *specifically* in the context of a cosmopolitan form of human protection.[[42]](#footnote-42) This claim is further evidenced by the failure of scholars to assess the high watermark and limited thresholds for intervention - including military action - afforded under the aegis of R2P which, as will be argued, are similarly commensurate with this cosmopolitan typology.

In view of the ephemeral analysis that has thus far taken place of the cosmopolitan moral tenetsinextricably tied to R2P, this thesis will delineate the explicit relationship that exists *in theory* between the doctrine and cosmopolitan human protection. In doing so, it will undertake a literature review encompassing a broad ambit of books, journals and web sources, assessing the work of prominent *ethical* cosmopolitan theorists including Mary Kaldor and Robert Fine. In addition, it will outline the key tenets - and limitations - axiomatic of cosmopolitan human protection, before examining the theoretical and empirical connotations attached to R2P and, most importantly, their relationship with this cosmopolitan typology. Whilst conceding that the nexus between R2P and cosmopolitan human protection remains weak - with the doctrine particularly *in practice* continuing to fall short of fulfilling the normative expectations of this cosmopolitan approach - it will contend that the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for intervention and, more implicitly, the concept of cosmopolitan distributive justice innate to the cosmopolitan form of human protection are all commensurate with R2P. Furthermore, and despite the continued pre-eminence of realist objections centred on the prevailing inclinations, agendas and *national interests* of powerful states - as well as the role played by a number of complex and overlapping contextual factors which, as will become clear, remain integral to the realisation of cosmopolitan humanitarian demands - this thesis will contend that R2P has accentuated the relevance of the vision of criminal justice that lies at the heart of the cosmopolitan approach to human protection. As intimated previously, this is reflected in the doctrine’s normative language and, to a lesser extent, empirical connotations which, as will become clear, have helped to qualify realist, liberal and liberal nationalist opposition to this cosmopolitan notion of criminal justice.

Further to the absence of any systematic appraisal of the relationship prevalent between R2P and cosmopolitan human protection, nominal reference has been made to the cosmopolitan *legal* tenets intimately bound up with R2P and, more specifically, the doctrine’s nexus with Habermas’ constitutional cosmopolitan approach. Whilst Habermas does allude to a series of political and institutional reforms - including R2P - proposed in 2004 which, subsequently, can be understood to have directed the political will towards a continuation of the ‘Kantian project’,[[43]](#footnote-43) limited analysis of the doctrine is provided within context of his own global constitutional paradigm. Indeed, Habermas focuses almost exclusively on the concept of collective human security contained within the 2004 report *A More Secure World: Our Shared Responsibility* released by the High Level Panel on Threats, Challenges and Change. Whilst intimately bound up with the evolution of R2P, this concept is concerned more broadly with the promotion of individual liberties, protection against basic dangers, rights of participation and emancipation from unworthy and undignified living conditions,[[44]](#footnote-44) primarily through the principle of collective state action. It should be acknowledged at this point that Anne Peters and Karel Wellens have begun to assess R2P’s legal cogency,[[45]](#footnote-45) Blagovesta Tacheva and Garrett Brown have explored the relationship between R2P and the process of constitutionalisation,[[46]](#footnote-46) Cristina Badescu and Thomas Weiss have considered the doctrine’s position within Finnemore and Sikkink’s three-stage normative ‘life cycle’ model[[47]](#footnote-47) and, finally, Spencer Zifcak has appraised the doctrine’s standing in customary international law.[[48]](#footnote-48) However, and aside from Tacheva and Brown’s analysis of R2P within the context of a Habermasian moral discourse of norm socialisation,[[49]](#footnote-49)no academic has as yet critically assessed the legal tenets underpinning R2P within the framework of Habermas’ constitutional cosmopolitan approach. In turn, no study has been undertaken of the prospective footing the doctrine provides for the constitutionalisation and grounding of cosmopolitan *humanitarian* norms.

In light of the above, this thesis will critically assess the relationship between R2P and Habermas’ constitutional cosmopolitan approach. Once more undertaking a literature review encompassing a broad gamut of books, journals and web sources, it will carry out this task through a comprehensive and robust analysis of the legal tenets axiomatic of Habermas’ global constitutional model, R2P’s legal and conceptual principles and, in addition, the doctrine’s normative and empirical implications. This author will concede that R2P has yet to fit perfectly into Habermas’ cosmopolitan narrative, evidenced by its failure to confer a legally-binding and collective obligation on the international community to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, to elicit consensus over the operationalization of its *secondary* legal principles in such threshold-crossing situations. Moreover, and as will be discussed, R2P has thus far failed to address the asymmetrical and *non-cosmopolitan* power relationships manifest within the UN - intimately bound up with Habermas’ linear and teleological assessment of the constitutionalisation process - whilst the doctrine’s *implicit* nexus with regime change in both the Ivory Coast and, in particular, in Libya has, in practice, further qualified the prospective fulfilment of Habermas’ overarching cosmopolitan objective. However, and as will be contended, through embodying an *emerging* constitutive norm and *nascent* legal principle within international law that establishes clear jurisdictional relationships and assigns specific roles and responsibilities to the wider international community in instances of genocide, war crimes, ethnic cleansing and crimes against humanity - re-affirmed by the space the doctrine occupies at the high end of the ‘norm cascade’ spectrum - R2P has come to tentatively advance Habermas’ constitutional cosmopolitan approach. More specifically, the doctrine has helped to begin to bridge the lacuna between the UN’s increasingly normative commitment to human rights and the weakness of its enforcement mechanisms. In so doing, and as will become clear, it has elevatedthe sense in which the UN has come to reflect the foundations of a weak yet budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. When considered alongside its relationship with cosmopolitan humanitarian principles, therefore, and as will be argued, R2P can - in both theory and, to a lesser extent, in practice - be seen to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, helping to engender a sense of enthusiasm over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. This postulate has been re-affirmed by the doctrine’s normative language and, more discursively, empirical connotations which, as will be discussed, have alleviated concerns over the manifestation and potential proliferation of *neo-imperialist* trends at the global constitutional level, at the same time providing a touchstone for subjugating a further weakness symptomatic of cosmopolitan human protection and *reinforcing* the sense of optimism that surrounds the transition towards this cosmopolitan typology.

In summary, then, this thesis will contribute to the existing literature on R2P and contemporary cosmopolitan theory by undertaking a robust and critical appraisal of the nexus between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. Relatedly, and by way of a further contribution to the current literature, it will also assess the feasibility of a series of potential institutional and legal reforms which, if implemented, could help to perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism surrounding the evolution towards this cosmopolitan typology in the post-Cold War period. This author acknowledges that a number of proposals have already been put forward by academics including James Pattison that would potentially improve the agents and institutional mechanisms associated with humanitarian intervention *per se*.[[50]](#footnote-50) Moreover, scholars including Heather Roff, Anne Peters and Alex Bellamy have previously recommended changes to the way in which the doctrine is both institutionalised and operationalised at the global constitutional level. These include the introduction of an institutional body intended to promulgate public rules governing the practice of the doctrine,[[51]](#footnote-51) obliging UNSC permanent member states to justify the use of veto in threshold-crossing instances - with an abusive veto subsequently deemed to be extraneous or illegal[[52]](#footnote-52) - codifying the broader concept of *Responsibility while Protecting* (RwP) in order to both enhance decision-making and strengthen accountability measures in response to the manifestation or imminent perpetration of genocide, war crimes, ethnic cleansing and crimes against humanity[[53]](#footnote-53) and, finally, creating a voluntary and independent UN military force.[[54]](#footnote-54) However, none of the proposals inextricably tied to the process of humanitarian intervention or, more importantly, R2P have been linked in to broader discussions relating to cosmopolitan human protection or Habermas’ constitutional cosmopolitan approach. Indeed, and aside from Roff’s recommendation to introduce an institutional body concerned with governing the practice of R2P in order to establish a *peremptory* duty of justice[[55]](#footnote-55) which, in turn, represents the fulfilment of a Kantian duty to transition provisional or ‘imperfect’ rights manifest in the pre-political state of nature to a condition of *perfect rights[[56]](#footnote-56)* - juridicial and enforceable by public law[[57]](#footnote-57) - no author has as yet proposed changes to the decision-making and enforcement process at the global constitutional level with the explicit purpose of strengthening the *cosmopolitan* moral and legal tenets underpinning R2P.

In view of the above, this thesis will assess the viability of a panoply of prospective institutional and legal reforms intended to strengthen the relationship between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. In so doing, it will adapt a number of the proposals put forward by Pattison - given that the doctrine is still intimately bound up with the dynamics of humanitarian intervention - draw upon the series of institutional and democratic propositions put forward under the aegis of *cosmopolitan democracy*[[58]](#footnote-58) and, in addition, consider the broader implications of codifying the RwP initiative. As will be articulated, and whilst a number of the proposals put forward remain in the short term a chimera, the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework and, in particular, the modification to a state’s perception of its ‘national interest’ do remain a realistic and feasible proposition. With regards to the latter, this is expounded by the institutional ‘building blocks’ both the EU - through its internalised democratic experiences and practices - and the UN provide for the creation and adoption of a more *ideational* form of interests at the global constitutional level, in the case of the UN a consequence of its increasingly normative commitment to the protection of human rights in the post-Cold War period. As will be contended, this adjustment to a state’s perception of its national interest would, if realised, have much wider ramifications, *elevating* the role that human rights concerns play in the decision to intervene for human protection purposes and concomitantly strengthening international consensus over theimplementation of R2P. At the same time, this would result in the doctrine more consistently translating into practice its normative reconceptualization of state sovereignty, accentuating the relevance of the cosmopolitan vision of justice intimately bound up with the doctrine’s conceptual and legal principles and providing a touchstone for the cogent application of delineated and limited thresholds for international intervention. In addition, it would help to remedy the absence of a secondary international responsibility to protect in instances of genocide, war crimes, ethnic cleansing and crimes against humanity, consequently providing a more *secure* platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms. Thus, the coalescence of humanitarianism with a state’s perception of its national interest constitutes a robust and potentially viable proposition which, in both theory and in practice, could have significant and positive implications for the relationship between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. At the same time, such a proposal would perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism that surrounds the evolution towards this cosmopolitan typology in the post-Cold War period.

It is important to finish this section by delineating the *limits* of this author’s heuristic approach to R2P and its nexus with contemporary forms of cosmopolitanism. For example, and as intimated previously, this project will concede that the relationship between the doctrine and cosmopolitan human protection remains limited, with R2P continuing - particularly in practice - to fall short of fulfilling the normative expectations of this cosmopolitan approach. Furthermore, R2P has yet to fit perfectly into Habermas’ cosmopolitan narrative, compounded by the asymmetrical relationships manifest within the UN and the doctrine’s implicit nexus with regime change in both the Ivory Coast and, in particular, Libya that have further qualified the prospective fulfilment of his overarching cosmopolitan objective. In addition, and as will be articulated, the implementation of the doctrine’s conceptual and legal principles - and, at the same time, its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors, whilst the complex transborder dynamics and fluid political identities prevalent in the post-Cold War period have enunciated the *complexities* of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity, a detriment R2P has thus far failed to acknowledge and address. Finally, and as espoused previously, it will concede that a number of the institutional and legal reforms put forward with the intention of strengthening the relationship between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach remain quixotic, a consequence primarily - albeit not exclusively - of the prevailing inclinations and agendas of powerful states and their concomitant monopolisation of both the decision-making and enforcement process in respect to the protection of vulnerable populations. However, this thesis will contend that, when assessed in the context of Habermas’ global constitutional model, R2P can be seen to have fostered a *sense* of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period, providing a *prospective* *footing* for the constitutionalisation and grounding of cosmopolitan humanitarian norms. In addition, it will emphasise the *potential* for the series of institutional and legal reforms considered to enhance the nexus between R2P and such contemporary forms of cosmopolitan theory. Indeed, in accepting the limits of its contribution to the existing literature on R2P, cosmopolitan human protection and Habermas’ constitutional approach, it is hoped that this thesis will provoke further debate, discussion and research on the doctrine and its relationship with cosmopolitanism in the post-Cold War period.

**Thesis Structure**

The thesis will be organised into six main chapters, with Chapter 6 reflecting upon the key arguments put forward in the course of this project and considering further its potential implications for future debates, discussions and research on R2P and contemporary forms of cosmopolitan theory. In Chapter 1, this thesis will examine the protracted and intensely violent forms of conflict that manifested in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo in the post-Cold War period and, in addition, the failure of the international community to systematically protect human rights within such endemically weak and fragile states. Whilst attributable to a broad confluence of factors, it will contend that the self-motivated inclinations and agendas of powerful states situated within the UNSC, the caveats attached to both Chapters VI and VII of the UN Charter and the prevailing tension between human rights and state sovereignty endemic to the UN all - either in tandem or in isolation - account primarily for the international community’s failure to protect vulnerable populations in the immediate post-Cold War period. Furthermore, the chapter will touch upon the key facets underpinning a *cosmopolitan approach* to human protection, concerned with re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes. As will elaborated upon, and in contrast to the post-Cold War interventionist discourse of human rights protection,,[[59]](#footnote-59) this cosmopolitan approach postulates a unique model of ‘law-enforcement’ intended to bridge the lacuna between peacekeeping - coterminous with Chapter VI of the UN Charter - and peace-enforcement, whilst also advocating the inclusion of Non-Governmental Organisations (NGOs), regional and local civil society groups in any decision to intervene military for humanitarian purposes. In addition, cosmopolitan human protection propagates the use of force as an *ultima ratio* measure - further helping to bridge the gap between peacekeeping and peace-enforcement - elevates the protection of human rights over the sanctity of political borders in the event of ‘supreme humanitarian emergencies’[[60]](#footnote-60) and, finally, supports the impartial and non-discriminatory implementation of cosmopolitan law-enforcementmeasures. In this way, therefore, and as will be contended, the systematic and nefarious abuses of human rights that took place in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo and, in particular, the international community’s anaemic response to such egregious human rights violations can be understood to have played a precipitous role in the appearance and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

In Chapter 2, this thesis will examine more closely the key tenets - and caveats - axiomatic of a cosmopolitan approach to human protection. The chapter will be concerned primarily - albeit not exclusively - with the ethical variant of the cosmopolitan typology which, as will become clear, is intimately bound up with this project’s overarching research objective. As will be discussed, the ethical form of cosmopolitan human protection places a universal and at the same time *collective* responsibility on the major powers to intervene - through the use of force as a matter of last resort - in cases of egregious internal human rights violations, elevates the protection of human rights above the concept of state sovereignty in such instances, embodies a form of ‘immediate’ international criminal justice concerned with safeguarding the rights and interests of individuals whilst concomitantly inculcating international duties to protect such rights and interests and, finally, offers a high watermark and limited thresholds for international intervention. Moreover, this cosmopolitan variant propagates criteria that must be fulfilled if the process of humanitarian intervention is to be deemed legitimate. With regards to the *institutional* form of cosmopolitan human protection, meanwhile, this is concerned with providing a framework through which concerns over the prevailing inclinations of powerful states can, in theory, *begin* to be subjugated. As will be articulated, this cosmopolitan variant promulgates the establishment of a set of legal guidelines upon which to base the legitimacy of humanitarian intervention - thus enshrining the process in international law - and supports democratising the international decision-making process so as to include NGOs in any global discussions over the necessity of intervention. In addition, it postulates the establishment of an UN-appointed Commission of military and civilian members responsible for preparing guidelines on the methods needed to intervene for humanitarian purposes and, finally, advocates the construction of a specialised and ‘cosmopolitan-minded’ rescue army designated the role of undertaking interventions, performing a dual role that falls somewhere between international policing and fighting. As will become clear in the course of the chapter, both the ethical and institutional forms of this cosmopolitan typology could be viewed as quixotic in their respective approaches to mitigating the influence of powerful states over the decision-making process and, in the case of the latter, the *implementation* of humanitarian military objectives. In addition, both strands fail in *practice* to offset the possibility of humanitarian intervention being employed as a smokescreen for the pursuit of economic and political objectives relevant to powerful states, in the case of the institutional variant potentially *exacerbating* this trend. The chapter will also examine a number of more general weaknesses symptomatic of this cosmopolitan approach to human protection, including the incongruence between cosmopolitanism and the application of military force, its *ad hoc* approach to the perpetration of large-scale human rights atrocities, opposition to the scope and demands associated with the cosmopolitan vision of criminal justice - found in the narratives of realism, liberalism and liberal nationalism - and, more contentiously, the need for a legitimate body or institution to authorise and implement force for humanitarian purposes. Crucially, identifying the caveats attached to the cosmopolitan form of human protection is inexorably linked to this project’s overarching research objective. For example, and as will be discussed in Chapter 4, R2P corresponds *directly* with a politics of prevention - and the principles axiomatic of cosmopolitan distributive justice - and has strengthened the notion of criminal justice that lies at the heart of the cosmopolitan typology. Moreover, and as will be elaborated upon in Chapter 5, R2P has provided a normative and, to a lesser extent, empirical framework through which concerns relating to the manifestation and potential proliferation of neo-imperialist trends can begin to be addressed. It is this latter dynamic, in particular, that is intimately bound up with the claim R2P has in theory - and, to a more limited extent, in practice - helped to engender a sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

 In Chapter 3, this thesis will critically assess Jürgen Habermas’ model of global constitutionalism, predicated on the extension of principles, norms and rules of constitutionalism beyond the modern state with the objective of constructing a global - and eventually *cosmopolitan* - legal order.[[61]](#footnote-61) More specifically, it will contend that the UN offers a prospective - whilst *incomplete* - blueprint for the establishment of such a cosmopolitan order. As will be articulated, the innovations and defining characteristics axiomatic of its Charter have conferred upon the UN the *prima facie* aspects of a global constitution, evidenced through the collective duty imparted on the international community - and in particular the UNSC’s permanent members - to promote and maintain international peace and security, the specific provisions and expectations generated in relation to this responsibility and, finally, the protection the UN affords to all of its members. At the same time, such constitutional tenets have been increasingly extended to the sphere of human rights in the post-Cold War period, with individual human rights coming to be incrementally recognised and *institutionalised* at the global constitutional level. Thus, and as will be argued, the UN has come to reflect the foundations of a nascent global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens, providing the ‘building blocks’ of a global legal identity and form of *cosmopolitan citizenship* commensurate with Habermas’ vision of constitutional patriotism[[62]](#footnote-62) and, in turn, the construction of a cosmopolitan legal order. However, and as will be conceded, the UN cannot as yet be deemed to be moving comprehensively in a cosmopolitan direction. This is expounded by the absence of a legally-binding obligation conferred on the wider international community to respond to systematic abuses of human rights, the continued dependence on the will and compliance of powerful states in both the decision-making and enforcement process, the monopolisation of such states over the use of military force and the retention of veto power by the UNSC’s permanent members. Moreover, the potential for states to manipulate the normative innovations and legally-binding commitments expressed within the UN Charter in order to pursue their own nefarious economic and political objectives, alongside the aforementioned retention of veto power, have both served to qualify Habermas’ linear and teleological assessment of the constitutionalisation process. More precisely, and as will be explained, the manifestation of such neo-imperialist and asymmetrical trends under the aegis of constitutionalisation have further attenuated the potential fulfilment of Habermas’ overarching cosmopolitan objective, compounding this author’s claim that the UN remains an as yet incomplete blueprint for the creation of a cosmopolitan legal order. Relatedly, one’s systematic and robust appraisal of the UN undertaken in this chapter - and, in particular, the relevance of this author’s claim that the institution provides the ‘building blocks’ for the construction of a globalised and eventually cosmopolitan order - will become evident in one’s analysis of R2P in Chapter 5. Of particular importance is the gap that exists between the UN’s increasingly normative commitment to the protection of human rights and the weakness of its enforcement mechanisms. As will become clear, the doctrine has helped in both theory and, to a lesser extent, in practice to *strengthen* the recognition and institutionalisation of individual human rights at the global constitutional level, tentatively bridging this lacuna between political rhetoric and political reality and, in the process, coming to embody a tacit extension of Habermas’ global constitutional paradigm. Furthermore, through its normative language and, to a lesser extent, empirical connotations, R2P has assuaged concerns over the manifestation and potential proliferation of neo-imperialist trends under the auspices of the constitutionalisation process, further strengthening the prospective realisation of Habermas’ overarching cosmopolitan objective. It is in this way, therefore, that one’s comprehensive analysis of the UN - and, more specifically, its enforcement mechanisms - can be understood to be intimately bound up with this thesis’ overarching research objective.

In Chapter 4, and given its concern with the prospective constitutionalisation of cosmopolitan *humanitarian* norms, this project will examine the nexus between R2P and the cosmopolitan approach to human protection. As will be articulated, the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for international intervention and, more implicitly, the concept of cosmopolitan distributive justice axiomatic of the cosmopolitan typology can all be understood to constitute *prima facie* aspects of R2P, enunciating the relationship - albeit a limited one - between the doctrine and the cosmopolitan form of human protection. Moreover, and despite the continued pre-eminence of realist objections centred on the prevailing inclinations, agendas and national interests of powerful states - as well as the role played by a number of complex and overlapping contextual factors which, as will become clear, remain integral to the fulfilment of cosmopolitan humanitarian demands - the chapter will contend that R2P has amplified the *relevance* of the cosmopolitan vision of criminal justice. This is evidenced through the doctrine’s normative language and, to a lesser extent, empirical connotations which, as will become clear, have helped to qualify realist, liberal and liberal nationalist recalcitrance to this cosmopolitan ideal.

In Chapter 5, this thesis will undertake a robust and critical appraisal of the relationship between R2P and Habermas’ constitutional cosmopolitan approach. Whilst yet to fit perfectly into Habermas’ overarching cosmopolitan narrative, the chapter will argue that the doctrine has come to constitute an emerging and constitutive norm - and novel and nascent international *legal* principle[[63]](#footnote-63) - in relation to the duties conferred on the wider international community, establishing clear jurisdictional relationships and assigning specific roles and responsibilities in instances of genocide, war crimes, ethnic cleansing and crimes against humanity.Consequently**,** R2P has helped to tentatively advance Habermas’ global constitutional paradigm and, more specifically, exacerbatethe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. Taking into account the doctrine’s existing relationship with cosmopolitan humanitarian principles, and as will be contended, R2P can be understood to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, helping to foster a sense of enthusiasm over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period. In addition, the doctrine’s locus as an emerging and constitutive norm within international law has also been consolidated by the position it occupies at the high end of the *norm cascade* spectrum, evidenced by its incremental internalisation and, in particular, invocation by UN member states in response to the manifestation or ‘imminent’[[64]](#footnote-64) perpetration of systematic human rights abuses. Thus, and as will become clear, R2P has also come to constitute an additional ‘step’ in the *potential* evolution of a customary international law concerned with the protection and advancement of global human rights in threshold-crossing situations, further helping to perpetuate Habermas’ constitutional cosmopolitan approach and, in the process, providing a further *budding* platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms. Alongside its status as an emerging norm and nascent legal principle, the chapter will contend that the doctrine has also helped to assuage concerns over the self-interested and potentially neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation process, similarly helping to strengthen the prospective fulfilment of Habermas’ overarching cosmopolitan objective. More specifically, and as will be explained, the language of R2P has alleviated fears that the language of humanitarian intervention and international humanitarian law could be used as a ‘Trojan Horse’[[65]](#footnote-65) to further the prevailing inclinations and agendas of powerful states, whilst the invocation of the doctrine in response to the crisis in Libya could - albeit more contentiously - be seen to extoll the virtues of R2P in countering reservations over the manifestation and potential proliferation of neo-imperialist trends at the global constitutional level. At the same time, and as will be articulated, R2P provides a normative and, to a lesser extent, empirical framework through which a fundamental weakness symptomatic of cosmopolitan human protection - more specifically its failure in *practice* to offset the possibility of military intervention being employed as a smokescreen for the perpetuation of political and economic objectives relevant to powerful states[[66]](#footnote-66) **-** can begin to be addressed. In both theory and, to a lesser degree, in practice, therefore, R2P has helped to *reinforce* the sense of enthusiasm that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

In Chapter 6, the thesis will assess the feasibility of a panoply of institutional and legal reforms which, if introduced, could perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism over the evolution towards this cosmopolitan typology in the post-Cold War period. The chapter will concede that a number of the recommendations considered remain in the short term a chimera, a consequence primarily - albeit not exclusively - of the prevailing inclinations and agendas of powerful states and their concomitant monopolisation of both the decision-making and enforcement process in respect to the protection of vulnerable populations. In addition, the implementation of R2P - and its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors, whilst the complex transborder dynamics and fluid political identities prevalent in the post-Cold War period have enunciated the complexities of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity. However, and as will be articulated, both the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework and, in particular, the modification to a state’s perception of its national interest do remain a realistic and feasible proposition. In the case of the former, this is in view of the doctrine already being coterminous with a politics of prevention, eliciting an international responsibility to help prevent the conditions that can lead to violent and protracted intra-state conflict, reflecting a theoretical consensus amongst UN member states pertaining to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and, finally, incorporating a nascent acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals. With regards to the viability of adjusting a state’s perception of its national interest, meanwhile, this is evidenced by the institutional ‘building blocks’ both the EU and, in particular, the UN provide for the creation and adoption of a more ideational form of interests at the global constitutional level, in the case of the former a consequence of its internalised democratic experiences and practices and, in the case of the latter, witnessed by its increasingly normative commitment to the protection of global human rights. It is this latter proposal, in particular, which, in both theory and in practice, could have significant and positive implications for the relationship between R2P and both the cosmopolitan form of humanitarian intervention and Habermas’ constitutional cosmopolitan approach. As will be contended, therefore, the amalgamation of humanitarianism with a state’s perception of its national interest constitutes a robust and potentially viable proposition that would help to perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism over the evolution towards this cosmopolitan typology in the post-Cold War period.

**Chapter 1: The ‘Failure to Protect’ in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo in the Post-Cold War Period**

**Introduction**

This chapter will examine the protracted and intensely violent forms of conflict that manifested in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo in the post-Cold War period and, in addition, the failure of the international community to systematically protect human rights within such endemically weak and fragile states.[[67]](#footnote-67) Whilst a new norm of Security Council-authorised interventions was to develop throughout the 1990s[[68]](#footnote-68) - axiomatic of a broader interventionist discourse of human rights protection[[69]](#footnote-69) - the UN, in particular, was to prove largely anaemic in the face of such egregious violations of individual human rights. Whilst attributable to a broad confluence of factors, and as will be articulated, it was to be the self-motivated inclinations and agendas of powerful states situated within the UN Security Council (UNSC), caveats attached to both Chapters VI and VII of the UN Charter and the prevailing tension between human rights and state sovereignty endemic to the UN which, either in tandem or in isolation, were to account primarily for the international community’s failure to protect vulnerable populations in the post-Cold War period. In Somalia, and as will be discussed, insufficient political will, the limits of a Chapter VI mandate, opposition within the US to the enforcement of a comprehensive disarmament strategy in view of objections to the loss of troops in conflict situations and, in particular, the pre-eminence of *political* rather than humanitarian objectives all help to explain the UN’s failure to halt the ensuing atrocities. In Rwanda, it was to be the diminutive nature of the United Nations Assistance Mission (UNAMIR) - deployed under Chapter VI of the UN Charter - a lack of political will amongst UN member states to extend UNAMIR’s operational capacity and the unpalatable inclinations and objectives of the French-led mission *Operation Turquoise*. In Bosnia-Herzegovina, the failure to protect vulnerable populations was the consequence of the prevailing inclinations and agendas of powerful states - in particular the US - concerns within the UN Protection Force (UNPROFOR) over the loss of troops, the ambiguous and contradictory nature of the UN’s Chapter VII mandates and the continuing tension between the protection of human rights and inviolability of state sovereignty prevalent within the world organisation. And in Kosovo, finally, the international community’s humanitarian endeavours were assuaged as a consequence of NATO’s high-altitude bombardment strategy - re-affirming US efforts to eschew military casualties - that resulted in a number of civilian fatalities and, more controversially, the absence of a ‘right’ of intervention within existing customary and statutory international law.

Contrasting the international community’s failure to provide an adequate level of human rights protection in the post-Cold War period, this chapter will touch upon the key facets underpinning a *cosmopolitan approach* to human protection, concerned with re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes within inherently weak and fragile states. As will be examined further in Chapter 2, this cosmopolitan typology postulates a unique model of ‘law-enforcement’ intended to bridge the lacuna between peacekeeping and peace-enforcement, thus helping to subvert the weaknesses symptomatic of a Chapter VI mandate in the event of large-scale atrocities. Furthermore, the cosmopolitan approach to human protection advocates the inclusion of NGOs, regional and local civil society groups in any decision to intervene military for humanitarian purposes, propagates the use of force as an *ultima ratio* measure - further helping to bridge the gap between peacekeeping and peace-enforcement - and elevates the protection of human rights over the sanctity of political borders in the event of ‘supreme humanitarian emergencies’.[[70]](#footnote-70) Finally, this cosmopolitan typology supports the impartial and *non-discriminatory* operationalization of cosmopolitan law-enforcement measures and, in addition, establishes a set of legal guidelines upon which the legitimacy of humanitarian intervention can be predicated. Thus, and as this chapter will demonstrate, the large-scale violations of human rights and concomitant failure of the international community to systematically protect such rights have played a precipitous role in the appearance and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

**The Growth of a Global Human Rights Agenda in the post-Cold War Period**

This chapter is concerned with a critical analysis of the new norm of Security Council-authorised interventions that developed throughout the 1990s,[[71]](#footnote-71) a consequence of the protracted and intensely violent forms of conflict that manifested in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo *inter alia* in the post-Cold War period. These conflicts were to be characterised by acts of mass murder, genocide and ethnic cleansing amongst diametrically-opposed ethnic groups, primarily the result of the manipulation of pre-existing cultural particularities and ‘ethno-national differences’[[72]](#footnote-72) by both state and non-state actors. In Somalia, for example, a battle for supremacy between warlords Mohammed Aideed and Ali Mahdi - and the subsequent polarisation of conflict along clan lines - resulted in the mass murder of approximately 14,000 people and wounding of a further 30,000 in the capital Mogadishu, whilst also giving rise to widespread famine in rural areas that resulted in the death of as many as 300,000 more.[[73]](#footnote-73) In Rwanda, the actions of Hutu elites and extremists were to provide the catalyst for the genocide of approximately 500,000[[74]](#footnote-74) Tutsi at the hands of Hutu militia and local peasants. In Bosnia-Herzegovina, warlords and, in particular, political elites including Slobodan Milosevic were complicit in the ethnic cleansing of an estimated 200,000[[75]](#footnote-75) Bosnian Muslims and Croats - alongside the deportation of several million more[[76]](#footnote-76) - carried out by Serbian nationalist and irregular paramilitary forces. And in Kosovo, finally, and as will be discussed, Milosevic’s provocation of ethnic sentiment amongst the minority Serbian population was to provide the backdrop for the ethnic cleansing of an estimated 10,000 Kosovar Albanians at the hands of predominantly regular Yugoslav forces and Serbian police,[[77]](#footnote-77) with a further 863,000 expelled between March and June 1999[[78]](#footnote-78) and some 400,000 left internally displaced.[[79]](#footnote-79)

In light of such systematic and nefarious human rights abuses, the post-Cold War period was to be characterised by an increasing emergence and acceptance of a global human rights agenda within the international community.[[80]](#footnote-80)In short, the collective responsibility of powerful states to promote international peace and security under the rubric of the UN was increasingly extended to the protection and advancement of global human rights and international humanitarian law.[[81]](#footnote-81) Thus, and as James Pattinson explains, humanitarian intervention gradually came to be accepted as morally - and to a lesser degree both *legally* and politically - permissible in the face of egregious human rights abuses.[[82]](#footnote-82) For prominent legal academics such as Russell Buchan, the years following the Cold War were characterised by a ‘modification’ of the existing principles of international law - in particular the principles of non-intervention and prohibition against the use of force, both of which exemplify the actualisation of international law protecting state sovereignty[[83]](#footnote-83)- resulting in the international community adapting such legal rules so as to allow for the effective protection and advancement of human rights.[[84]](#footnote-84) Reinforced by the development of international humanitarian law and the explicit reference to the promotion of human rights contained within the UN Charter,[[85]](#footnote-85) the non-intervention principle - designed to ensure that each state respects the sovereignty of the other members of the international community and implicit under Article 2 of the UN Charter[[86]](#footnote-86) - came to be understood to no longer prohibit a state from imposing coercion against another state when it is systematically violating fundamental human rights.[[87]](#footnote-87) Thus, and as Buchan explains, the global advancement of individual human rights during this period was to constitute an exception to the non-intervention principle.[[88]](#footnote-88) Further to the principle of non-intervention, the use of force prohibition - an autonomous legal rule that precludes the threat or use of force against a state and which is explicit under Chapter I of the Charter[[89]](#footnote-89) - was similarly modified in the post-Cold War period. For example, Chapter VII provisions previously reserved for threats to - and breaches of - international peace and security and acts of aggression were employed by the UN Security Council (UNSC) in response to egregious internal human rights violations in Somalia, Rwanda[[90]](#footnote-90) and Bosnia-Herzegovina, underlining the willingness of the international community to intervene in order to protect vulnerable populations. Moreover, and an instance where the government was systematically abusing the human rights of its citizens and the UNSC was unable to act, it could be argued that events in Kosovo resulted in state obligations as stipulated under Chapter I of the Charter similarly being adjusted so as to enable concerned states to use force to put an end to human rights abuses.[[91]](#footnote-91)

In summary, then, the post-Cold War period was to see the international community adapt the existing principles of non-intervention and prohibition on the use of force in light of an increasingly normative commitment to the protection of global human rights, as Buchan explains seeking to transpose its own rules relating to the promotion of liberal values into binding international law.[[92]](#footnote-92) Consequently, international law gradually came to reflect an instrument of ‘moral-based’ intervention,[[93]](#footnote-93) resulting in a *humanisation* of international law.[[94]](#footnote-94) Indeed, Buchan goes as far as to argue that the practice of the international community in response to large-scale human rights violations suggests that a modification of *customary* international law took place during this period, however as he himself concedes in relation to the principle of non-intervention - and as will become clear - there remains widespread debate over whether sufficient state practice existed in order to substantiate this claim, as well as over the ‘scope’ of a human rights exception to existing international law.[[95]](#footnote-95)

In sum, therefore, the years immediately following the Cold War witnessed the development of an interventionist discourse of human rights protection,[[96]](#footnote-96) with the responsibility of the UN’s permanent member states to promote international peace and security incrementally ‘broadened in scope’[[97]](#footnote-97) and reconceptualised so as to include the protection and advancement of global human rights and international humanitarian law. However, and despite its efforts to protect vulnerable populations in the immediate post-Cold War period - evidenced through the notable achievements of the Unified Task Force in Somalia (UNITAF) the United Nations Assistance Mission in Rwanda (UNAMIR) and the United Nations Protection Force in Bosnia-Herzegovina (UNPROFOR)[[98]](#footnote-98)- the international community and, in particular, the UN proved largely anaemic in the face of egregious human rights violations in Somalia, Rwanda and Bosnia-Herzegovina. Whilst the UN’s failings in response to such atrocities were multi-faceted - a reflection of ongoing tensions between the UN and NGOs, insufficient intelligence-gathering capabilities, weaknesses linked to strategy, co-ordination and consultation, and ineffective military command structures[[99]](#footnote-99) - it was to be the self-motivated inclinations and agendas of powerful states situated within the world organisation, caveats attached to both Chapter VI and VII of the UN Charter and, in particular, the prevailing tension between human rights and state sovereignty endemic to the UN which, either in tandem or in isolation, accounted primarily for the international community’s failure to protect vulnerable populations in the immediate post-Cold War period. Its concomitant shortcomings in Kosovo, meanwhile, exposed a further weakness - albeit one highly contested - in the shape of the absence of humanitarian intervention within existing customary or statutory international law, with the UN proving intransigent in response to large-scale human rights abuses and military intervention subsequently being spearheaded by a US-led NATO force. Whilst legitimate on ethical grounds,[[100]](#footnote-100) the NATO mission was illegal under the terms of international law, with academics including Jonathan Graubart also coming to question the motivations of the US-led military operation in Kosovo.[[101]](#footnote-101)

**Somalia**

The roots of intra-state violence in Somalia can be traced back to the removal of Siad Barre from political power in 1991. A number of complex dynamics help to account for the collapse of Barre’s regime. Firstly, the increased presence and relevance of the IMF and World Bank in Africa, resulting in widespread economic reforms including devaluation, reduction of the public sector and removal of price controls which, in turn, accelerated the collapse of the Somali economy.[[102]](#footnote-102) Secondly, Barre’s catastrophic attempt to reclaim the ethnically-Somali Ogaden region of Ethiopia, which left Somalia with a permanent refugee population and subsequently led to an insurrection by northern clans in the former British Protectorate and North-East.[[103]](#footnote-103) Thirdly, US withdrawal of fiscal support following the end of the Cold War,[[104]](#footnote-104) a decision expedited by Barre’s vicious attacks on rival clan segments.[[105]](#footnote-105) Finally, the unification of the three major Somali opposition groups - the Somali National Movement (SNM), the USC and the Somali Patriotic Movement (SPM), all of which joined forces with the aim of ousting Barre’s weakened regime from power, an objective finally accomplished on 27th January 1991.[[106]](#footnote-106) Crucially, by the time Barre - a member of the Darod clan - had been disposed from power, Somalia had already disintegrated into its traditional clan segments.[[107]](#footnote-107) What was to follow was a protracted power struggle between Ali Mahdi - leader of the USC Hawiye clan - and Mohammed Aideed who, following his split from the USC, formed the sub-faction the USC/SNA.[[108]](#footnote-108) Unable to agree on how to divide up political rule, what was to follow in the capital Mogadishu was an intense and violent conflict polarised along *clan* lines, with both leaders manipulating traditional clan groupings and using the spoils of war as an incentive to attract political support.[[109]](#footnote-109) In addition, the Hawadle and Murasadi clans - which had previously been neutral - also took sides, supporting Aideed and Mahdi respectively.[[110]](#footnote-110) Acquiring warlord status as a result of their manipulation of traditional clan groupings and use of the spoils of war as an incentive to attract political support, the battle for supremacy between Aideed and Mahdi was to result in the mass murder of approximately 14,000 people and wounding of a further 30,000 more in Mogadishu. [[111]](#footnote-111) In addition, and compounded by the actions of Barre’s son-in-law Mohammed Said Hersi Morgan,[[112]](#footnote-112) this conflict was to decimate Somalia’s agricultural and livestock production, provoking widespread famine in rural areas that resulted in the death of as many as 300,000 more.[[113]](#footnote-113)

In terms of the international community’s response to the escalating violence in Somalia, there was initially no form of international intervention, either military or non-military.[[114]](#footnote-114) According to Oliver Ramsbotham and Tom Woodhouse, this can be attributed to the major powers no longer perceiving vital security interests to be at stake in Somalia, whilst these states were also preoccupied with the worsening situations in both the Gulf and Yugoslavia respectively.[[115]](#footnote-115) Indeed, and despite the UNSC later agreeing in principle to establish a UN Operation in Somalia (UNOSOM, later labelled UNOSOM I) to monitor a vague cease-fire brokered in February 1992, UN Secretary-General Boutros Boutros-Ghali was to complain publicly that the West was more interested in the ‘rich man’s war’ in Bosnia-Herzegovina than the unfolding atrocities in Somalia.[[116]](#footnote-116) Furthermore, and in addition to a lack of political interest and will amongst the major powers - alongside logistical and financial constraints - Ioan Lewis and James Mayall acknowledge the specific nature of the Somali conflict, which lay beyond the experience of traditional UN peacekeeping operations.[[117]](#footnote-117) Governed by the principles of consent and minimum force - and thus commensurate with Chapter VI of the UN Charter - there was no precedent for deploying UN forces on a *humanitarian* rather than a peacekeeping mission when there was no government with which to negotiate.[[118]](#footnote-118) In short, the idea of humanitarian intervention in Somalia represented a seismic shift away from a traditional way of understanding and carrying out peacekeeping operations.[[119]](#footnote-119) In this way, therefore, both the absence of political will and the weaknesses symptomatic of the UN Charter can be seen to account for the initial reluctance of UN member states to become embroiled in the Somali conflict.

The UN finally became involved politically in Somalia in January 1992,[[120]](#footnote-120) reflected in the adoption of SCR 733 - which invoked Chapter VII of the UN Charter - and the subsequent imposition of an arms embargo.[[121]](#footnote-121) In February, Boutros-Ghali invited representatives of Mahdi and Aideed to New York where a vague cease-fire agreement was signed.[[122]](#footnote-122) On April 28th, Algerian diplomat and former protégé of Boutros-Ghali - Mohammed Sahnoun - was appointed special representative for Somalia.[[123]](#footnote-123) Employing a unique ‘civil society’ strategy analogous to the cosmopolitan approach to human protection,[[124]](#footnote-124) Sahnoun immersed himself in local Somali politics, establishing contacts with clan elders as well as warlords - including Aideed - and accepting that in accordance with Somali custom, everything had to be done by negotiation with consent.[[125]](#footnote-125) As a result, Sahnoun won considerable respect from a broad array of Somalis and other observers by exhibiting an ability to listen to their concerns and aspirations,[[126]](#footnote-126) helping to facilitate co-operation between the UN and the wider Somali population.[[127]](#footnote-127) In addition, Sahnoun also succeeded in finalising an agreement in August 1992 to deploy the 500-member security force authorised in April under the rubric of UNOSOM, operating within a traditional UN peacekeeping mandate.[[128]](#footnote-128) However, and accelerated by the UN’s increasing inclination towards conducting humanitarian operations in Somalia,[[129]](#footnote-129) by late 1992 Sahnoun’s patient, consensual and localised approach was deemed inadequate.[[130]](#footnote-130) The UN’s position was compounded by media coverage of the ensuing humanitarian crisis which, through its messages of ‘starving victims’, ‘cruel warlords’ and ‘brave foreign aid workers’, provoked widespread global condemnation and placed pressure on the international community to respond to the atrocities with force.[[131]](#footnote-131) Unwilling to allow Sahnoun’s ‘cosmopolitan’[[132]](#footnote-132) stratagem to play out, it was to be in the middle of his complex negotiations to persuade faction leaders to accept an expanded UNOSOM force that the UN announced that 3,000 troops would be sent in any case, instantly destroying Sahnoun’s work and resulting in his resignation in October 1992.[[133]](#footnote-133) It should be acknowledged at this point that the UN’s decision to employ more forceful measures in Somalia was to coincide with a broader shift in emphasis within the US administration. Previously opposed to any escalation in American involvement, this change in posture was the result of a number of complex factors. These included President Bush’s status as the architect of the ‘new world order’[[134]](#footnote-134) - with the Somali conflict seen as providing an opportunity to increase UN credibility in peacekeeping in the post-Cold War era[[135]](#footnote-135) - changing American attitudes to peacekeeping,[[136]](#footnote-136) US media coverage of the conflict,[[137]](#footnote-137) the long-term lobbying efforts of a number of US relief agencies and perceptions of Somalia as a relatively easy military prospect.[[138]](#footnote-138) In November 1992, and despite having recently lost his bid for re-election, Bush offered US troops to lead UN action in Somalia.[[139]](#footnote-139) In December, UNITAF was established under SCR 794. Acting under the aegis of a Chapter VII mandate, UNITAF was authorised to use ‘all necessary means’ to establish a secure environment for humanitarian relief operations in Somalia.[[140]](#footnote-140) This mandate was to provide the trigger for ‘Operation Restore Hope’, initiated by Bush and continued by his successor Bill Clinton.[[141]](#footnote-141) However, and despite enjoying some successes in opening up supply routes, involving local elders in aid distribution and helping preparations for reconstruction,[[142]](#footnote-142) as well as paving the way for the unique UN peace-making military administration UNOSOM II in May 1993,[[143]](#footnote-143) UNITAF was largely ineffective.[[144]](#footnote-144) In particular, and whilst conducting raids on Mogadishu’s markets and houses in search of weapons, the operation largely failed to disarm armed bandits and more organised militia groups.[[145]](#footnote-145) US Defence Secretary Dick Cheney stated that active disarmament did not fall within the remit of Operation Restore Hope.[[146]](#footnote-146) In addition, and in focusing on forces loyal to Aideed, UNITAF’s actions had the paradoxical effect of intensifying violence in Kismayu, allowing Morgan’s forces to take control of the city.[[147]](#footnote-147) Attributable to a broad confluence of factors including the absence of a coherent political strategy,[[148]](#footnote-148) this failure to disarm the warring factions in Somalia can in part be credited to US concerns with eschewing military casualties.[[149]](#footnote-149) Further to the position of Dick Cheney, at the start of their mission US forces made extreme efforts to avoid disarmament altogether, insisting that such actions lay outside their remit.[[150]](#footnote-150) Thus, and despite operating under the auspices of a Chapter VII mandate, the US remained reticent to implement a comprehensive disarmament strategy, in principle a consequence of ongoing concerns relating to the loss of troops in conflict situations. In this way, therefore, the prevailing inclinations and reservations pertinent to powerful states can be understood to have contributed to the international community’s failure to systematically protect human rights in Somalia.

As mentioned, UNITAF was to provide the catalyst for the establishment of UNOSOM II, sanctioned under SCR 814 of March 1993 which, in turn, provided for a multinational force of 20,000 peacekeeping troops, 8,000 logistical support staff and some 3,000 civilian personnel, backed up by a US tactical rapid reaction force.[[151]](#footnote-151) This new mandate explicitly included disarmament, the establishment of a police force, and national reconciliation.[[152]](#footnote-152) However, in its efforts to disarm Aideed’s militias, UNOSOM II provoked fears of differential advantage and loss of power.[[153]](#footnote-153) In short, the operation was perceived by Aideed and his forces to be *discriminatory* in its approach, re-affirmed by the UN’s decision to focus its disarmament programme on Mogadishu - the USC/SNA’s main base for operations - which created an imbalance whereby USC/SNA forces became much weaker in comparison to other Somali factions.[[154]](#footnote-154) Following an attack by militia believed to be loyal to Aideed on UN Pakistani troops, the UN adopted SCR 837 which authorised the use of strong-counter measures against those responsible - namely, USC/SNA forces spearheaded by Aideed.[[155]](#footnote-155) What had begun as a humanitarian mission was to incrementally morph into an injudicious and indiscriminate operation against the USC/SNA, initiated by the UN Secretary-General who, as Ramsbotham and Woodhouse explain, had become side-tracked by his personal vendetta against Aideed.[[156]](#footnote-156) On 12th June 1993, and under the command of Admiral Howe, UNOSOM II launched an attack on USC/SNA forces in southern Mogadishu, resulting in approximately 100 civilian casualties.[[157]](#footnote-157) At the same time, UNOSOM II and a US-commanded rapid reaction force began a campaign to capture Aideed, joined in August by the elite special operations Delta Force.[[158]](#footnote-158) On 3rd October, in a US Rangers and Delta commandos operation to seize Aideed and his key aides, two US helicopters were shot down, 18 US soldiers killed and a further 75 wounded.[[159]](#footnote-159) With the bodies of the dead paraded and mutilated in full view of television cameras,[[160]](#footnote-160) the US public, horrified by images from Mogadishu and haunted by the memories of Vietnam, clamoured for withdrawal.[[161]](#footnote-161) By early 1994, US troops - along with European forces - had been withdrawn from Somalia.[[162]](#footnote-162) The last Pakistani UN peacekeepers left on 4th March 1995,[[163]](#footnote-163) leaving the country to its own fate.

From a stance of non-intervention, then, the actions of UNOSOM II and US elite Special Forces demonstrate how the UN’s response to the conflict in Somalia had swung to the opposite extreme, with indiscriminate and injudicious levels of force employed in the pursuit of political rather than humanitarian objectives - namely, the capture of General Aideed and his key allies. Compounded by the high level of civilian casualties,[[164]](#footnote-164) the UNOSOM II and Delta Force operations in Somalia highlight the dangers associated with employing a Chapter VII mandate in the event of egregious violations of human rights. As Kaldor concludes, the problem in Somalia was not the use of force *per se*, but the assumption of *overwhelming* force and - reinforced by the decision to revoke Sahnoun’s civil society strategy - the failure to take into account the local political situation.[[165]](#footnote-165) Further to the absence of sufficient political will and the caveats attached to a Chapter VI mandate - both of which encapsulate the UN’s initial reluctance to intervene - as well as US opposition to a comprehensive disarmament strategy in view of its attempts to avoid military casualties, therefore, the Chapter VII mandates adopted in this instance similarly help to account for the international community’s failure to protect vulnerable populations in Somalia. In contrast, and as will be discussed further in Chapter 2, a cosmopolitan approach to human protection propagates a unique model of law-enforcement intended to bridge the lacuna between peacekeeping - governed by the principles of consent and minimum force,[[166]](#footnote-166) and thus synonymous with Chapter VI of the UN Charter - and peace-enforcement, providing a touchstone for subverting the limits of a Chapter VI mandate in the event of egregious human rights violations. This approachalso advocates the use of force *ultima ratio*, whilst at the same time advocating the impartial - and therefore *non-discriminatory* - application of cosmopolitan law-enforcement measures. In addition, the cosmopolitan typology attempts to address the prevailing inclinations of states by incorporating NGOs, regional and local civil society groups into the decision-making process relating to the protection of vulnerable populations. As a consequence, one can extrapolate that the UN’s anaemic response to the atrocities in Somalia has provided an important context for the development and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

**Rwanda**

The conflict in Rwanda can be attributed to a broad confluence of factors. Firstly, the economic effects of *intense globalisation*,[[167]](#footnote-167) inexorably linked to the heightened influence of global economic institutions and ‘external actors’ such as the IMF and World Bank.[[168]](#footnote-168) The decision to sign a $90 million structural adjustment programme with the World Bank, for example - and precipitated by the collapse of the International Coffee Agreement in 1987[[169]](#footnote-169) - prompted substantial cuts in development spending, resulting in widespread inflation and poverty[[170]](#footnote-170) and, crucially, challenging the power and prestige of the incumbent Hutu regime. Secondly, the armed invasion into Rwanda from Uganda by Tutsi refugees under the banner of the Rwandan Patriotic Front (RPF),[[171]](#footnote-171) with the RPF simultaneously encouraging the movement of previously displaced persons and compounding the perception amongst Hutus that their lands were being stolen by Tutsi refugees.[[172]](#footnote-172) Posing a similarly significant challenge to the Hutu administration and its monopoly on political power in Rwanda, the Tutsi invasion provided Hutu elites with an opportunity to use widespread acceptance of the *democratic ideology* to publicly rationalise what was in fact a coup by the RPF in order to avoid sharing power.[[173]](#footnote-173) This ideology can be traced back to the Hutu ‘democratic revolution’ of 1959, which not only played upon the notion that the Tutsi were a distinct race of ‘foreign invaders’ who had come from afar, but inverted this ideology so as to portray Hutu as the only legitimate inhabitants of the country and a Hutu-controlled government as both automatically legitimate and ontologically democratic.[[174]](#footnote-174) In short, it established an inferiority complex among the Hutu and painted the Tutsi as evil foreigners who, at any time, might seek to re-impose their tyrannical and feudalist system of political rule.[[175]](#footnote-175) Finally, the assassination of the moderate Hutu President Habyarimana on 6th April 1994,[[176]](#footnote-176) most likely by Hutu extremists who had grown increasingly disillusioned with the Rwandan President following the signing of the Arusha Accords in 1993, which made substantial concessions to the RPF.[[177]](#footnote-177) These extremists utilised *government-controlled* Radio Rwanda, alongside private station Radio Television Libre des Mille Collines (RTLM),[[178]](#footnote-178) in order to urge Hutus to take vengeance against Tutsi rebels for the ‘alleged’ murder of their President.[[179]](#footnote-179) It was to be the response of Hutu extremists and elites - more precisely through the provocation of pre-existing ethnic sentiment - to both the Tutsi armed invasion from Uganda and the murder of Habyarimana, in particular, that was to provide the backdrop for the genocide of an estimated 500,000[[180]](#footnote-180) Tutsi at the hands of Hutu militia and local peasants.

In assessing the response of the international community to the conflict in Rwanda, one can turn in particular to the discourse provided by Romeo Dallaire, the former commander of UNAMIR first deployed in 1993 in order to oversee the implementation of the Arusha Peace Accords.[[181]](#footnote-181) Focusing on the restrictions placed upon UNAMIR, he begins by outlining the UN’s chronic limitation to raise, equip, and sustain military forces,[[182]](#footnote-182) which contributed markedly to the international community’s failure to protect human rights in Rwanda. As he elaborates, half-battalions from Belgium and Bangladesh created an inefficient command, control and support system, with few troops available for operations.[[183]](#footnote-183) This claim is supported by the mandate provided to UNAMIR. Deployed in accordance with the provisions of Chapter VI of the UN Charter, and as Ian Martin explains, UNAMIR was limited to monitoring the security situation in Rwanda and in particular the capital Kigali, reflected in its modest force strength of 2,548.[[184]](#footnote-184) For Martin, once the genocide had begun, a rapid reinforcement of the UN operation - supported by a Chapter VII mandate to protect civilians - could have prevented the worst of the atrocities.[[185]](#footnote-185) In addition, UNAMIR was also hampered by international indifference to the Rwandan crisis and, in particular, a failure of political *will*[[186]](#footnote-186)to strengthen its mandate. For example, and prior to the assassination of President Habyarimana, in January 1994 Dallaire made a request to the UN to raid and disarm militia groups in the Kigali region, based upon information relating to the potential genocide of Tutsi by Hutu extremist cells.[[187]](#footnote-187) Permission was denied on the grounds that such action could only be perceived as hostile by the Rwandan government,[[188]](#footnote-188) with Dallaire advised to report the matter to the Belgian, French and US embassies before taking it up with the incumbent Rwandan administration.[[189]](#footnote-189) Opposition within the UN to Dallaire’s proposed course of action epitomised the organisation’s reticence to transcend the provisions of a Chapter VI mandate in Rwanda. It is also important to stress that such antipathy was accelerated by a ‘Mogadishu Syndrome’,[[190]](#footnote-190) with the UN Security Council reluctant to take offensive action and put the lives of peacekeepers at risk in light of the disastrous US military operation in Somalia.[[191]](#footnote-191) Indeed, the implications of the Somali conflict also help to account for the decision to reject Dallaire’s request in April 1994 - once the genocide had begun - for reinforcements in order to protect citizens in Kigali, with UN officials failing to even bring this request before the UNSC.[[192]](#footnote-192) A widened mandate would almost certainly have required US participation,[[193]](#footnote-193) with the ghost of Somalia and fear of additional ‘body bags’ already inhibiting President Clinton from taking the lead in a conflict in which there was no perceived interest-based justification for military involvement.[[194]](#footnote-194) It is this lack of willingness amongst member states of the UNSC - particularly the US - to broaden UNAMIR’s mandate for which Dallaire reserves particular criticism, with the cynical pursuit of their own ‘selfish’ foreign policies - such as the eschewal of military casualties - preventing his forces from taking a more proactive role in halting the ensuing violence.[[195]](#footnote-195) Alongside the withdrawal of Belgian forces after 10 of their peacekeepers had been murdered in April 1994,[[196]](#footnote-196) the actions of the UN Security Council were to contribute to the ‘abandonment’ of UNAMIR in Rwanda and subsequent reduction of the force to only 450 personnel.[[197]](#footnote-197)

It should be highlighted that in June 1994, the UN finally took the decision to authorise the use of force under Chapter VII of the UN Charter. The French-led *Operation Turquoise -* sanctioned under SCR 929[[198]](#footnote-198) -was established to provide a humanitarian security zone in the southwest of the country, with a mandate to co-ordinate humanitarian relief efforts for the large displaced population (over 1.5 million Rwandans) in an environment of security within that zone.[[199]](#footnote-199) However, and as Arthur Klinghoffer concludes, Operation Turquoise was too late and too limited.[[200]](#footnote-200) In relation to the limited nature of its mandate, and as Martin explains, the operation lacked the authority to detain those who were *prima facie* organisers of the genocide and disarm those crossing international borders out of Rwanda.[[201]](#footnote-201) Furthermore, and despite helping to save lives, the operation’s humanitarian objectives were called into question in light of the motivations and actions of the French military prior to 1994, underscored by its role in arming and training the predominantly Hutu government forces - the RGF - whilst occasionally engaging in direct combat with the RPF.[[202]](#footnote-202) In addition, incredulity towards Operation Turquoise’s objectives was compounded by its main contribution - saving the *genocidaires* from Tutsi-led retribution and reverse genocide.[[203]](#footnote-203) At the same time, the RPF opposed the deployment of the French-led operation,[[204]](#footnote-204) reacting with force against both Operation Turquoise and UNAMIR which, despite an authorised expansion of its forces under SCR 918 in May 1994,[[205]](#footnote-205) still only consisted of the remaining 450 personnel under the command of Romeo Dallaire.[[206]](#footnote-206) Thus, and further to both the weaknesses of UNAMIR’s mandate and the lack of international will to expand the mission’s operational capacity, the delay in sanctioning force under Chapter VII of the UN Charter - with SCR 929 itself lacking the authority to confine and disarm the worst perpetrators of the violence - coupled with the questionable motivations of the French-led operation similarly help to account for the international community’s failure to protect vulnerable populations in Rwanda.

In summary, then, a number of factors explain the UN’s anaemic response to the atrocities committed in Rwanda. Firstly, the diminutive nature of UNAMIR’s peacekeeping force, again underlining the limitations associated with a Chapter VI mandate and, in particular, its ineffectiveness in the event of large-scale human rights violations. Secondly, the UN’s intransigence in relation to the extension of UNAMIR’s operational capacity, a consequence of insufficient political will amongst UN permanent member states and, in particular, US opposition to incurring further military casualties following events in Somalia. In addition, the delay in sanctioning the use of force - alongside the limited measures axiomatic of SCR 929 - further elucidate the reluctance of the UNSC to transcend the provisions of a Chapter VI mandate, whilst the inclinations of its permanent member states have been similarly brought into question in light of the motivations and actions of the French military both prior to and *during* the deployment of Operation Turquoise in Rwanda. In contrast, and as emphasised previously, a cosmopolitan approach to human protection endeavours to both bridge the lacuna between peacekeeping and peace-enforcement and mitigate the self-motivated inclinations and agendas of powerful states located within the UNSC by advocating the inclusion of NGOs, regional and local civil society groups in any decision to authorise the use of force for humanitarian purposes. In addition, this cosmopolitan typology propagates the introduction of ‘cosmopolitan-minded’ militaries that would be prepared to sacrifice themselves in defence of human rights, thus helping to overcome opposition to the loss of troops in conflict situations. In these ways, therefore, and further to one’s analysis of the Somali conflict, one can begin to see how the international community’s failure to systematically protect human rights in Rwanda has provided a cogent platform for the evolution and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

**Bosnia-Herzegovina**

In the case of Bosnia-Herzegovina, a broad interplay of complex dynamics help to explain the manifestation of large-scale violence and subsequent ethnic cleansing of approximately 200,000[[207]](#footnote-207) Bosnian Muslims and Croats at the hands of Serbian nationalist and irregular paramilitary forces. The first and most important of these was the collapse of the Socialist Federal Republic of Yugoslavia in 1989, attributable to a broad ambit of factors. Firstly, an IMF Recovery Plan initiated in 1982 in response to a crippling debt crisis, which served only to intensify the growing criminalisation of the federation’s economy and undermine the incumbent regime’s control over the printing of money, contributing to inflation and widespread unemployment.[[208]](#footnote-208) Secondly, the death of former leader Josip Broz Tito who, contrary to the claims of Slobodan Milosevic - leader of the Communist Party and President of Serbia between 1989 to 1997 - had guaranteed the rights, interests and *equality* of Muslims, Serbs and Croats within a multinational Yugoslav state.[[209]](#footnote-209) His death was to provide the catalyst for the re-emergence of powerful and historically rooted fears, ambitions and antagonisms, offering a platform for warlords and, in particular, political elites to challenge for the only guarantee of security and power - sovereignty.[[210]](#footnote-210) Finally, the actions of Milosevic and his Communist Party, which played on sentiments amongst majority Serbs that they had been disadvantaged both politically and economically under Tito’s regime. The subsequent redistribution of wealth to poorer Serbs within Yugoslavia was to fuel calls for separatism amongst wealthy Slovenes and Croats,[[211]](#footnote-211) providing the backdrop for the Croatian civil war that took place in 1991 and which, in turn, formally marked the dissolution of the former Soviet Bloc. In addition, Milosevic provided sponsorship and encouragement for the actions of the Yugoslav People’s Army (YPA),[[212]](#footnote-212) who were to use Bosnia-Herzegovina as a staging ground to promote the on-going Croatian war effort.[[213]](#footnote-213) Alongside increased Serbian assertiveness under the auspices of Milosevic’s nationalist rhetoric, it is important to emphasise that support for an autonomous Croatian state - the precursor to war in Bosnia-Herzegovina - was also elicited by Franjo Tudman. In collaboration with members of his political party the Croatian Democratic Community, Tudman fuelled ethnic sentiment amongst Croatian nationalists - and resentment amongst Croatian Serbs - by encouraging public display of the *Sahovnica*, the red and white checkerboard emblem.[[214]](#footnote-214) At the same time, Tudman’s regime mounted a concerted effort to alienate and disenfranchise the Serbs of Croatia, suppressing rival news media and propagating harsh nationalist rhetoric via government-controlled radio and television.[[215]](#footnote-215) Encouraged by Milosevic’s actions in Kosovo,[[216]](#footnote-216) the Serbs began to demand autonomy, organising a referendum in Serb-inhabited regions of Croatia that was to result in the declaration of the ‘Serbian Autonomous Region of Krajina’.[[217]](#footnote-217) Amid rising tensions between Serbs and Croats, the YPA began to openly aid Serbian irregulars.[[218]](#footnote-218) Backed by Milosevic, the YPA gave large numbers of weapons from its stockpiles to Serbian paramilitary leaders in Croatia.[[219]](#footnote-219) With clashes between Serbian irregulars and Croatian militia increasing exponentially - fuelled by the events that transpired in the village of Borovo Selo in May 1991[[220]](#footnote-220) - the YPA initiated the siege and bombardment of the city of Vukovar, whilst the Yugoslav air force launched an air assault on the capital Zagreb.[[221]](#footnote-221) With hostilities continuing to escalate throughout the summer of 1991, the European Community sent observers to Croatia to help achieve a diplomatic resolution.[[222]](#footnote-222) On January 1st 1992, Cyrus Vance - the UN Secretary-General’s personal envoy - announced that the YPA, Serbia and Croatia had agreed to a cease-fire and that UNPROFOR would be deployed to help separate the belligerents.[[223]](#footnote-223)

The conflict in Croatia was to permeate into Bosnia-Herzegovina as a result of a broad interplay of factors. Firstly, the provocation of ethnic sentiment amongst Serbs within Bosnia-Herzegovina, who subsequently rejected the outcome of a referendum acknowledging an independent Bosnian republic in February 1992 on the basis that they would be constantly outvoted by the other two ethnic groups.[[224]](#footnote-224) With the independence of Bosnia-Herzegovina recognised by the European Community (EC) and US in April of the same year, Bosnian Serbs found themselves against their will transformed into a threatened minority, perceiving the President of Bosnia-Herzegovina Alija Izetbegovic as a dangerous Islamic fundamentalist and the dissolution of the former Yugoslavia as a German plot.[[225]](#footnote-225) Secondly, the role of the YPA which, as espoused, used Bosnia as a staging ground to support the Croatian war effort, establishing virtual Serbian protectorates and strengthening its presence in several Serbian-led areas of Bosnia-Herzegovina.[[226]](#footnote-226) In addition, and following the declaration of its independence, the YPA launched an attack against the newly-declared republic of Bosnia-Herzegovina, providing the precursor to full-scale civil war.[[227]](#footnote-227) Inextricably linked to both of these factors, finally, was the role of Milosevic, who opposed Bosnian sovereignty - instead supporting its partition[[228]](#footnote-228) - and provided support and encouragement for the actions of the YPA.[[229]](#footnote-229) In doing so, and aided by heightened Serbian assertiveness under the auspices of enhanced nationalistic particularities, Milosevic was to be complicit in the ensuing ethnic cleansing campaign conducted predominantly by Serbian nationalist and irregular paramilitary forces - the latter fronted by warlords including Milan Lukic[[230]](#footnote-230) - against Muslims and Croats in Bosnia-Herzegovina.[[231]](#footnote-231)

The international community’s response to the conflict was to prove as complex as the causes of the violence in Bosnia-Herzegovina. Between 1990 and 1991, and prior to the outbreak of civil war in Croatia, the UNSC remained preoccupied with maintaining the sovereignty and territorial integrity of the former Yugoslavia.[[232]](#footnote-232) More specifically, its permanent members did not consider that they should intervene in the internal affairs of a member state,[[233]](#footnote-233) in turn underlining the tension between human rights and state sovereignty endemic to the UN which, in this instance, can be understood to have precluded pre-emptive intervention and potentially the *prevention* of large-scale human rights violations in Bosnia-Herzegovina. Furthermore, and whilst economic sanctions were imposed on the rump Yugoslav regime in May 1992 under SCR 757,[[234]](#footnote-234) the US remained ambivalent on the issue of intervention throughout the ensuing crisis, with the Pentagon particularly hesitant in the early phases of the conflict.[[235]](#footnote-235) According to Syros Economides and Paul Taylor, this was in light of Bosnia-Herzegovina being perceived as a ‘European’ problem, with the US making its contribution towards the maintenance of international peace and security during the Gulf War.[[236]](#footnote-236) Ramsbotham and Woodhouse, meanwhile, and alongside Steven Burg, emphasise the US’ preoccupation with restoring the independence of oil-rich Kuwait, which contrasted sharply with its unwillingness to intervene in Bosnia-Herzegovina.[[237]](#footnote-237) James Gow, finally, attributes such antipathy to the impact of domestic considerations upon both the Clinton and Bush administrations, including the necessity to deal with the country’s economic difficulties, the perceived lack of public support for intervention - exacerbated by the legacy of the Vietnam War[[238]](#footnote-238) - and the absence of a political campaign that would be able to justify such a military commitment to the US public.[[239]](#footnote-239) Thus, and alongside a general reluctance to become ensconced in the conflict, the pre-eminence of political and economic interests - both internal and external - help to account for the US’ initial unwillingness to intervene through the use of force in Bosnia-Herzegovina. Further to the conflicts in Somalia and Rwanda, therefore, the international community’s failure to protect vulnerable populations in this instance can again be attributed in part to the self-motivated inclinations and agendas of powerful states situated within the UNSC.

In August 1992, the UN introduced two Resolutions, SCR 770 and SCR 771, both of which were sanctioned under Chapter VII of the UN Charter. SCR 770 authorised member states to take all necessary measures in order to facilitate the delivery of humanitarian assistance to Sarajevo and wherever else it was required,[[240]](#footnote-240) whilst SCR 771 demanded that humanitarian organisations be granted immediate and unimpeded access to all camps, prisons and detention centres within the former Yugoslavia, at the same time strongly condemning violations of international humanitarian law.[[241]](#footnote-241) In addition, SCR 770 extended the mandate provided to UNPROFOR - originally established in Croatia in February 1992 - resulting in the creation of UNPROFOR II.[[242]](#footnote-242) However, and despite operating under Chapter VII of the Charter, UNPROFOR II was instructed to follow normal peacekeeping rules of engagement, operating with the consent of the warring parties and with force authorised only as a means of self-defence.[[243]](#footnote-243) In short, neither SCR 770 nor SCR 771 explicitly provided for the use of force in Bosnia-Herzegovina, with UNPROFOR II constituting a peacekeeping mission rather than a forcible response to aggression or atrocity.[[244]](#footnote-244) Whilst re-affirming the caveats attached to Chapter VI of the UN Charter, it is important to note that the limited mandate provided to UNPROFOR II was intimately bound up with the outcome of a conference in London in which familiar principles of territorial integrity and the inadmissibility of altering borders by force were proclaimed.[[245]](#footnote-245) As such, therefore, the limits of the UNPROFOR II operation can be traced back to the prevailing tension between the protection of human rights and inviolability of state sovereignty endemic to the UN. Furthermore, UNPROFOR II was itself criticised for failing to depart from a basis of consensual peacekeeping, leading to accusations that the operation was more concerned with its own security, rather than those that it was there to protect.[[246]](#footnote-246) This further undermined the credibility of UNPROFOR II, with some critics labelling it ‘the UN Self-Protection Force’.[[247]](#footnote-247) Whilst contentious, this latter claim could, in addition to the conflicts in Somalia and Rwanda, be understood to enunciate how concerns over military casualties similarly hampered the international community’s endeavours to address egregious violations of human rights in Bosnia-Herzegovina.

Further to Resolutions 770 and 771, SCR 836 - adopted in June 1993 - can also be seen to highlight the ambiguous and contradictory nature of the UN’s Chapter VII mandates in Bosnia-Herzegovina. Under SCR 836, UNPROFOR II was authorised to take ‘necessary measures’ in response to the bombardment of, or armed incursion into, safe areas - including Srebrenica, Sarajevo and Tuzla - and, in addition, sanctioned the use of air power to support the extended UNPROFOR mission.[[248]](#footnote-248) However, proposed reinforcements of some 7,600 troops did not materialise for over 12 months, whilst the use of air power envisaged under SCR 836 was not invoked until February 1994.[[249]](#footnote-249) The latter, in particular, can be accredited to the UN’s intransigence to move beyond a basis of consensual peacekeeping, with UN civilian authorities continually blocking the resolution and even deliberately placing their own forces near key Serb positions.[[250]](#footnote-250) In particular, they feared that air strikes would result in an immediate escalation with the Serbs.[[251]](#footnote-251) Furthermore, and whilst authorised to deter attacks within the designated safe zones, monitor an existing cease-fire and promote the withdrawal of Serbian military and paramilitary units, UNPROFOR II was again permitted to use force only as a means of self-defence.[[252]](#footnote-252) The limits of its mandate were to be ruthlessly exposed in July 1995, with an attack by Serbian nationalist and paramilitary forces on the Bosnian enclave of Srebrenica resulting in the massacre of an estimated 8,000 unarmed Muslims,[[253]](#footnote-253) Europe’s worst human rights atrocity since the Holocaust.[[254]](#footnote-254) Deployed with the purpose of deterrence rather than direct combat, a weak Dutch contingent composed of just 429 soldiers - originally deployed under SCR 813 of April 1993 - were unable to prevent the ensuing atrocities.[[255]](#footnote-255) Indeed, the massacre was accelerated as a direct result of the Dutch battalion bowing to pressure from Serbian troops and forcing thousands of Bosniaks to leave the UN compound of Potocari.[[256]](#footnote-256)

In summary, then, a panoply of complex and overlapping factors combined to undermine the international community’s endeavours to halt the atrocities in Bosnia-Herzegovina. These included the prevailing inclinations and reservations of powerful states situated within the UNSC - in particular the US, which remained ambivalent on the issue of military intervention throughout the crisis in light of its broader political and economical objectives - concerns over the loss of troops in conflict situations and the ambiguous and contradictory nature of the UN’s mandates, which conversely served to reinforce the limits of Chapter VI of the UN Charter in the event of large-scale human rights violations. As explained in relation to the conflicts in Somalia and Rwanda, these are shortcomings that a cosmopolitan approach to human protection seeks to address, encapsulating how the UN’s failure to protect vulnerable populations in Bosnia-Herzegovina has provided a further cogent platform for the evolution and normative salience of this cosmopolitan typology. In addition, and as discussed, the absence of pre-emptive intervention and the diminutive nature of the mandate provided to UNPROFOR II both illuminate the perennial tension between the protection of individual human rights and inviolability of state sovereignty endemic to the UN, in the process further helping to account for the international community’s anaemic response to the conflict. In contrast, and as will be examined further in Chapter 2, cosmopolitan human protection places a universal and concomitantly *collective* responsibility on the international community - and in particular powerful states - to intervene through the use of force *ultima ratio* in cases of egregious human rights violations, a duty deemed to both supersede and take precedence over the sanctity of political borders in ‘supreme humanitarian emergencies’. In this way, therefore, the continued antagonism between human rights and state sovereignty within the UN has provided a further key ingredient and motivational factor in the appearance and relevance of a cosmopolitan approach to human protection in the post-Cold War period.

**Kosovo**

As intimated previously, it was not only in Bosnia-Herzegovina that Milosevic was to prove complicit in the manifestation of large-scale ethnic violence, with the deteriorating political and economic situation in the former Yugoslavia also enabling him to exploit atavistic instincts amongst Serbs situated in Kosovo, a federal unit of Serbia. Indeed, for Ian Oliver, Milosevic went from obscurity to dictator to President of Serbia by riding on the back of one issue largely of his own creation - the persecution of minority Serbs in the Kosovo province.[[257]](#footnote-257) The roots of the conflict can be traced back to 1988 and Milosevic’s ‘Serbianization’ of Kosovo, triggered by the replacement of Albanian party leaders with Serbian ones.[[258]](#footnote-258) In 1989, Kosovo’s autonomy was abolished by a constitutional amendment and a number of Kosovo Albanian politicians were arrested.[[259]](#footnote-259) Milosevic continued to build support for his political objectives - namely, the creation of an ethnically pure Greater Serbia[[260]](#footnote-260) - by fuelling ethnic sentiment amongst minority Serbs, making a famous speech recalling a traumatic battle in 1389 when Ottoman troops forced Serbs to flee from the region.[[261]](#footnote-261) In response, Kosovo Albanians held a referendum organised by members of the Kosovo Assembly that has previously been disbanded, voting overwhelming for independence[[262]](#footnote-262) and laying the foundations for the establishment of a Kosovo Albanian shadow state.[[263]](#footnote-263) In 1992, Kosovo Albanians held elections for a parliament and president, electing Ibrahim Rugova as their leader.[[264]](#footnote-264) Despite heightened tensions between Albanians and Serbs, however, large-scale violence was avoided, in part a consequence of Rugova’s political pacifism.[[265]](#footnote-265) This situation was to change in 1995 with the emergence of the Kosovo Liberation Army (KLA), who rejected Rugova’s diplomatic approach and - with the endorsement of Kosovo Albanians - began to carry out sporadic attacks against Serbian nationalists.[[266]](#footnote-266) In spring 1998, and following the assassination of four Serbia policemen by the KLA, Serbia retaliated with a crackdown.[[267]](#footnote-267) Attempts were then made first by the ‘Contact Group’ - composed of the US, UK, Germany, France, Italy and Russia - and later Russia individually to broker a peace agreement, however such endeavours were to ultimately fail due to Albanian intransigence.[[268]](#footnote-268) Following the murder of 45 Kosovo Albanians in the town of Racak, Milosevic was forced to agree to negotiations at Rambouillet, France, in which Belgrade was given an ultimatum to surrender sovereignty over Kosovo for an interim period of three years.[[269]](#footnote-269) This ultimatum was rejected,[[270]](#footnote-270) and following NATO air strikes against Serbia what was to follow was a large-scale campaign of ethnic cleansing, with some 863,000 Kosovo Albanians expelled on the basis of their ethnicity between March and June 1999[[271]](#footnote-271) and a further 400,000 left internally displaced.[[272]](#footnote-272) In addition, Yugoslav forces and Serbian police were complicit in the murder of approximately 10,000 Kosovo Albanians,[[273]](#footnote-273) perpetrated - in accordance with Milosevic’s nationalist discourse - with the intention of ethnically purifying the province.[[274]](#footnote-274)

Of particular importance in assessing the international community’s response to the conflict in Kosovo is the aerial bombing campaign conducted by NATO and led by the US, which began in March 1999 following an exponential increase in human rights atrocities - particularly those committed against the Kosovo Albanians - and the onset of the Albanian exodus from the province.[[275]](#footnote-275) The US cited three factors in justifying its actions in Kosovo - the Milosevic government’s sponsorship of the ethnic cleansing of Kosovar Albanians, the concomitant development of a humanitarian emergency that threatened peace and security in the province and the precedents set by the UNSC in the former Yugoslavia.[[276]](#footnote-276) However, and whilst morally legitimate, NATO’s actions were *illegal* under the terms of international law,[[277]](#footnote-277) proceeding without the prior authorisation of the UN Security Council. This was in light of political gridlock amongst the UNSC permanent member states, with NATO’s endeavours to secure a UN mandate offset by Russia and China’s insistence that they would veto any resolution pertaining to the use of force.[[278]](#footnote-278) Both countries extolled the virtues of national sovereignty and territorial integrity in their opposition to the sanctioning of a Chapter VII mandate in Kosovo.[[279]](#footnote-279) In addition, Russia and China pointed to the absence of a ‘right’ of humanitarian intervention, which has no place in existing customary or statutory international law.[[280]](#footnote-280) Further to the conflict in Bosnia-Herzegovina, therefore, the prevailing tension between human rights and state sovereignty endemic to the UN similarly hampered the international community’s efforts to address large-scale human rights violations in Kosovo. At the same time, NATO’s unilateral action elucidated an additional - albeit widely contested[[281]](#footnote-281) - caveat in the shape of *uncodified* humanitarian intervention, in this instance prompting air strikes which were illegal under the terms of international and international humanitarian law.

In addition to paralysis within the UNSC and the absence of humanitarian intervention in international law, the ramifications of NATO’s aerial bombing campaign, in particular, help to account for the international community’s failure to systematically protect the civilian population in Kosovo. NATO’s approach can be understood as paradigmatic of a shift in military strategy towards the ideology of *virtual war*, a process initiated in the 1970s and concerned with making conflict as bloodless, risk-free and precise as possible.[[282]](#footnote-282) Crucially, this revolution in military affairs was linked to concerns with preventing large-scale military casualties,[[283]](#footnote-283) and whilst additional factors precluded the deployment of ground forces in Kosovo - such as the absence of a proficient US rapid reaction force - it was ultimately to be the perceived *military cost* associated with ground operations that limited NATO’s response to air strikes against designated Serbian targets.[[284]](#footnote-284) Of particular relevance are the wider implications attached to NATO’s high-altitude bombardment strategy. For example, and whilst succeeding in hitting a number of military targets, the operation also struck a number of civilian ones.[[285]](#footnote-285) This resulted in civilian casualties totalling between 1,200 and 5,000.[[286]](#footnote-286) In addition, the air strikes paradoxically *accelerated* Milosevic’s ethnic cleansing campaign, mobilising Serbian national sentiment and enabling Milosevic to crack down on NGOs and independent media, thus minimising domestic constraints on his political activities.[[287]](#footnote-287) NATO forces also failed to protect Serbs from reverse ethnic cleansing in the aftermath of the conflict, with some 160,000 Serbs forced to leave the province after June 1999.[[288]](#footnote-288) It should also be emphasised that academics including Jonathan Graubart have questioned the motivations of the military operation *per se*, with Kosovo seen as representing an opportunity for NATO to strengthen its credibility through re-affirming its position as a regional organisation - in the process undermining European attempts to adopt an independent security policy - and transforming itself into a vehicle for the global projection of US-led military power.[[289]](#footnote-289) Whilst this latter claim is particularly contentious, it is clear that there were negative connotations attached to NATO’s high altitude bombing strategy which, significantly, can be traced back to concerns amongst UNSC member states with eschewing military casualties. In this way, therefore, and further to the conflicts in Somalia, Rwanda and Bosnia-Herzegovina, the prevailing inclinations relevant to powerful states help to explain the international community’s failure to systematically protect human rights in Kosovo.

In summary, a broad confluence of factors helps to account for the international community’s shortcomings in response to the conflict in Kosovo. Firstly, disparity amongst the major powers, with Russia and China promoting the virtues of state sovereignty and territorial integrity in lieu of the global advancement of individual human rights. Secondly, antipathy - particularly within the US - to the loss of troops in conflict situations, with the subsequent adoption of a high-altitude bombing strategy in Kosovo enduring varied levels of success. Finally, and more controversially, the absence of a ‘right’ of intervention within existing customary and statutory international law, similarly drawn upon by Russia and China in their justifications for negating the implementation of a Chapter VII mandate. As espoused previously, the tension between human rights and state sovereignty within the UN and, in addition, the perennial inclinations apposite to powerful states are caveats that a cosmopolitan approach to human protection seeks to address. In relation to the former, this cosmopolitan typology elevates the protection of human rights above the inviolability of state sovereignty when mass atrocities are committed. With regards to the latter, cosmopolitan human protection postulates the introduction of ‘cosmopolitan-minded’ militaries that would help to bridge the lacuna between peacekeeping and peace-enforcement. In addition, and as will be elaborated upon in Chapter 2, the institutional variant of the cosmopolitan typology advocates the creation of a set of legal guidelines upon which the legitimacy of humanitarian intervention can be predicated, thus ensconcing the process in international law. In these ways, therefore, and further to the cases of Somalia, Rwanda and Bosnia-Herzegovina, one can extrapolate that the conflict in Kosovo has similarly provided a touchstone for the evolution and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

**Conclusion**

In summary, then, this chapter has examined the protracted and intensely violent forms of conflict that manifested in Somalia, Rwanda, Bosnia-Herzegovina and Kosovo and, in addition, the failure of the international community to systematically protect human rights within such endemically weak and fragile states in the post-Cold War period. Furthermore, and despite the incremental emergence and acceptance of a global human rights agenda - and an increasingly normative commitment to the protection of human of rights - the international community and, in particular, the UN were to prove largely anaemic in the face of such egregious human rights violations. Whilst attributable to a broad confluence of factors, and as espoused, the self-motivated inclinations and agendas of powerful states situated within the UNSC, caveats attached to both Chapters VI and VII of the UN Charter and the prevailing tension between human rights and state sovereignty endemic to the UN all - either in tandem or in isolation - helped to account for the international community’s failure to protect vulnerable populations in the post-Cold War period.

As alluded to in this chapter, and in contrast to the interventionist discourse of human rights protection that appeared in the immediate post-Cold War period, a cosmopolitan approach to human protection postulates a unique model of ‘law-enforcement’ intended to bridge the lacuna between peacekeeping and peace-enforcement, thus providing a conceptual platform for subverting the limits of a Chapter VI mandate in the event of large-scale atrocities. Furthermore, this cosmopolitan typology advocates the inclusion of NGOs, regional and local civil society groups in any decision to intervene military for humanitarian purposes, promulgates the use of force as an *ultima ratio* measure - further to its efforts to bridge the gap between peacekeeping and peace-enforcement - and elevates the protection of human rights over the sanctity of political borders in the event of ‘supreme humanitarian emergencies’. Finally, cosmopolitan human protection supports the impartial and non-discriminatory implementation of cosmopolitan law-enforcement measures and, in addition, establishes a set of legal guidelines upon which the legitimacy of intervention can be predicated. Thus, and as demonstrated in this chapter, the egregious violations of human rights that manifested in the post-Cold War period and, in particular, the concomitant failure of the international community to systematically protect such rights have played a precipitous role in the appearance and normative relevance of a cosmopolitan approach to human protection.It is in the next chapter that the key facets underpinning this cosmopolitan typology will be assessed more robustly, concerned as it is with a comprehensive and critical assessment of both its ethical and institutional dynamics.

**Chapter 2: The Cosmopolitan Approach to Human Protection: Ethical and Institutional Variants**

**Introduction**

Whilst Chapter 1 assessed the role of egregious human rights violations and the concomitant failure of the international community to systematically protect such rights in precipitating the appearance and relevance of a cosmopolitan approach to human protection, this chapter will examine the fundamental characteristics - and limitations - underpinning this cosmopolitan typology. Whilst a number of prominent cosmopolitan theorists including Patrick Hayden, Simon Caney and Darrel Moellendorff have explored and helped to reconcile the perennial tension between cosmopolitan*ism* and the use of force, more specifically through their advancement of just war theory,[[290]](#footnote-290) very few have alluded to a *cosmopolitan approach* to human protection.[[291]](#footnote-291) This author argues that such an approach is most closely associated with the work of Robert Fine, Mary Kaldor and Daniele Archibugi who, as will become clear, are concerned with re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes. More precisely, all three advocate a form of intervention predicated on cosmopolitan principles, focused primarily on addressing the symptoms and aftermath of conflict within endemically weak and abusive states.[[292]](#footnote-292)

This chapter will argue that there are two variations to a cosmopolitan approach to human protection - ethical and institutional. The ethical form of this cosmopolitan typology can, as will be discussed, be understood to place a universal and at the same time *collective* responsibility on the major powers to intervene - through the use of force as a matter of last resort - in cases of egregious internal human rights violations, elevates the protection of human rights above the concept of state sovereignty in such instances, embodies a form of ‘immediate’ international criminal justice and, finally, offers a high watermark and limited thresholds for international intervention. As will be returned to in Chapter 4, the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice and the provision of delineated and limited thresholds for intervention all constitute *prima facie* aspects of the Responsibility to Protect (R2P), testament to the relationship manifest between the doctrine and the cosmopolitan form of human protection. Furthermore, and as will be discussed, the ethical variant propagates criteria that must be fulfilled if humanitarian intervention is to be deemed legitimate. These include the *justification* for intervention - with coercive military action only deemed permissible in the event of ‘supreme humanitarian emergencies’ - the *authorisation* of humanitarian military objectives, with emphasis placed on the inclusion of NGOs, regional and locally-based civil society groups in any decision to intervene for humanitarian purposes and, finally, adjustments to the role of *military conduct*, with advocates of this cosmopolitan approach advancing a unique model of law-enforcement that combines both military and civilian strategies and which, crucially, can be understood to help bridge the lacuna between peacekeeping and peace-enforcement. There are, however, a number of caveats attached to the ethical form of cosmopolitan human protection. For example, and as will be discussed, this approach is idealistic, with any decision to intervene - including through the use of force - under the aegis of the existing international order remaining contingent upon the will and compliance of powerful states. Furthermore, and whilst advocating the inclusion of NGOs, regional civil society groups and local populations in any deliberations leading up to intervention, it tells us little about *how* the merging of such organisations and groups into the decision-making process would subsequently be achieved. In short, the ethical variant of the cosmopolitan typology adopts a quixotic approach to mitigating the impact of powerful states and, in particular, the role of *self-interest* in the decision to - or conversely not to - intervene in the event of large-scale human rights abuses. In addition, and as will be elaborated upon, under the auspices of this cosmopolitan variant powerful states remain instrumental to the *implementation* of cosmopolitan law-enforcement measures and, more specifically, the construction and composition of the ‘cosmopolitan-minded’ militaries propagated by Robert Fine and Mary Kaldor.

Having assessed the characteristics and limitations associated with the ethical form of cosmopolitan humanitarian protection, the chapter will move on to a robust examination of the institutionalvariant of the cosmopolitan typology, in short concerned with providing a framework through which concerns over the prevailing inclinations of powerful states can, in theory, *begin* to be subjugated. As will be contended, there are four overarching components to this cosmopolitan variant. The first of these concerns the establishment of a set of legal guidelines upon which the legitimacy of intervention can be predicated, thus ensconcing the process of humanitarian intervention in international law. The second relates to the authorisation of humanitarian military objectives, democratising the international decision-making process so as to include NGOs in any global discussions over the necessity of intervention. The third transcends the model of law enforcement propagated by advocates of the ethical form of cosmopolitan human protection, postulating the creation of an UN-appointed Commission of military and civilian members responsible for preparing guidelines on the methods needed to intervene - through the use of force *ultima ratio* - for humanitarian purposes. The fourth, finally, is denoted by the establishment of a specialised and ‘cosmopolitan-minded’ military force designated the role of undertaking interventions, performing a dual role that falls somewhere between international policing and fighting and coming to embody a more advanced form of the cosmopolitan-minded militaries postulated by Fine and Kaldor. Similarly to its ethical predecessor, however, the institutional variant of the cosmopolitan typology can, in practice, be seen as quixotic in its approach to mitigating the influence of powerful states over the decision-making process and, in addition, the implementation of humanitarian military objectives. As will be discussed, the introduction of such a robust and comprehensive programme of institutional reform is contingent upon the *compliance* of powerful states to give up some of their decision-making power, as well as the *willingness* of such states to participate in the construction and composition of ‘cosmopolitan-minded’ militaries. Moreover, and as will become clear, a further source of contention can be found in the proposal to ensconce the process of humanitarian intervention, potentially increasing the likelihood of international and international humanitarian law being employed as a ‘Trojan Horse’[[293]](#footnote-293) for the promulgation of economic and political interests relevant to powerful states. This latter critique will be returned to in one’s discussion of R2P in Chapter 4, where it be argued through both its normative language and, to a lesser extent, empirical connotations, the doctrine has provided a framework through which concerns over the self-interested and, in particular, neo-imperialist inclinations of powerful states can begin to be addressed. Subsequently, R2P can be seen to have countered criticism of the cosmopolitan typology predicated on its failure in *practice* to offset - and, in certain respects, elevate - the possibility of intervention being used as a cover for the pursuit of broader political and economic objectives, in the process *reinforcing* the sense of enthusiasm that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

The chapter will finish by examining a number of more general criticisms associated with a cosmopolitan approach to human protection. This is with the intention of not only enunciating further the weaknesses symptomatic of this cosmopolitan typology but also in view of the fact that, and as will again be discussed in Chapter 4, R2P has helped to address a number of these caveats, at the same time strengthening the relevance, veracity and credibility of cosmopolitan human protection as a contemporary approach to international relations theory. The first of these criticisms concerns the incongruence between cosmopolitanism and the application of military force. The second relates to cosmopolitan human protection’s focus on the symptoms and aftermath of conflict rather than on a discussion of - or response to - the underlying *causes* of violence and, subsequently, the demands of cosmopolitan *distributive* justice.[[294]](#footnote-294) The third concerns opposition to the scope and demands coterminous with the cosmopolitan vision of criminal justice, found in the narratives of realism, liberalism and liberal nationalism. The final and most controversial criticism pertains to the need for a legitimate body - more specifically a state or international institution - to authorise and implement force for humanitarian purposes, with Cecile Fabre postulating the rights of *individuals* to resort to war against an illegitimate state or unlawful foreign belligerent.[[295]](#footnote-295)

**The Ethical Form of Cosmopolitan Human Protection**

Whilst various forms of cosmopolitan theory exist within contemporary international relations, all variations of cosmopolitanism - including both the cosmopolitan approach to human protection and, as will be examined in Chapter 3, Habermas’ theory of constitutionalisation with a ‘cosmopolitan purpose’ - are predicated on three basic premises. Firstly, the idea of *individualism*, with individuals rather than states perceived to be the ultimate units of concern and regarded as one another’s moral equals.[[296]](#footnote-296) States are seen as *implicit* units of concern in light of being composed of individual members or citizens, and whatever privileges they possess are relevant only to the extent that they serve individuals’ fundamental rights and interests.[[297]](#footnote-297) Secondly, the notion of *egalitarianism*, with the status of ‘ultimate unit of concern’ attached to every living human being equally - put simply, all persons are understood to possess an equal moral status.[[298]](#footnote-298) Finally, the idea of *universalism*, with the status of individuals seen as having global force and with persons subsequently considered subjects of concern for everyone,[[299]](#footnote-299) in the process stretching the duties of common humanity beyond the domestic realm and into the international sphere.[[300]](#footnote-300) Thus, cosmopolitan theory can be understood to inculcate a moral and at the same time *collective* responsibility on all members of the international community to help protect the rights of individual persons.

As will become evident in this chapter, the cosmopolitan premise of universalism has played a precipitous role in the manifestation of the ethical form of cosmopolitan human protection. In addition, and as will now be explained, Immanuel Kant’s ‘theory of international law’ has also provided a touchstone for the appearance of this cosmopolitan typology. Whilst Kantian cosmopolitanism will be discussed at length in Chapter 3, it is important to examine his notion of *cosmopolitan law*, part of a tripartite system of public law concerned with the establishment and protection of universal laws of hospitality, with the broader objective of creating a condition of universal or cosmopolitan public right.[[301]](#footnote-301) In sum, cosmopolitan public right can be understood to reflect the fulfilment of a ‘cosmopolitan condition’ in which the fundamental right of *freedom* of all persons is effectively recognised, in turn providing the grounding for a more institutionalised organisation of cosmopolitan law and, eventually, the establishment of a universal moral community in the form of the *kingdom of ends*.[[302]](#footnote-302) Of particular importance in the context of this chapter is Kant’s conception of hospitality, which relates to the right of a stranger not to be treated with hostility when he or she arrives in another’s country.[[303]](#footnote-303) For Kant, the universal laws of hospitality are to be applied both internally within a non-coercive federation of independent, *liberal*[[304]](#footnote-304) and like-minded states and externally between federated and non-federated peoples, in essence moving beyond a form of legal and moral obligation that stops at the borders of sovereign states to one that reaches all members of the globe as if they were equal citizens.[[305]](#footnote-305) In this way, therefore, Kantian cosmopolitanism can be seen to impart on both states and individuals alike a universal and at the same time *collective* obligation and moral duty to respect and apply the laws of hospitality conducive to the establishment of such a condition of cosmopolitan public right. Respect for the rights of man is, as Kant explains, an unconditional and imperative duty for everyone, a right that must not be transgressed.[[306]](#footnote-306)

Further to this implied collective obligation to enforce universal laws of hospitality, and whilst a number of academics have contended that Kant was opposed to any form of interference in the affairs of sovereign states - arguing that, from Kant’s perspective, this would endanger the moral personality and legal autonomy of *all* states, even those with despotic regimes residing outside of the federation[[307]](#footnote-307) - he can, according to others, be understood to permit military intervention under certain, specific circumstances. Of particular importance here is Burleigh Wilkins claim - predicated on Michael Doyle’s assessment of Kant’s theory of *democratic peace*[[308]](#footnote-308) - that liberal states will go to war with illiberal ones in order to promote democracy and advance the cause of *human* rights.[[309]](#footnote-309) As Doyle explains, the factors that promote peace within the federation of liberal states at the same time provoke conflict with despotic regimes, and so Kant can be seen to provide an account of how republics engage in war with non-republics.[[310]](#footnote-310) This postulate also resonates with Antonio Franceschet, who argues that Kant’s principle of non-intervention does not apply in instances where there is not an effective contract to constitute a state as a ‘moral person’, thus creating a space to justify humanitarian intervention in cases of extreme political evil including genocide and crimes against humanity.[[311]](#footnote-311) Thus, and in addition to imparting a universal and collective obligation on states and individuals to respect and apply the universal laws of hospitality - in the process establishing a framework palatable to the realisation of a condition of cosmopolitan public right - Kant can also be understood to offer nascent support for military intervention in states situated outside of the *foedus pacificum* in order to protect vulnerable populations. Relatedly, Kant’s implicit reference to a collective international obligation and budding advocacy for humanitarian intervention in instances of egregious human rights violations can be seen to have provided a yardstick for the evolution of the ethical form of cosmopolitan human protection. As will be discussed, this cosmopolitan variant is predicated on the conviction that there is a universal and at the same time collective responsibility on the international community to intervene - through the use of force as a last resort - in cases where gross violations of individual human rights have taken place, a responsibility that both supersedes and takes precedence over broader concerns with preserving the boundaries of sovereign states.

As outlined in the previous chapter, the systematic and nefarious abuses of human rights that occurred in the post-Cold War period and, in particular, the failure of the international community to systematically protect such rights within endemically weak and abusive states played a precipitous role in the evolution and normative salience of a cosmopolitan approach to human protection.It is the UN’s shortcomings in response to the conflicts in Somalia, Rwanda and Bosnia-Herzegovina - and the actions of the wider international community in the case of Kosovo - in particular, that expedited the appearance and relevance of this cosmopolitan typology, reflected in the work of prominent ethical cosmopolitan theorists including Robert Fine and Mary Kaldor. Fine, for example, has argued that support for humanitarian intervention is premised on the urgent need to stop grave humanitarian crimes, alluding to the failure of the international community to act effectively in the face of genocide in Rwanda in 1994 and ethnic cleansing in Bosnia-Herzegovina throughout the 1990s.[[312]](#footnote-312) Mary Kaldor, meanwhile, has assessed the UN’s failure to prevent egregious violations of human rights in Somalia, Rwanda and Srebrenica, arguing that these wars cannot be understood in traditional terms and, as a consequence, adopting a more political approach to resolving such conflicts.[[313]](#footnote-313) In turn, and as emphasised previously, both Fine and Kaldor propagate a form of humanitarian intervention predicated on cosmopolitan principles, re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force if required and as a matter of last resort - for humanitarian purposes within endemically weak and abusive states. It is in this way, therefore, that a cosmopolitan approach to human protection can be understood to offer a deontological framework through which a number of the complex institutional and political dynamics coterminous with the international community’s failure to protect vulnerable populations in the immediate the post-Cold War period can, in theory*,* begin to be subjugated.

An important starting point in one’s analysis of the cosmopolitan approach to human protection can be found in Fine’s endeavour to resolve the inherent tension between cosmopolitanism and the use of military force.[[314]](#footnote-314) For Fine, the practice of humanitarian interventiongoes to the heart of cosmopolitan aims to defend human rights, raising searching questions about whether and how individuals can be safeguarded against the murderous actions of their *own* governments.[[315]](#footnote-315) Such intervention is subsequently premised on the notion that the exercise of military force - albeit as a last resort - is both possible and urgently required to stop grave humanitarian crimes.[[316]](#footnote-316) Further to Wilkins and Franceschet’s interpretations of Kant’s discourse, therefore, it is the protection and advancement of individual *human* rights that can be understood to help bridge the lacuna between humanitarian intervention and the *prima facie* cosmopolitan principle of non-intervention. Patrick Hayden, meanwhile, looks to examine more closely the relationship between cosmopolitanism and human rights. As he explains, the cosmopolitan character of such rights is encapsulated by their fundamental moral nature, advancement of individual interests and universal disposition.[[317]](#footnote-317) In addition, human rights refer explicitly to two normative concepts; persons are regarded as free and equal in worth and dignity, and are considered to be entitled equally to certain fundamental rights needed to ensure an existence worthy of human equality and dignity.[[318]](#footnote-318) Thus, such rights have come to represent paramount moral claims to certain basic liberties, needs and interests to which all human beings as individuals and members of the human community are equally entitled.[[319]](#footnote-319) It so follows, therefore, that human rights are coterminous with the individualistic, egalitarian and universalistic principles that underpin cosmopolitanism more generally, with broader concerns over their *protection* providing a key ingredient and motivational element in the appearance of a cosmopolitan approach to human protection in the post-Cold War period. So, whereas Kant was concerned explicitly with establishing the conditions of non-interference conducive to the appearance of cosmopolitan public right - in which the fundamental privilege of individual freedom was proliferated on a global scale - cosmopolitan humanitarian protection is concerned exclusively with the security of individual *human* rights and, in particular, their global advancement in a post-Cold War international order increasingly characterised by violent and protracted forms of intra-state warfare.

As will now be discussed, there are a number of key tenets underpinning the ethical variant of the cosmopolitan typology. It is the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for international intervention and, more implicitly, the concept of cosmopolitan distributive justice that are of particular relevance to this thesis. As will be discussed in Chapter 4, such cosmopolitan dynamics have in theory - and, to a lesser extent, in practice - come to constitute *prima facie* aspects of R2P, testament to the relationship manifest between the doctrine and the cosmopolitan approach to human protection. An important starting point in one’s appraisal of the ethical variant is the notion of *universal* responsibility, understood to apply to those who have the power not to stand idly by whilst crimes against humanity are being committed and it is within their capacities to end them.[[320]](#footnote-320) Whilst Fine and Kaldor discuss and advance the role of NGOs and regional and locally-based civil society groups in any decision to authorise intervention for humanitarian purposes, given the continued importance of states to the *implementation* of military and civilian measures paradigmatic of cosmopolitan law-enforcement,[[321]](#footnote-321) as well as their perennial influence within the UN, one can extrapolate that by ‘those who have the power’, the cosmopolitan typology is referring primarily to the most powerful states situated within the international community. Inextricably linked to the cosmopolitan premise of universalism, therefore, the cosmopolitan approach to human protection can be understood to place a universal and at the same time collective responsibility on the major powers to intervene - through the use of force *ultima ratio* - in cases of egregious human rights violations. In addition, a *positive duty* is invoked on the international community to protect and enforce human rights, characterised by the presence of ‘positive’ principles pertaining to the securement, protection and promotion of individual human rights claims and the fulfilment of the ‘duties’ correlative to such rights. [[322]](#footnote-322)

Further to this notion of collective international responsibility, Fine argues that in instances of ethnic cleansing, crimes against humanity or genocide[[323]](#footnote-323) there must be a form of ethical life beyond that of their own[[324]](#footnote-324) state to which individuals have a right of appeal and from which they can have a realistic expectation of support.[[325]](#footnote-325) For both Fine and Kaldor, the advancement of global human rights claims is understood to both supersede and take precedence over broader concerns with maintaining the sanctity of political borders. Put simply, intervention in the internal affairs of states is seen as justified for the purpose of ending or *preventing*[[326]](#footnote-326) egregious violations of human rights.[[327]](#footnote-327) It is also important to emphasise that this reconceptualization of state sovereignty is intimately bound up with the cosmopolitan typology’s locus as a form of ‘immediate’ international criminal justice,[[328]](#footnote-328) encompassing the notion that intervention - including the use of force - is not deemed a violation of state sovereignty if such action is concerned explicitly with the advancement of individual human rights. [[329]](#footnote-329) Under the ambit of this cosmopolitan vision of justice, and whilst intervention within a sovereign state is not justified in those instances where a state affords persons sufficient protection or at the very least does them no unjust harm - a consequence of ‘just’ basic structures and domestic policies[[330]](#footnote-330) - should a political regime violate or fail to respect people’s human rights, external intervention may be justified.[[331]](#footnote-331) In addition, a corresponding duty falls on ‘external agents’ - powerful states situated within the international community - to intervene and protect such rights when they are contravened,[[332]](#footnote-332) with the sovereignty of the host state ‘abrogated’ in the pursuit of such international justice.[[333]](#footnote-333) Thus, one can discern that a cosmopolitan approach to human protection is concerned both with propagating the rights and interests of individuals and the concomitant duties placed on powerful states to intervene and protect such rights and interests when they are violated.

Further to the ideas of collective responsibility, reconceptualization of state sovereignty and the cosmopolitan vision of criminal justice, the ethical variant of the cosmopolitan approach propagates three criteria that humanitarian intervention must fulfil if it is to be considered legitimate.[[334]](#footnote-334) The first of these is *justification* for intervention, with coercive military action only deemed defensible in the context of ‘supreme humanitarian emergencies’.[[335]](#footnote-335) As Fine explains, and whilst no cosmopolitan scholar has yet to provide an unambiguous distinction between ‘acceptable’ and ‘unacceptable’ crimes, most trade on the idea of crimes that ‘shock the conscience of humanity’.[[336]](#footnote-336) Indeed, and whilst a matter of debate whether he can be considered a cosmopolitan theorist, Nicholas Wheeler’s ‘crimes against humanity’ incorporating state-sponsored mass murder, mass population expulsions - which fall under the umbrella of ethnic cleansing - and genocide are drawn upon by Fine to help define such ‘supreme humanitarian emergencies’.[[337]](#footnote-337) Given that crimes against humanity, ethnic cleansing and genocide can be understood to have *fairly* precise legal meaning grounded in the 1948 Genocide Convention, the Rome Statute of the International Criminal Court (ICC) and the practice of the international criminal tribunals for former Yugoslavia and Rwanda­[[338]](#footnote-338) - despite genocide’s conceptual and moral deficiency[[339]](#footnote-339) - the cosmopolitan approach to human protection can thus be understood to provide delineated and limited thresholds for intervention. In addition, force is advocated - albeit as a means of last resort[[340]](#footnote-340) - whilst Fine advocates the introduction of a *proportionality threshold*[[341]](#footnote-341)for intervention that can be deemed coterminous with the theory of ‘just war’ advocated by prominent cosmopolitan theorists including Patrick Hayden, Simon Caney and Darrel Moellendorff.[[342]](#footnote-342)

The second criterion propagated under the aegis of the ethical variant concerns the *authorisation* of humanitarian military objectives.[[343]](#footnote-343) As intimated, Fine considers the role of NGOs - part of a wider global civil society - and regionally-active civil society groups in the decision to authorise intervention for humanitarian purposes. Kaldor, meanwhile, emphasises the part that *locally*-based civil society groups, in particular, can play in shaping a cosmopolitan response to protracted intra-state conflict. According to Fine, NGOs and regional civil society groups may be significant in forming public opinion and influencing the decision to intervene, so much so that they should be granted some form of institutional representation at the global level.[[344]](#footnote-344) For some cosmopolitans, and as Fine elaborates, such representation could be achieved through the establishment of a World Court, which would determine publicly whether humanitarian crimes were serious enough to merit humanitarian intervention.[[345]](#footnote-345) Kaldor, meanwhile, touches upon the role of NGOs in drawing attention to violations of human rights and war crimes, and the subsequent impact these organisations have had on the responses and policies of domestic governments and international institutions.[[346]](#footnote-346) Crucially, and as Fine explains, the purpose of including NGOs and regional civil society groups in the decision-making process would be to both maximise the role that genuine humanitarian concerns play in deliberation leading up to any decision over the use of force and to minimise the possibility of humanitarian concerns acting as a cover for other interests.[[347]](#footnote-347) In short, therefore, the inclusion of such organisations and groups would, from a cosmopolitan perspective, help to mitigate the impact of powerful states and, in particular, the role of state self-interest in the decision to - or conversely not to - intervene in the event of egregious human rights violations. As a consequence, not only would the incorporation of NGOs and regional civil society groups into the decision-making process potentially offset the tendency for the major powers to abrogate the implementation of internationally and legally-binding humanitarian commitments - a phenomenon that will be discussed further in Chapters 3, 4 and 5 - it would also help to reduce the possibility of humanitarian intervention being used a smokescreen or ‘Trojan Horse’ for the pursuit of self-motivated and potentially nefarious economic and political objectives pertinent to such states. As emphasised, Kaldor stresses the need to involve locally-based civil society groups in any deliberations surrounding intervention, including coercive military action, within inherently weak and abusive states. As she explains, the inclusion of local populations - working in tandem with the international community - would help to reflect a more *political* response, marking a shift away from traditional approaches to addressing these conflicts.[[348]](#footnote-348) Elaborating further, she argues that what is required is consent from local populations and, more specifically, the victims of large-scale abuses of human rights.[[349]](#footnote-349) This would reflect a new form of cosmopolitan political mobilisation which, in her view, could have negated the ambivalent and diminutive nature of the UN’s mandates in Bosnia-Herzegovina and, addition, the failure to disarm warring factions in Somalia.[[350]](#footnote-350) The role of Mohamed Sahnoun, the UN’s special representative for Somalia who explicitly pursued a ‘civil society’ strategy by including elders, women and neutral clans in a variety of talks helps to enunciate - however contentiously[[351]](#footnote-351) - the veracity and cogency of Kaldor’s claims. Sahnoun can be understood to have adopted a *cosmopolitan* strategy, in the sense of introducing and then attempting to build upon local cosmopolitan initiatives.[[352]](#footnote-352) In turn, Sahnoun’s approach embodies how, from a cosmopolitan perspective, an effective response would be based upon an alliance between international organisations and local advocates of cosmopolitanism in order to reconstruct legitimacy.[[353]](#footnote-353) It is also prudent to acknowledge that that the inclusion of local populations in any potential discussions surrounding humanitarian intervention could, further to Fine’s appraisal of NGOs and regional civil society groups, be seen as further evidence of the cosmopolitan imperative to mitigate the influence of the major powers and, in particular, the role of state self-interest in the decision to - or conversely not to - intervene in the event of egregious human rights violations.

The final criterion that humanitarian intervention must fulfil in order to be deemed legitimate relates to *military conduct*.[[354]](#footnote-354) As Fine explains, the most distinctive contribution of this form of cosmopolitanism lies in its account of the changes required in military strategy if militaries are to respond to violations of humanitarian law in a humanitarian way.[[355]](#footnote-355) Fine and, in particular, Kaldor propagate a model of *cosmopolitan law-enforcement* that combines both military and civilian strategies and which, importantly, can be understood to help bridge the lacuna between peacekeeping - governed by the principles of consent and minimum force[[356]](#footnote-356) and thus synonymous with Chapter VI of the UN Charter - and peace-enforcement. As Kaldor explains, whilst the tasks of cosmopolitan law-enforcement are more closely associated with traditional peacekeeping, this model of intervention falls somewhere between policing and soldiering, with the use of force a necessary component of such law-enforcement measures.[[357]](#footnote-357) Both Fine and Kaldor also argue that such ‘cosmopolitan-minded militaries’ differ from traditional state-based militaries in that, unlike in a situation of war-fighting, in which the aim is to maximise casualties on the other side and to minimise casualties on your own side, and peacekeeping - predicated on the principles of consent, impartiality and minimum force - cosmopolitan law-enforcement is concerned with minimising casualties on *all* sides.[[358]](#footnote-358) Put simply, although the use of force may be required as an *ultima ratio* measure, the overarching objective of such cosmopolitan-minded militaries is to minimise military and civilian casualties on all sides of the conflict, emphasising how cosmopolitan law-enforcement measures would potentially come to occupy the middle ground between peacekeeping and peace-enforcement. Furthermore, the strategic imperative underpinning cosmopolitan law-enforcement is not primarily to win wars or overpower an enemy, but to secure the end of state-organised human rights atrocities,[[359]](#footnote-359) leading Kaldor to postulate that the new international ‘soldier-cum-policeman’ should be prepared to risk his or her life for humanity.[[360]](#footnote-360) Indeed, in being willing to endanger their lives, such cosmopolitan-minded militaries could help to overcome opposition amongst powerful states to the loss of troops in conflict situations. As discussed in Chapter 1, this was a phenomenon intimately bound up with the international community’s failure to systematically protect human rights in Somalia, Rwanda and Kosovo in the post-Cold War period. Although failing to assess the broader context in which such cosmopolitan law-enforcement measures would be constructed and implemented,[[361]](#footnote-361) in attempting to bridge the lacuna between peacekeeping and peace-enforcement, the ethical form of cosmopolitan human protection can be seen to be concerned with addressing the problem of doing either too little in response to egregious human rights violations - *a la* Rwanda - or too much, exemplified by the indiscriminate and disproportionate levels of force employed in the pursuit of broader political objectives in Somalia. Thus, the model of law-enforcement propagated under the aegis of the cosmopolitan typology further underlines how the international community’s anaemic response to protracted intra-state violence in the post-Cold War period provided a cogent template for the evolution and normative salience of a cosmopolitan approach to human protection. This is also supported by Kaldor’s claim that such law-enforcement measures would be applied *impartially*, in contrast to perceptions amongst Aideed and his forces in Somalia without any sense of discrimination on the basis of either race or religion.[[362]](#footnote-362)

**Ethical Cosmopolitan Human Protection: A Critique**

In summary, then, the ethical form of cosmopolitan human protection can be understood to place a universal and at the same time collective responsibility on the major powers to intervene - through the use of force if required and as a matter of last resort - in cases of egregious internal human rights violations, elevates the protection of human rights above the concept of state sovereignty in such instances, embodies a form of ‘immediate’ international criminal justice concerned with safeguarding the rights and interests of individuals - whilst at the same time inculcating international duties to protect such rights and interests - and, finally, offers a high watermark and limited thresholds for international intervention. As will be returned to in Chapter 4, the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice and the provision of delineated and limited thresholds for intervention are all commensurate with R2P, encapsulating the relationship between the doctrine and the cosmopolitan typology. Furthermore, and as discussed, the ethical variant propagates criteria that must be fulfilled if humanitarian intervention is to be deemed legitimate. Alongside the justification for intervention - with coercive military action only permissible in the event of ‘supreme humanitarian emergencies’ - these criteria include the authorisation of humanitarian military objectives, with Fine advocating the inclusion of NGOs and regionally-active civil society groups in the decision to sanction intervention for humanitarian purposes and Kaldor emphasising the role that locally-based civil society groups should play in any discussion surrounding international intervention. Such criteria also include proposed adjustments to the role of military conduct, with advocates of a cosmopolitan approach to human protection advancing a unique model of law-enforcement that combines both military and civilian strategies and which, crucially, can be understood to help bridge the lacuna between peacekeeping and peace-enforcement. The introduction of such ‘cosmopolitan-minded’ militaries, in particular, has been precipitated by the failed liberal interventions of the post-Cold War period, further underlining how the international community’s anaemic response to protracted intra-state violence provided an important context for the development and normative relevance of a cosmopolitan form of human protection.

There are, however, a number of caveats attached to this strand of the cosmopolitan typology. For example, it is highly idealistic and utopian in outlook, with any decision to intervene - including through the use of force - contingent upon the will and *compliance* of powerful states. This is witnessed through the asymmetrical power relationships prevalent within the UN Security Council.[[363]](#footnote-363) Furthermore, and whilst advocating the inclusion of NGOs - a decision in itself questioned by critical theorists such as David Chandler in light of their lack of accountability and genuine ability to influence the policy-making process[[364]](#footnote-364) - regional civil society groups and local populations in any deliberations leading up to intervention, the ethical cosmopolitan variant adopts a quixotic approach to mitigating the impact of powerful states and, at the same time, the role of state self-interest in the decision to - or conversely not to - intervene in order to protect vulnerable populations. It also tells us little about *how* the merging of such organisations and groups into the decision-making process would subsequently be achieved, beyond Fine’s ephemeral reference to the establishment of a World Court. In addition, and as intimated previously, powerful states remain instrumental to the *implementation* of cosmopolitan law-enforcement measures and, more specifically, the construction and composition of the ‘cosmopolitan-minded’ militaries propagated by Fine and Kaldor. So, and whilst embodying a normative and deontological approach to contemporary international relations theory that describes how military action *should* be carried out in a more cosmopolitan world, and as Fine himself acknowledges, the ethical variant says little about what happens in the face of the ‘non-ideal’ complexities of a world order in which powerful states have interests that conflict with cosmopolitan purposes, international humanitarian law lacks reliable enforcement mechanisms and military forces are tied to the organising principle of the nation-state.[[365]](#footnote-365) As a consequence, one can discern that the ethical form of cosmopolitan human protection fails to consider or engage with the realities and practicalities of a contemporary international order in which powerful states continue to monopolise and dictate the measures adopted by the international community in response to large-scale human rights violations, with economic and political interests - including concerns with preserving the national integrity of autonomous sovereign states and efforts to eschew military casualties - potentially negating the implementation of internationally and legally-binding humanitarian commitments. Moreover, the ethical variant offers little in respect to *how*, from an institutional perspective, it would alleviate the potential for humanitarian intervention to be used a smokescreen for the pursuit of self-motivated and potentially neo-imperialist inclinations pertinent to powerful states. This phenomenon has already been witnessed through the invasion of Iraq in 2003, where the US and UK attempted to invoke principles of international humanitarian law in order to legitimate non-UN sanctioned coercive enforcement measures.[[366]](#footnote-366)

**The Institutional Form of Cosmopolitan Human Protection**

In view of the limitations axiomatic of the ethical form of cosmopolitan human protection, political theorists including Daniele Archibugi have championed a form of intervention predicated on *institutional* cosmopolitan principles, in turn providing a framework through which concerns over the prevailing inclinations of powerful states - and their concomitant monopolisation of the decision-making process - can, in theory, *begin* to be subjugated. Although this thesis is concerned primarily with examining the correlation between the ethical variant of the cosmopolitan typology and R2P - as well as the *legal* relationship manifest between the doctrine and Habermas’ constitutional cosmopolitan approach - it is important to consider the key tenets underpinning the institutional form of cosmopolitan human protection. This is in view not only of the caveats attached to the ethical variant but also its role in further accounting for the evolution and heightened relevance of cosmopolitan human protection in the post-Cold War period. In addition, as will be discussed in Chapter 6, the reforms synonymous with the institutional variant of the cosmopolitan typology are also apposite to any discussion surrounding the enhancement of the relationship between R2P and the vision of criminal justice innate to cosmopolitan human protection, with the introduction of a large and cosmopolitan UN standing force, in particular, potentially strengthening international consensus over the implementation of the doctrine’s conceptual and legal principles and, relatedly, the *relevance* of the cosmopolitan vision of criminal justice.[[367]](#footnote-367)

Similarly to its predecessor, the institutional form of cosmopolitan human protection advocates the use of military force as a means of last resort when - and only when - egregious violations of human rights are being perpetrated.[[368]](#footnote-368) There are four components to this institutional strand. The first of these concerns the establishment of a set of legal guidelines upon which the legitimacy of humanitarian intervention can be predicated, thus ensconcing the process in international law. For Archibugi, the UN International Law Commission - rather than the UN Charter - would be the most appropriate institution to draft guidelines for humanitarian intervention for UN General Assembly approval.[[369]](#footnote-369) In doing so, it would provide a more secure basis for UN law and action.[[370]](#footnote-370) In enshrining the process within international law, the institutional variant can be seen as attempting to address the problem of powerful states - in particular Russia and China - negating the implementation of a Chapter VII mandate in instances of egregious human rights abuses. This phenomenon was prevalent during the conflict in Kosovo,[[371]](#footnote-371) further helping to account for the international community’s failure to systematically protect human rights in the immediate post-Cold War period. In addition, a ‘right’ of intervention could also help to alleviate the tension between human rights and state sovereignty endemic to the UN, with state sovereignty predicated on the principles of non-intervention and prohibition against the use of force contained within the UN Charter. Similarly to one’s analysis of the ethical variant of the cosmopolitan typology, therefore, the recommendations propagated under the aegis of the institutional form of cosmopolitan human protection have been expedited by the international community’s anaemic response to the conflicts of the post-Cold War period, further encapsulating how this failure to protect vulnerable populations provided an important context for the development and normative relevance of a cosmopolitan approach to human protection in the post-Cold War period.

The second component of the institutional variant concerns the *authorisation* of humanitarian military objectives. Whilst preferring the authority of the UN Security Council to unilateral decisions taken by states or state alliances such as NATO,[[372]](#footnote-372) Archibugi is quick to draw attention to the asymmetrical relationships prevalent within the world organisation, epitomised by the power of veto which allows any of the UNSC’s five permanent members - the UK, US, France, China and Russia - to legally paralyse the decision-making process.[[373]](#footnote-373) This was witnessed by the absence of an UN-sanctioned mandate in Kosovo and, more recently, the failure to reach international consensus in response to the atrocities in Syria.[[374]](#footnote-374) His comments are echoed by Neta Crawford who, in her broader discussion of cosmopolitan humanitarian measures, argues that within the UN the decision to intervene militarily for humanitarian purposes is reserved for a small group of individuals within powerful states. This leads her to assert that the democratisation of world politics is required so that the criteria for - and conduct of - humanitarian interventions is decided both legitimately and with accountability.[[375]](#footnote-375) Subsequently, and further to Fine, Archibugi advocates the inclusion of NGOs in any global discussions over the necessity of humanitarian intervention.[[376]](#footnote-376) In the short-term, an independent ‘Council of Experts’ could be created, allowing NGOs such as Amnesty International to deliberate such measures.[[377]](#footnote-377) In the long-term, NGOs could be incorporated within an empowered World Parliamentary Assembly (WPA) - part of a broader ambit of UN reform - concerned with the protection of human rights and deciding on the necessity of intervention in matters of survival.[[378]](#footnote-378) By advocating the inclusion of NGOs in the decision-making process at an *institutional* level - and taking into account Archibugi’s aforementioned incredulity towards the present structure of the UNSC - one can discern that the institutional variant of the cosmopolitan typology is, similarly to its ethical predecessor, concerned with offsetting the propensity for the major powers to abrogate the implementation of internationally and legally-binding humanitarian commitments and, in addition, the possibility of humanitarian intervention being used as a ‘Trojan Horse’ for the pursuit of self-motivated and potentially neo-imperialist inclinations apposite to powerful states.

The third component of the institutional variant builds upon the model of law-enforcement propagated by Fine and, in particular, Kaldor. Further to Kaldor, Archibugi emphasises the dichotomy between peacekeeping - concerned with more palatable humanitarian measures - and peace-enforcement, which endeavours to minimise casualties on the side of intervening forces whatever the cost to opposing military forces and the civilian population, drawing upon the examples of Bosnia-Herzegovina and Kosovo to emphasise the polarisation between the two extremes.[[379]](#footnote-379) As he explains, any state or political community willing to undertake a genuine humanitarian intervention should be prepared to risk the lives of its own soldiers in order to save the lives of those in the community threatened,[[380]](#footnote-380) with force employed as a matter of last resort when all diplomatic and non-forceful measures have failed.[[381]](#footnote-381) Archibugi transcends the model of law-enforcement promulgated by Fine and Kaldor in advocating the creation of an UN-appointed Commission of military and civilian members, responsible for preparing guidelines on the methods needed to intervene - including through the use of force - for humanitarian purposes.[[382]](#footnote-382) Such a commission would also take responsibility for deciding which methods ought to be used in each humanitarian emergency, possibly deciding whether a military intervention - declared legal by the WPA - is technically feasible.[[383]](#footnote-383) Thus, the creation of this commission would provide an institutional and legal framework for the deployment of *ad hoc* cosmopolitan law-enforcement measures, helping to ensure that the methods adopted in response to the perpetration of large-scale human rights atrocities are tailored to the specific circumstances of each conflict. By including both the military and civilian population in the formulation of such procedures, one can extrapolate that the institutional variant is again concerned with mitigating the impact of powerful states and, in particular, the role of state self-interest in the decision to - or conversely not to - intervene in order to protect vulnerable populations within endemically weak and abusive states.

The final component of the institutional form of cosmopolitan human protection - and linked to its own version of cosmopolitan law-enforcement - concerns the establishment of a specialised and ‘cosmopolitan-minded’ military force assigned the task of undertaking humanitarian interventions. This idea is touched upon by David Held who, in his broader discussion of cosmopolitan democracy,[[384]](#footnote-384) argues that a segment of a state’s military could be temporarily transferred to the ‘new’ international authorities and placed at their disposal on a routine basis.[[385]](#footnote-385) Held does, however, prefer the creation of a permanent and independent military force composed of individuals who volunteer from all countries.[[386]](#footnote-386) This preference for a permanent and independent force is also advanced by Archibugi, who advocates the establishment of a cosmopolitan UN standing force or ‘rescue army’ composed of soldiers, police and civilians drawn from approximately 50 of the largest and most wealthy nations.[[387]](#footnote-387) Further to Fine and Kaldor’s support for the introduction of ‘cosmopolitan-minded’ militaries, such a force would, according to Archibugi, be trained specifically for peacekeeping and humanitarian relief, in the process fulfilling a role more comparable to international ‘policing’ than fighting.[[388]](#footnote-388) This would be reflected in its inclusion of doctors, teachers, social workers and engineers, who would have the task of explaining to the affected civilian population that the intervention has not only military objectives, but also those of welfare and assistance.[[389]](#footnote-389) It is, however, important to remember that such a permanent rescue army would also be composed of military personnel prepared to risk their lives in order to protect human rights, with force employed as a matter of last resort.[[390]](#footnote-390) Through amalgamating soldiers and civilians, therefore, this UN standing force would perform a *dual* role that falls somewhere between policing and fighting, coming to embody a more advanced form of the cosmopolitan-minded militaries postulated by Fine and Kaldor in their discussions of cosmopolitan law-enforcement measures. Thus, the introduction of such a specialised and independent rescue army - deployable at the behest of the UN Secretary-General[[391]](#footnote-391) - would help to further bridge the lacuna between peacekeeping and peace-enforcement and, at the same time, attenuate the monopoly possessed by powerful states over the *implementation* of humanitarian military objectives. In addition, it would also address the antipathy of powerful states towards the loss of troops in conflict situations, a prominent dynamic that consequently undermined the international community’s endeavours to address egregious human rights violations in Somalia, Rwanda and Kosovo in the post-Cold War period.

In summary, then, four key tenets lie at the heart of the institutional form of cosmopolitan human protection. The first of these concerns the establishment of a set of legal guidelines upon which the legitimacy of humanitarian intervention can be predicated, thus ensconcing the process in international law. The second pertains to the authorisation of humanitarian military objectives, democratising the international decision-making process so as to include NGOs in any global discussions over the necessity of intervention. The third transcends the model of law enforcement propagated by prominent advocates of the ethical cosmopolitan variant through the creation of an UN-appointed Commission of military and civilian members, responsible for preparing guidelines on the methods needed to intervene - through the use of force *ultima ratio* - for humanitarian purposes. The fourth, finally, is reflected in the establishment of a specialised and ‘cosmopolitan-minded’ military force designated the role of undertaking interventions within endemically weak and abusive states, performing a dual role that falls somewhere between international policing and fighting and, consequently, coming to embody a more advanced form of the cosmopolitan-minded militaries postulated by Fine and Kaldor. As explained, the last three components of the institutional variant are concerned with weakening the monopoly possessed by powerful states over the decision-making and enforcement process relating to the protection of vulnerable populations. Thus, the institutional form of cosmopolitan human protection can be understood to provide a framework through which concerns over the prevailing inclinations and agendas of such states can, in theory, begin to be subjugated. In addition, the first component of the institutional variant - concerning the codification of humanitarian intervention within international law - can be seen as an attempt to address the problem of powerful states, in particular Russia and China, eschewing the implementation of a Chapter VII mandate in view of wider concerns over preserving the national integrity of autonomous sovereign states, a phenomenon prevalent during the conflict in Kosovo. In this way, therefore, one can again see how the failed liberal interventions of the post-Cold War period provided an important context for the evolution and normative relevance of a cosmopolitan approach to human protection.

**Institutional Cosmopolitan Human Protection: A Critique**

Further to its ethical predecessor, the institutional variant of the cosmopolitan typology could be viewed as utopian in its approach to mitigating the influence of powerful states over both the decision-making process and, in addition, the enforcement of humanitarian military objectives. As Archibugi himself concedes, the most obvious obstacle to the implementation of such institutional cosmopolitan proposals comes from states, who are highly unwilling to subscribe to multilaterally-agreed codes of conduct and would have to agree to both limit their freedom and take on the obligation to participate in something comparable to a humanitarian international *Fire Brigade.*[[392]](#footnote-392) In other words, the introduction of such a robust and comprehensive programme of institutional cosmopolitan reform would, for Archibugi, be contingent upon both the compliance of powerful states to give up some of their decision-making power - particularly in relation to unilateral intervention[[393]](#footnote-393) - and the willingness of such states to participate in the construction and composition of ‘cosmopolitan-minded’ militaries. As intimated previously, the unequal power relationships prevalent within the UNSC, continued monopolisation of powerful states over the enforcement of humanitarian military objectives and their concomitant antipathy towards incurring military casualties - the latter a prominent dynamic in the international community’s failure to protect vulnerable populations in the post-Cold War period - would all appear to run antithetical to such a claim. Thus, and further to the ethical variant of the cosmopolitan typology, the institutional form of cosmopolitan human protection can, in *practice*, be seen as idealistic in its attempts to subvert international concerns over the prevailing inclinations of powerful states and, in particular, their continued monopolisation of the decision-making and enforcement process.

In addition to its idealism, a further source of contention can be found in the proposal to ensconce the process of humanitarian intervention in international law. Whilst intended to resolve the problem of powerful states negating the implementation of a Chapter VII mandate in instances of egregious human rights violations - a phenomenon prevalent during the conflict in Kosovo - and, at the same time, to alleviate the tension between human rights and state sovereignty within the UN, such a proposition could paradoxically increase the likelihood of international and international humanitarian law being employed as a ‘Trojan Horse’ for the pursuit of economic and political objectives relevant to powerful states. In short, the codification of such measures could amplify the self-interested and potentially *neo-imperialist* tendencies of powerful states situated within the international community, facilitating ‘non-humanitarian’ interventions in which such states impose their will on the powerless.[[394]](#footnote-394) As mentioned previously, this claim has been given further credence following the military intervention in Iraq in 2003, where both the US and UK gave considerable weight to the humanitarian case - and thus violations of international humanitarian norms - in order to legitimise their actions, a position rejected by the wider international community.[[395]](#footnote-395) Thus, and whilst the ethical form of cosmopolitan human protection endeavours *in theory* to alleviate the potential for intervention to be used as a smokescreen for the pursuit of neo-imperialist objectives relevant to powerful states, through its proposal to ensconce humanitarian intervention in international law the institutional variant of the cosmopolitan typology could, in practice, be seen to conversely *perpetuate* this trend. In the process, this institutional strand has further illustrated how the cosmopolitan approach to human protection fails to consider or engage with the realities and practicalities of the contemporary international order and, in particular, the pre-eminence of state self-interest over the decision-making process and concomitant implementation of humanitarian military objectives.

**The Cosmopolitan Approach to Human Protection: A Critical Appraisal**

So far, then, this chapter has examined the key tenets - and limitations - underpinning both the ethical and institutional variants of cosmopolitan human protection. Whilst the failure of both cosmopolitan strands in *practice* to reduce the possibility of humanitarian intervention being employed as a smokescreen for the pursuit of economic and political objectives relevant to powerful states - in the case of the institutional variant, potentially exacerbating this trend - will be returned to in one’s discussion of R2P, this chapter will finish by expounding a number of more general weaknesses symptomatic of this cosmopolitan approach. As will similarly be discussed in Chapter 4, R2P has helped in both theory and, to a lesser extent, in practice to address a number of these weaknesses, in turn strengthening the relevance, veracity and credibility of cosmopolitan human protection as a contemporary approach to international relations theory. As intimated previously, Kant’s *prima facie* opposition to any form of interference in the affairs of sovereign states - as discussed, predicated on the belief that intervention would endanger the moral personality and legal autonomy of *all* states, even those with despotic regimes residing outside of the federation[[396]](#footnote-396) - would appear to render cosmopolitanism incommensurate with the use of military force. As emphasised, however, such incongruence has been qualified by the work of Burleigh Wilkins and Antonio Franceschet - who postulate that Kant offers nascent support for military intervention in states situated outside of the *foedus pacificum* in order to protect vulnerable populations - and the concept of human rights which, as explained, can be understood to help bridge the lacuna between humanitarian intervention and the *prima facie* cosmopolitan principle of non-intervention. A more prominent critique, meanwhile, can be found in cosmopolitan human protection’s primarily *ad hoc* approach to the perpetration of large-scale human rights atrocities. This approach could be linked to the overarching principle of humanitarian intervention which, as Caney postulates, embodies a reactive policy adopted *after* people’s needs or rights have been harmed.[[397]](#footnote-397) Whilst some discussion of preventive humanitarian measures is provided by Fine and Kaldor, this is limited to both a discursive reference to pre-emptive intervention in cases where intervening parties are convinced that crimes against humanity are imminent[[398]](#footnote-398) and support for the ‘pre-war’ reconstruction of political authorities and civil society[[399]](#footnote-399) respectively. As discussed, the ethical variant of the cosmopolitan typology advocates intervention in those cases where ‘supreme humanitarian emergencies’ *have* occurred or *are* currently taking place, whilst the institutional form of cosmopolitan human protection supports the adoption of interventionist measures when - and only when - gross violations of human rights *are* being perpetrated.[[400]](#footnote-400) Thus, cosmopolitan human protection neglects to consider or provide a cogent response to the underlying structural causes of protracted internal conflict in the post-Cold War period which, as Garrett Brown and Ali Bohm have alluded to, includes unjust economic situations, unequal market conditions and global poverty.[[401]](#footnote-401) More specifically, a cosmopolitan approach to human protection fails to adhere to the demands of cosmopolitan *distributive* justice[[402]](#footnote-402) - concerned with the ‘human’ rights and freedoms that all individuals must possess if they are to have equal opportunities for a minimally decent life[[403]](#footnote-403) - with the inequality in the distribution of resources, in particular, undermining such opportunities and providing a key dynamic in the rise of global poverty.[[404]](#footnote-404) Crucially, and as Brown and Bohm explain specifically in the context of humanitarian intervention, any consistent account of a cosmopolitan approach must incorporate principles of distributive global justice in order to be fully consistent with broader cosmopolitan aims, more specifically those relating to the establishment of a condition of public right and the ‘entitled’ use of force in cases of egregious human rights violations.[[405]](#footnote-405) On this understanding, therefore, one can extrapolate that a cosmopolitan form of human protection must similarly incorporate principles of distributive global justice in order to remain fully consistent with broader cosmopolitan aims, focused as it is on the symptoms and aftermath of conflict rather than on providing a detailed discussion of, and response to, the underlying causes of structural violence and how these relate to the demands of cosmopolitan *distributive* justice.[[406]](#footnote-406)

Relatedly, cosmopolitan human protection’s predominantly reactive approach to the protection of human rights will be returned to in Chapter 4. Here it will be argued that, despite failing to sufficiently recognise the importance of the global socioeconomic realm in achieving justice for individuals, R2P can be equated with a politics of prevention,[[407]](#footnote-407) reflecting a theoretical consensus amongst member states pertaining to the prevention of acts of genocide, war crimes, ethnic cleansing and crimes against humanity and, crucially, a *nascent* assessment and acceptance of the role of influential global actors in precipitating the conditions that can lead to violent and protracted forms of internal conflict. In this way, therefore, and as will become clear, the doctrine can be understood to have reinforced - albeit imperfectly - its relationship with the cosmopolitan approach to human protection. Furthermore, in tentatively bridging the lacuna between cosmopolitan distributive justice and cosmopolitan humanitarian principles, R2P has helped to enhance the veracity and credibility of cosmopolitan human protection as a contemporary approach to international relations theory, with the language and rhetoric axiomatic of the doctrine countering criticism of the former’s primarily *ad hoc* approach to the protection of vulnerable populations.

Alongside its reactionary approach to human rights crises, an additional source of contention can be found in the *relevance* of the vision of criminal justice that lies at the heart of the cosmopolitan form of human protection. As discussed, under the auspices of this vision of justice intervention - including through the use of force - is not deemed a violation of state sovereignty if such action is concerned explicitly with the advancement of individual human rights,[[408]](#footnote-408) with a corresponding duty falling on ‘external agents’ - powerful states situated within the international community - to intervene and protect such rights when they are contravened.[[409]](#footnote-409) One can discern, therefore, that the cosmopolitan typology is concerned both with safeguarding the rights of individuals and the concomitant responsibilities conferred upon the international community to protect such rights when they are violated in threshold-crossing situations. However, opposition to the scope and demands associated with this cosmopolitan notion of criminal justice can be found in the narratives of realism, liberalism and liberal nationalism, all of which have come to largely reject this cosmopolitan ideal. As will be returned to in Chapter 4, realists deem the cosmopolitan vision of justice to be largely extraneous given the prevailing self-interested inclinations and agendas of powerful states.[[410]](#footnote-410) Liberals such as Rawls, meanwhile, are concerned with advancing principles of distributive justice within well-ordered and self-sufficient communities, whilst at the same time rejecting the idea of a general ‘responsibility’ to protect individuals across sovereign boundaries.[[411]](#footnote-411) Finally, and whilst acknowledging a subordinate duty to protect individual human rights, liberal nationalists including Miller postulate that the responsibilities placed on co-nationals to advance the egalitarian principles of distributive justice take precedence over the duties conferred on the international community to secure the basic rights of people exogenous to the boundaries of states.[[412]](#footnote-412) In this way, therefore, the realist, liberal and liberal nationalist schools of thought can, in terms of scope and demand, be understood to reject the principles associated with the cosmopolitan vision of criminal justice. Correlatively, the contention surrounding this cosmopolitan ideal will be returned to in Chapter 4, where it will be argued that, through its codification and implementation at the international level, alongside the normative language and rhetoric paradigmatic of its legal and conceptual principles, R2P can, in both theory and, to a lesser extent, in practice, be understood to have *strengthened* the relevance of the vision of criminal justice innate to cosmopolitan human protection. In the process, and as will become clear, R2P has countered realist opposition predicated on the self-motivated and potentially nefarious inclinations of powerful states situated within the international community and, in addition, weakened liberal and liberal nationalist narratives that run antithetical to this cosmopolitan notion of criminal justice.

A final albeit more qualified criticism of the cosmopolitan approach to human protection concerns its emphasis on a legitimate body - more specifically, a state or international organisation - to authorise and subsequently enforce humanitarian military objectives. As discussed, the ethical variant of the cosmopolitan typology alludes to *institutional* representation - potentially through the establishment of a World Court - for a broad ambit of NGOs and regional civil society groups in order to maximise the role that genuine humanitarian concerns play in the decision-making process, whilst also deeming states integral to the implementation of cosmopolitan law-enforcement measures. The institutional form of cosmopolitan human protection, meanwhile, provides a framework through which concerns over the prevailing inclinations of powerful states can, normatively speaking, begin to be addressed. This is reflected in its proposals to ensconce humanitarian intervention in international law, incorporate NGOs either within a ‘Council of Experts’ or, in the longer term, a WPA - so as democratise the decision-making process - and create an UN-appointed Commission of military and civilian members responsible for preparing guidelines on the methods needed to intervene for humanitarian purposes. In addition, this variant advocates the establishment of a specialised and ‘cosmopolitan-minded’ military force assigned the task of undertaking interventions, a permanent and independent *international* standing force composed of soldiers, police and civilians drawn from the international community’s 50 largest and most wealthy nations. In contrast to this approach to human protection, Cecile Fabre has argued that a *people* should be able to resort to war in order to overthrow an illegitimate state, and that individuals - as well as states or global institutions - have the right to go to war against unlawful foreign belligerents.[[413]](#footnote-413) Such a claim is predicated on cosmopolitan logic, more specifically the notion that individuals’ basic entitlements - including human rights[[414]](#footnote-414) - exist independent of political borders, and it so follows that states have authority only to the extent that they respect and promote those entitlements.[[415]](#footnote-415) Should a tyrannical state fail to respect those fundamental rights, and as Fabre elaborates, it loses its right to compliance, and thereby its claim that a people not overthrow it by military force.[[416]](#footnote-416) Whilst Fabre’s approach to the ‘legitimate’ use of violence has elicited numerous objections in view of concerns over the right of an individual to wage war against a political community, the potential for such individuals to paradoxically accentuate human suffering and the likelihood of the *jus in bello* principle of non-combatant immunity being contravened,[[417]](#footnote-417) it is clear that her model of cosmopolitanism challenges the key ethical and institutional tenets underpinning the cosmopolitan approach to human protection. Under the aegis of the latter, and as discussed, it is states and, in particular, institutions that act as the ‘legitimate authorities’, with no consideration or appraisal of the rights of individuals to use force in instances of large-scale human rights violations.[[418]](#footnote-418)

**Conclusion**

This chapter has critically assessed the cosmopolitan form of human protection, a normative approach to international relations concerned with re-evaluating the role of institutions, states and non-state actors in any decision to intervene - through the use of force *ultima ratio* - for humanitarian purposes within inherently weak and fragile states. As explained, the ethical variant of this cosmopolitan typology can be understood to place a universal and at the same time collective responsibility on states to intervene - through the use of force as a matter of last resort - in cases of egregious human rights violations, elevates the protection of human rights above the concept of state sovereignty in such instances, embodies a form of ‘immediate’ international criminal justice and, finally, offers a high watermark and limited thresholds for international intervention. Furthermore, and as discussed, the ethical cosmopolitan variant propagates three criteria that must be fulfilled if humanitarian intervention is to be deemed legitimate. Firstly, justification for intervention, with coercive military action only deemed permissible in the event of ‘supreme humanitarian emergencies’ of state-sponsored mass murder, mass population expulsions and genocide. Secondly, the authorisation of humanitarian military objectives, with emphasis placed on the inclusion of NGOs, regional and locally-based civil society groups in any decision to intervene for humanitarian purposes. Finally, military conduct, with advocates of this cosmopolitan approach advancing a unique model of law-enforcement that combines both military and civilian strategies and which, crucially, can be understood to help bridge the lacuna between peacekeeping - coterminous with Chapter VI of the UN Charter - and peace-enforcement.

However, there are a number of caveats attached to the ethical form of cosmopolitan human protection. As explained, it is idealistic and utopian in outlook, with any decision to intervene - including through the use of force - remaining dependent upon the will and compliance of powerful states situated within the international community. Furthermore, and whilst advocating the inclusion of NGOs, regional civil society groups and local populations in any deliberations leading up to intervention, the ethical variant tells us little about how the merging of such organisations and groups into the decision-making process would subsequently be achieved. In short, the ethical form of cosmopolitan human protection adopts a quixotic approach to mitigating the impact of powerful states and, in particular, the role of self-interest in the decision to - or conversely not to - intervene in order to protect vulnerable populations. In addition, states remain integral to the implementation of cosmopolitan law-enforcement measures and, more specifically, the construction and composition of ‘cosmopolitan-minded’ militaries, further enunciating how this strand of the cosmopolitan typology fails to consider or engage with the realities of a contemporary international order in which powerful states continue to dictate the measures adopted by the international community in response to large-scale human rights violations.

Further to the key tenets and limitations axiomatic of the ethical form of cosmopolitan human protection, this chapter has also assessed the institutionalvariant of the cosmopolitan typology, in short concerned with providing a framework through which concerns over the prevailing inclinations of powerful states can, in theory, begin to be addressed. As discussed, there are four overarching components to this institutional strand. The first of these concerns the establishment of a set of legal guidelines upon which to base the legitimacy of humanitarian intervention, thus enshrining the process in international law. The second relates to the authorisation of humanitarian military objectives, democratising the international decision-making process so as to include NGOs in any global discussions over the necessity of intervention. The third postulates the establishment of an UN-appointed Commission of military and civilian members responsible for preparing guidelines on the methods needed to intervene - through the use of force *ultima ratio* - for humanitarian purposes. The fourth, finally, concerns the creation of a specialised and ‘cosmopolitan-minded’ rescue army designated the role of undertaking interventions, performing a dual role that falls somewhere between international policing and fighting and, subsequently, coming to embody a more advanced form of the cosmopolitan-minded militaries promulgated by Fine and Kaldor. As explained, the last three components are concerned with weakening the monopoly possessed by powerful states over the decision-making and enforcement process in respect to the protection of vulnerable populations. Moreover, the first component - concerning the codification of humanitarian intervention within international law - can be seen as an attempt to eschew the capacity for powerful states to negate the implementation of Chapter VII measures, particularly in light of concerns over maintaining the territorial integrity of autonomous sovereign states. Similarly to the ethical form of cosmopolitan human protection, however, and as explained, the institutional variant of the cosmopolitan typology can be seen as quixotic in its approach to mitigating the influence of powerful states over the decision-making process and, in addition, the implementation of humanitarian military objectives. The introduction of such a robust and comprehensive programme of institutional cosmopolitan reform is, as explained, still contingent upon the agreement of the major powers to give up some of their decision-making power, alongside the willingness of such states to participate in the construction and composition of ‘cosmopolitan-minded’ militaries. In addition, and as discussed, a further source of contention can be found in the proposal to ensconce the process of humanitarian intervention in international law. Whilst intended to address the problem of powerful states negating the implementation of a Chapter VII mandate in instances of egregious human rights violations and, at the same time, to alleviate the perennial tension between human rights and state sovereignty manifest within the UN, such a proposition could, paradoxically, increase the likelihood of international and international humanitarian law being employed as a smokescreen for the pursuit of broader economic and political objectives. In short, the codification of such measures could perpetuate the self-interested and potentially neo-imperialist tendencies of powerful states situated within the international community.

This chapter finished by expounding a number of more general weaknesses symptomatic of a cosmopolitan approach to human protection. Firstly, the incongruence between cosmopolitanism and the application of military force, qualified by Kant’s nascent support for military intervention in states situated outside of the *foedus pacificum* in order to protect vulnerable populations and, as explained, the concept of human rights, which can be understood to help bridge the lacuna between humanitarian intervention and the *prima facie* cosmopolitan principle of non-intervention. Secondly, its primarily *ad hoc* approach to the perpetration of large-scale human rights atrocities, failing to adhere or respond to the demands of cosmopolitan distributive justice which, as explained, are intimately bound up with a cosmopolitan approach to human protection. Thirdly, opposition to the scope and demands associated with the cosmopolitan vision of criminal justice, found in the narratives of realism, liberalism and liberal nationalism. Finally, and more contentiously, the need for a legitimate body - more specifically a state or international institution - to authorise and implement force for humanitarian purposes, with Cecile Fabre propagating the rights of individuals to resort to war against an illegitimate state or unlawful foreign belligerent. As explained, under the aegis of cosmopolitan human protection, it is states and, in particular, institutions that act as the ‘legitimate authorities’, with no consideration or appraisal of the rights of individuals to use force in instances of large-scale human rights violations.

As intimated in the course of this chapter, the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice and the provision of delineated and limited thresholds for intervention all constitute *prima facie* aspects of R2P, encapsulating the nexus between the doctrine and the cosmopolitan typology. In addition, through providing a normative and, to a lesser extent, empirical framework through which concerns relating to the self-interested and potentially neo-imperialist inclinations of powerful states can begin to be subverted, the doctrine has helped to address a fundamental weakness symptomatic of the cosmopolitan form of human protection. These dynamics will be returned to in Chapters 4 and 5, integral as they are to the contention that in theory - and, to a more limited extent, in practice - the doctrine has helped to engender a sense of optimism surrounding the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. Moreover, and inexorably linked to this project’s overarching research objective, the thesis will elaborate upon R2P’s correspondence with a politics of prevention - and, more precisely, cosmopolitan distributive justice - and enhancement of the cosmopolitan vision of criminal justice, the implications of which have again helped to address the limitations of the cosmopolitan typology and, in the process, strengthened the relevance, veracity and credibility of cosmopolitan human protection as a contemporary approach to international relations theory.

In the next chapter, meanwhile, this thesis will critically assess Jürgen Habermas’ model of global constitutionalism, predicated on the extension of principles, norms and rules of constitutionalism beyond the modern state with the objective of constructing a global - and eventually cosmopolitan - legal order.[[419]](#footnote-419) More specifically, it will postulate that the UN offers a prospective - whilst incomplete - blueprint for the establishment of such a cosmopolitan order. This critical appraisal of the UN is, as will become clear, instrumental in understanding how R2P has, in both theory and practice, begun to help bridge the lacuna between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms and, through its normative language and empirical connotations, alleviated concerns pertaining to the manifestation and potential proliferation of neo-imperialist trends under the aegis of constitutionalisation, strengthening the potential fulfilment of Habermas’ overarching cosmopolitan objective. As will become evident in Chapter 5, it is the progressive and evolutionary character of R2P that is integral in validating the contention that the doctrine has created a sense of positivity over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

**Chapter 3: Kant, Habermas and the Constitutionalisation of International Law**

**Introduction**

This chapter will undertake a robust and comprehensive analysis of Jürgen Habermas’ theory of constitutionalisation with a ‘cosmopolitan purpose’. Relatedly, it will claim that the UN can be understood to offer a prospective - whilst incomplete - blueprint for the construction of Habermas’ cosmopolitan legal order. The importance and relevance of this postulation will become evident in Chapter 4 where it will be argued that, alongside its enumeration with such legally and internationally-binding commitments as the Genocide Convention and UN Charter, the *Responsibility to Protect* doctrine (R2P) can, through its legal cogency, codification and gradual internalisation and operationalization by UN member states, be understood to have tentatively *advanced* Habermas’ constitutional cosmopolitan approach. In the process, the doctrine has come to strengthen the potential fulfilment of his overarching cosmopolitan objective. A legacy of Immanuel Kant’s *theory of international law*, and as will be explained, Habermas advocates the constitutionalisation of international law under the aegis of constitutional authorities specialised in securing peace and implementing human rights worldwide.[[420]](#footnote-420) In turn, these authorities will facilitate the creation of a legally-constituted global political community of states and - through the institutionalisation of cosmopolitan ‘human’ rights - their citizens, in the process establishing the groundwork for a globalised and eventually cosmopolitan legal order. Whilst building upon Kant’s assessment of the role of global processes in precipitating the realisation of a ‘cosmopolitan condition’, and as will be discussed, Habermas explores the continued pre-eminence of international conflict in providing the driving force behind the reformulation and reconceptualization of Kantian cosmopolitanism. In addition, he supports the constitutionalisation of international law in such a way that it imposes specific restraints on the exercise of hegemony by powerful states and, furthermore, is concerned with institutionalising cosmopolitan *human* rights through circumventing the collective subjects of international law - states - and directly establishing the legal status of individual citizens. This latter dynamic is affirmed by Habermas’ modified conception of ‘constitutional patriotism’ which, as will become clear, provides the social and moral conditions requisite for the fulfilment of his overarching cosmopolitan objective, fostering a sense of loyalty between individuals and the principles underpinning a global constitution and, in turn, establishing a sense of *legal* identity and cosmopolitan citizenship at the global constitutional level. In this way, therefore, and whilst building on the fundamental tenets underpinning Kantian cosmopolitanism, Habermas’ constitutional cosmopolitan approach can, as will be argued, be understood to embody a marked digression from the moral and legal dynamics axiomatic of Kant’s theory of international law.

Having assessed the foundations upon which Habermas’ global constitutional model is predicated, the chapter will move on to a robust and critical appraisal of the normative connotations attached to his cosmopolitan approach, postulating that the UN - in both theory and in practice - provides the ‘building blocks’ for the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism. As will be contended, the innovations and defining characteristics axiomatic of the UN Charter have conferred upon the world organisation the *prima facie* aspects of a global constitution, emphasised by the collective duty bestowed on the international community - and in particular the UNSC’s permanent members - to promote and maintain international peace and security, the specific provisions and expectations generated in relation to this responsibility and the protection the UN affords to all of its members. At the same time, such constitutional tenets have been increasingly extended to the sphere of global human rights in the post-Cold War period. Alongside the collective and legally-binding obligations inculcated on the UN’s member states, therefore, and as will emphasised, individual human rights have come to be incrementally recognised and *institutionalised* at the global constitutional level, underlining how the UN reflects the foundations of a *budding* global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens. Thus, through the normative and legally-binding commitments contained within its Charter, the UN can, in both theory and, more nominally, in practice, be understood to offer a prospective ‘stepping stone’ to the construction of Habermas’ cosmopolitan legal order.

However, and whilst potentially axiomatic of an evolution towards a cosmopolitan legal order, caution must be exercised in relation to the UN’s enforcement mechanisms and, subsequently, any prospective fulfilment of Habermas’ constitutional cosmopolitan approach. As will be articulated, the UN cannot as yet be deemed to be moving *comprehensively* in a cosmopolitan direction. This is reflected in the absence of a legally-binding obligation conferred on the wider international community to respond to systematic abuses of human rights, the continued dependence on the will and compliance of powerful states in both the decision-making and enforcement process, the monopolisation of such states over the use of military force and the retention of veto power by the UNSC’s permanent members. In this way, therefore, the caveats attached to the UN’s enforcement mechanisms have demonstrated how, in both theory and, in particular, in practice, individual human rights have yet to be *sufficiently* recognised and institutionalised at the global constitutional level. Thus, and as will be argued, the UN remains a weak and emerging global constitutional order resembling something *only comparable* to a legally-constituted political community of states and, more importantly, their citizens, an as yet *incomplete* blueprint for the construction of Habermas’ cosmopolitan legal order. In addition, the potential for states to manipulate the innovations and commitments expressed within the UN Charter in order to pursue their own nefarious economic and political objectives, alongside the aforementioned retention of veto power, have served to qualify Habermas’ linear and *teleological* assessment of the constitutionalisation process. In the case of the former, constitutionalisation could be seen to entrench forms of Western political and economic power, whilst in the case of the latter the process has seemingly ‘locked in’ asymmetrical and *non-cosmopolitan* relationships at the global constitutional level. As a consequence, and as will be argued, the prevailing influence of self-motivated and potentially neo-imperialist inclinations pertinent to powerful states have served to further weaken the potential fulfilment of Habermas’ overarching cosmopolitan objective, compounding the claim that the UN remains an as yet incomplete blueprint for the establishment of a cosmopolitan legal order.

As stated previously, the importance of this author’s claim that the UN provides the building blocks for the construction of a globalised and eventually cosmopolitan order will become evident in one’s analysis of R2P in Chapter 5. Of particular relevance is the lacuna that exists between the UN’s increasingly normative commitment to the protection of human rights and the weakness of its enforcement mechanisms. As will be argued in Chapter 5, through helping in both theory and in practice to strengthen the recognition and institutionalisation of individual human rights at the global constitutional level - and, more specifically, through *beginning* to help bridge the gap between the UN’s *prima facie* commitment to human rights and its concomitant constitutional and empirical limitations - R2P can be understood to embody a tacit extension of Habermas’ global constitutional paradigm. In addition, the normative language and empirical implications paradigmatic of the doctrine have helped to assuage concerns over the potentially neo-imperialist inclinations of powerful states, similarly enhancing the potential fulfilment of Habermas’ overarching cosmopolitan objective. In the process, R2P has come to *strengthen* the sense in which the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. In sum, it is the progressive and evolutionary character of R2P that is integral to validating the contention that in theory - and, to a more limited extent, in practice - the doctrine has helped to engender a sense of optimism surrounding the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. It is in this way, therefore, that one’s robust and critical appraisal of the UN - and, more specifically, its enforcement mechanisms - is inextricably linked to this thesis’ overarching research objective.

**Kant’s Theory of International Law**

In Chapter 2, this project outlined Kant’s implicit reference to a collective obligation and moral duty to respect and apply universal laws of hospitality - conducive to the establishment of a condition of cosmopolitan *public right* - and nascent advocacy for humanitarian intervention in instances of egregious human rights violations, both of which have provided an important context for the evolution of the ethical form of cosmopolitan human protection. Whilst this chapter is not concerned with a robust and critical assessment of Kantian cosmopolitanism, or the potential relationship between Kant’s approach and the *Responsibility to Protect*,[[421]](#footnote-421) it is important to delineate the fundamental tenets underpinning his theory of international law. More specifically, this chapter is concerned with Kant’s analysis of the role of global processes in fostering the creation of a ‘federation of peoples’ *between* states, his commitment to moral norms guiding interstate relations and articulation of cosmopolitan citizenship predicated on the notion of universal ‘rights’,[[422]](#footnote-422) all of which have provided a cogent template for the development of Habermas’ theory of constitutionalisation with a ‘cosmopolitan purpose’. As intimated previously, Kant is concerned with introducing a tripartite and ‘co-constituting’[[423]](#footnote-423) system of domestic, international and cosmopolitan law, with the overarching purpose of establishing a condition of universal or cosmopolitan public right. In short, cosmopolitan public right can be understood to reflect the fulfilment of a ‘cosmopolitan condition’ in which the fundamental right of *freedom* of all persons is effectively recognised, in turn providing the grounding for a more institutionalised organisation of cosmopolitan law and, eventually, the establishment of a universal moral community in the form of the *kingdom of ends*.[[424]](#footnote-424) Relatedly, a key dynamic and determining factor in the realisation of Kant’s cosmopolitan ideal is the ‘unsocial sociability’ that exists between both individuals and states, accounted for through the connotations attached to both traditional warfare and global commerce. According to Kant, the tension that exists between men in society is the means by which nature brings about the development of all of their capacities.[[425]](#footnote-425) As he elaborates, this tension manifests itself in the form of the ‘sociable’ inclinations of men and their ‘unsociable’ characteristics, the latter of which constantly threatens to destroy the society in which they reside.[[426]](#footnote-426) It is the continued antagonism between isolation and social interaction - the latter of which is embedded in human nature - that has the effect of awakening the senses and accelerating the development of a man’s natural capacities.[[427]](#footnote-427) This claim is underwritten by the consequences resulting from such global processes or ‘mechanisms of nature’ as war and global trade. As Garrett Brown explains, whilst individuals are forced to socially relate with one another through forces of global commerce and mutual interest - underlining how, according to Kant, the world has become increasingly interconnected through a system of mutual trade between nations - they are also continuously threatened by the global effects and ramifications of destructive war.[[428]](#footnote-428) States, in particular, are positioned in a self-perpetuating ‘pre-political’ condition of anarchy and insecurity,[[429]](#footnote-429) and it is through the experiences of conflict - and, more specifically, the gradual realisation of the *global* risks and costs associated with war, particularly in the context of its impact upon the economic requirements of a commercial age in which peaceful exchange is more profitable than plunder[[430]](#footnote-430) - that states will be motivated to leave this pre-political state of nature and, as will shortly be explained, enter into a *federation of peoples*.[[431]](#footnote-431) Further to the importance of such dynamics as war and global trade, it is also prudent to point out that the establishment of Kant’s universal moral community - the *kingdom of ends* - is dependent upon the fulfilment of a ‘cosmopolitan condition’ in which freedom is at the same time both guaranteed and *limited*. For Kant, the universal purpose of humanity can only be realised in a society that has not only the greatest freedom, and therefore a continual antagonism among its members, but combines this with a precise determination and protection of the limits of this freedom, in order that it can coexist with the freedom of others.[[432]](#footnote-432) Thus, and as Brown explains, it is in this regard that the practical concern for cosmopolitanism is with creating a global environment where various individuals can mutually develop their capacities without the consequences of conflict that have been witnessed throughout history.[[433]](#footnote-433) In other words, for a more peaceful global order to be established - and for Kant’s ‘cosmopolitan condition’ to be realised - individual freedom must be restricted, and it is through the mechanisms and experiences of nature that both individuals and states will come to acknowledge that such restrictions are required. It is in this way, therefore, that these global processes can be understood to possess an historical and universal purpose for humanity, according with the universal principles of right synonymous with Kantian cosmopolitanism and thus providing a key motivational element and precipitous factor in the realisation of Kant’s cosmopolitan ideal.

Following on from these limits to individual freedom, Kant propagates a concept of global justice, which necessitates that a *legal* condition of public right should exist so that the freedom of the individual is limited in such a way so as to secure the freedom of all.[[434]](#footnote-434) In short, Kant advocates the creation of a rightful cosmopolitan constitution[[435]](#footnote-435) conducive to the appearance of such a condition of cosmopolitan right, predicated on a tripartite and co-constituting system of domestic, international and cosmopolitan law. To be more precise, Kant’s conceives of a cosmopolitan constitution that takes the form of a gradually-expanding cosmopolitan federation of independent and *liberally*[[436]](#footnote-436) like-minded states, who dedicate themselves to creating a more rightful condition under such a tripartite system of interlocking laws.[[437]](#footnote-437) The basic tenets of Kant’s theory of international law are contained within his *Definitive Articles for Perpetual Peace among Nations*. The first article stipulates that the civil constitution of every nation should be republican,[[438]](#footnote-438) corresponding to a form of domestic law that concerns the rights and duties that should exist between citizens and their governments.[[439]](#footnote-439) For Kant, republicanism - predicated on popular and democratic sovereignty - provides the benchmark for all forms of civil constitution, representing a form of government coterminous with the principles of freedom shared by all members of a given society, the dependence of everyone on a single, common source of legislation, and the law of equality amongst all individuals.[[440]](#footnote-440) Put another way, a republican constitution would ensure respect for the freedom of individuals by subjecting them to a common source of law, safeguard their independence as civil subjects and guarantee their equality as citizens through providing equal treatment in the eyes of the law.[[441]](#footnote-441) In addition, Kant argues that republican states are more conducive to peace as their citizens will be more aware of the dangers and costs of war, and therefore more capable of steering political leaders away from military engagements.[[442]](#footnote-442) In short, they are less likely to consent to a declaration of war.[[443]](#footnote-443) Thus, for Kant, a democratic and republican constitution is required in order to secure and maintain justice both internally and externally.[[444]](#footnote-444) In addition, Kant’s support for a republican form of domestic law is re-affirmed by his theory of *democratic peace*. As intimated in Chapter 2, this theory is centred on the notion that democracies seemingly promote peace between each other and, as a consequence, people sharing similar conditions of popular sovereignty are more likely to agree on universal principles of justice.[[445]](#footnote-445)

Kant’s second definitive article stipulates that the right of nations should be based on a federation of free states.[[446]](#footnote-446) Kant promulgates a form of international law predicated on a mutually-contracted federation of independent and liberal states, dedicated to the principles of popular sovereignty, peace and mutual international right.[[447]](#footnote-447) Whilst individuals are obliged to submit to such a civil condition in view of the lawlessness axiomatic of the state of nature,[[448]](#footnote-448) states - although prone to conflict - already have a lawful internal constitution.[[449]](#footnote-449) In addition, no state possesses a right to force others into a civil state or international organisation,[[450]](#footnote-450) and thus Kant’s *foedus pacificum* can be understood to represent a non-coercive and *voluntary* federation of states.[[451]](#footnote-451) As espoused previously, it is through the gradual acceptance of the global risks and costs associated with traditional warfare that states will be motivated to leave this pre-political state of nature and enter into such a *federation of peoples*. Whilst political theorists including Carl Friedrich, Howard Williams and Sidney Axinn have all argued that Kant’s long-term objective was the creation of a world republic predicated on coercive laws,[[452]](#footnote-452) Kant himself seemingly rejects this proposal, enunciating the linguistic and religious differences that exist between states, as well as the increased propensity for conflict that such an arrangement would generate.[[453]](#footnote-453) Instead, Kant advocates a non-coercive association that respects the moral personality, legal autonomy and thus *political* *sovereignty* of all states, even those with illiberal or despotic regimes that would ultimately reside outside of the federation.[[454]](#footnote-454) It is important to stress at this point that Kant’s theory of international law is committed not only to the principles of popular sovereignty, peace and international right but also to the establishment and protection of universal *laws of hospitality*.[[455]](#footnote-455) This leads Kant to articulate his third and final definitive article, a vision of cosmopolitan public right limited to the conditions of universal hospitality.[[456]](#footnote-456) For Kant, this conception of hospitality pertains to the right of a stranger not to be treated with hostility when he or she arrives in another’s country.[[457]](#footnote-457) There are also additional principles of cosmopolitan hospitality that are understood to affect all global interactions between individuals, including the right to exit, enter and travel, freedom from negligence and to engage in commerce, and freedom from false or fraudulent contracts.[[458]](#footnote-458) Moreover, the conditions attached to Kant’s vision of universal hospitality are to be applied both internally within the federation and externally between federated and non-federated peoples.[[459]](#footnote-459) Whilst opposing *prima facie* political interference in the affairs of sovereign states,[[460]](#footnote-460) Kant is ultimately concerned with the transformation of these minimal laws of hospitality - and consequently the evolution of his cosmopolitan condition - into a more institutionalised organisation of cosmopolitan law,[[461]](#footnote-461) providing the groundwork for the eventual construction of a universal moral community in the form of the *kingdom of ends*.[[462]](#footnote-462) As William Smith and Robert Fine explain, such a society would, for Kant, come to represent a kind of global public sphere in which all citizens come to be regarded as *legal* as well as moral personalities across national boundaries.[[463]](#footnote-463) Indeed, this universal moral community would exist between *all* individuals and states - regardless of national origin or state citizenship[[464]](#footnote-464) - and thus would come to include stateless people.[[465]](#footnote-465)Furthermore, in transcending a form of moral and legal obligation that stops at the borders of sovereign states to one that reaches all members of the globe as if they were equal citizens,[[466]](#footnote-466) and as articulated in Chapter 2, Kantian cosmopolitanism can be seen to impart on both states and individuals alike a universal and at the same time *collective* obligation to respect and apply universal laws of hospitality conducive to the establishment of such a condition of cosmopolitan public right. Alongside his budding support for humanitarian intervention, therefore, Kant’s theory of international law has at the same time provided a touchstone for the evolution of the ethical form of cosmopolitan human protection. As discussed, this variant is predicated on the notion that there exists a universal and collective responsibility on the international community to intervene - through the use of force *ultima ratio* - in instances of egregious human rights violations, a moral duty that both supersedes and takes precedence over the sanctity of political borders.

In summary, then, Kant is concerned with introducing a tripartite and co-constituting system of domestic, international and cosmopolitan law with the purpose of establishing a cosmopolitan constitution conducive to the appearance of universal public right, a ‘cosmopolitan condition’ in which the fundamental right of freedom is, at the same time, both recognised and restricted. In turn, this condition of cosmopolitan public right will provide the grounding for a more institutionalised organisation of cosmopolitan law and, eventually, the establishment of a universal moral community - and peaceful law-governed society - in the form of the *kingdom of ends*. It is the ‘unsocial sociability’ that exists amongst both individuals and states which, crucially, provides the key dynamic and motivational element in the realisation of Kant’s cosmopolitan ideal, with the global risks and costs attached to traditional warfare - particularly in terms of their consequences for mutual trade between nations - eliciting an *acceptance* amongst individuals and states that restrictions on individual freedom are required, prompting such actors to leave the pre-political state of nature and enter into a *federation of peoples*. As will become clear, Habermas emphasises the challenges posed by the catastrophes of the twentieth century and the forces of globalisation - a legacy of Kant’s *Idea for a Universal History with a Cosmopolitan Intent -* in giving new impetus to the latter’s idea of a ‘cosmopolitan condition’. [[467]](#footnote-467) In short, Habermas explores the broader political, social, cultural and, in particular, *economic*[[468]](#footnote-468) implications of intense globalisation in expediting the formation of international institutions that place collective and legally-binding obligations *upon* - as opposed to between - member states and which, as will be explained, are integral to both the promotion of international peace and institutionalisation of cosmopolitan *human* rights. In this way, therefore, and whilst in many respects constituting a marked digression from the cosmopolitan tenets contained within Kant’s theory of international law, Kant’s assessment of the role of global processes and antagonisms in precipitating the construction of a ‘federation of peoples’ *between* states, his commitment to moral norms - and more precisely the establishment of a more peaceful and law-governed global society - in guiding interstate relations and, finally, his articulation of a vision of universal and cosmopolitan public ‘right’ in which freedom is at the same time both recognised and restricted can all be understood to have shaped the development of Habermas’ global constitutional paradigm.

**Habermas and the Constitutionalisation of International Law**

Habermas’ constitutional cosmopolitan approach is, then, heavily indebted to Kant, with the latter’s conception of the ‘cosmopolitan condition’, in particular, deemed to remain a vital source for our own times.[[469]](#footnote-469) However, and whilst building upon a number of the key tenets underpinning Kantian cosmopolitanism, and as mentioned, Habermas’ typology in many ways represents a deviation from the cosmopolitan principles contained within Kant’s theory of international law. For example, Habermas argues that Kant’s approach is in need of reformulation and reconceptualization in light of such historical developments as imperialism, totalitarianism and the Cold War throughout the twentieth century which, as he explains, were to undermine the emergence of cosmopolitanism as a political force.[[470]](#footnote-470) Of particular relevance is the failure of the League of Nations in 1919 which, although analogous to Kant’s *foedus pacificum* in light of resembling a collective community of states committed to the promotion of international peace and universal ‘rights’ in the form of self-determination and the equality of states - consequently helping the ‘Kantian project’ to find its way on to the political agenda[[471]](#footnote-471) - failed in its overriding purpose to prevent war.[[472]](#footnote-472) Exacerbated by the events of World War II,[[473]](#footnote-473) Habermas is led to conclude that something more than an association of free and equal consociates under international law is required.[[474]](#footnote-474) Instead, and as will become clear, Habermas supports the *constitutionalisation* of international law in such a way that it imposes restraints on the exercise of hegemony by powerful states,[[475]](#footnote-475) arguing that what is in fact required is a supranational power - in other words, a constitutional authority - above competing states that would equip the international community with executive and sanctioning powers in order to implement and enforce its rules and decisions.[[476]](#footnote-476) For Habermas, the purpose of ‘cosmopolitan law’ is to bypass the collective subjects of international law - states - and directly establish the *legal* status of individual subjects through granting them unrestricted membership in an association of free and equal world citizens,[[477]](#footnote-477) an objective that can only be achieved through the existence of ‘mechanisms’ - supranational organisations - specialised in securing peace and implementing human rights worldwide.[[478]](#footnote-478)

In order to comprehend and critically assess the normative connotations attached to Habermas’ global constitutional paradigm, it is important to begin with an analysis of the legal and moral dynamics underscoring his constitutional cosmopolitan approach. An important starting point can be found in the process of constitutionalisation. In its most basic form, constitutionalisation pertains to the growth of international law, the enlargement of global legal regimes and expansion of international organisations, as well as to the hierarchical system of law that establishes legal authority while clearly defining the obligations that are to exist between all constitutional parties.[[479]](#footnote-479) In this way, constitutionalisation can be understood to reflect a growing body of international legal norms which, through creating a gradual sense of ‘compliance pull’ and acceptance amongst states of being under the authority of a globalised legal order, begin to resemble a global constitution. Relatedly, the key tenets underpinning this process of constitutionalisation have provided the impetus for Habermas’ ‘normative’[[480]](#footnote-480) model of global constitutionalism, predicated on the extension of principles, norms and rules of constitutionalism beyond the modern state with the objective of constructing a global - and eventually *cosmopolitan* - legal order.[[481]](#footnote-481) As Brown explains, for Habermas constitutionalisation represents a form of juristic ‘pathway dependence’ where political power is socially legitimised or reversed through established legal corridors.[[482]](#footnote-482) As international laws and regulations gradually expand, and the pathways for state behaviour become more restricted, political power is forced into legal channels, in the process helping to meet the legitimised standards of the global community.[[483]](#footnote-483) In turn - and as will be discussed - constitutionalisation can, according to Habermas, be understood to have a ‘socialising effect’[[484]](#footnote-484) in terms of fostering a sense of loyalty or *patriotism* between individuals and the principles underpinning a global constitution, helping to establish a sense of legal identity and cosmopolitan citizenship at the global constitutional level. In short, it is the social and moral dynamics associated with this process of ‘constitutional patriotism’[[485]](#footnote-485) that are integral to establishing a common ethical-political dimension necessary for the identity formation of a corresponding global community,[[486]](#footnote-486) thus providing the key ingredient and motivational element in the fulfilment of Habermas’ overarching cosmopolitan objective.

Presenting the constitutionalisation of international law as an alternative to realist and ethical conceptions of the primacy of power over law, with the former rooted in classical international law and the latter epitomised by the ‘hegemonic unilateralism’ paradigmatic of the US,[[487]](#footnote-487) Habermas’ model of global constitutionalism is, as mentioned, concerned with establishing constitutional authorities specialised in securing peace and implementing human rights worldwide. In short, the incremental expansion of international law and institutional regimes[[488]](#footnote-488) under the aegis of constitutionalisation would, according to Habermas, see the classical function of the state as the guarantor of security, law and freedom[[489]](#footnote-489) transferred to supranational institutions which, in turn, would help to equip the international community with the sanctioning powers required to implement and enforce its decisions.[[490]](#footnote-490) Thus, what are required for Habermas are legislative and adjudicative bodies that place upon states a collective and *legally-binding* obligation to respect and apply international laws and regulations, in the process helping to establish a ‘legally-constituted’ community of states capable of taking political initiatives and executing joint decisions.[[491]](#footnote-491) Whilst not concerned with establishing a condition of ‘cosmopolitan right’ *a la* Kant, such supranational organisations are, for Habermas, integral to the institutionalisation and protection of universal or cosmopolitan ‘human’ rights and thus the entrenchment of the legal status of cosmopolitan citizens on the global stage.[[492]](#footnote-492) The constitutionalisation of international law under the aegis of such authorities would, therefore, have the effect of creating both a legally-constituted global political community of states and, through the advancement of cosmopolitan human rights, *their* *citizens*, establishing the groundwork for a globalised and eventually cosmopolitan legal order.

Before examining more closely the precise conditions required for the fulfilment of Habermas’ overarching cosmopolitan objective, it is important to explore the relationship between his global constitutional model and the process of *globalisation*. A phenomenon that has its roots in the 1970s and 1980s,[[493]](#footnote-493) globalisation can be understood to reflect the intensification of global interconnectedness - political, economic, military and cultural - and the changing character of political authority.[[494]](#footnote-494) This process has been characterised by the heightened influence of transnational corporations, NGOs and, in particular, quasi-autonomous global economic institutions such as the IMF and World Bank[[495]](#footnote-495) which, in turn, has intensified further in the post-Cold War era.[[496]](#footnote-496) With regards to Habermas’ model of global constitutionalism, and as Antje Wiener *et al* explain, the evolution of this paradigm is intimately bound up with the consequences of intense globalisation, with the process understood to perforate national and state borders and undermine familiar roots of legitimacy, leading to calls for new forms of checks and balances as a result.[[497]](#footnote-497) As Habermas explains, the twentieth century has given rise to a set of global problems such as monetary crises, ecological dangers and transnational terrorism that cannot be addressed adequately by nation-states acting independently.[[498]](#footnote-498) At the same time, the worldwide expansion of trade, production, financial markets, news and communications *inter alia* under the auspices of intense globalisation have entangled states in the dependencies of an increasingly interconnected global society, whose functional capabilities effortlessly bypass territorial boundaries.[[499]](#footnote-499) As a consequence, the capacity of states for autonomous action, alongside their overarching democratic substance, has been increasingly eroded.[[500]](#footnote-500) It is important to acknowledge at this point that for Habermas, states still constitute the most important collective actors on the global political stage and remain an integral site of democratic praxis, epitomised by the guarantee of equal opportunity they provide for citizens to make use of their rights.[[501]](#footnote-501) However, and faced with a growing reduction in their functional capabilities, Habermas postulates that in order for states to remain a source of democratic legitimacy, they would need to coalesce into supranational and transnational[[502]](#footnote-502) groupings with centralised institutions and decision-making capabilities, a *postnational* solution to the erosion of national power.[[503]](#footnote-503) Indeed, Habermas points to the EU as evidence of this new form of political organisation.[[504]](#footnote-504) In this way, therefore, the consequences of intense globalisation can be understood to provide an ‘accommodating trend’ in the fulfilment of Habermas global constitutional paradigm, motivating states to increasingly direct their interests into new channels of ‘soft’ political influence in the form of international and transnational organisations.[[505]](#footnote-505) In addition, globalisation can be seen to be instrumental in the fostering of a sense of ‘constitutional patriotism’ at the global level, as Habermas argues dramatically altering the self-image of states - and in particular their citizens - with membership in international organisations and participation in transnational networks resulting in both states and individuals increasingly perceiving themselves as members of larger political communities.[[506]](#footnote-506)

In order to fully comprehend the transition from a global to a *cosmopolitan* legal order - and thus the conditions necessary to fulfil Habermas’ overarching cosmopolitan narrative - it is important to explore the fundamental tenets underpinning his notion of ‘constitutional patriotism’. In its most basic form, constitutional patriotism refers both to a shared attachment towards universalistic principles - including human rights - implicit in the idea of constitutional democracy and to the actualisation of these principles in the form of particular national institutions, acting as a bridge between the ideas of the ‘universal’ and the ‘particular’.[[507]](#footnote-507) In short, it provides a means through which respect for constitutionally-regulated processes of national politics rooted within states can be reconciled with the authority of cosmopolitan institutions,[[508]](#footnote-508) helping to nurture a sense of attachment to one’s country whilst remaining compatible with the transformed self-consciousness of world citizens.[[509]](#footnote-509) Through generating a sense of ‘national consciousness’, constitutional patriotism helps to foster loyalty to the principles underpinning a particular national constitution, whilst at the same time inculcating a willingness on the part of citizens to do what is required of them for the common good.[[510]](#footnote-510) Under the aegis of his constitutional cosmopolitan approach, Habermas builds upon his earlier conception of constitutional patriotism, with constitutionalisation deemed to have a ‘socialising effect’[[511]](#footnote-511) in terms of fostering a sense of loyalty or patriotism amongst individuals to a *global* constitutional order. In sum, through engendering a belief that global legal practices - such as the promotion of international peace and protection of individual human rights - have a bearing and positive impact upon human existence, states and, in particular, individuals will begin to identify with the principles that underwrite such a constitutional order, in the process establishing a sense of global legal identity.[[512]](#footnote-512) Crucially, this sense of identification is generated outside of local jurisdictions,[[513]](#footnote-513) underlining how under this modified conception of constitutional patriotism, loyalty to a particular constitution is fostered at the *global* rather than national level. For Habermas, the creation of a global legal identity and articulation of *cosmopolitan citizenship* will remain almost impossible without constitutional patriotism, as this sense of identification is, as espoused, necessary in order to create a common ethical-political dimension requisite for the identity formation of a corresponding global community.[[514]](#footnote-514) Thus, it is the social and moral dynamics coterminous with this vision of constitutional patriotism that can be understood to provide the driving force behind the eventual construction of Habermas’ cosmopolitan legal order.

In summary, then, Habermas promulgates the constitutionalisation of international law under the aegis of constitutional authorities specialised in securing peace and implementing human rights worldwide which, in turn, will facilitate the creation of a legally-constituted global political community of states and - through the institutionalisation of cosmopolitan ‘human’ rights - their citizens, in the process establishing the groundwork for a globalised and eventually cosmopolitan legal order. In addition, it is the existence of Habermas’ modified conception of ‘constitutional patriotism’ that provides the social and moral conditions requisite for the fulfilment of his overarching cosmopolitan objective. This is as a result of fostering a sense of loyalty between individuals and the principles underpinning a global constitution and, in turn, establishing a sense of legal identity and cosmopolitan citizenship at the global constitutional level. Whilst sharing Kant’s concern with global processes and their role in the construction of a ‘cosmopolitan condition’, Habermas emphasises the continued pre-eminence of international conflict in providing the driving force behind the reformulation and reconceptualization of Kantian cosmopolitanism. In addition, he supports the constitutionalisation of international law in such a way that it imposes specific restraints on the exercise of hegemony by powerful states and, finally, is concerned with institutionalising cosmopolitan human rights through circumventing the collective subjects of international law - states - and directly establishing the legal status of individual citizens. In this way, therefore, and whilst building on such Kantian themes as the commitment to moral norms guiding interstate relations and articulation of cosmopolitan citizenship predicated on the notion of universal ‘rights’, Habermas’ overarching cosmopolitan narrative can be understood to represent a marked digression from the moral and legal dynamics axiomatic of Kant’s theory of international law.

**The UN: A *Potential* Blueprint for the Creation of a Cosmopolitan Legal Order**

Having examined the legal and moral foundations upon which Habermas’ global constitutional paradigm is predicated, it is now important to assess the connotations attached to his cosmopolitan typology and, more precisely, this author’s claim that the UN offers a *prospective* - whilst incomplete - blueprint for the establishment of a cosmopolitan legal order. Whilst this chapter is concerned explicitly with a robust and critical appraisal of the UN’s enforcement mechanisms, the importance and relevance of this claim will become clear in Chapter 5. Here it will be argued that, in addition to its enumeration with such legally and internationally-binding commitments as the ICCPR, ICSECR and UN Charter, R2P can, through its legal cogency, codification and gradual internalisation and operationalization by UN member states, be understood to have tentatively *advanced* Habermas’ global constitutional paradigm, in the process strengthening the potential fulfilment of his overarching cosmopolitan objective. For Habermas, the UN can be seen as symptomatic of the evolution from proto-constitutional legal tenets to the supranational organisations of a cosmopolitan order.[[515]](#footnote-515) Elaborating further, he equates the world organisation with a suit of clothes a couple of sizes too big waiting to be filled out by a stronger body of organisational law - in other words, by stronger supranational mandates for governance.[[516]](#footnote-516) Habermas outlines three defining characteristics or ‘normative innovations’ axiomatic of the UN Charter that can be understood to have conferred upon the institution the *prima facie* aspects of a global constitution.[[517]](#footnote-517) It is these innovations that help to underwrite this author’s claim that the UN offers a prospectiveblueprint for the establishment of a cosmopolitan legal order. Indeed, for Habermas, states and *their citizens* have already come to embody the constitutional pillars of a politically-constituted world society.[[518]](#footnote-518) The first and most prominent of these innovations is the connection the UN Charter makes between securing peace and the politics of human rights.[[519]](#footnote-519) The Charter confers on the UNSC - and, more specifically, its permanent member states - the primary and ‘collective’ responsibility for maintaining international peace and security.[[520]](#footnote-520) Thus, and as Dan Sarooshi explains, the Charter can be understood to constitute a collective security system, which by definition relates to the use of collective measures against a member of the international community that has violated certain community values.[[521]](#footnote-521) Put another way, member states - and, more specifically, the permanent members of the UNSC - have, under the auspices of the UN Charter, been given the authority to determine the content of the interests of the international community in a particular case and, more importantly, whether violations of such interests constitute a collective security response.[[522]](#footnote-522) This is reflected in the provisions contained within Chapter VII of the Charter, which outline the measures that can be taken by member states in response to threats to peace, breaches of peace and acts of aggression.[[523]](#footnote-523) In this way, therefore, the UN can, in principle, be seen to constitute something analogous to a legally-constituted global political community of states which, under the aegis of the UN’s *prima facie* global constitution, are responsible for both promoting and maintaining international peace and security. In addition to its role as the primary organisation for the promotion of international peace and security, the UN has displayed an increasingly normative commitment to the protection of global human rights in the post-Cold War period. As emphasised in Chapter 1, the incremental acceptance of a global human agenda amongst UN member states was initially witnessed through the new norm of Security Council-authorised humanitarian interventions that developed throughout the 1990s,[[524]](#footnote-524) more specifically by the international community’s endeavours to address egregious human rights violations in Somalia, Rwanda and Bosnia-Herzegovina in the immediate post-Cold War period. More recently, it has been evidenced by the NATO-led military operation in Libya in 2011, framed exclusively within the context of global concerns with the protection of cross-border human rights and, as will be discussed in Chapter 5, heralded by many as constituting an *unprecedented* collective determination within the international community to halt a mass atrocity. In sum, then, the post-Cold War period has seen the collective responsibility of powerful states to promote international peace and security under the rubric of the UN increasingly extended to the protection and advancement of global human rights and international humanitarian law.[[525]](#footnote-525) As a consequence, one can discern that the rights of individuals have been incrementally recognised and *institutionalised* at the global constitutional level, with the UN coming to reflect the foundations of a nascent global constitutional order resembling something comparable not only to a legally-constituted community of states, but also *their citizens*. In this way, therefore, the UN can, in both theory and in practice, be understood to provide the ‘building blocks’ for the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism, in short offering a prospective blueprint for the establishment of a cosmopolitan legal order.

The second defining characteristic of the UN Charter - and inexorably linked to the connection it makes between securing peace and protecting human rights - concerns the relationship between the prohibition on the use of violence and the realistic threat of prosecution and sanctions. Under Article 41 of the UN Charter, and in response to threats to peace, breaches of peace and acts of aggression, the UNSC can decide upon which coercive measures - not involving the use of force - to employ to give effect to its decisions, including the complete or partial termination of economic relations and means of communication, as well as the severance of diplomatic relations.[[526]](#footnote-526) Furthermore, under Article 42 should the measures contained within Article 41 be deemed or prove to be inadequate, the UNSC is authorised to take additional action - including the use of force - in order to maintain or restore international peace and security.[[527]](#footnote-527) In this way, therefore, the UN Charter can be understood to make available a wide ambit of social, political and economic provisions which, given the overarching constitutional dynamic of the UN - and, more specifically, the primary and collective responsibility conferred on its member states - are *expected* to be implemented in matters of international peace and security. Further to its collective security system, the connection the UN makes between the prohibition on the use of violence and realistic threat of prosecution and sanctions has similarly permeated into the discourse of global human rights. This has been witnessed most recently during the conflict in Libya in 2011. Whilst providing the focus of Chapters 4 and 5, it is important to emphasise here that Libya was framed as a problem of human protection almost from the outset,[[528]](#footnote-528) with the actions of Gaddafi’s regime against the civilian population seen to constitute a ‘war crime’, ‘crime against humanity’ and even ‘genocide’.[[529]](#footnote-529) As a consequence, travel bans and asset freezes were imposed on a number of high-profile Libyan individuals and organisations,[[530]](#footnote-530) the matter referred to the International Criminal Court (ICC)[[531]](#footnote-531) and, ultimately, an UN-sanctioned, NATO-led military operation conducted under the auspices of a Chapter VII mandate. Thus, intervention in Libya has demonstrated how the provisions of the UN Charter and, more specifically, the *expectations* imparted on UN member states in respect to matters of international peace and security have similarly been extended to the sphere of individual human rights. In the process, such expectations have helped to further enunciate how human rights have come to be incrementally recognised and institutionalised at the global constitutional level. The connection the UN makes between the prohibition on the use of violence and threat of prosecution and sanctions has, therefore, provided further evidence to support the claim that the UN reflects the foundations of a budding global constitutional order resembling something comparable to a legally-constituted political community of states and citizens, once again - in both theory and in practice - offering a prospective blueprint for the establishment of Habermas’ cosmopolitan legal order.

The final normative innovation axiomatic of the UN Charter is reflected in the inclusive and universal character of the world organisation *per se*. For Habermas, if conflicts are to be resolved peacefully, then all states without exception must be treated as concerned members of the international community.[[532]](#footnote-532) The configuration of the General Assembly (GA), which has 193 members and incorporates authoritarian, despotic and criminal regimes, provides evidence in support of this claim, satisfying a necessary precondition for the international community’s commitment to transforming international conflicts into *domestic* conflicts.[[533]](#footnote-533) Thus, and addition to constituting a collective security system, the UN can be understood to guarantee protection to *all* of its members in matters relating to international peace and security. Whilst primarily directed at its member states, it is also important to emphasise that this guarantee of protection has increasingly permeated down to *individual citizens* and, in particular, vulnerable populations within endemically weak and abusive states. As outlined previously, this is reflected in the UN’s growing normative commitment to the protection of cross-border human rights, witnessed initially through the new norm of Security Council-authorised humanitarian interventions that developed throughout the 1990s and, more recently, by the NATO-led military operation in Libya. Thus, the levels of protection afforded to states and, in particular, individuals in *all* matters relating to international peace and security - including human rights - has helped to further support the contention that such rights have come to be incrementally recognised and institutionalised at the global constitutional level. In this way, therefore, the inclusive and universal character of the world organisation has further encapsulated the sense in which the UN reflects the foundations of a nascent global constitutional order resembling something analogous to a legally-constituted political community of states and citizens. Thus, in both theory and in practice, the UN has again come to provide the building blocks for the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism and, in turn, the establishment of a cosmopolitan legal order.

In summary, then, one can discern that the normative innovations and characteristics axiomatic of its Charter have embellished the UN with the *prima facie* aspects of a global constitution, offering a prospective blueprint for the fulfilment of Habermas’ overarching cosmopolitan objective. As discussed, the UN imparts a collective duty on the international community - and, in particular, the UNSC’s permanent member states - to promote and maintain international peace and security, inculcates specific provisions and expectations in relation to this responsibility and affords protection to all of its members. Crucially, such constitutional tenets have been increasingly extended to the sphere of global human rights in the post-Cold War period, epitomised by the international community’s attempts to end nefarious and systematic human rights violations in Somalia, Rwanda and Bosnia-Herzegovina and, more recently, by the NATO-led military operation in Libya. Subsequently, and as articulated, individual human rights have come to be incrementally recognised and institutionalised at the global constitutional level, helping to validate this author’s claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens. In this way, therefore, the normative innovations and legally-binding commitments contained within the UN Charter could, in both theory and in practice, be understood to offer a potential ‘stepping stone’ to the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism and, in turn, the establishment of a cosmopolitan legal order.

However, and whilst potentially axiomatic of an evolution towards a cosmopolitan legal order, the UN has yet to display a comprehensively cosmopolitan *zeitgeist*, reflected in the gap that exists between political rhetoric and political reality at the global level and, more specifically, between the institution’s normative commitment to the protection of global human rights and the weakness of its enforcement mechanisms. Thus, and as will be argued in this section of the chapter, the UN remains an as yet *incomplete* blueprint for the establishment of Habermas’ cosmopolitan legal order. Once again, the importance and relevance of this claim will become evident in Chapter 4. Here it will be argued that, in helping in both theory and in practice to strengthen the recognition and institutionalisation of human rights at the global constitutional level - and, more specifically, through *beginning* to help bridge the gap between the UN’s *prima facie* commitment to human rights and its concomitant constitutional and empirical limitations - R2P can be understood to embody a tacit extension of Habermas’ global constitutional paradigm. Thus, and as will be explained, the doctrine has come to strengthen the sense in which the UN provides the building blocks of a nascent global constitutional order resembling something analogous to a legally-constituted political community of states and, more importantly, their citizens, in the process enhancing the potential fulfilment of Habermas’ overarching cosmopolitan objective.

Despite the significant progress made in respect to international security and global human rights, Habermas himself acknowledges that further reform of the UN is required if the institution is to develop into a supranational entity capable of securing peace and promoting human rights in an effective and non-selective fashion,[[534]](#footnote-534) emphasising the continued reliance on provisions of legitimacy from within state-centred systems.[[535]](#footnote-535) For example, and whilst the immediate post-Cold War period was to witness the emergence and gradual acceptance of a global human rights agenda amongst UN member states - underpinned by a ‘modification’ to the existing principles of international law[[536]](#footnote-536) - and the legally-binding commitments contained within such covenants as the Genocide Convention outline states’ responsibilities towards the prevention of mass atrocity crimes, [[537]](#footnote-537) under the aegis of the UN Charter there is no legal obligation conferred on the *wider* *international community* to respond to egregious violations of human rights. In addition, the UN’s failure to protect vulnerable populations in Somalia, Rwanda and Bosnia-Herzegovina in the immediate post-Cold War period has highlighted the continued debate that surrounds any claim that a modification of *customary* international law has taken place.[[538]](#footnote-538) Thus, any decision to intervene for human protection purposes, including through the use of force, remains contingent upon the will and compliance of powerful states, with the inclinations and reservations pertinent to such states continuing to influence the decision to - or conversely not to - intervene in order to protect vulnerable populations. As outlined in Chapter 1, and whilst attributable to a broad confluence of complex dynamics, the continued preoccupation of the UNSC’s permanent members with preserving the national integrity of sovereign states, the pursuit of broader economic and political objectives and endeavours to eschew military casualties all contributed - either in isolation or in tandem - to the UN’s failure to systematically protect human rights in the immediate post-Cold War period. This trend has also continued into the 21st Century, encapsulated by the UN’s anaemic response to the conflicts in Darfur, Democratic of Congo and Zimbabwe which, for Michael Barnett and Thomas Weiss, epitomise how the logic of independent state interests continues to trump the logic of humanity.[[539]](#footnote-539) Crucially, such constitutional and empirical limitations have demonstrated how - in both theory and in practice - individual human rights have yet to be *sufficiently* recognised and institutionalised at the global constitutional level. As a consequence, the caveats attached to the UN’s enforcement mechanisms have served to reinforce the institution’s status as a weak and emerging global constitutional order resembling something *only comparable* to a legally-constituted political community of states and, more importantly, their citizens, underlining how the UN remains an as yet incomplete blueprint for the construction of Habermas’ cosmopolitan legal order.

Further to the continued dependency on provisions of legitimacy from within state-centred systems, there also exists the prospect that powerful states will abuse the normative innovations and legally-binding commitments contained within the UN Charter - particularly given the modification of the existing principles of non-intervention and prohibition against the use of force that manifested in the immediate post-Cold War period[[540]](#footnote-540) - in order to advance their own nefarious economic and political objectives. In particular, there is the possibility that humanitarian intervention could be used as a smokescreen for the pursuit of self-motivated and potentially neo-imperialist inclinations relevant to powerful states, paradoxically resulting in ‘non-humanitarian’ interventions in which such states impose their will on the powerless.[[541]](#footnote-541) Indeed, and as will be returned to in Chapters 4 and 5, this has been witnessed through the invasion of Iraq in 2003, where the US and UK attempted to invoke principles of international humanitarian law in order to legitimate non-sanctioned coercive enforcement measures.[[542]](#footnote-542) Whilst re-affirming the weakness of the UN’s enforcement mechanisms, the potential for such humanitarian commitments to be exploited and manipulated by powerful states has also qualified Habermas’ constitutional cosmopolitan approach and, more specifically, his *teleological* assessment of the constitutionalisation process. As explained, Habermas’ global constitutional paradigm is predicated on the establishment of legislative and adjudicative bodies - more precisely constitutional authorities - that confer upon states a collective and legally-binding obligation to respect and apply international laws and regulations, with the promotion of international peace and institutionalisation of individual human rights establishing the groundwork for a globalised and eventually cosmopolitan legal order. In this way, therefore, Habermas’ model of global constitutionalism can be understood to follow a *linear* trajectory in the pursuit and fulfilment of an overarching constitutional narrative and cosmopolitan endgame. However, and encapsulated by events in Iraq in particular, Graham Thomson *et al* have argued that it is not unreasonable to view the current process of constitutionalisation as simply entrenching Western political and economic power.[[543]](#footnote-543) Thus, constitutionalisation could be seen to represent nothing more than a form of neo-imperialism, thus re-affirming the legal and institutional dominance of the world’s most powerful states.[[544]](#footnote-544) Whilst this claim will be returned to and deliberated in Chapters 5 and 6, it is clear that the manifestation and potential proliferation of such self-interested and neo-imperialist trends runs antithetical to Habermas’ linear and teleological assessment of the constitutionalisation process, attenuating the prospective fulfilment of his overarching cosmopolitan objective. In this way, therefore, the prevailing influence of self-motivated and potentially neo-imperialist inclinations relevant to powerful states has served to compound the claim that the UN remains an incomplete blueprint for the construction of Habermas’ cosmopolitan legal order.

Inextricably linked to the continued pre-eminence of states in both the decision-making and enforcement process relating to the protection of vulnerable populations, a further caveat attached to the UN’s enforcement mechanisms can be found in the monopolisation of the major powers over the use of military force. Whilst conferring on the UNSC the primary and collective responsibility to promote international peace and security, and as Sarooshi acknowledges, the implementation of Chapter VII provisions is in practice delegated to ‘entities’ - states - as the UNSC possesses no enforcement capacity of its own.[[545]](#footnote-545) In short, the UN lacks a force upon which it can call to directly conduct military enforcement action.[[546]](#footnote-546) Alongside matters of international peace and security, this continued dependency of the UN on the military capabilities axiomatic of powerful states has concomitantly permeated into the sphere of human rights, helping to account for the international community’s failure to protect vulnerable populations in the immediate post-Cold War period. As outlined in Chapter 1, and whilst interspersed with a broad confluence of factors, the UN’s anaemic response to egregious human rights violations in Somalia, Rwanda and Kosovo in particular can, in part, be attributed to the reticence of the UNSC’s permanent member states - and especially the US - to incur military casualties, underlining how this dynamic is factored into any decision to intervene military for humanitarian purposes. In addition, and whilst representing an arguably *successful*[[547]](#footnote-547) case of international intervention in response to the systematic abuse of individual human rights, the almost complete absence of ground troops in Libya could be seen as testament to the continuing phenomenon of *virtual war,*[[548]](#footnote-548)a legacy of the NATO-led operation in Kosovo and, more generally, a glowing indictment of the continued antipathy of UN member states to the loss of troops in conflict situations. Thus, the retention of force by the major powers has provided further evidence that, in practice, individual human rights have yet to be sufficiently recognised and institutionalised at the global constitutional level. Once again, therefore, the limitations associated with the UN’s enforcement mechanisms have illustrated how the institution remains a weak and emerging global constitutional order resembling something only comparable to a legally-constituted political community of states and citizens, re-affirming this author’s claim that the UN remains an as yet incomplete blueprint for the establishment of a cosmopolitan legal order.

A final weakness associated with the UN’s enforcement mechanisms that will be assessed in this chapter concerns the continued retention of veto power by the UNSC’s permanent member states. Whilst perceived as an important institutional check and, more specifically, primary restraint against excessive interventionism by the Security Council,[[549]](#footnote-549) the power of veto at the same time provides a mechanism through which powerful states can preclude intervention - including humanitarian intervention - despite transgressions under the umbrella of both international and international humanitarian law. As explained in Chapter 1, this was the case in Kosovo where, despite acts of large-scale ethnic cleansing committed by Yugoslav forces and Serbian police against the ethnic Albanian population, both Russia and China threatened to veto any proposed resolution on the use of force, principally in light of concerns relating to both the national sovereignty and territorial integrity of the province which, at the time, constituted a federal unit of Serbia. Furthermore, and whilst providing the focus of Chapters 4 and 5, the same members of the UN Security Council vetoed all draft resolutions aimed at ending the recent violence in Syria, in the case of Russia a consequence primarily of its vested political and economic interests in the Middle East region as a whole. In addition to the manifestation and potential proliferation of self-interested and neo-imperialist trends under the aegis of constitutionalisation, the continued retention of veto power by the UNSC’s permanent member states can, in both theory and in practice, be understood to further undermine Habermas’ linear and teleological assessment of the constitutionalisation process. This is in view of being symptomatic of the ‘locking in’ of asymmetrical and *non-cosmopolitan* legal relationships at the global constitutional level. In short, the retention of veto epitomises the unequal distribution of power manifest within the UN, as Brown explains encapsulating how the process of constitutionalisation has locked-in legal relationships - and thus the *responses* to such global problems as human rights - that favour some states more than others, with those states with the greatest political and economic power able to ‘legitimately’ demand compliance even when this runs contrary to the principles of international justice.[[550]](#footnote-550) The conflicts in Kosovo and Syria both help to validate this contention, elucidating how the broader inclinations pertinent to powerful states - more specifically Russia and China - have, in these instances, superseded and taken precedence over the UN’s broader normative commitment to the protection of human rights. In sum, the power of veto was utilised by Russia and China in order to perpetuate and protect broader political objectives and economic interests. Thus, and characterising the continued pre-eminence of states in both the decision-making and enforcement process relating to the protection of vulnerable populations, the retention of veto power has, in both theory and in practice, further illuminated how individual human rights have yet to be sufficiently recognised and institutionalised at the global constitutional level. As a consequence, and in addition to running antithetical to Habermas’ linear and teleological approach to the constitutionalisation of international law - further qualifying the prospective fulfilment of his overarching cosmopolitan objective - the continued possession of veto power by the UNSC’s permanent member states has similarly re-affirmed the claim that the UN remains an as yet incomplete blueprint for the construction of Habermas’ cosmopolitan legal order.

**Conclusion**

This chapter began with a comprehensive analysis of the legal and moral foundations upon which Habermas’ global constitutional paradigm is predicated. An advancement on - and digression from - the key tenets underpinning Kant’s *theory of international law*, Habermas advocates the constitutionalisation of international law under the aegis of supranational bodies - constitutional authorities - specialised in securing peace and implementing human rights worldwide which, in turn, will facilitate the creation of a legally-constituted global political community of states and their citizens. In the process, such authorities will lay the groundwork for a globalised and eventually cosmopolitan legal order. In addition, and as explained, Habermas’ propagates a modified conception of ‘constitutional patriotism’ that provides the social and moral conditions requisite for the fulfilment of his overarching cosmopolitan objective, fostering a sense of loyalty between individuals and the principles underpinning a global constitution and, in turn, establishing a sense of legal identity and cosmopolitan citizenship at the global constitutional level. Following on from one’s analysis of the moral and legal tenets underpinning Habermas’ global constitutional model, this chapter has critically assessed the normative connotations attached to his constitutional cosmopolitan approach, arguing that the UN offers a prospective - whilst incomplete - blueprint for the creation of a cosmopolitan legal order. As explained, the innovations and legally-binding commitments contained within the UN Charter have embellished the world organisation with the *prima facie* aspects of a global constitution, reflected in the collective duty conferred on the international community - and, in particular, the UNSC’s permanent member states - to promote and maintain international peace and security, the specific provisions and expectations generated in relation to this responsibility and the protection the UN affords to all of its members. At the same time, such constitutional tenets have been increasingly extended to the sphere of global human rights in the post-Cold War period. This is reflected in the new norm of Security Council-authorised humanitarian interventions that developed throughout the 1990s and concomitant attempts by the international community to halt nefarious and systematic abuses of human rights in Somalia, Rwanda, Bosnia-Herzegovina and, more recently, in Libya. Alongside the collective and legally-binding obligations inculcated on the UN’s member states, therefore, and as argued in this chapter, human rights have come to be incrementally recognised and institutionalised at the global constitutional level, with the UN coming to embody the foundations of a nascent global constitutional order resembling something comparable to a legally-constituted political community of states and, most importantly, their citizens. Thus, through the innovations and commitments contained within its Charter, the UN can in both theory and, to a more limited extent, in practice, be understood to provide the ‘building blocks’ for the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism, a prospective ‘stepping stone’ to the construction of a globalised and eventually cosmopolitan order.

However, and whilst potentially paradigmatic of an evolution towards the constitutional authorities of a cosmopolitan legal order, the UN has yet to display a comprehensively cosmopolitan *zeitgeist*. As explained, this is reflected in the absence of a legally-binding obligation inculcated on the wider international community to respond to egregious violations of human rights, the continued dependence on the will and compliance of powerful states, the monopoly possessed by such states over the use of military force and the retention of veto power within the UNSC. Thus, and whilst undermining the UN’s role in promoting international peace and security, the caveats attached to its enforcement mechanisms have reinforced how, in both theory and, in particular, in practice, the UN remains a weak and emerging global constitutional order resembling something only comparable to a legally-constituted political community of states and citizens. In addition, the prospect of states manipulating the innovations and commitments expressed within the UN Charter in order to pursue their own nefarious political and economic objectives, alongside the continued retention of veto power by permanent UNSC members, have both served to qualify Habermas’ linear and teleological assessment of the constitutionalisation process. As emphasised, therefore, the prevailing influence of self-interested and potentially neo-imperialist inclinations pertinent to the major powers has further weakened the potential fulfilment of Habermas’ overarching cosmopolitan objective, serving to compound the claim that the UN remains an as yet incomplete blueprint for the establishment of a cosmopolitan legal order.

In the next chapter, this thesis will examine the relationship between R2P and the cosmopolitan approach to human protection, concerned as it is with the prospective constitutionalisation of cosmopolitan *humanitarian* norms. Meanwhile, and as emphasised in this chapter, the importance of the UN in providing the building blocks for the construction of a globalised and eventually cosmopolitan legal order will become evident in one’s analysis of R2P in Chapter 5. Of particular relevance is the systematic appraisal of the UN’s enforcement mechanisms undertaken in this chapter, which is intimately bound up with the project’s overarching research objective. As will be contended in Chapter 5, through helping in both theory and, to a lesser extent, in practice to strengthen the recognition and institutionalisation of individual human rights at the global constitutional level - and, more specifically, through beginning to bridge the gap between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms - R2P can be understood to embody a tacit extension of Habermas’ global constitutional paradigm. As a consequence, the doctrine has helped to heightenthe sense in which the UN reflects the foundations of a weak yet budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. In addition, and as will be argued, through its normative language and, to a lesser extent, empirical connotations, the doctrine has alleviated concerns over the neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation process, similarly enhancing the potential fulfilment of Habermas’ overarching cosmopolitan objective. These claims are, as will become clear, instrumental to this author’s contention that in theory - and, to a more limited extent, in practice - R2P has helped to engender a sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

**Chapter 4: The Responsibility to Protect and Cosmopolitan Human Protection**

**Introduction**

This chapter will undertake a robust and critical appraisal of the nexus between R2P and the cosmopolitan form of human protection. As will become clear in Chapter 5, this relationship is integral to the claim that the doctrine has engendered a sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. As will be discussed, and whilst R2P continues to fall short of fulfilling the normative expectations of this cosmopolitan typology, the doctrine can be understood to share a number of distinctly cosmopolitan characteristics. Firstly, the notion of collective responsibility, with the international community - through the UN - having a residual duty to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[[551]](#footnote-551) Secondly, the reformulation and reconceptualization of state sovereignty, with R2P elevating the protection of human rights above the principle of internal state sovereignty in ‘supreme humanitarian emergencies’ - more specifically in instances of genocide, ethnic cleansing and crimes against humanity - conferring a responsibility on the international community of states to intervene when such violations of human rights and international humanitarian law have taken placeand, finally, legitimating the use of force as a last resort. Thirdly, the cosmopolitan vision of criminal justice, concerned as the doctrine is with safeguarding the rights and interests of individuals and the concomitant duties inculcated upon external agents - in particular states - to protect such rights and interests when they are violated in threshold-crossing situations. Fourthly, the provision of delineated and limited thresholds for international intervention, with R2P propagating a ‘responsibility to protect’ that applies *exclusively* to cases of genocide, war crimes, ethnic cleansing and crimes against humanity. Finally, and more implicitly, the concept of cosmopolitan distributive justice, eliciting an international responsibility to help ‘prevent’ the conditions that lead to violent and intractable conflict within endemically weak and abusive states. As articulated in Chapter 2, and further to constituting *prima facie* aspects of R2P, these cosmopolitan moral tenets are all coterminous with the ethical form of cosmopolitan human protection. Thus, and as will be argued in this chapter, R2P can be considered analogous to a cosmopolitan approach to human protection. Furthermore, and despite the continued pre-eminence of realist objections centred on the prevailing inclinations, agendas and *national interests* of powerful states - as well as the role played by a number of complex and overlapping contextual factors which, as will become clear, remain integral to the fulfilment of cosmopolitan humanitarian demands - this chapter will also contend that R2P has amplified the *relevance* of the notion of criminal justice that lies at the heart of the cosmopolitan approach to human protection. This is evidenced through the doctrine’s normative language and, to a lesser extent, empirical connotations which, as will become clear, have helped to qualify realist, liberal and liberal nationalist opposition to this cosmopolitan vision of criminal justice.

**The ICISS Report**

Before examining the relationship between R2P and cosmopolitan human protection, it is important to trace the roots of the doctrine, with the 2001 report produced by the International Commission on Intervention and State Sovereignty (ICISS) titled *The Responsibility to Protect*,[[552]](#footnote-552) in particular, proving instrumental in shaping both the content of - and connotations attached to - R2P in its present form. With regards to the idea of the ‘responsibility to protect’, firstly, this can be located as far back as 1993 and the notion of *sovereignty as responsibility* as articulated by the former Sudanese diplomat Francis Deng, a product of both his participation in a Brookings Institution initiative in the late 1980s on conflict management in Africa and his later experience as the Secretary-General’s Special Representative on Internally Displaced Persons, albeit from 1994 to 2004.[[553]](#footnote-553) Crucially, Deng challenged the principle of non-intervention by arguing that the sovereign right of non-interference was contingent upon the performance of sovereign responsibilities for the protection of populations.[[554]](#footnote-554) Meanwhile, and a product of both the illegal NATO intervention in Kosovo, as well as the failure of the UN to protect vulnerable populations in Somalia, Rwanda and Bosnia-Herzegovina in the immediate post-Cold War period, the 2001 ICISS report was to develop this idea further, as Buchan explains moving away from a ‘pristine’ conception of state sovereignty that conferred on states an unrestricted right to deal with individuals as they saw fit, towards an approach that regarded states as being under a *responsibility* to protect their populations.[[555]](#footnote-555) An attempt to address the fundamental problems of international law - in particular the tension prevalent within the international community between the protection of global human rights and inviolability of state sovereignty, as well as antipathy to the language of humanitarian intervention compounded by events in Kosovo[[556]](#footnote-556) - the report prioritised the rights and interests of individual victims above the perspectives and preferences of intervening powers.[[557]](#footnote-557) According to the report, a state has the primary responsibility to uphold individual human rights.[[558]](#footnote-558) Should it be ‘unable or unwilling’ to fulfil this responsibility, its sovereignty is temporarily abrogated and the ‘responsibility to protect’ is transferred to the wider international community.[[559]](#footnote-559) Under the recommendations of the Commission, therefore, and as Peter Hilpold explains, sovereignty is no longer interpreted in the traditional Westphalian sense as the ‘supreme authority within a territory’, but as a concept based on human security and implying wider responsibilities.[[560]](#footnote-560) In short, the ICISS report inculcated a *collective* responsibility on the international community - and in particular the permanent members of the UNSC - to protect individuals in the event of large-scale human rights violations that sovereign states were unable or unwilling to prevent, providing criteria and thresholds for intervention which, if met, legitimated the use of military action for humanitarian purposes.[[561]](#footnote-561) Furthermore, and whilst humanitarian intervention still remained a key component under the aegis of the ‘responsibility to react’, the report placed particular emphasis on both the responsibility to *prevent* - involving the provision of developmental assistance to help prevent protracted intra-state conflict from occurring, intensifying, spreading or persisting - and the responsibility to *rebuild*, with the international community required to provide full assistance with recovery, reconstruction and reconciliation, particularly following a military intervention.[[562]](#footnote-562) Although the ideas of prevention and reconstruction *individually* are nothing new,[[563]](#footnote-563) the ICISS report reflected a multi-faceted diplomatic and political agenda,[[564]](#footnote-564) with its proposals for a responsibility to both prevent and rebuild testament to its concern with moving away from a politics of ‘right’ towards one of ‘responsibility’ rooted in the needs and interests of the individual. Coupled with its endeavours to reconcile human rights and state sovereignty, this shift away from the language of a ‘right of intervention’ to one of ‘the responsibility to protect’ was, as will become clear, to provide the building blocks of the R2P endorsed and adopted at the 2005 World Summit meeting.

However, and despite the long-term achievements of the Commission in illuminating a broad constituency of states prepared to acknowledge that both sovereignty entailed responsibilities and international engagement might be legitimate in certain circumstances, as well as in reframing the ‘humanitarian intervention’ debate by situating military action within a broader gamut of measures,[[565]](#footnote-565) it should be emphasised that the R2P that emerged in 2005 was to represent a marked digression from the proposals put forward under the 2001 ICISS report. This was due to a number of the recommendations contained within the report being rejected by the wider international community. For example, the document propagated ‘precautionary principles’ grounded in the criteria of *jus bellum* as a watermark for military intervention, with the Commission arguing that such a threshold generated an *obligation* to intervene despite the absence of both a legal and, to a lesser extent, moral justification for such a claim.[[566]](#footnote-566) Furthermore, the report recommended that the permanent members of the UNSC refrained from casting their power of veto in threshold-crossing situations where no vital interests were at stake and a majority supported collective action.[[567]](#footnote-567) Further to the experience of Kosovo, this raised the possibility of unilateral, non-sanctioned military intervention within weak and fragile states,[[568]](#footnote-568) despite the report emphasising that the UN still remained the most appropriate body to authorise the use of force for humanitarian purposes.[[569]](#footnote-569) Finally, the Commission identified two alternatives that would allow for humanitarian intervention to be sanctioned in those extreme cases where Security Council authorisation was absent - the General Assembly (GA) ‘Uniting for Peace’ procedure (which requires a two-thirds majority backing) and regional organisations acting under Chapter VIII of the UN Charter.[[570]](#footnote-570) The prospect of ‘illegal’ military action provoked fears amongst Russia and China - permanent members of the UNSC - that force could be used as a facade to advance the interests of powerful states, a concern that was to gain further credence following the US-led invasion of Iraq in 2003. Exemplifying the massive international preoccupation with terrorism in the wake of 9/11,[[571]](#footnote-571) and as espoused previously, both the US and UK were to give considerable weight to the *humanitarian* case for military intervention in Iraq - even invoking the language of the ‘responsibility to protect’ in order to legitimise their actions[[572]](#footnote-572) - a position widely rejected by the international community.[[573]](#footnote-573) As a consequence, the perception of both states as international ‘norm carriers’ was weakened, with the US and UK thereafter seen as lacking the credibility on the international stage to spearhead humanitarian military operations abroad.[[574]](#footnote-574) Indeed, and as Cristina Badescu and Thomas Weiss have argued, the actions of both countries in Iraq almost became a ‘conversation stopper’ for norm development against mass atrocities, nearly choking at birth the emerging norm of R2P.[[575]](#footnote-575) At the time, these sentiments were echoed by political commentators including Ian Williams, Richard Falk, Karl Kaiser and John Kampfner.[[576]](#footnote-576)

**The Responsibility to Protect and the Cosmopolitan Approach to Human Protection: A Critical Appraisal**

Despite fears that the invasion of Iraq would undermine the future endorsement of military action under the rubric of humanitarianism, support for humanitarian intervention - and more broadly the concept of the *Responsibility to Protect* - has continued over the past decade,[[577]](#footnote-577) culminating in the NATO-led military operation in Libya in 2011 which, as will be examined further, was framed *exclusively* within the context of global concerns with human protection. For Badescu and Weiss, Iraq helped to reinforce the boundaries of the doctrine and clarify why human rights violations that fall short of genocide, war crimes, ethnic cleansing and crimes against humanity do not justify the use of R2P rhetoric.[[578]](#footnote-578) In this way, therefore, the model of R2P that emerged from the World Summit meeting can be understood to have been shaped by the fall-out from the US-led intervention in Iraq in 2003. Furthermore, the appearance of the doctrine is related to - whilst at the same time distinct from - the new *collective* human security agenda that manifested during this period, in sum concerned with the prevention of economic, political and social threats to individual persons through the principle of collective state action.[[579]](#footnote-579)

In Chapter 2, this thesis explored the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice and provision of threshold-crossing criteria for international intervention coterminous with a cosmopolitan approach to human protection. Whilst this chapter will argue that R2P has yet to reflect a comprehensively cosmopolitan *zeitgeist*, it will contend that such normative ideas constitute *prima facie* aspects of the doctrine, testament to R2P’s relationship with the ethical variant of the cosmopolitan typology. As explained, the ethical form of cosmopolitan human protection is predicated on the assertion that there is a universal and at the same time collective responsibility on the world’s most powerful and influential states to intervene - through the use of force *ultima ratio* - in cases of egregious human rights violations, with the protection of human rights in cases of ‘supreme humanitarian emergencies’understood to both supersede and take precedence over broader concerns with preserving the boundaries of sovereign states. Under the aegis of R2P, meanwhile - and a legacy of the 2001 ICISS recommendations, as well as the 2004 report *A More Secure World: Our Shared Responsibility* released by the High Level Panel on Threats, Challenges and Change put in place by Kofi Annan [[580]](#footnote-580) - the international community has, through the UN, the responsibility to help protect *populations*[[581]](#footnote-581) from genocide, war crimes, ethnic cleansing and crimes against humanity.[[582]](#footnote-582)Put another way, the doctrine confers a collective responsibility *prima facie* on the UNSC’s permanent member states, the principal actors capable of ensuring respect for international law and compliance with the human rights regime,[[583]](#footnote-583) to intervene in the event that sovereign governments fail to protect their populations from such violations of human rights and international humanitarian law.[[584]](#footnote-584) According to the World Summit Outcome document, ‘intervention’ primarily takes the form of diplomatic, humanitarian and other peaceful means.[[585]](#footnote-585) However, and as clarified under Secretary General Ban Ki-Moon’s 2009 report *Implementing the Responsibility to Protect* endorsed by 180 of the UN’s 193 members, this duty extends to the use of coercive enforcement measures under Chapter VII of the UN Charter, albeit as a means of last resort.[[586]](#footnote-586) Re-affirming the importance of the ICISS recommendations in shaping R2P, under the aegis of the doctrine each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[[587]](#footnote-587)Should it be ‘manifestly failing’[[588]](#footnote-588) to fulfil this primary responsibility, its sovereignty is abrogated and the responsibility to protect is devolved to the international community of states working through the UN Security Council.[[589]](#footnote-589) Whilst sovereignty *per se* still remains relevant[[590]](#footnote-590) and, as will shortly be discussed, R2P stops short of conferring a legal *obligation*[[591]](#footnote-591) on powerful states in instances of genocide, war crimes, ethnic cleansing and crimes against humanity, the language contained within the doctrine can be understood to elevate human life, human dignity and, most importantly, human rights above the entrenched concept of state sovereignty.[[592]](#footnote-592) In short, R2P provides a fresh normative and cognitive agenda through which to understand the primacy of human rights and the relative or conditional nature of state sovereignty,[[593]](#footnote-593) in the process helping to reconcile the perennial tension between human rights and state sovereignty endemic to the UN. Thus, and similarly to the cosmopolitan approach to human protection, R2P is premised on the notion that there is a *collective* albeit residual responsibility on the world’s most powerful and influential states to intervene - through the use of force as a last resort - in the event of such ‘supreme humanitarian emergencies’ as genocide, ethnic cleansing and crimes against humanity, with the protection of human rights deemed to both supersede and take precedence over broader concerns with preserving the boundaries of sovereign states in such instances. From a normative perspective, therefore, the doctrine can be equated with the principles axiomatic of the cosmopolitan typology.

It should be emphasised at this point that whilst conferring a collective responsibility *prima facie* on the international community - and, in particular, the UNSC’s permanent member states - to intervene in the event that sovereign governments fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, R2P does fall short of inculcating a legally-binding obligation on powerful states to respond to such violations of human rights and international humanitarian law. Indeed, political commentators including Michael Doyle have highlighted the discretionary[[594]](#footnote-594) and *ad hoc* language attached to the doctrine, underscored by Paragraph 139 of the World Summit Outcome document which stipulates that any collective action will be taken on a ‘case-by-case’ basis.[[595]](#footnote-595) Consequently, critics such as Carsten Stahn have argued that although states are under a responsibility to protect, where the primary responsibility of sovereign states is breached it does not, in practice, pass to the wider international community - and in particular the UNSC - in the form of a *positive duty[[596]](#footnote-596)* to protect, instead remaining within the discretion of the Security Council to act.[[597]](#footnote-597) As will become clear in one’s analysis of the conflicts in Libya and Syria, the implementation of R2P’s conceptual and legalprinciples remains contingent upon both the inclinations and agendas of powerful states and, in addition, a broad confluence of complex and context-specific factors, with the pre-eminence of the latter acknowledged by one of the doctrine’s most prominent advocates, Alex Bellamy.[[598]](#footnote-598) As such, therefore, the inconsistent and selective application of R2P - compounded by the sense of ambivalence attached to its language and rhetoric - epitomises how the doctrine has stopped short of conferring a legal obligation on the international community to intervene in threshold-crossing situations. Given that the cosmopolitan approach to human protection is concerned with conferring a collective and *positive* duty on powerful states to protect human rights,[[599]](#footnote-599) one can extrapolate that the nexus between R2P and cosmopolitan human protection remains weak, with the doctrine failing in both theory and, in particular, in practice to fulfil the normative expectations of the cosmopolitan typology. Indeed, as will become clear, the absence of such a positive duty to intervene in cases of genocide, war crimes, ethnic cleansing and crimes against humanity under the aegis of R2P has also qualified the relationship between the doctrine and the cosmopolitan vision of criminal justice, with the latter constituting a similarly integral aspect of cosmopolitan human protection.

Inextricably tied to the notion of collective international responsibility, R2P’s reformulation and reconceptualization of state sovereignty has also helped to elucidate its relationship with the cosmopolitan approach to human protection. As explained in Chapter 2, the ethical variant of the cosmopolitan typology elevates the protection of cross-border human rights above the concept of state sovereignty in the most extreme cases, with the use of force deemed palatable as a matter of last resort. In addition, and inexorably linked to its own vision of criminal justice, under the rubric of cosmopolitan human protection external intervention is only justified if states violate their citizens’ individual rights,[[600]](#footnote-600) with abusive states subsequently ‘losing’ their sovereign status and external agents - states - understood to have duties to protect people’s fundamental interests in such instances.[[601]](#footnote-601) In the case of R2P, the doctrine departs from a pristine conception of state sovereignty that permits states to deal with individuals as they see fit towards an approach that regards states as being under a responsibility to protect their populations,[[602]](#footnote-602) at the same time modifying the principles of *internal* and *external* sovereignty. This is in view of the limitations placed on the actions of states within their territories and the residual responsibility conferred on other states to uphold and engage in human security, eschewing their autonomy in relation to the wider international community.[[603]](#footnote-603) Whilst *attempts* to redefine state sovereignty have taken place since the end of the Cold War[[604]](#footnote-604) - epitomised by the ‘modification’ of the existing principles of non-intervention and prohibition on the use of force outlined in Chapter 1 - and the notion of ‘sovereignty as responsibility’ has both predated and evolved exogenously to the doctrine,[[605]](#footnote-605) R2P constitutes both a doctrinal innovation and conceptual development[[606]](#footnote-606) within international law. This is evidenced by the positive and affirmative responsibility conferred on national authorities to protect the fundamental rights of their populations which, in the event that it is not discharged, passes to an international body.[[607]](#footnote-607) In short, should the host state fail to uphold its primary duty to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, its sovereignty is abrogated and the responsibility to protect devolved to the international community of states working through the UNSC. Furthermore, and whilst underpinned by the broader efforts of the international community to transcend the language of ‘humanitarian intervention’ in view of widespread opposition to the term[[608]](#footnote-608) - reinforced by events in both Kosovo and Iraq - R2P embraces a wide gamut of reactive responses, with coercive enforcement measures reserved for the most extreme and exceptional cases.[[609]](#footnote-609) Thus, and further to the cosmopolitan approach to human protection, R2P elevates the protection of human rights above the principle of internal state sovereignty in ‘supreme humanitarian emergencies’ - more specifically in instances of genocide, ethnic cleansing and crimes against humanity - inculcates duties on the international community of states to intervene when such violations of human rights and international humanitarian law have taken place and legitimates the use of force as an *ultima ratio* measure. In this way, therefore, the doctrine can again - in theory - be deemed commensurate with the cosmopolitan typology.

However, whilst in principle reformulating the concept of state sovereignty, in *practice* R2P has thus far failed to resolve the prevailing tension between human rights and state sovereignty endemic to the world organisation. For example, and although occurring prior to the full endorsement of R2P in 2005,[[610]](#footnote-610) the international community’s underwhelming response to the conflict in Darfur can, at least in part, be attributed to insufficient *political will* on behalf of the international community and, more precisely, the reticence of China and Russia to sanction peace-enforcement measures in the absence of consent from the host government in Khartoum.[[611]](#footnote-611) Of greater relevance, however, and as will become evident in the course of this chapter, has been the relative inaction of the UNSC in response to the atrocities committed in Syria. Despite R2P providing a key aspect of the diplomatic and political language invoked by the international community,[[612]](#footnote-612) numerous proposed UN resolutions have been rejected by Russia and China on the basis that they would encroach upon and violate the national sovereignty and territorial integrity of Syria.[[613]](#footnote-613) In short, both states have prioritised the principle of non-intervention over the protection of human rights in what could be deemed to constitute a threshold-crossing situation.[[614]](#footnote-614) Whilst the failure of the UN to respond effectively to such systematic abuses of human rights can, as will become clear, also be attributed to a broad confluence of context-specific factors, one can discern that concerns amongst the major powers with preserving the sovereignty and integrity of the Syrian state account at least in part for the relative apathy of the UN in response to the conflict. It is the Syrian case, in particular, that has challenged the cogency and veracity of the conceptual and legal principles underpinning R2P, exhibiting how the doctrine has thus far failed to *consistently* translate into practice its normative reconceptualization of state sovereignty and, as a consequence, provide a touchstone for the amelioration of sovereignty and human rights concerns at the global constitutional level. Thus, and given that the cosmopolitan approach to human protection elevates the protection of human rights in ‘supreme humanitarian emergencies’ over broader concerns with preserving the boundaries of sovereign states, one can again discern that, in practice, the nexus between R2P and this cosmopolitan typology remains weak, with the doctrine once more failing to adhere to the normative demands of cosmopolitan human protection.

In addition to the ideas of collective responsibility and reconceptualization of state sovereignty, a further source of congruence between R2P and the cosmopolitan approach to human protection - and linked inextricably to the ideas of collective responsibility and reconceptualization of state sovereignty - can be found in the latter’s vision of criminal justice. As explained in Chapter 2, cosmopolitan human protection can be understood to represent a form of ‘immediate’ international criminal justice,[[615]](#footnote-615) encompassing the notion that intervention - through the use of force as a last resort - is not deemed a violation of state sovereignty if such action is concerned explicitly with the advancement of individual human rights.[[616]](#footnote-616) Whilst intervention within a sovereign territory is not justified if the host state affords persons sufficient protection or does them no unjust harm,[[617]](#footnote-617) should a state fail to provide protection or is itself constituting a threat, there is a corresponding duty on ‘non-compatriots’ - in this case, the wider international community - to help remedy the injustice.[[618]](#footnote-618) As such, therefore, this cosmopolitan vision of criminal justice is concerned both with safeguarding the rights and interests of individuals and the concomitant duties inculcated upon external agents - in particular states - to protect such rights and interests when they are violated in threshold-crossing situations. With regards to R2P, and whilst the primary responsibility to protect vulnerable populations is understood to rest with the host state, in principle the doctrine confers a collective responsibility on the international community to intervene in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. Under R2P, therefore, and in accordance with the notion of cosmopolitan criminal justice, should a sovereign state violate or fail to protect individual human rights, in threshold-crossing situationsthe international community has a residual duty to intervene in order to protect people’s fundamental rights and interests. Thus, through its concerns with the protection of human rights and the subsequent duties conferred on the international community to respond to instances of genocide, war crimes, ethnic cleansing and crimes against humanity, R2P can, in theory, once again be considered analogous to the cosmopolitan approach to human protection.

In addition to sharing a *prima facie* nexus with the cosmopolitan vision of criminal justice, the doctrine has also helped in both theory and in practice to strengthen the *relevance* of this cosmopolitan ideal. As intimated in Chapter 2, and whilst various counter-arguments have been put forward concerning the ideas of ‘cosmopolitan’ sovereignty and humanitarian intervention,[[619]](#footnote-619) opposition to the scope and demands coterminous with this vision of criminal justice has its roots in the narratives of realism, liberalism and liberal nationalism. For realists, cosmopolitan criminal justice is largely extraneous, as states are concerned exclusively with promoting their own narrow self-interests independent of the interests - and rights - of others.[[620]](#footnote-620) The *National Interest*[[621]](#footnote-621) *-* defined principally in terms of military security, political independence[[622]](#footnote-622) and economic prosperity - in particular, is understood to be independent of all other considerations, constituting not only a political necessity but also a moral duty for all states.[[623]](#footnote-623) Furthermore, realists would argue that in those instances where powerful states take the decision to intervene through the use of force, this is often premised on self-motivated and potentially neo-imperialist considerations, with humanitarian intervention - and consequently the principles associated with cosmopolitan criminal justice - used as a smokescreen for the pursuit of broader political and economic objectives.[[624]](#footnote-624) This contention has been given credence following the Delta Force Operation in Somalia during the 1990s[[625]](#footnote-625) and, in particular, the US and UK-led invasion of Iraq in 2003. Liberal opposition to the notion of cosmopolitan criminal justice, meanwhile, has been heavily influenced by the work of the political theorist John Rawls and his rights-based theory of justice. According to Rawls, obligations of justice - in particular those pertaining to political and civil rights[[626]](#footnote-626) - exist primarily withinthe boundaries of sovereign states.[[627]](#footnote-627) Rawls is concerned with advancing a theory of distributive justice that applies only to well-ordered peoples within self-sufficient communities,[[628]](#footnote-628) focusing upon the relations amongst collective units *within* states rather than those of individuals *across* states.[[629]](#footnote-629) Whilst basic humanitarian duties of assistance to help burdened societies to achieve the required level of economic and social development to become well-ordered is advocated,[[630]](#footnote-630) particularly in relation to individuals living under the conditions of an illiberal or illegitimate political regime, there is no general requirement to take *responsibility* for others by engaging in inter-state relations, re-affirmed by his principle of non-intervention.[[631]](#footnote-631) Rawls’ theory of political justice has also influenced subsequent liberal *nationalist* theorists including Thomas Nagel, who argues that sovereign states make unique demands on the will of their members which, in turn, bring with them exceptional obligations, the positive obligations of distributive justice.[[632]](#footnote-632) Whilst there are universal relations in which we stand to everyone, and there can be understood to exist a ‘secondary’ and *non-contingent* obligation to protect individuals in instances of egregious human rights violations, such a requirement is subordinate to the rights and duties associated with the demands of distributive justice.[[633]](#footnote-633) Further to Nagel, opposition to the cosmopolitan vision of criminal justice can also be found in the shape of ‘generalised’ liberal nationalists concerned both with the attachment each individual has to his or her nation[[634]](#footnote-634) and, in addition, the idea that obligations to co-nationals - particularly those underscored by the egalitarian principles of distributive justice - take precedence over humanitarian obligations to foreigners.[[635]](#footnote-635) David Miller, for example, promulgates a theory of distributive justice that applies only within national boundaries,[[636]](#footnote-636) predicated both on the ‘intrinsically valuable’ relationships that exist among compatriots - which help to promote both social justice and deliberative democracy[[637]](#footnote-637) - and the subsequent duty that falls on co-nationals *per se* to protect individual rights by limiting inequalities of wealth and resources.[[638]](#footnote-638) Similarly to Nagel, whilst acknowledging that ‘non-comparative’ principles and duties of justice - including the protection of human rights - operate across the boundaries of sovereign states,[[639]](#footnote-639) Miller postulates that the responsibilities conferred on the international community to both prevent human rights violations and secure the basic rights of people *across* states are peripheral and subordinate to the duties placed on ‘co-nationals’ *within* states to advance the principles axiomatic of distributive justice.[[640]](#footnote-640)

In summary, then, the realist, liberal and liberal nationalist schools of thought can, in terms of scope and demand, be understood to reject the principles associated with cosmopolitan criminal justice. As discussed, realists would deem this cosmopolitan ideal to be largely irrelevant given the prevailing inclinations and agendas relevant to powerful states; liberals such as Rawls are concerned with advancing principles of distributive justice within well-ordered and self-sufficient communities, whilst rejecting the idea of a general ‘responsibility’ to protect individuals across sovereign boundaries; and although acknowledging a subordinate duty to protect individual human rights, liberal nationalists including Miller postulate that the responsibilities placed on co-nationals to advance the egalitarian principles of distributive justice take precedence over the broader duties conferred on the international community to secure the basic rights of people exogenous to the boundaries of states. With regards to R2P, meanwhile, the evolution of the doctrine has taken place within the context of the international community’s increasingly normative commitment to the protection of human rights. As emphasised previously, R2P represents a doctrinal innovation and conceptual development within international law. Alongside its language of responsibility, this is exemplified both by its *prima facie* elevation of human rights above state sovereignty in instances of threshold-crossing human rights violations and - further to its endeavours to transcend the terminology of humanitarian intervention - its reformulation of state sovereignty in such a way as to link the right to non-intervention to the responsibility to protect the basic needs of one’s population,[[641]](#footnote-641) propagating a shift away from a ‘right of intervention’ of any state to a ‘responsibility to protect’ of *every* state.[[642]](#footnote-642) As such, therefore, the codification - and subsequent application - of R2P can be understood to reflect a theoretical consensus[[643]](#footnote-643) amongst UN member states to take the protection of civilians *more* seriously[[644]](#footnote-644) and an *increased* sense of willingness within the international community to intervene in order to protect vulnerable populations. This postulation has, as will be discussed further in Chapter 5, been enhanced by the NATO-led operation conducted in Libya in 2011, framed through the prism of R2P and representing the first time in history that the UNSC has authorised the use of force for human protection purposes against a functioning state without the consent of the incumbent government. Thus, in both theory and, to a lesser extent, in practice, R2P has helped to strengthen the relevance of the vision of criminal justice innate to cosmopolitan human protection, countering *realist* antipathy predicated on the self-motivated inclinations and agendas of powerful states situated within the international community. As will again become clear in Chapter 5, this claim has been amplified by the delineated and limited thresholds for intervention and multi-faceted diplomatic and political agenda provided for under the aegis of the doctrine, both of which have helped to alleviate the propensity for humanitarian intervention - and, at the same time, the principles associated with cosmopolitan criminal justice - to be employed as a smokescreen for the proliferation of political and economic objectives apposite to powerful states. Further to challenging realist recalcitrance, it should also be emphasised that R2P has helped to qualify liberal and liberal nationalist opposition to the notion of cosmopolitan criminal justice. As discussed, Rawls’ political liberalism is concerned with advancing principles of distributive justice within well-ordered and self-sufficient communities - which are seen as the primary units of concern - whilst at the same time rejecting the idea of a general ‘responsibility’ to protect individuals across sovereign boundaries. Liberal nationalists, meanwhile, and whilst acknowledging a subordinate duty to protect individual human rights, emphasise the primary responsibilities placed on co-nationals to advance the egalitarian principles of distributive justice endogenous to the boundaries of states. The language and rhetoric axiomatic of R2P, on the other hand, is - in terms of scope and demand - incommensurate with both the liberal and liberal nationalist visions of justice. For example, and in accordance with the principles synonymous with cosmopolitan criminal justice, the doctrine exhorts the virtues of *responsibility* in lieu of prioritisation, gives equal consideration to the rights and interests of *all* individuals and - whilst placing a primary duty on sovereign states to respect the dignity and basic human rights of their people - propagates a collective international responsibility to intervene in threshold-crossing situations. In addition, and as will be discussed, through its relationship with the idea of prevention, R2P is comparable to a theory of cosmopolitan distributive justice[[645]](#footnote-645) concerned with the equality of opportunity to individuals *across* rather than well-ordered communities *within* states, further emphasising the dichotomy between the cosmopolitan and liberal ideologies. As explained, R2P embodies both a doctrinal innovation and conceptual development within international law, with the codification and subsequent application of its principles helping to accentuate the relevance of the vision of criminal justice that lies at the heart of the cosmopolitan approach to human protection. At the same time, therefore, the language and rhetoric paradigmatic of the doctrine can be understood to have weakened liberal and liberal nationalist narratives that run antithetical to this cosmopolitan ideal.

However, and whilst sharing a *prima facie* nexus with cosmopolitan criminal justice and, in addition, helping in both theory - and, to a lesser extent, in practice - to bolster its relevance, it should be emphasised that the relationship between R2P and this cosmopolitan ideal remains weak, whilst ubiquitous debate surrounds the contention that the cosmopolitan vision of criminal justice has become more apposite following the codification and subsequent application of the doctrine in the post-Cold War period. With regards to the limits of the relationship between R2P and cosmopolitan criminal justice, this is enunciated by the absence of a *positive duty* to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. Although in theory inculcating a collective responsibility on powerful states to intervene - through the use of force if necessary - as articulated R2P continues to be applied on a discretionary and *ad hoc* basis. As a consequence, therefore, and as Patrick Hayden helps to explain, the ‘positive’ principles invoked by moral agents - which can be taken to mean individual states within the international community - to aid and co-operate in securing, protecting and promoting the realisation of individual human rights claims and thus fulfil the duties correlative to such rights[[646]](#footnote-646) have, in certain cases, been absent, as the UN’s anaemic response to the ongoing conflict in Syria has illustrated. Re-affirmed by the failure to confer a legally-binding obligation on the international community to intervene in threshold-crossing situations, the absence of such a positive duty has, in practice, qualified R2P’s preoccupation with protecting individual human rights and the corresponding duties inculcated on the international community to protect such rights in instances of genocide, war crimes, ethnic cleansing and crimes against humanity, principles which, crucially, can be equated with the cosmopolitan vision of criminal justice. When framed within the context of a cosmopolitan approach to human protection which, as discussed, is concerned with safeguarding the rights and interests of individuals and conferring a positive duty on external agents - states - to intervene in the event that such rights and interests are transgressed, one can again extrapolate that in both theory and, in particular, in practice, R2P has failed to meet the normative demands of this cosmopolitan typology, further qualifying the relationship between the doctrine and cosmopolitan human protection.

With regards to the contention that surrounds this author’s claim that cosmopolitan criminal justice has become more apposite following the endorsement and application of R2P in the post-Cold War period, meanwhile, this is elucidated primarily by the continued prominence of realist objections which remain both relevant to, and manifest within, contemporary international relations. As discussed, realists perceive the notion of cosmopolitan criminal justice to be largely superfluous in view of states’ concerns with propagating their own interests, with the ‘national interest’, in particular, understood to be independent of all other considerations.[[647]](#footnote-647) The decision by China to abstain rather than consent to the use of military force in Libya could, for example, be seen to validate this claim, a culmination and reflection of its growing economic and political ties with Africa and, more specifically, its sale of approximately $200 million worth of weapons to the Gaddafi regime in the heat of the humanitarian crises.[[648]](#footnote-648) Furthermore, the relative inaction of the UNSC in response to the atrocities in Syria can also be seen to extoll the continuing virtues of the realist approach. In this instance, the rejection of numerous proposed resolutions within the UN despite violations of individual human rights and international humanitarian law by the Assad regime has been attributable in part to the prevailing tension between state sovereignty and human rights and, more specifically, Russian and Chinese adherence to the principle of non-intervention. Russia has been particularly concerned with the wider implications of encroaching upon the national sovereignty and territorial integrity of Syria, arguing that any outside interference - military or otherwise - could provoke regional instability and thus undermine the country’s position as the cornerstone of the Middle East security architecture.[[649]](#footnote-649) China, meanwhile, has similarly affirmed the principle of non-intervention implicit under Article 2 of the UN Charter, believing that the imposition of sanctions or the threat thereof would likely complicate the situation, rather than assist in resolving it.[[650]](#footnote-650) It addition, opposition to outside intervention has gone beyond preoccupations with preserving the state sovereignty and territorial integrity of the Syrian state. Russia, in particular, has vested economic and political interests in the country, demonstrated by its involvement in natural gas extraction and the export of arms and defence equipment even throughout the ongoing crises.[[651]](#footnote-651) One could discern, therefore, that Russia does not wish to ‘rock the boat’ and be complicit in the removal of the Assad regime at the risk of undermining its broader economic and political objectives in the Middle East. Thus, the continuing pre-eminence of sovereignty concerns in what could be seen to constitute a ‘threshold-crossing’ instance of human rights violations,[[652]](#footnote-652) coupled with the vested interests of Russia in the Middle East region as a whole, expound how, in practice, the perennial inclinations, reservations and *national interests* of powerful states have both undermined and on occasion superseded the international community’s increasingly normative commitment to the protection of global human rights. In turn, such dynamics have qualified the heightened sense of willingness to intervene in order to protect vulnerable populations that could be seen to have manifested under the aegis of R2P. Put another way, the case of Syria has exemplified the absence of international agreement over the *implementation* of the doctrine’s principles in threshold-crossing situations, in the process attenuating the claim that the cosmopolitan vision of criminal justice has become relevant following the codification and subsequent application of R2P in the post-Cold War period.

In addition to the prevailing inclinations of powerful states - particularly those situated within the UNSC - the shortcomings of the international community in response to the Syrian conflict can also be attributed to a broad confluence of complex and overlapping *contextual* factors. Whilst such failings are multi-faceted, and academics have offered a panoply of explanations for the relative apathy of the UNSC in response to the conflict,[[653]](#footnote-653) it is the role of regional organisations, the international and domestic standing of the Assad regime and both the clarity of threat and short timeframe for international action, in particular, that help to account for the failure to operationalize R2P in this instance. Indeed, the importance of such factors has been amplified by their paradoxical role in precipitating military intervention in Libya, underlining how these dynamics are integral to any decision taken by the international community to intervene - through the use of force *ultima ratio* - for human protection purposes. For example, the involvement of regional organisations including the Peace and Security Council of the African Union, Organisation of Islamic Co-operation and, in particular, the Arab League (LAS) was integral to the UNSC’s decision to sanction a Chapter VII mandate in Libya. The LAS was instrumental in pressurising the Security Council to impose sanctions and intervene to protect Libya’s citizens from a regime perceived to have spiralled out of control,[[654]](#footnote-654) taking the unusual step of suspending Libya from the Arab League and calling on the UNSC to impose a no-fly zone and co-operate with the Transitional National Council (TNC).[[655]](#footnote-655) Further to the influence of the Economic Community of West African States (ECOWAS) in determining UNSC action in the Ivory Coast following the contested presidential election of 2010,[[656]](#footnote-656) the role of the LAS in prompting intervention in Libya has illustrated how, according to Bellamy, regional organisations have increasingly emerged as international ‘gatekeepers’, influencing which issues get debated within the UNSC, how such issues are framed and the range of possible Security Council responses.[[657]](#footnote-657) Indeed, Bellamy has argued that without the support of the African Union (AU) and LAS, Resolution 1973 would almost certainly not have passed through the Security Council. [[658]](#footnote-658) As Hehir explains, both China and Russia expressed their support for the AU and LAS respectively as a determining factor in their decision to abstain.[[659]](#footnote-659) In addition, one could discern that it was China’s growing political and economic ties with Africa - rather than broader humanitarian concerns[[660]](#footnote-660) - that were a key feature in the decision not to veto action in Libya.[[661]](#footnote-661) In the case of Syria, meanwhile, the LAS was much more hesitant to intervene, primarily in view of the close relationship that many of its members shared with the Assad regime.[[662]](#footnote-662) Lebanon, in particular, was influential in halting the movement towards tougher international measures in response to the ongoing atrocities, a consequence of Hezbollah’s prevailing links with the Syrian government.[[663]](#footnote-663) The LAS was thus unwilling to provide a strong lead in the case of Syria, with the later decision to condemn Assad, expel Syria from the League and insist upon sending its monitors to Damascus not taken until November 2011.[[664]](#footnote-664) As a consequence, the Security Council - and, more specifically, its permanent members China and Russia - were much less inclined to sanction resolutions against the Assad government.[[665]](#footnote-665) Further to the Libyan conflict, therefore, the Syrian case encapsulates how regional organisations have increasingly emerged as international ‘gatekeepers’, in this instance contributing to a lack of consensus amongst UN member states over the appropriate measures to adopt in response to the atrocities committed by the Assad regime. In this way, therefore, and despite R2P providing a key aspect of the diplomatic and political language invoked by the international community in the case of Syria, both the Libyan and Syrian conflicts help to enunciate how the implementation of the doctrine’s principles is both contingent upon, and interspersed with, the role of regional organisations. Thus, the importance of such organisations in accounting for the international community’s failure to operationalize R2P and protect vulnerable populations in Syria has served to further attenuate the claim that the cosmopolitan vision of criminal justice has become more apposite following the codification and application of the doctrine in the post-Cold War period.

Further to the role of regional organisations and, more specifically, the influence of the LAS, the international and domestic standing of the Gaddafi and Assad regimes respectively has also proved instrumental in determining the decision to - or indeed not to - intervene for human protection purposes. In the case of the former, and despite being an important donor to the AU and a number of African states, Gaddafi’s government was widely distrusted across Africa and the Middle East.[[666]](#footnote-666) This was principally a result of its role in fuelling conflicts in Liberia, Sierra Leone, Chad and Palestine.[[667]](#footnote-667) As a consequence, his regime was largely isolated, and when conflict broke out in Libya support for Gaddafi’s violent response to the rebellion was negligible amongst neighbouring governments.[[668]](#footnote-668) Furthermore, on the domestic front the Gaddafi regime was both strategically and militarily weak, expounded by its limited military resources, deeply divided army and poor levels of political support,[[669]](#footnote-669) particularly amongst Libya’s tribal communities.[[670]](#footnote-670) Consequently, the detached and fragile nature of the Libyan government can be seen to have provided a significant motivational factor in the LAS’ decision to intervene, with its members having little to lose politically were Gaddafi to fall from power.[[671]](#footnote-671) With regards to Syria, however, the circumstances were very different. Even once the anti-government protests had begun, the incumbent regime was still perceived by its neighbours as a strong and stable political administration in the midst of a volatile region.[[672]](#footnote-672) Many Middle Eastern governments regarded Syria as an important trading partner, influential political force and essential strategic ally, re-affirmed by the Arab League’s reticence and hesitancy to intervene despite the atrocities committed by the Assad regime.[[673]](#footnote-673) Such alliances - particularly in relation to the LAS - have served as a strong disincentive to Security Council action, reinforced by the vested economic and political interests of Russia in the Middle East region.[[674]](#footnote-674) In addition, the regime is strategically and militarily strong, possessing considerable military resources, enjoying cohesive and loyal military command and security intelligence services and retaining the support of a substantial proportion of the civilian population.[[675]](#footnote-675) Assad has also retained strong domestic support from Alawites and the Christian community, whilst the large Sunni merchant class and business communities located in such cities as Damascus and Aleppo remain fearful of the power vacuum that would accompany the collapse of the Syrian government.[[676]](#footnote-676) There also remain deep sectarian divisions amongst opposition groups located within the National Coalition for Syrian Revolutionary and Opposition Forces and Syrian National Council[[677]](#footnote-677) which, in contrast to Libya, were apparent from the outset,[[678]](#footnote-678) serving as a further obstacle to international intervention. Indeed, the existence of and subsequent gains made by the extremist Sunni militant group ISIS/IS in Syria - exacerbated by events in Iraq - underline the complex transborder dynamics and fluid political identities that have come to characterise many contemporary intra-state conflicts,[[679]](#footnote-679) reflecting more generally the *complexity* of the politics associated with human rights atrocities.[[680]](#footnote-680) So, in summary, the international and domestic standing of the Assad government has acted as a strong disincentive to intervention - military or otherwise - in Syria, with powerful states and regional actors also standing to lose out as a consequence of any mediation in the conflict. Therefore, and similarly to the role of the LAS, the robust nature of the Assad regime also helps to account for the international community’s failure to operationalize R2P and protect vulnerable populations in Syria, further qualifying the claim that the cosmopolitan vision of criminal justice has become more relevant in the post-Cold War period.

The final contextual factor that will be discussed here concerns the clarity of threat and minimal timeframe for international action. In the case of Libya, the crisis escalated rapidly, with the euphoria surrounding the protests - reflected in the successes enjoyed by the rebels in Benghazi and Tobruk[[681]](#footnote-681) - quickly turning to anxiety in light of the response of Gaddafi’s military forces.[[682]](#footnote-682) Gaddafi employed rhetoric that bore echoes of the 1994 Rwandan genocide - referring to the rebels as ‘cockroaches’[[683]](#footnote-683) - fuelling international fears that the citizens of Benghazi might face annihilation.[[684]](#footnote-684) Indeed, and as Bellamy explains, the expediency of rebel gains and subsequent losses at the hands of Gaddafi’s forces left little time to try a further round of mediation - as proposed by Russia - or a more ordered response advocated by some bureaucrats within the UN.[[685]](#footnote-685) As a consequence, senior UN officials framed the problem as one of human protection almost from the outset of the crisis, with the UN Secretariat - in this case the Special Advisers, High Commissioner for Human Rights and Secretary General - playing a central role.[[686]](#footnote-686) The actions of Gaddafi’s regime could also be understood to constitute a ‘war crime’, ‘crime against humanity’ and even ‘genocide’[[687]](#footnote-687) under the rubric of R2P.[[688]](#footnote-688) In the case of Syria, however, no ‘imminent’ threat of harm to the civilian population was immediately apparent. Whilst the Assad regime accused the Syrian protestors of having fallen under extremist and external influences and characterised the uprising as that of ‘armed gangs’, it combined such repression with promises of political and constitutional reform that evoked hope within protestors and the international community alike.[[689]](#footnote-689) Indeed, this has led some political commentators to argue that the Assad regime has responded with much less ferocity to the uprising in Syria.[[690]](#footnote-690) Thus, and further to the role of regional organisations and the international and domestic stature of the Assad regime, the importance of clarity and timescale in accounting for the international community’s anaemic response to the crisis in Syria and, in particular, its failure to implement R2P has once again run antithetical to the claim that cosmopolitan criminal justice has become more relevant following the codification and application of the doctrine in the post-Cold War period.

Thus far, then, this chapter has critically assessed the nexus between R2P and the ideas of collective responsibility, reconceptualization of state sovereignty and cosmopolitan criminal justice that form integral components of a cosmopolitan approach to human protection, as well as the claim that R2P has strengthened the salience of the vision of criminal justice that lies at the heart of this cosmopolitan typology. Before moving on to an analysis of the relationship between R2P and the concept of cosmopolitan *distributive* justice, it is important to highlight a further source of congruence in the form of the high watermark and limited thresholds for intervention - including military action - provided for under the aegis of the doctrine. As explained in Chapter 2, cosmopolitan human protection only deems the use of force justifiable in *supreme humanitarian emergencies*, incorporating such ‘crimes against humanity’ as state-sponsored mass murder, mass population expulsions - which fall under the umbrella of ethnic cleansing - and genocide. Meanwhile, and whilst not providing criteria for the use of force *per se*, R2P propagates a ‘responsibility to protect’ that applies *exclusively* to cases of genocide, war crimes, ethnic cleansing and crimes against humanity, for Bellamy clearly identifying its scope and thresholds.[[691]](#footnote-691) It should be emphasised at this point that the meanings attached to such terms, in particular the act of genocide, have come under close scrutiny in light of their inconsistent and selective application in the post-Cold War period. For example, the US was reticent to use the term in response to the atrocities in Rwanda,[[692]](#footnote-692) whilst the UN refrained from using such terminology to describe the killings in Sudan, both of which can be deemed to constitute acts of genocide.[[693]](#footnote-693) Furthermore, Adrian Gallagher has questioned the conceptual clarity and moral competency attached to the terminology of genocide, in view of its failure to both acknowledge the role of the state within the genocidal process and protect groups other than those that are national, ethnic, racial and religious in origin.[[694]](#footnote-694) However, and reinforced by his acceptance of the terms ‘intent’ and ‘destroy’ enunciated within the lexicon of genocide[[695]](#footnote-695) - alongside R2P’s incorporation of ‘crimes against humanity’ which, as Gallagher concedes, recognises the protection of political, economic and gendered groups,[[696]](#footnote-696) it is this author’s contention that the high watermark and limited thresholds for intervention propagated under the aegis of the doctrine can be understood to have *fairly* precise legal meanings grounded in the Genocide Convention, the Rome Statute of the International Criminal Court (ICC), and the practice of the international criminal tribunals for former Yugoslavia and Rwanda.[[697]](#footnote-697) Genocide, by definition, is characterised by the intention to destroy, in whole or in part, a national, ethnic, racial or religious group, including through acts of murder, actual or mental harm, sterilisation and child trafficking.[[698]](#footnote-698) War crimes, meanwhile, are identified as acts that contravene the Genocide Convention such as wilful killing, torture, preclusion of the right to fair and regular trial, unlawful deportation and taking of hostages,[[699]](#footnote-699) whilst crimes against humanity include - but are not limited to - acts of murder, extermination, enslavement, rape, torture and imprisonment when committed as part of a widespread and systematic attack against a civilian population.[[700]](#footnote-700) Ethnic cleansing, finally, and inextricably linked to the act of genocide, pertains to rendering an area ethnically homogenous by using force or intimidation to remove persons of a given group from a particular area, often through murder or mass population expulsions.[[701]](#footnote-701) It is also important to emphasise that the limited scope and thresholds for intervention provided for under R2P have paradoxically been reinforced by the failure of France and Russia to translate the doctrine into legitimate coercive action in Myanmar and South Ossetia respectively.[[702]](#footnote-702) In the case of the former, the devastation inflicted by Cyclone Nargis was understood to constitute an environmental disaster rather than a ‘crime against humanity’, whilst Russia’s actions in relation to the latter can be seen to represent a classic case of self-defence under Article 51 of the UN Charter.[[703]](#footnote-703) In addition, the fall-out from the conflict in Iraq - and, more specifically, the US and UK’s spurious invocation of R2P in order to legitimise their ‘humanitarian’ actions - helped to reinforce the boundaries of the concept and clarify why human rights violations that fall short of mass atrocity crimes do not justify the employment of R2P rhetoric.[[704]](#footnote-704) Thus, the misuse of R2P in these cases acted, as Badescu and Weiss explain, to increase conceptual clarity and consolidate R2P’s status as an emerging norm within international relations.[[705]](#footnote-705) So, and whilst the meanings attached to the lexicon of genocide, war crimes, ethnic cleansing and crimes against humanity remain contested, the legal definition of genocide has been questioned in view of its conceptual and moral deficiency and the substance and scope of such terminology continues to be challenged by powerful states situated within the UNSC, R2P can, in theory, be understood to provide delineated and limited thresholds for international intervention. When considered alongside the ‘supreme humanitarian emergencies’ that legitimate the use of force *ultima ratio* under the rubric of cosmopolitan human protection, therefore, R2P can once again be deemed commensurate with the principles axiomatic of the cosmopolitan typology.

However, it is important to point out that whilst providing a high watermark and limited thresholds for intervention - including military action - the capricious and selective application of the terminology of genocide, war crimes, ethnic cleansing and crimes against humanity by the international community has, in practice, compounded the limits of the relationship between R2P and cosmopolitan human protection. In addition to the cases of Rwanda and Sudan - both of which reflect a hesitancy to invoke such threshold-crossing typologies in view of their wider implications and, in particular, the reluctance of powerful states to intervene militarily for human protection purposes - the conflict in Syria has similarly served to affirm the empirical limitations of the thresholds propagated under the auspices of the doctrine. For example, despite R2P providing a key aspect of the diplomatic and political language invoked in response to the perpetration of large-scale human rights violations - and the subsequent adoption of Resolution 2118 on the elimination of the country’s chemical weapons stockpile[[706]](#footnote-706) - there has been no use of coercive measures, military or otherwise, against the Assad regime. This is despite the reports published by the Independent International Commission of Inquiry on Syria which have condemned the actions of government commanding officers, security officials and civilian superiors in facilitating crimes against humanity and other gross violations of human rights.[[707]](#footnote-707) In addition, Ban-Ki Moon has alluded to the potential use of chemical weapons against the civilian population as constituting a ‘crime against humanity’ as per the provisions of the ICC. In this way, therefore, and whilst in principle providing a benchmark for intervention - a ‘universal moral minimalism’[[708]](#footnote-708) - analogous to cosmopolitan human protection, the doctrine has once again failed in practice to fulfil the demands of the cosmopolitan typology, reflected in the inconsistent application of its delineated and limited thresholds. It should also be emphasised that whilst the cases of Myanmar and South Ossetia have paradoxically reinforced the high watermark for intervention propagated under the auspices of R2P and, in addition, the conflict in Iraq has helped to consolidate the substance and scope of the doctrine, these instances all demonstrate how powerful states have *attempted* to abuse and manipulate the language underpinning R2P, in the process further qualifying the nexus between the doctrine and the cosmopolitan approach to human protection.

**The Responsibility to Protect and Cosmopolitan Distributive Justice**

So, and whilst possessing a weak cosmopolitan *zeitgeist,* R2P can be deemed commensurate with the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice and the provision of a high watermark and limited thresholds for international intervention that underpin the cosmopolitan approach to human protection. The doctrine has also in theory - and, to a more limited extent, in practice - amplified the relevance of the vision of criminal justice axiomatic of the cosmopolitan typology, qualifying realist, liberal and liberal nationalist opposition to this cosmopolitan ideal.

Further to its explicit nexus with cosmopolitan humanitarian principles, R2P can also be understood to help offset concerns over the primarily *ad hoc* approach of cosmopolitan human protection to the perpetration of large-scale human rights atrocities. As discussed in Chapter 2, this cosmopolitan typology is focused on the symptoms and aftermath of conflict, rather than on providing a detailed discussion of, and response to, the underlying causes of structural violence and how these relate to the demands of cosmopolitan *distributive* justice. The latter, meanwhile, is preoccupied with the ‘human’ rights and freedoms that all individuals - in particular the least advantaged - must possess if they are to have equal opportunities for a minimally decent life,[[709]](#footnote-709) with an inequality in the distribution of resources, in particular, undermining such equal opportunities and proving a critical factor in the rise of global poverty.[[710]](#footnote-710) Thus, it so follows that activities including the alteration of unjust economic situations, reformation of unequal market conditions and enhancement of poverty reduction efforts *inter alia* would all help to ensure the possession of such rights and freedoms, potentially offsetting the conditions of economic hardship and global poverty that exponentially increase the likelihood of conflict and large-scale human rights violations.[[711]](#footnote-711) It is important to stress at this point that R2P has similarly been criticised for its failure to address the ensconced structural causes of protracted intra-state warfare, particularly in view of its emphasis on the responsibility of domestic states to resolve the root sources of armed conflict, rather than on the wider role of the international community in perpetuating its *global* structural causes.[[712]](#footnote-712) In short, R2P fails to sufficiently recognise the importance of the global socioeconomic realm in achieving justice for individuals,[[713]](#footnote-713) both in terms of a systematic acknowledgement of the role of influential global actors and, in particular, powerful states in widening global inequalities and social exclusion or, more importantly, providing *recommendations* on how such conflict-inducing conditions could potentially be subverted. However, and further to its locus as a multifaceted diplomatic and political agenda influenced by the recommendations of the 2001 ICISS report, R2P can be equated with a politics of prevention,[[714]](#footnote-714) the roots of which can be found in the duty of the international community to encourage and help states to exercise their responsibility to protect, as well as to support the UN in establishing an early warning capability.[[715]](#footnote-715) Furthermore, this nexus between R2P and prevention has been bolstered by the establishment of the ‘three pillars’ - in particular Pillar Two - contained within Ban Ki-Moon’s 2009 report titled *Implementing the Responsibility to Protect[[716]](#footnote-716)* and, more recently, by the Secretary-General’s follow-up report *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*. In the case of the latter, Ban Ki-Moon reiterates - and elaborates upon - the three broad categories of international assistance propagated under the auspices of his 2009 report. The first of these involves encouraging states to meet their responsibility to protect by disseminating legal standards and normative commitments - in particular those relating to humanitarian standards and norms - reminding states of the importance of adherence and engaging in dialogue on ways to fulfil their responsibility.[[717]](#footnote-717) The second category involves assisting states in building national capacities in order to prevent acts of genocide, war crimes, ethnic cleansing and crimes against humanity, whether through helping to strengthen participatory and accountable political institutions, aiding in the promotion and protection of the rights of minorities or building ‘inhibitors’ such as an accountable security sector, an impartial and competent electoral commission and independent judicial and human rights institutions that would enable states to address the early signs of crisis.[[718]](#footnote-718) The final category concerns assisting states to protect in situations of emerging or ongoing crisis through the provision of additional capacity and expertise, whether through strengthening cross-border customs co-operation and information-sharing networks - thus helping to stem the flow of small arms and weapons - or providing civilian assistance in the fields of conflict-resolution, human rights and law enforcement.[[719]](#footnote-719) In addition, Ban-Ki Moon highlights the progress already made by the UN in helping states to exercise their responsibility to protect. For example, the Office of the High Commissioner for Human Rights (OHCHR) has already developed into a global resource for assisting countries in observing their human rights obligations,[[720]](#footnote-720) encouraging states to meet their protection responsibilities by aiding the implementation of human rights standards, development of national human rights institutions and supporting the introduction of commissions of enquiry into allegations of systematic human rights abuses.[[721]](#footnote-721) Moreover, in his 2014 report Ban-Ki Moon alludes to the efforts of the World Bank and ICC in providing international assistance in order to help states fulfil their responsibility to protect.[[722]](#footnote-722) Finally, and whilst still focused primarily on the responsibility of domestic states to resolve the root sources of armed conflict - and subsequently the national rather than global causes of protracted intra-state warfare[[723]](#footnote-723) - his 2014 report does acknowledge the influence of poorly-designed international support or technical advice in inadvertently creating or exacerbating social cleavages.[[724]](#footnote-724) In particular, he emphasises the role of private sector actors in indirectly contributing to the commission of atrocity crimes through their operations and business practices.[[725]](#footnote-725) In these ways, therefore, R2P can be understood to have elicited an international responsibility to help ‘prevent’ the conditions that lead to violent and intractable conflict within endemically weak and abusive states, in accordance with the principles axiomatic of cosmopolitan distributive justice. Indeed, this responsibility has mirrored and even *superseded*[[726]](#footnote-726) the responsibility to ‘protect’ in threshold-crossing situations. Thus, and given that a cosmopolitan approach to human protection must incorporate principles of distributive global justice in order to remain fully consistent with broader cosmopolitan aims,[[727]](#footnote-727) R2P can be understood to have reinforced - albeit imperfectly - its relationship with this cosmopolitan typology. Furthermore, in tentatively bridging the lacuna between cosmopolitan distributive justice and cosmopolitan human protection, R2P has helped to enhance the veracity and credibility of the latter as a contemporary approach to international relations theory, with the language and rhetoric axiomatic of the doctrine alleviating concerns over the cosmopolitan typology’s predominantly *ad hoc* approach to the protection of vulnerable populations.

**Conclusion**

This chapter has undertaken a comprehensive analysis of the nexus prevalent between R2P and cosmopolitan human protection. As discussed, the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for international intervention and, more implicitly, the concept of cosmopolitan distributive justice can all be understood to constitute *prima facie* aspects of R2P. Thus, and despite the doctrine continuing to fall short of adhering to the normative demands of the cosmopolitan typology, the presence of such dynamics have helped to enunciate the relationship between R2P and the cosmopolitan approach to human protection. Moreover, and despite the continued pre-eminence of realist objections centred on the prevailing inclinations of powerful states and, in addition, a broad confluence of complex and overlapping contextual factors in the form of regional organisations, the international and domestic standing of political regimes and both the clarity of threat and short timeframe for international action, the normative language and, to a lesser extent, empirical connotations attached to R2P can, as discussed, be understood to have accentuated the relevance of the vision of criminal justice that lies at the heart of the cosmopolitan typology.

As intimated previously, the relationship between R2P and cosmopolitan human protection explored in this chapter is integral to the claim that the doctrine has helped to foster a sense of enthusiasm over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period. This is in view of this author’s concern with the prospective constitutionalisation of cosmopolitan *humanitarian* norms. As will be elaborated upon in the next chapter, through its status as an emerging legal norm, alongside its incremental internalisation and invocation at the international level, R2P can be seen to have enhanced the claim that the UN embodies the foundations of a weak yet nascent global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. Crucially, and at the same time, the doctrine has come to provide a *platform* for the constitutionalisation and grounding of cosmopolitan humanitarian norms. It is in this way, therefore, that the comprehensive appraisal of R2P undertaken in this chapter is intimately bound up with this project’s overarching research objective.

**Chapter 5: The Responsibility to Protect and Habermas’ Theory of Constitutionalisation with a ‘Cosmopolitan Purpose’**

**Introduction**

Whilst Chapter 4 undertook a robust and critical appraisal of the relationship between R2P and cosmopolitan human protection, this chapter will examine the nexus between the doctrine and Habermas’ *constitutional* cosmopolitan approach, integral to this author’s claim that R2P has helped to foster a sense of enthusiasm over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.As will be articulated, R2P can be understood to constitute both an established and regulative hard norm with regards to the responsibilities conferred on the host state and, crucially, an emerging and constitutive norm - and novel and nascent international *legal* principle[[728]](#footnote-728) - in relation to the duties conferred on the wider international community, establishing clear jurisdictional relationships and assigning specific roles and responsibilities in instances of genocide, war crimes, ethnic cleansing and crimes against humanity.Whilst acknowledging that R2P has so far failed to inculcate a legally-binding *obligation* on UN member states, this chapter will argue that alongside its codification and, to a lesser extent, application in response to systematic and nefarious abuses of individual human rights, the doctrine’s legal cogency has helped to *begin* to bridge the lacuna between the UN’s increasingly global normative commitment to human rights and the weakness of its enforcement mechanisms examined in Chapter 3. As a consequence, R2P has come to *further* encapsulate how the collective international responsibility to promote international peace and security under the auspices of the UN has been increasingly extended to the protection of global human rights in the post-Cold War period. In the process, and as will be argued, the doctrine has tentatively advanced Habermas’ global constitutional paradigm and, more specifically, strengthenedthe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. Given the doctrine’s existing relationship with cosmopolitan humanitarian principles - in particular the ideas of collective responsibility, reconceptualization of state sovereignty and the cosmopolitan vision of criminal justice - R2P can subsequently be understood to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, helping to foster a sense of enthusiasm over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period.

Further to encompassing a budding international legal principle endorsed and implemented by UN member states, R2P’s locus as an emerging and constitutive norm within international law has also been consolidated by its position within Martha Finnemore and Kathryn Sikkink’s three-stage normative ‘life cycle’ model. Whilst R2P has yet to be invoked explicitly in relation to the *secondary* international responsibility to intervene in instances where state authorities fail to protect their populations, the doctrine has come to occupy a space at the high end of the *norm cascade* spectrum, evidenced by its incremental internalisation and, in particular, invocation by UN member states in response to the manifestation or ‘imminent’[[729]](#footnote-729) perpetration of systematic human rights abuses. Thus, and as will be espoused, the operationalization of R2P could be understood to reflect an *increased* willingness amongst UN member states to intervene in order to protect vulnerable populations, further helping to bridge the aforementioned gap between the UN’s global normative commitment to human rights and the weakness of its enforcement mechanisms. Indeed, and as will be postulated, R2P has come to constitute an additional ‘step’ in the *potential* evolution of a customary international law concerned with the protection and advancement of global human rights in threshold-crossing situations. In the process, the doctrine has further enhanced the claim that the UN embodies the foundations of a weak yet nascent global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. When again once assessed within the context of its relationship with cosmopolitan humanitarian principles - in particular its nexus with the cosmopolitan vision of criminal justice and the provision of delineated and limited thresholds for intervention - R2P can be understood to have provided a further *budding* platform for the constitutionalisation and grounding of such cosmopolitan humanitarian norms, in the process helping once again to engender a sense of optimism over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

This chapter will finish by asserting that R2P has helped to assuage concerns over the self-interested and potentially neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation process, similarly helping to strengthen the potential fulfilment of Habermas’ overarching cosmopolitan objective. As will be discussed, R2P postulates a transition away from the ‘right of intervention’ of any state to the ‘responsibility to protect’ of *every* state,[[730]](#footnote-730) engages with a broad gamut of preventive and reactive humanitarian measures and, finally, provides a high watermark and limited thresholds for military intervention which, in turn, can only proceed with the authority of the UNSC. Whilst this chapter will acknowledge that the doctrine has thus far failed to address the unequal power relationships and *non-cosmopolitan* legal tenets manifest within the world organisation - evidenced in particular by the continued retention of veto power by the UNSC’s permanent member states - it will argue that, in principle, R2P has alleviated fears that the language of humanitarian intervention and international humanitarian law could be used as a ‘Trojan Horse’[[731]](#footnote-731) to further the prevailing inclinations and agendas apposite to powerful states. In addition, and whilst more contentious in view of the doctrine’s implicit nexus with regime change, the invocation of R2P in response to the conflict in Libya could also be seen to extoll the virtues of the doctrine in assuaging concerns over the manifestation and potential proliferation of neo-imperialist trends under the aegis of international law. In both theory and in practice, therefore, R2P has weakened claims surrounding the ‘misuse’ of the terminology of humanitarian intervention, in the process countering antipathy towards Habermas’ linear and *teleological* approach to the constitutionalisation of international law and, consequently, strengthening the potential fulfilment of his global constitutional paradigm. At the same time, and as will be contended, R2P has come to provide a normative and, to a lesser extent, empirical framework through which a further limitation associated with cosmopolitan human protection - more specifically, its failure in *practice* to offset the possibility of intervention being employed as a smokescreen for the perpetuation of political and economic objectives relevant to powerful states[[732]](#footnote-732) **-** can begin to be addressed. In both theory and, to a lesser degree, in practice, therefore, R2P has helped to *reinforce* the sense of enthusiasm that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

**The Responsibility to Protect and Habermas’ Theory of Constitutionalisation with a ‘Cosmopolitan Purpose’: A Critical Appraisal**

As explained in Chapter 3, Habermas advocates the constitutionalisation of international law under the aegis of constitutional authorities specialised in securing peace and implementing human rights worldwide,[[733]](#footnote-733) in turn expediting the construction of a legally-constituted global political community of states and - through the institutionalisation of cosmopolitan ‘human’ rights - their citizens. In the process, such authorities will come to provide the foundations of a globalised and eventually *cosmopolitan* legal order. Crucially, and as explained, the UN could be seen as paradigmatic of the evolution from proto-constitutional legal tenets to the supranational institutions indicative of such a cosmopolitan order,[[734]](#footnote-734) with the UN Charter providing the basis of a weak yet *fledgling* global constitutional order resembling something analogous to a legally-constituted community of states and their citizens. As articulated, this is seen through the collective duty conferred on the international community - and, in particular, the UNSC’s permanent member states - to promote international peace and security, the specific provisions and expectations generated in relation to this responsibility and the protection afforded to all of the UN’s member states, constitutional tenets that have been increasingly extended to the sphere of human rights in the post-Cold War period. Through such normative innovations and legally-binding commitments - and, consequently, the gradual recognition and institutionalisation of human rights at the global constitutional level - the UN can, in both theory and in practice, be seen to have offered a prospective ‘stepping stone’ to the construction of a global legal identity and form of cosmopolitan citizenship commensurate with Habermas’ vision of constitutional patriotism.[[735]](#footnote-735) In the process, the UN has come to provide a potential - albeit incomplete - blueprint for the fulfilment of Habermas’ overarching cosmopolitan objective.

With regards to R2P, and whilst ubiquitous debate continues to surround the doctrine’s legal veracity, this chapter will argue - further to Anne Peters - that the doctrine represents an established and regulative hard norm with regards to the responsibilities conferred on the host state and, crucially, an emerging and constitutive norm - and budding *legal* principle[[736]](#footnote-736) - with regards to the duties inculcated on other states and the UN,[[737]](#footnote-737) in the case of the latter reflecting a tacit *extension* of Habermas’ global constitutional paradigm. By definition, a norm constitutes a standard of appropriate or proper behaviour for actors with a given identity,[[738]](#footnote-738) shaping both their preferences and identities.[[739]](#footnote-739) In the case of R2P’s status as an established regulative norm, this is evidenced by the doctrine’s foundations in existing international and international humanitarian law. For example, the 1948 Genocide Convention outlines states’ obligations towards the prevention of genocide and makes the perpetration of such an act punishable by law.[[740]](#footnote-740) In short, the Convention embodies positive duties to protect persons from inhuman acts committed by rulers, public officials and private actors, in part explicitly obliging states to prevent such acts beforehand.[[741]](#footnote-741) Furthermore, the ICCPR and ICSECR adopted by the UN in 1966 impose legally-binding obligations upon state parties to protect the stipulated human rights.[[742]](#footnote-742) Whilst not referring explicitly to acts of genocide, war crimes, ethnic cleansing and crimes against humanity, these covenants ensconce in law the right to life, freedom from torture and inhumane treatment, freedom of thought, expression and religion and the right to attain the highest possible standard of physical and mental health,[[743]](#footnote-743) all of which can be seen to fall within the contours of the threshold-crossing typologies propagated under R2P. Finally, under the preamble contained within the UN Charter, each state is obliged to reaffirm its faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women,[[744]](#footnote-744) whilst the ‘modification’ of the existing principles of international law that manifested under the aegis of the UN in the immediate post-Cold War period could be seen as testament to the *consequences* of the host state in failing to prevent acts of ethnic cleansing and crimes against humanity. In sum, then, R2P is amalgamated with the prohibition on specific inhumane actions - more specifically genocide, war crimes, ethnic cleansing and crimes against humanity - rooted in the Genocide Convention and implicit under the terms of the ICCPR, ICSECR and, importantly, the UN Charter. As discussed, and further to both international and international humanitarian law, the doctrine places a primary responsibility on each individual state to protect its populations from acts of genocide, war crimes, ethnic cleansing and crimes against humanity,[[745]](#footnote-745) prohibiting the perpetration of such acts by rulers, public officials and private actors. In addition, the host state has the responsibility to *prevent* such crimes, including their incitement, through appropriate and necessary means. [[746]](#footnote-746) In this way, therefore, and whilst stopping short of inculcating an *obligation* on individual states to protect their populations, R2P can be understood to reflect a political standard in respect to the responsibilities of the host state that has its foundations in legally and internationally-binding commitments, enunciating the doctrine’s status as an established and regulative hard norm enumerated within international and international humanitarian law.

Moving beyond existing legal mechanisms and the responsibilities conferred on individual states to protect their populations, the doctrine also embodies an emerging and constitutive norm and, in particular, a *novel* and nascent international legal principle. This is in view of the duties imparted on other states and the UN and, more specifically, the role and responsibilities R2P assigns to the wider international community. Whilst primarily a conceptual innovation,[[747]](#footnote-747) Peters argues that R2P is also a novel construct that uses pre-existing legal principles as ‘building blocks’ for a new international order.[[748]](#footnote-748) For example, such pre-existing principles include the concept of *multi-level governance*, which embraces the notion that competences and obligations should be allocated to the level of governance on which such functions as the protection of individual human rights can be effectively performed.[[749]](#footnote-749) As Peters elaborates, this idea is apt to justify the allocation of the residual responsibility to protect to actors ‘above’ the territorial state.[[750]](#footnote-750) Indeed, R2P can, in theory, be seen to be part of the establishment of a *new* constitutional legal order, in the sense of establishing a hierarchy of law that suggests state sovereignty can be surrendered in threshold-crossing situations, whilst concomitantly bringing all states into a clear jurisdictional relationship within the UN Security Council.[[751]](#footnote-751)Furthermore, R2P’s use of pre-existing principles also extends to the notion of solidarity, concerned both with responding to dangers and events and establishing joint rights and obligations.[[752]](#footnote-752) As Karel Wellens explains, solidarity operates as an instrument to achieve common *ethical and moral[[753]](#footnote-753)* objectives through the imposition of such common obligations.[[754]](#footnote-754) Prior to the codification of R2P, the highest degree of constitutionalisation - and ethical articulation[[755]](#footnote-755) - of the principle of solidarity could be found in the UN Charter provisions on the maintenance of international peace and security,[[756]](#footnote-756) alongside the obligation to ensure respect contained within international humanitarian law.[[757]](#footnote-757) However, and as Wellens elaborates, the doctrine can be understood to represent the first major articulation on a *global level* of the constitutional principle of solidarity.[[758]](#footnote-758) This in view of its specification of the conditions of action for protecting shared values which are of a human rights nature.[[759]](#footnote-759) Put another way, through placing a collective responsibility on the international community and, in particular, the permanent members of the UNSC to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity - a principle seen even by its critics as potentially innovative[[760]](#footnote-760) - R2P has helped to give *legal* expression to the international principle of solidarity.[[761]](#footnote-761) In addition, and as explained previously, the doctrine also embodies both a doctrinal innovation and conceptual development within international law, with its codification and - as will be discussed further - application by the international community coming to reflect a *heightened* sense of theoretical consensus amongst UN member states to protect vulnerable populations, as well as an *increased* willingness to intervene in order to perpetuate the global advancement of individual human rights. So, through its status as an innovative legal and conceptual principle that establishes clear jurisdictional relationships and assigns specific roles and responsibilities to the wider international community in threshold-crossing situations - a principle endorsed and implemented by UN member states - R2P has come to embody an emerging constitutive norm within international law, *further* encapsulating how the collective international responsibility to promote international peace and security under the auspices of the UN has been increasingly extended to the protection of global human rights in the post-Cold War period. In short, R2P has come to *strengthen* the recognition and institutionalisation of individual human rights at the global constitutional level. At the same time, the doctrine’s novel legal cogency, codification and, to a lesser extent, application[[762]](#footnote-762) have helped to *begin* to bridge the lacuna manifest between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms outlined in Chapter 3.[[763]](#footnote-763) As a consequence, R2P can be understood to have tentatively advanced Habermas’ global constitutional paradigm and, more specifically, strengthenedthe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens. In turn, and given the doctrine’s existing relationship with cosmopolitan humanitarian principles - in particular the ideas of collective responsibility, reconceptualization of state sovereignty and the cosmopolitan vision of criminal justice as outlined in Chapter 4 - R2P can be seen to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, in the process helping to engender a sense of enthusiasm over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

Further to encompassing a novel and nascent international legal principle ratified and adopted by UN member states, R2P’s locus as an emerging and constitutive legal norm within international law is also consolidated by its position within Martha Finnemore and Kathryn Sikkink’s three-stage normative ‘life cycle’ model.[[764]](#footnote-764) The first stage in this process is, as Finnemore and Sikkink explain, *norm emergence*, inextricably linked to the role of ‘norm entrepreneurs’ who actively build norms, calling to attention issues through using language that names, interprets, and dramatizes them.[[765]](#footnote-765) In the case of R2P, Canada was the doctrine’s principle advocate, playing a dominant role in establishing ICISS in 2001[[766]](#footnote-766) and, subsequently, persuading the UN High Level Panel to endorse R2P, at the same time encouraging UN Secretary General Kofi Annan to do likewise in his response.[[767]](#footnote-767) Annan was also integral to the adoption of R2P, putting in place the High Level Panel that approved the doctrine in 2004 which, alongside its place in his wider programme of UN reform, paved the way for R2P’s inclusion within the 2005 World Summit declaration.[[768]](#footnote-768) In addition, R2P has emerged within a broader ‘normative architecture’[[769]](#footnote-769) and interventionist discourse of human rights protection, whilst the doctrine has also been *institutionalised* at the international level.[[770]](#footnote-770) In these ways, therefore, R2P has fulfilled the first stage of Finnemore and Sikkink’s normative life-cycle model, reflecting a norm actively propagated by state and non-state actors with an ideational commitment*[[771]](#footnote-771)* to the protection of vulnerable populations.

Relatedly, R2P can also be understood to have moved into the second stage of the norm life-cycle process - *norm cascade*.[[772]](#footnote-772) This stage of broad acceptance is achieved when a critical mass of states - namely, at least a third of the total states in the international system - are persuaded to become norm leaders and adopt new norms, culminating in the threshold or ‘tipping point’ between norm emergence and norm cascade being reached.[[773]](#footnote-773) Furthermore, this stage is characterised by a dynamic of imitation as norm leaders attempt to socialise other states to become norm followers.[[774]](#footnote-774) As explained previously, R2P reflects a *codified*[[775]](#footnote-775) international legal principle, endorsed in 2005 and subsequently re-affirmed by 180 of the 193 members of the UN General Assembly in 2009.[[776]](#footnote-776) As a consequence, R2P has - alongside the ICC - become the most prominent *institution* of international human rights enforcement.[[777]](#footnote-777) Thus, and further to the sentiments of Badescu and Weiss, one could argue that R2P has reached its tipping point and moved into the stage of ‘norm cascade’.[[778]](#footnote-778) In addition, and of particular importance to this thesis, there is substantial evidence to indicate that doctrine has become incrementally *internalised* within the UN,[[779]](#footnote-779) with internalisation representing the final stage of the norm life-cycle process.[[780]](#footnote-780) This is exhibited by the doctrine’s invocation in response to a panoply of human rights crises, testament to its role in ‘shaping’ the international context in which these atrocities are committed.[[781]](#footnote-781) Put simply, the normative language axiomatic of R2P has been increasingly adopted by the international community - and, in particular, the UN’s member states - in response to the manifestation or ‘imminent’[[782]](#footnote-782) perpetration of systematic and nefarious human rights abuses, with the doctrine prevalent in the foreign policies that these states have pursued. As a consequence, R2P has the potential to evolve into a form of *customary* international law, by definition established by states engaging in a repetitive and on-going practice so far as to be regarded a compulsory rule.[[783]](#footnote-783) Indeed, there have been a number of instances in which the UN has made reference to R2P in response to violations of human rights and international humanitarian law, with the doctrine invoked in more than 25 resolutions since 2006.[[784]](#footnote-784) For example, the R2P ‘lens’ was used to guide the international community’s response to post-election violence in Kenya in 2007[[785]](#footnote-785) - according to advocates of the doctrine, providing both a discursive framework for international diplomatic involvement and a political tool used to facilitate international pressure on the Kenyan government[[786]](#footnote-786) - whilst the doctrine was invoked directly following the actions of former President Laurent Gbagbo in the Ivory Coast in 2011.[[787]](#footnote-787) Moreover, and whilst the cases of Myanmar and South Ossetia underline the potential for R2P to be abused, paradoxically they demonstrate how the doctrine has increasingly become part of the diplomatic language of powerful states, more specifically France and Russia.[[788]](#footnote-788) In addition, R2P was re-affirmed by the UNSC under Resolutions 1674 (2006), 63/308 (2009)[[789]](#footnote-789) and 1894 (2009)[[790]](#footnote-790) and, as mentioned, by 180 of the General Assembly’s 193 members following the release of Ban Ki Moon’s 2009 report *Implementing the Responsibility to Protect,[[791]](#footnote-791)* whilst the doctrine has also provided a key aspect of the diplomatic language invoked by the international community in response to the ongoing atrocities in Syria.[[792]](#footnote-792) By far the most successful example of R2P in action, however, can be found in the form of the UN-sanctioned, NATO-led mission ‘Operation Unified Protector’ conducted in Libya in 2011. Whilst critics such as Aidan Hehir have questioned the ‘novelty’ of the intervention in Libya,[[793]](#footnote-793) this author argues that, further to the sentiments of Jon Western, Joshua Goldstein, Ivo Daalder and James Stavridis, Resolution 1973 can be seen to constitute an *unprecedented* collective determination to halt a mass atrocity.[[794]](#footnote-794) More specifically, it can be contextualised within a *new* politics of protection,[[795]](#footnote-795) underscored by the fact that Libya represents the first time in history that the UNSC has authorised the use of Chapter VII measures against a functioning member state - without its consent - for human protection purposes.[[796]](#footnote-796) In Rwanda, the French-led Operation Turquoise enjoyed the consent of the interim government, whilst the Chapter VII mandates sanctioned in Somalia were authorised in the *absence* of a centralised government, as opposed to against one.[[797]](#footnote-797) More recently, in Haiti, the Democratic Republic of Congo (DRC), Sudan and Cote d’Ivoire, the Security Council authorised the use of ‘all necessary measures’ to protect civilians, but the peace operations in these countries all operated with the consent of the host state.[[798]](#footnote-798)In addition,andwhilst Hehir has also critiqued the relationship between Libya and the *Responsibility to Protect*,[[799]](#footnote-799) this author contends that intervention in Libya was framed through the prism of R2P, with the codification and institutionalisation of the doctrine intimately bound up with the evolution of this new human protection agenda. For example, the military operation undertaken in Libya was derived directly from the responsibility - and subsequent failure - of the Libyan government to protect its own people, underlined by the specific reference to R2P in the preamble of UN Resolution 1970, the consequences of which extended to UN Resolution 1973.[[800]](#footnote-800) In accordance with the doctrine’s multi-faceted diplomatic and political approach to humanitarian crises, a broad - albeit largely unsuccessful - gamut of measures was implemented by the UN prior to the decision to sanction the use of force for human protection purposes, including the imposition of travel bans and asset freezes on a number of high-profile individuals and organisations,[[801]](#footnote-801) as well referral of the situation to the ICC.[[802]](#footnote-802) Furthermore, and understood to constitute a ‘war crime’, ‘crime against humanity’ and even ‘genocide’[[803]](#footnote-803) under the rubric of R2P[[804]](#footnote-804) - and thus to meet the relevant watermark and thresholds for military action - the subsequent decision taken by both Russia and China to abstain rather than utilise their power of veto during the Libyan crisis could be seen as an acknowledgement that *inaction* was unpalatable in the face of such large-scale human rights atrocities.[[805]](#footnote-805) It is prudent to reiterate at this point that the operationalization of R2P’s legal and conceptual principles in Libya was interspersed with a broad confluence of contextual factors, including the involvement of regional organisations such as the LAS, the international and domestic standing of the Gaddafi regime and both the clarity of threat and short timeframe for international action. Moreover, at the time of writing there remains widespread disagreement amongst UN member states over the implementation of R2P given its *implicit*[[806]](#footnote-806) nexus with regime change in Libya, a concern that has subsequently spilt over into deliberations surrounding Syria and helps to account for the relative inaction of the UNSC in response to the conflict.[[807]](#footnote-807) Finally, and whilst this thesis is not concerned with a robust assessment of Operation Unified Protector, it is also important to emphasise that widespread contention surrounds the *success* of the NATO-led mission in Libya which, in turn, has served to further enunciate the shortcomings of R2P. For example, NATO’s use of air-delivered Precision-Guided Munitions (PGMs) was to undermine the UN’s civilian protection mandate, with a number of Libyan civilians killed during the course of the 9700 NATO strike sorties over Libya.[[808]](#footnote-808) The use of PGMs can be seen as testament to the continuing phenomenon of *virtual war,*[[809]](#footnote-809)a detached form of risk-transfer warfighting[[810]](#footnote-810) which, as outlined in Chapter 1, is an ideology concerned with making conflict as bloodless, risk-free and precise as possible. As Jonathan Gilmore explains, the response of the international community to the atrocities committed in Libya exhibited a series of characteristics that can be loosely defined as *Remote Cosmopolitanism*, whereby despite a normative ethical commitment to civilian protection and human security, intervention was predicated on a policy of risk aversion and increased moral distance - involving minimal ground-level force commitment - and an extensive dependence on local proxies in the form of anti-government insurgents.[[811]](#footnote-811) This approach can be seen as a glowing indictment of the continued antipathy of UN member states to the loss of troops in conflict situations, with the US, in particular, hesitant to intervene in Libya in light of the of the catastrophic events in Somalia in 1993.[[812]](#footnote-812) Indeed, without the support of the LAS, it is unlikely that the US would even have consented to the use of force under SCR1973, with the influence exerted by the organisation helping to offset the broader concerns of the Obama administration with military overstretch, budgetary implications, the possibility of mission creep and, again, the potential for military casualties.[[813]](#footnote-813) Such reticence also helps to account for the decision taken by the US to *support* than actively lead the military action employed by French and other NATO forces.[[814]](#footnote-814) Furthermore, and alongside the praxis and implications of virtual war in Libya, concerns have also been raised over the *longer-term* consequences of the NATO-led operation. This is in light of the continued lawlessness and violence perpetrated by the country’s tribal-based militias - some with links to Al-Qaeda - which have included reprisals against black African migrants, torture and extra-judicial detention[[815]](#footnote-815) and culminated in the assassination of the Libyan deputy industry minister Hassan al-Droui on January 12th 2014.[[816]](#footnote-816) In summary, then, both the practice of *Remote Cosmopolitanism* and implications of the NATO-led operation have acted to qualify the efficacy of the military intervention undertaken in Libya. At the same time, and as intimated previously, such caveats can be understood to compound the limits of R2P. For example, the ideology of virtual war and its presence in Libya has re-affirmed how powerful states continue to possess a monopoly over the use of military force for human protection purposes. At the same time, therefore, it has further enunciated how the doctrine has yet to *systematically* bridge the gap between the UN’s increasingly normative commitment to human rights and the weakness of its enforcement mechanisms. In addition, the ensuing actions of insurgents in Libya have epitomised the *complexity* of modern conflict and, subsequently, of responding to human rights crises within endemically weak and abusive states. This is a detriment that R2P has, in both theory and in practice, thus far failed to acknowledge and address.[[817]](#footnote-817)

In short, the conduct and consequences of the NATO-led operation inLibya have raised further important questions over the theory and practice of R2P, with the doctrine yet to adapt to the complexities associated with human protection and powerful states continuing to monopolise the enforcement process in respect to the protection of vulnerable populations. In addition, and as discussed, problems continue to surround the implementation of the doctrine, given the role of contextual factors in shaping the outcome of the Libyan conflict and, furthermore, the doctrine’s nexus with regime change in Libya. Thus, and of particular relevance to this chapter, it must be remembered that R2P has yet to be *fully* internalised and to reach a ‘tipping point’ between the stages of norm cascade and norm internalisation, compounded by the fact that the doctrine has so far failed to acquire a ‘taken for granted’ quality and remains a matter of broad international debate.[[818]](#footnote-818) Indeed, the absence of international consensus over the implementation of R2P has encapsulated how, in practice, the doctrine remains a *weak* emerging and constitutive norm within international law. However, it should be emphasised that the NATO mission in Libya - as discussed, framed through the prism of R2P - succeeded in securing a UN mandate to protect civilians, establishing and enforcing no-kill zones, halting Gaddafi’s advancing army and preventing a massacre of the civilian population in Benghazi.[[819]](#footnote-819) More importantly, Libya has not sounded R2P’s death-knell,[[820]](#footnote-820) with the UN’s invocation of the doctrine in response to the atrocities committed in the Central African Republic (CAR)[[821]](#footnote-821) and, more recently, former Foreign Secretary Malcolm Rifkind’s fleeting reference to the ‘responsibility to protect’ following the US’ decision to launch air strikes against ISIS in Iraq underlining how the doctrine continues to occupy a space at the high end of the *norm cascade* spectrum. In sum, then, R2P’s normative language has and continues to be increasingly adopted by powerful states in order to legitimise their humanitarian actions, with the case of Libya, in particular, demonstrating how the doctrine’s conceptual and legal principles have been gradually internalised and used to *shape* the foreign policies that these states have pursued in response to violations of human rights and international humanitarian law. Moreover, and despite the absence of a secondary responsibility to intervene,[[822]](#footnote-822) the relationship between Libya and R2P could be seen as testament to the fact that humanitarian intervention is no longer dependent upon a ‘modification’ to the existing principle of non-intervention contained within the UN Charter, whilst in meeting the relevant watermark and thresholds for military action outlined under the aegis of the doctrine, the NATO operation has helped to clarify the *scope* of a human rights exception to existing international law.In this way, therefore, the invocation of R2P’s language and rhetoric in response to the atrocities committed in Libya has enunciated the sense of ‘norm-building’[[823]](#footnote-823) manifest within the UN and, at the same time, the *proximity* of the doctrine to the final stage of Finnemore and Sikkink’s normative life-cycle model. Thus, and consolidated by the doctrine’s presence in more than 25 resolutions since 2006, the operationalization of R2P in this instance could be understood to reflect an *increased* willingness amongst UN member states to intervene in order to protect vulnerable populations, further helping to bridge the aforementioned gap between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms. At the same time, through its incremental internalisation and operationalization, R2P has come to constitute an additional ‘step’ in the *potential* evolution of a customary international law concerned with the protection of global human rights in threshold-crossing situations, further strengthening the recognition and institutionalisation of human rights at the global constitutional level. In practice, therefore, R2P has further enhanced the claim that the UN embodies the foundations of a weak yet nascent global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. When again once assessed within the context of its relationship with cosmopolitan human protection - in particular the cosmopolitan vision of criminal justice and the provision of delineated and limited thresholds for intervention - therefore, R2P can be understood to provide a further *budding* platform for the constitutionalisation and grounding of such normative cosmopolitan elements, in the process helping once again to generate a sense of enthusiasm over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

Further to R2P’s locus as a nascent legal principle and emerging constitutive norm within international law, the doctrine has - through its normative language in particular - helped to assuage concerns over the self-interested and potentially neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation process, similarly helping to strengthen the potential fulfilment of Habermas’ overarching cosmopolitan objective. As explained in Chapter 3, Habermas propagates a linear and *teleological* approach to the constitutionalisation of international law, attenuated both by the ‘locking-in’ of constitutional and asymmetrical legal relationships within the UN - the latter reflected in the continued retention of veto power by the UNSC’s permanent member states - and the potential proliferation of neo-imperialist trends, exemplified by the US and UK’s endeavours to invoke R2P and the principles of international humanitarian law in order to legitimate non-UN sanctioned coercive enforcement measures in Iraq in 2003.[[824]](#footnote-824) As will shortly be discussed, R2P has thus far failed to abrogate the asymmetrical relationships and *non-cosmopolitan* legal tenets manifest within the UN, reflected in the continued retention of veto power by the UNSC’s permanent member states and reinforced - albeit more contentiously - by the elitist and anti-democratic rhetoric axiomatic of the doctrine. However, and as intimated previously, R2P propagates a transition away from the ‘right of intervention’ of any state to the ‘responsibility to protect’ of *every* state[[825]](#footnote-825) - underpinned by the broader endeavours of the international community to transcend the lexicon of humanitarian intervention in view of widespread hostility towards the term - prioritises the rights and interests of all individuals and, in the process, limits the freedom of powerful states to justify the use of force for human protection purposes.[[826]](#footnote-826) In addition, and a legacy of the 2001 ICISS recommendations, R2P’s normative punch is accentuated by its engagement with a broad gamut of preventive and reactive humanitarian measures, expounding its status as a multi-faceted diplomatic and political agenda that advocates the use of force only as a matter of last resort and which, consequently, has helped to bridge the lacuna between non-intervention and coercive - and in particular *unilateral* - military action. Furthermore, and whilst capriciously and selectively applied by UN member states, the doctrine provides a high watermark and limited thresholds for military intervention which, in turn, can only proceed with the authority of the UNSC, eschewing the possibility of unilateral coercive measures *a la* Kosovo and, in particular, Iraq. Thus, R2P has - at least in theory - made it *more* difficult for powerful states to sanction the use of military force for anything other than genuine humanitarian reasons. In short, the doctrine embodies a conceptual development and doctrinal innovation at the international level which, through its normative language and rhetoric, has redirected the global discussion away from a ‘sovereignty-versus-intervention’ debate and, as Ban-Ki Moon explains in his 2009 report, resulted in states or groups of states finding it substantially more difficult to claim they need to act unilaterally or outside the channels of the UN in order to respond to humanitarian emergencies.[[827]](#footnote-827) In principle, therefore, R2P has alleviated fears that the language of humanitarian intervention and international humanitarian law will be used as a ‘Trojan Horse’ to further the objectives of powerful states. At the same time, the doctrine has also helped to counter antipathy towards Habermas’ linear and teleological assessment of the constitutionalisation process, enhancing the potential fulfilment of his constitutional cosmopolitan approach.

In addition to its normative language, and whilst more contentious, the invocation of R2P in response to the Libyan conflict could, from an empirical perspective, be understood to extoll the virtues of the doctrine in alleviating concerns over the manifestation and potential proliferation of such self-interested and neo-imperialist trends. The NATO-led intervention was framed through the prism of R2P and wider concerns of the international community with human protection, as discussed reflecting an unprecedented collective determination to halt a mass atrocity. The UNSC sanctioned the use of Chapter VII measures *exclusively*[[828]](#footnote-828) for human protection purposes and, for the first time in its history, without the consent of the host state. In addition, a broad gamut of measures were implemented by the UN prior to the decision to sanction the use of force - in accordance with the doctrine’s multi-faceted diplomatic and political approach to humanitarian crises - whilst the conflict could be seen to constitute a ‘war crime’, ‘crime against humanity’ and even ‘genocide’ under the rubric of R2P. Thus, and in contrast to Iraq, one can extrapolate that global concerns with the protection of human rights were the *primary* objective of the international community - and, more specifically, the permanent members of the UNSC - in Libya.[[829]](#footnote-829) The military operation was also strongly supported by regional organisations including the LAS, Peace and Security Council of the African Union and the Organisation of Islamic Co-operation,[[830]](#footnote-830) a hallmark of the normative consensus surrounding R2P and, at the same time, the doctrine’s pledge to work in conjunction with such organisations in cases where military force is required for human protection purposes.[[831]](#footnote-831) It should also be pointed out - further to their *prima facie* acceptance that military action should not be precluded in the face of egregious human rights violations - that the decision by both Russia and China to abstain in the case of Libya could be seen as testament to Ban-Ki Moon’s appeal rather than ‘recommendation’ - *a la* the 2001 ICISS report[[832]](#footnote-832) - to the UNSC’s permanent member states not to employ the use of veto in situations of ‘manifest failure’ in order to meet their obligations relating to R2P.[[833]](#footnote-833) So, and whilst the dynamics of regime change were to ultimately become entangled with the operationalization of the doctrine’s principles in Libya - a caveat that has subsequently posed a substantial challenge to advocates of humanitarian intervention and, more pertinently, to the implementation of R2P in threshold-crossing situations - the language and rhetoric underpinning the doctrine was to prove instrumental in shaping the international community’s response to the conflict. As explained, a multi-faceted approach was initially adopted, military intervention subsequently framed exclusively within the context of the UN’s increasingly normative commitment to the protection of human rights, consensus for military action elicited from a broad ambit of regional organisations - as well as states - and the use of force deemed legitimate in view of the conflict meeting the relevant watermark and thresholds for intervention. As such, therefore, the operationalization of R2P in this instance could similarly be understood to have alleviated concerns surrounding the ‘misuse’ of the terminology of humanitarian intervention and, in the process, opposition to Habermas’ linear and teleological approach to the constitutionalisation of international law, once more helping to strengthen the potential fulfilment of his overarching cosmopolitan objective. At the same time, the doctrine can be seen to have provided a normative and, to a lesser extent, empirical framework through which a further weakness symptomatic of cosmopolitan human protection - more specifically, its failure in *practice* to offset the possibility of intervention being employed as a ‘Trojan Horse’ for the perpetuation of political and economic inclinations relevant to powerful states[[834]](#footnote-834)- can begin to be addressed. In both theory and, to a lesser degree, in practice, therefore, R2P has helped to *reinforce* the sense of enthusiasm surrounding the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

This chapter has, then, argued that R2P can be seen to embody an emerging and constitutive legal norm within international law, evidenced primarily through its establishment of clear jurisdictional relationships and delegation of specific roles and responsibilities to the wider international community and, furthermore, re-affirmedby the space the doctrine occupies at the high end of the *norm cascade* spectrum. In the process, R2P has helped to tentatively advance Habermas constitutional cosmopolitan approach. In addition, through its normative language - and, to a lesser extent, empirical implications - R2P has alleviated concerns over the self-motivated and potentially neo-imperialist inclinations of powerful states paradoxically intensified by the constitutionalisation process, similarly enhancing the potential fulfilment of Habermas’ overarching cosmopolitan objective. However, it is important to remember that R2P has yet to acquire the status of an *established* constitutional principle. For example, and as emphasised in Chapter 4, the doctrine falls short of eliciting a legally binding and collective *obligation* on UN member states to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. Furthermore, and as intimated previously, R2P has yet to be fully internalised and consequently reach a ‘tipping point’ between the stages of norm cascade and norm internalisation at the global constitutional level, illustrated by the fact the doctrine has not been *explicitly [[835]](#footnote-835)* referred to in the context of the secondary international responsibility to intervene in instances where state authorities have failed to protect their populations.[[836]](#footnote-836) For example, SCR 1975 adopted in response to the crisis in the Ivory Coast only made mention of the responsibility of the Ivorian authorities to promote and protect the human rights and fundamental freedoms of all of their citizens,[[837]](#footnote-837) whilst despite France’s ephemeral reference to an international responsibility to act in Libya,[[838]](#footnote-838) SCR 1973 acknowledged only the responsibility of state authorities to protect the Libyan population.[[839]](#footnote-839) Moreover, and whilst used to guide the international community’s response to post-election violence in Kenya in 2007,[[840]](#footnote-840) R2P played only an *implicit*[[841]](#footnote-841) role, employed by Secretary-General Ban Ki-Moon and his Special Adviser Francis Deng to remind the Kenyan authorities of their legal and moral responsibility to protect the lives of innocent people.[[842]](#footnote-842) Whilst in the case of Libya the consequences of SCR 1970 - which recognised the responsibility of the Libyan government to protect its own people - did extend to SCR 1973, and the coercive measures adopted by the international community, including the use of military force, subsequently fell within the scope of R2P, as Jennifer Welsh explains it is clear that the idea of a secondary international responsibility to intervene is still contested by some members of the Security Council as an appropriate rationale for military action.[[843]](#footnote-843) In short, there remains widespread disagreement over the *implementation* of R2P’s conceptual and, in particular, legal principles in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. Whilst specific analysis of the failure to invoke this secondary responsibility is both limited and controversial,[[844]](#footnote-844) in the case of Libya it could be attributed in part to the prevailing concerns of Russia and China with preserving the territorial integrity of autonomous sovereign states.[[845]](#footnote-845) In addition, it could also be accredited to opposition amongst UN member states to the loss of troops in conflict situations. In the case of Syria, meanwhile, its absence has been the result of both R2P’s nexus with regime change in Libya and, in particular, the broader economic and political objectives of Russia and China, compounding how the interests of powerful states continue to influence and dictate the measures adopted by the international community in response to systematic and nefarious abuses of individual human rights. In summary, then, R2P has thus far failed to confer a legally-binding and collective obligation on the international community to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, to elicit consensus over the operationalization of its secondary legal principles in instances where state authorities fail to protect their populations, enunciating its status as an *emerging* constitutive norm and *nascent* legal principle within international law. Thus, and whilst the doctrine’s legal cogency, codification and incremental internalisation and invocation by UN member states have begun to tentatively bridge the lacuna between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms, one can extrapolate that in both theory and, in particular, in practice, R2P has thus far fallen short of *comprehensively* advancing Habermas’ constitutional cosmopolitan approach. At the same time, the doctrine has yet to provide a *secure* platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms, tempering enthusiasm over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

In addition to its locus as an emerging - as opposed to established - constitutional principle within international law, and as espoused previously, R2P has so far failed to address the unequal power relationships prevalent within the UN, evidenced by the continued retention of veto power by the UNSC’s permanent member states and re-affirmed - albeit more contentiously - by the elitist and anti-democratic language axiomatic of the doctrine. As explained in Chapter 3, any adoption of a Security Council Resolution, particularly in relation to the use of force, is contingent upon the acquiescence of all five permanent members of the Security Council. Whilst acting as an important constitutional check and restraint against excessive interventionism, the power of veto also represents a mechanism by which UNSC member states can threaten to or simply eschew proposed sanctions against a transgressing state at any time. This was the case in Kosovo in 1999, Zimbabwe in 2008[[846]](#footnote-846) and, more recently, in Syria, where all draft resolutions aimed at ending the violence were vetoed by China and Russia.[[847]](#footnote-847) In the case of Syria, and as explained, the position adopted by China and Russia is largely attributable to concerns with preserving the territorial integrity and sovereignty of the Syrian state and, specifically in relation to Russia, perpetuating wider economic and political interests in the Middle East. Thus, this continued ‘locking-in’ of asymmetrical relationships within the UN highlights once again how, in practice, the prevailing inclinations of powerful states continue to supersede and take precedence over the international community’s broader normative commitment to the protection of human rights, providing further evidence that R2P has yet to be fully internalised and consequently reach a ‘tipping point’ between the stages of norm cascade and norm internalisation at the global constitutional level. One could also make the argument that the adoption and ratification of R2P has paradoxically *reinforced* the asymmetrical and non-cosmopolitan legal relationships manifest within the UN. This claim is underwritten by the continued emphasis on the role of the Security Council in sanctioning the use of coercive measures for human protection purposes - leading to assertions that R2P is statist, elitist and anti-democratic[[848]](#footnote-848) - and the fact that, further to the recommendations of the 2001 ICISS report, interventions will almost certainly not take place in situations that implicate the major powers, underlining the ambivalent and contradictory nature of the doctrine.[[849]](#footnote-849) Whilst contentious,[[850]](#footnote-850) such a claim enunciates the structural limitations of the UN and, more importantly, how any decision to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity remains at the behest of powerful states situated within the UNSC. Thus, one can discern that R2P has thus far failed to address concerns pertaining to the asymmetrical relationships manifest within the world organisation which, as outlined in Chapter 3, are intimately bound up with Habermas’ linear and teleological approach to the constitutionalisation process. The continued prevalence of such concerns has, in turn, qualified this author’s claim that R2P has helped to enhance the potential fulfilment of Habermas’ overarching cosmopolitan objective. At the same time, the continuation of such non-cosmopolitan trends has also served to re-affirm the quixotic approach of cosmopolitan human protection to mitigating the influence of powerful states over the decision to intervene for humanitarian purposes,[[851]](#footnote-851)failing in this respect to *reinforce* the sense of optimism that surrounds the transition towards a more cosmopolitan form of human protection in the post-Cold War period.

In addition to its failure to address the unequal power relationships prevalent within the UN, the doctrine’s implicit nexus with regime change in both the Ivory Coast[[852]](#footnote-852) and, in particular, Libya has similarly compounded protestations to Habermas’ linear and teleological approach to the constitutionalisation of international law. In the case of Libya, regime change was a direct consequence of the decision to implement the use of force for human protection purposes and, as acknowledged by Bellamy, an *intention* of those responsible for executing the Security Council’s decisions in response to the perpetration of widespread human rights abuses.[[853]](#footnote-853) Whilst regime change was not specifically authorised under SCR1973,[[854]](#footnote-854) NATO and several key allies including Qatar and Jordan adopted a broad interpretation of the UN mandate, claiming that it provided the platform for a wide range of military activities including the suppression of Libya’s air defences, air force and other aviation capacities, as well as the use of force against Libyan field forces and its command and control capabilities on the basis that Libya’s forces constituted a threat to civilians.[[855]](#footnote-855) As such, therefore, NATO’s humanitarian objectives were to incrementally ‘morph’ into ones that embraced the notion of regime change in Libya, with the justification for its actions centred on the claim that the protection of civilians could not be achieved unless military victory was complete.[[856]](#footnote-856) In contrast, Brazil, Russia, India, China and South Africa (the BRICS countries) all objected to this broad interpretation of SCR1973 and, more specifically, the alteration of NATO’s military stance from one of relative neutrality to one of evident partiality in taking the side of the Libyan rebels.[[857]](#footnote-857) Russia and China, in particular, argued that NATO had exceeded its mandate[[858]](#footnote-858) and attacked what they perceived to be an abuse of the provisions of SCR1973.[[859]](#footnote-859) Subsequently, and despite the successes of the NATO operation, critics have concluded that the protection of civilians was not the primary goal in Libya, reinforced by the presence of Special Forces troops on Libyan territory - contrary to the provisions of SCR1973 - and NATO’s continuation of air strikes after rebel forces had established control in the capital, Tripoli.[[860]](#footnote-860) From this author’s own perspective, concerns with human protection were the primary objective of the international community in Libya,[[861]](#footnote-861) at the same time siding with proponents of R2P who concede that, on occasion, regime change may be determined to be the only viable strategy to prevent the perpetration of widespread atrocities.[[862]](#footnote-862) However, and as will be returned to in Chapter 6, it is clear that the broader implications of NATO’s actions in Libya have posed a significant challenge to advocates of humanitarian intervention and, more importantly, to the operationalization of R2P in threshold-crossing situations. Indeed, and as stated previously, the wider ramifications of regime change in Libya also account in part for the decision of China and Russia to subsequently veto proposed sanctions in Syria.[[863]](#footnote-863) So, and whilst regime change was not the primary objective of the international community in Libya - in contrast to US and UK objectives in Iraq - its presence and subsequent implications for the Syrian conflict have underlined the distance R2P still has to go in order to eschew concerns over the ‘misuse’ of the terminology of humanitarian intervention which, as espoused, continue to beset Habermas’ constitutional cosmopolitan approach. As a consequence, one can extrapolate that R2P has so far provided a *limited* empirical framework for remedying a further caveat attached to cosmopolitan human protection, more specifically its failure *in practice* to offset the possibility of intervention being employed as a ‘Trojan Horse’ for the perpetuation of political and economic objectives apposite to powerful states. Empirically speaking, therefore, R2P has largely failed to reinforce the sense of optimism that surrounds the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

**Conclusion**

This chapter has critically assessed the relationship between the R2P and Habermas’ constitutional cosmopolitan approach. As explained, R2P can be understood to constitute an established and regulative hard norm with regards to the responsibilities conferred on the host state, evidenced through the doctrine’s coalescence with the prohibition on specific inhumane actions - more specifically genocide, war crimes, ethnic cleansing and crimes against humanity - rooted in the Genocide Convention and implicit under the ICCPR, ICSECR and, importantly, the UN Charter. In addition, and of particular relevance to this thesis, R2P has come to reflect an emerging and constitutive norm - and novel and nascent international legal principle - in relation to the duties conferred on the wider international community, witnessed by its establishment of clear jurisdictional relationships and allocation of specific roles and responsibilities in instances of genocide, war crimes, ethnic cleansing and crimes against humanity.Alongside its codification and, to a lesser extent, application by UN member states, the doctrine’s legal cogency has helped to begin to bridge the lacuna between the UN’s global normative commitment to human rights and the weakness of its enforcement mechanisms. As a consequence, R2P has come to furtherencapsulate how the collective international responsibility to promote international peace and security under the auspices of the UN has been increasingly extended to the protection of human rights in the post-Cold War period, strengthening the recognition and institutionalisation of human rights at the global constitutional level. In the process, the doctrine has tentatively advanced Habermas’ global constitutional paradigm and, more specifically, strengthenedthe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. Given the doctrine’s existing relationship with cosmopolitan humanitarian principles, R2P can subsequently be understood to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, helping to foster a sense of enthusiasm over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period.

Further to encompassing a budding international legal principle endorsed and implemented by UN member states, R2P’s locus as an emerging and constitutive norm within international law has also been re-affirmed by the position it occupies at the far end of the ‘norm cascade’ stage of Finnemore and Sikkink’s normative life cycle model. Whilst yet to be fully internalised and thus reach a ‘tipping point’ between the final two stages - norm cascade and norm internalisation - the language and rhetoric axiomatic of R2P have been increasingly adopted by UN member states in response to the manifestation or imminent perpetration of systematic and nefarious human rights abuses. In this way, therefore, and as articulated, the operationalization of R2P could be understood to reflect an *increased* willingness amongst UN member states to intervene in order to protect vulnerable populations, further helping to bridge the gap between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms. Indeed, through its incremental internalisation and invocation by UN member states, the doctrine can be seen to constitute an additional ‘step’ in the *potential* evolution of a customary international law concerned with the protection and advancement of global human rights in threshold-crossing situations, once more strengthening the recognition and institutionalisation of human rights at the global constitutional level. In the process, R2P has come to further enhance the claim that the UN embodies the foundations of a weak yet nascent global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. When again once assessed within the context of its relationship with cosmopolitan humanitarian principles, R2P can be understood to have provided a further *budding* platform for the constitutionalisation and grounding of such cosmopolitan humanitarian norms, in the process helping once again to foster a sense of optimism over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

Further to its sense of legal cogency, this chapter has argued that the normative language and, to a lesser extent, empirical connotations attached to the doctrine have similarly enhanced the prospective fulfilment of Habermas’ overarching cosmopolitan objective, assuaging concerns over the potentially neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation of international law. As discussed, R2P transcends the terminology of humanitarian intervention, engages with a broad gamut of preventive and reactive humanitarian measures that help to bridge the lacuna between non-intervention and coercive military action and, finally, provides a high watermark and limited thresholds for military intervention which, in turn, can only proceed with the authority of the UNSC. In principle, therefore, R2P has alleviated fears that the language of humanitarian intervention and international humanitarian law could be used as a ‘Trojan Horse’ to further the prevailing inclinations and agendas of powerful states. In addition, and whilst more contentious, the invocation of R2P in response to the conflict in Libya could also be seen to extoll the virtues of the doctrine in countering reservations over the manifestation and potential proliferation of neo-imperialist trends under the aegis of international law. In both theory and in practice, therefore, R2P has attenuated claims surrounding the ‘misuse’ of the terminology of humanitarian intervention, weakening opposition to Habermas’ linear and teleological assessment of the constitutionalisation process and, consequently, strengthening the potential fulfilment of his global constitutional paradigm. At the same time, R2P has come to provide a normative and, to a lesser extent, empirical framework through which a further limitation associated with cosmopolitan human protection - more specifically, its failure in practice to offset the possibility of intervention being employed as a smokescreen for the perpetuation of political and economic inclinations relevant to powerful states **-** can begin to be addressed. In both theory and, to a lesser degree, in practice, therefore, R2P has helped to reinforce the sense of enthusiasm that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

As emphasised throughout the course of this chapter, there are a series of qualifications attached to the claim that R2P has helped to perpetuate Habermas’ constitutional cosmopolitan approach, tempering enthusiasm over the transition towards a more cosmopolitan form of human protection. For example, and as discussed, R2P remains a weak emerging and constitutive norm within international law, whilst the doctrine has yet to be invoked explicitly in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. In this way, therefore, the doctrine has fallen short of systematically advancing Habermas’ constitutional cosmopolitan approach and, at the same time, failed to provide a secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms. Furthermore, R2P has yet to address the unequal power relationships prevalent within the UN which, which, alongside the doctrine’s nexus with regime change in both the Ivory Coast and, in particular, Libya, has qualified the prospective fulfilment of Habermas’ overarching cosmopolitan objective. In this regard, and given that cosmopolitan human protection is concerned both with mitigating the influence of powerful states over the decision-making process and offsetting the possibility of humanitarian intervention being employed as a smokescreen for the pursuit of political and economic inclinations relevant to such states, one can discern that R2P has thus far provided a limited empirical framework for addressing such caveats attached to the cosmopolitan typology. In the chapter that follows, this thesis will return to the failure of R2P to fit perfectly into Habermas’ cosmopolitan narrative and, furthermore, to adhere to the normative demands of cosmopolitan human protection as expounded in Chapter 4. This is in view of its concern with postulating a broad gamut of institutional and political reforms which, if introduced, could strengthen the relationship between the doctrine and both cosmopolitan typologies. The adoption of this heuristic approach is, as will become clear, with the intention of perpetuating the limited progress thus far made towards a more cosmopolitan form of human protection and, normatively speaking, helping to generate a greater sense of enthusiasm over the transition towards this cosmopolitan approach in the post-Cold War period.

**Chapter 6: Towards an ‘Even More’ Cosmopolitan Approach to Human Protection: Proposals on Extending the Cosmopolitan Trend**

**Introduction**

This chapter will consider the feasibility of a broad array of institutional and legal reforms which, if introduced, would potentially enhance the relationship between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. This author acknowledges that the implementation of the doctrine’s conceptual and legal principles - and, at the same time, its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors, whilst the complex transborder dynamics and fluid political identities prevalent in the post-Cold War period have, as alluded to in Chapter 5, highlighted the *complexities* of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity, a detriment R2P has thus far failed to acknowledge and address. However, this chapter will argue that the introduction of such reforms would, if achieved, help to perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, accentuate the sense of enthusiasm that surrounds the evolution towards this cosmopolitan typology in the post-Cold War period.

The chapter will begin with a robust and systematic appraisal of a series of reforms which, if implemented, could help to enhance the nexus between R2P and cosmopolitan human protection, seeing the doctrine move a step further towards fulfilling the normative demands of the cosmopolitan typology. Such propositions include the full enumeration of the doctrine in international law, the inculcation of a *positive duty* on UN member states to intervene in threshold-crossing situations and the modification of a state’s perception of its ‘national interest’. As will be explained, it is the creation and adoption of a more *ideational* form of interests at the global constitutional level, in particular, that remains the most feasible of these proposals, a consequence of the institutional ‘building blocks’ already put in place by the EU and, in particular, the UN. In addition, and as will be contended, the construction of an independent and voluntary military capacity exclusive to the UN and, furthermore, the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework would further enable the doctrine to both adhere to - and indeed perpetuate - the expectations axiomatic of cosmopolitan human protection. In the case of the former, and whilst in the short-term quixotic in view of the continued pre-eminence of powerful states over the decision-making process, the construction of an independent and voluntary UN standing force would help to counter opposition amongst UN member states to the loss of troops in conflict situations, at the same time negating the requirement for national approval. In addition, the viability of conflating humanitarianism with a state’s perception of its national interest would heighten the potential for such a military force to be sanctioned and deployed in conflict situations. As a consequence, therefore, the construction of an independent and voluntary military capacity exclusive to the UN could strengthen international consensus over the *implementation* of R2P and, relatedly, the *relevance* of the vision of criminal justice intimately bound up with both the doctrine and cosmopolitan human protection. With regards to the latter, meanwhile, the coalescence of cosmopolitan democratic principles with R2P’s normative and conceptual framework would establish the foundations of a more robust relationship between the doctrine and the concept of cosmopolitan distributive justice indivisible from the cosmopolitan typology, further assuaging criticism of the latter founded upon its primarily *ad hoc* approach to the protection of vulnerable populations.

Having critically assessed the viability of a panoply of institutional and legal reforms which, if introduced, could strengthen the relationship between R2P and the cosmopolitan form of human protection, the chapter will examine a number of proposals that would help to enhance the doctrine’s nexus with Habermas’ constitutional cosmopolitan approach. As outlined in Chapter 4, R2P has yet to acquire the status of an established constitutional principle and, in addition, to be invoked explicitly in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. Thus, and as will be postulated, the full enumeration of the doctrine R2P within international law, alongside the aforementioned proposals to modify a state’s perception of its national interest and establish an independent military capacity exclusive to the UN respectively, would, if implemented, help to address such shortcomings, potentially strengthening the relationship between the doctrine and Habermas’ cosmopolitan constitutional approach. In the process, and as will be contended, such reforms would perpetuate this author’s claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. At the same time, R2P would, in both theory and in practice, come to provide a more *secure* platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms, fostering a *greater* sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

The chapter will finish by examining a series of proposals that could equip R2P with the empirical tools to subjugate the asymmetrical and neo-imperialist trends that continue to run antithetical to Habermas’ linear and teleological assessment of the constitutionalisation process and which, as discussed previously, have qualified the prospective fulfilment of his overarching cosmopolitan objective. With regards to the asymmetrical legal relationships that continue to manifest at the global constitutional level -witnessed through the continued retention of veto power by the UNSC’s permanent member states - one can turn to a series of political reforms put forward under the aegis of *cosmopolitan democracy*. Whilst this cosmopolitan paradigm is highly utopian in outlook and, in addition, constrained by its democratic and structural shortcomings, this chapter will contend that a modification of the decision-making process in relation to the protection of vulnerable populations would help to ensure that the implementation of R2P is predicated on conventional democratic and altruistic principles, consolidating Habermas’ linear and teleological assessment of the constitutionalisation process. In addition, and as will be argued, situating R2P within such a comprehensive and robust programme of institutional reform would help to perpetuate Habermas constitutional cosmopolitan approach, a consequence of R2P’s status as an emerging norm and *novel* international legal principle. Adjustments could also be made directly to R2P’s normative and conceptual framework, principally through the insertion of a clause stipulating that interventions can occur in situations that both implicate and directly involve UNSC members. As a consequence, and as will be argued, R2P would also help to remedy the failure of cosmopolitan human protection to subvert the pre-eminence of states in the decision-making process, *further* reiterating the sense of optimism that surrounds the evolution towards a more cosmopolitan form of human protection in the post-Cold War period. With regards to the manifestation and potential proliferation of neo-imperialist tendencies under the aegis of international law. this chapter will consider the recommendations put forward under the initiative of *Responsibility while Protecting* (RwP) which, if codified, could reduce the likelihood of *unintended* regime change and, in addition, heighten global awareness of the phenomenon and its concomitant implications *prior* to any decision to intervene for human protection purposes. As will be argued, the introduction of RwP could potentially strengthen international consensus over the implementation of R2P’s conceptual and legal principles in threshold-crossing situations, further alleviating concerns over the ‘misuse’ of the terminology of humanitarian intervention - perpetuated by the doctrine’s nexus with regime change in Libya - and similarly enhancing the potential fulfilment of Habermas’ overarching cosmopolitan objective. In addition, R2P would provide a more secure *empirical* framework for addressing a further weakness symptomatic of cosmopolitan human protection - its failure in practice to offset the possibility of military force being used as a smokescreen for the pursuit of broader objectives apposite to powerful states - once more reiterating the sense of optimism that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

**Strengthening the Nexus between R2P and Cosmopolitan Human Protection**

As outlined in Chapter 3, R2P continues to experience a weak and nascent relationship with the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for intervention and, more implicitly, the concept of cosmopolitan distributive justice innate to cosmopolitan human protection, characterising how - particularly in practice - R2P continues to fall short of fulfilling the normative expectations of this cosmopolitan typology. Given that the prospective constitutionalisation of cosmopolitan humanitarian norms is inextricably tied to this thesis’ overarching research objective, strengthening the relationship between the doctrine and cosmopolitan human protection is integral to any perpetuation of the limited progress thus far made towards this cosmopolitan typology and, normatively speaking, inculcating a greater sense of enthusiasm over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period. Thus, it is important to begin one’s analysis with a robust and systematic appraisal of the institutional and legal reforms which, if introduced, could help to enhance the nexus between R2P and cosmopolitan humanitarian principles. Following on from one’s discussion of R2P within the context of the doctrine’s locus as an emerging and constitutive legal norm in respect to the duties conferred on the wider international community, one logical proposal would see R2P’s transition to an *established* constitutional principle, conferring a legally-binding and collective obligation on UN member states to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. As explained previously, under the aegis of the UN Charter there is no obligation on the wider international community to respond to such violations of human rights and international humanitarian law, whilst the discretionary and *ad hoc* nature of the language attached to the doctrine has compounded its capricious and selective application by UN member states. Whilst any proposal to codify humanitarian intervention *per se* could paradoxically increase the likelihood of international and international humanitarian law being employed as a ‘Trojan Horse’ for the pursuit of political and economic inclinations apposite to powerful states - potentially resulting in ‘non-humanitarian’ interventions in which such states impose their will on the powerless[[864]](#footnote-864) - it must be remembered that R2P reflects an evolution *away* from the language of humanitarian intervention and its associated caveats. Indeed, and as explained, the doctrine embodies a doctrinal innovation and conceptual development at the international level which, through its normative language and rhetoric - and, more specifically, its status as a multi-faceted diplomatic and political agenda and provision of delineated and limited thresholds for intervention - has redirected the global discussion away from a ‘sovereignty-versus-intervention’ debate, resulting in states finding it substantially more difficult to claim they need to act unilaterally or outside the channels of the UN in order to protect vulnerable populations. Furthermore, and as discussed in Chapter 4, the case of Libya has illustrated - albeit contentiously - that when regime change does become a prominent factor under the auspices of R2P, this is eclipsed by the wider concerns and *primary* objectives of the international community with human protection. In both theory and, to a more limited extent, in practice, therefore, the doctrine has already established a framework for offsetting broader concerns pertaining to the ‘misuse’ of the terminology of humanitarian intervention. Thus, in qualifying the pre-eminence of self-motivated and potentially *neo-imperialist* considerations in both the decision-making and enforcement process, R2P has given further weight to the proposal to ensconce its principles in international law. In addition, a clause could also be inserted - perhaps drawn up by the UN International Law Commission[[865]](#footnote-865) - expounding the obligation of the international community to aid and co-operate in securing, protecting and promoting the fulfilment of individual rights and interests.[[866]](#footnote-866) This obligation would be applicable in threshold-crossing situations, in the process engendering a *positive duty* on UN member states to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. Relatedly, and given that the cosmopolitan approach to human protection is concerned with conferring a collective and positive duty on powerful states to intervene -through the use of force *ultima ratio* - in ‘supreme humanitarian emergencies’, these propositions would have the effect of perpetuating - and indeed transcending - the notion of collective responsibility axiomatic of the cosmopolitan typology. Thus, the full enumeration of R2P in international law would help to strengthen the relationship between the doctrine and cosmopolitan human protection, seeing R2P move a further step towards fulfilling the demands of the cosmopolitan typology. The introduction of a positive duty to intervene, meanwhile, would - in theory - help to enhance the nexus between R2P and the cosmopolitan vision of criminal justice outlined in Chapter 4, with the doctrine once again moving a step closer to realising the normative expectations of the cosmopolitan form of human protection.

However, and whilst R2P already constitutes a novel and nascent international legal principle ratified and adopted by UN member states, it is important to acknowledge that the proposals to ensconce the doctrine in international law or insert a clause pertaining to a positive duty to intervene remain, for the short term at least, a chimera. For example, such propositions would be contingent upon the will and compliance of powerful states, who continue to monopolise the decision-making and enforcement process in relation to the protection of vulnerable populations. As emphasised previously, the inclinations and agendas pertinent to such states continue to play an integral role in the decision to - or conversely not to - intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. This is evidenced by the lacuna that continues to exist between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms, witnessed most recently through the decision of Russia and China to veto proposed sanctions in Syria. Thus, the adoption - and subsequent implementation - of such a collective and legally-binding obligation would be dependent on the willingness of states to eschew such inclinations and elevate human protection concerns above broader political and economic objectives. In addition, and as discussed in Chapter 5, there remains widespread disagreement amongst UN member states over the operationalization of R2P given its *implicit* nexus with regime change in Libya, and so the likelihood of acquiring the requisite consensus to modify R2P’s normative and conceptual framework - and thus insert a clause pertaining to the positive duties conferred on UN member states in threshold-crossing situations - remains nominal. Thus, and whilst potentially helping to further adhere to cosmopolitan humanitarian demands, both the full enshrinement of R2P in international law and the introduction of a positive duty to intervene remain quixotic, eclipsed by the realities of an international order in which the objectives of powerful states have, as the case of Syria illustrates, continued to supersede and take precedence over the UN’s broader normative commitment to the protection of human rights.

It should be emphasised at this point that whilst unrealistic in the short term, the proposals to fully enumerate R2P within international law and inculcate a positive duty on UN member states to intervene in threshold-crossing situations could, at some point in the future, be achieved as a result of a subtle adjustment to a state’s perception of its ‘national interest’.[[867]](#footnote-867) As articulated in Chapter 4, the prevailing interests of powerful states have acted to qualify the relationship manifest between R2P and the notion of collective responsibility, re-formulation of state sovereignty, vision of criminal justice and provision of delineated and limited thresholds for intervention axiomatic of the cosmopolitan approach to human protection. As a consequence, and drawing upon the recommendations put forward by Kofi Annan in 1999 in response to both the illegal NATO intervention in Kosovo and the atrocities committed in Somalia, Rwanda and Bosnia-Herzegovina in the immediate post-Cold War period,[[868]](#footnote-868) a new, broader definition of the national interest could be introduced in which the narrow interests of states would become congruous with the *collective* interests of the international community as a whole.[[869]](#footnote-869) Whilst discussed by James Pattison exclusively in the context of coercive military action,[[870]](#footnote-870) intervention under the auspices of R2P would, in this sense, come to be seen by states as having substantial potential benefits in terms of increased international status, greater standing in regional organisations and the opening up of new foreign markets.[[871]](#footnote-871) Alternatively, and of particular relevance to this thesis, states could adopt a more *ideational* form of interests, which would transcend the realist mind-set of treating humanitarianism - including military intervention for humanitarian purposes - as a separate category of state behaviour.[[872]](#footnote-872) According to Chris Brown, morality - and thus *non-material* factors - can be accommodated within a state’s perception of its national interest, with the desire to live in a world in which gross violations of human dignity do not take place and a willingness to make this possible, for example, considered as legitimate a basis for self-interest as the defence of national borders or state sovereignty.[[873]](#footnote-873) From this ideational perspective, therefore, protecting vulnerable populations in accordance with R2P’s conceptual and legal principles would come to be seen as in the *national interest* of individual states. It is important to acknowledge that neither Pattison nor Brown consider the practicalities or complexities associated with modifying a state’s perception of its national interest, in particular the extent to which the broader political and economic objectives of powerful states - including concerns with preserving the national integrity of autonomous sovereign states and efforts to eschew military casualties *inter alia* - continue to influence and dictate the measures adopted by the international community in response to systematic and nefarious abuses of human rights. However, and as discussed in Chapter 3, one has already seen how, under the umbrella of the world organisation, the collective responsibility conferred on UN member states to promote international peace and security has been incrementally extended to the protection of cross-border human rights in the post-Cold War period, with the UN providing the ‘building blocks’ for the construction of a global legal identity and form of *cosmopolitan citizenship* at the global constitutional level. This trend has continued under the aegis of R2P, with the doctrine strengthening the recognition and institutionalisation of global human rights and, at the same time, helping to bridge the gap between the UN’s *prima facie* commitment to human rights and its concomitant constitutional and empirical limitations. Affirmed by the *primary* humanitarian objectives pursued by the international community in the cases of Kosovo[[874]](#footnote-874) and, more recently, Libya, one could discern that global concerns with human protection have already begun to coalesce and amalgamate with a state’s perception of its national interest. In addition, and whilst not directly coterminous with Brown’s ideational paradigm, the EU has demonstrated how democratic experiences and historical practices have helped to establish new political meanings and *cosmopolitan norms*[[875]](#footnote-875) that transcend the boundaries of sovereign states, more specifically the disaggregation of citizenship rights[[876]](#footnote-876) under the aegis of both the Charter of Fundamental Rights (CFR) and the European Convention on Human Rights (ECHR). By the same logic, such democratic ‘iterations’ have come to shape the perceptions and *interests* of EU member states, with the organisation representing an illustrative model of self-generated jurisgenerative politics.[[877]](#footnote-877) This claim is also applicable to the norms of security and human rights, with the EU becoming increasingly ‘outward-looking’ in scope and embodying a collective commitment amongst its member states to the promotion of international peace and security and protection of global human rights.[[878]](#footnote-878) So, whether through explicit concerns with the global advancement of human rights or, more indirectly, internalised democratic experiences and practices, one can discern that the EU and, in particular, the UN provide the *institutional* building blocks for the realisation of Brown’s ideational model. As a consequence, and given the feasibility of reconciling humanitarianism with a state’s perception of its national interest, it is not unrealistic to claim that, in the long term, the aforementioned propositions to ensconce R2P within international law and engender a positive duty on states to intervene in threshold-crossing situations could eventually be achieved as the result of a subtle adjustment to a state’s perception of its national interest. In addition, and through potentially elevating the role that human protection concerns play in the decision-making process, such a modification could strengthen international consensus over the implementation of R2P. This would result in the doctrine more consistently translating into practice its normative re-formulation of state sovereignty - in the process taking a further important step towards overcoming the perennial tension between human rights and state sovereignty endemic to the UN - accentuating the relevance of the cosmopolitan vision of justice intertwined with the doctrine’s conceptual and legal principles and, finally, providing the groundwork for the cogent application of delineated and limited thresholds in instances of genocide, war crimes, ethnic cleansing and crimes against humanity. In this way, therefore, the proposal to conflate human rights concerns with a state’s perception of its national interest - underwritten by the normative steps already taken towards the realisation of Brown’s ideational paradigm - would similarly help to adhere to cosmopolitan humanitarian demands, potentially strengthening the connection between R2P and cosmopolitan human protection and, as a consequence, seeing the doctrine once again move a step further towards fulfilling the normative expectations of this cosmopolitan typology.

Following on from the proposed adjustment to a state’s perception of its national interest, a further recommendation would see the UN acquire its own independent military capacity, in the process weakening the monopoly possessed by powerful states over the use of military force for humanitarian purposes. Compounding the lacuna prevalent between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms, the organisation lacks a force upon which it can call to directly conduct military enforcement action,[[879]](#footnote-879) with the implementation of its Chapter VII mandates remaining at the behest of powerful states and, in particular, the permanent member of the UN Security Council. As outlined in Chapters 1 and 3, this continued dependency on the military capabilities axiomatic of such states helps in part to account for the international community’s failure to protect vulnerable populations in Somalia, Rwanda and Kosovo in the post-Cold War period, intimately bound up with the US’ reticence to incur military casualties. In addition, and as explained in Chapter 5, the almost complete absence of ground troops during the conflict in Libya could be seen as testament to the continuing phenomenon of *virtual war*, a legacy of the NATO-led operation in Kosovo and, more generally, a glowing indictment of the continued antipathy of UN member states to the loss of troops in conflict situations. In light of the continued retention of military force by UN member states, and by way of reform, one proposition would, as suggested by Pattison, see the extension and enhancement of the UN’s Standby Arrangement System (UNSAS),[[880]](#footnote-880) including the introduction of rapid-response units in order to enhance the capacity for the UN to directly undertake military interventions for humanitarian purposes.[[881]](#footnote-881) As Pattison explains, an enhanced UNSAS would result in the UN developing a wider knowledge of available troops, improved planning of humanitarian operations, an ability to deploy troops more quickly and, crucially, could mean that member states would be *more* willing to commit troops and resources.[[882]](#footnote-882) With regards to the establishment of rapid response units, meanwhile, these could be modelled on the existing EU Battlegroups conceived in 2004, a legacy of the European Rapid Reaction Force (ERRF) originally devised in 1999 following the development of the European Crisis Management Capacity (CMC).[[883]](#footnote-883) The operational military components of the European Security and Defence Policy (ESDP) and Common Security and Defence Policy (CSDP), these military groups are conceived as rapidly deployable and coherent force packages, consisting of highly-trained, battalion-sized formations - made up of approximately 1,500 soldiers - available within 15 days notice and sustainable for at least 30 days.[[884]](#footnote-884) Given that these EU Battlegroups are equipped with a broad spectrum of crisis management instruments that combine both military and civilian assets[[885]](#footnote-885) - and have already been deployed in various capacities in both the Balkans and Sub-Sahara Africa[[886]](#footnote-886) - the introduction of UN rapid response units could help to further bridge the lacuna between peacekeeping and peace-enforcement, potentially coming to resemble ‘cosmopolitan-minded’ militaries as postulated by Mary Kaldor and Robert Fine in their broader discussions of cosmopolitan law-enforcement.[[887]](#footnote-887)

It should be emphasised at this point that the long-term viability and sustainability of the current EU Battlegroups has been brought into question by the increasing preoccupation of the EU with the development of a separate civilian crisis management capacity,[[888]](#footnote-888) ubiquitous debate over the Battlegroups’ operational capability[[889]](#footnote-889) and, in particular, by their locus as a pool of voluntary national military forces - rather than a permanent or ‘standing’ EU force - with their employment wholly dependent upon the national approval of EU member states.[[890]](#footnote-890) Indeed, the issue of national approval is mooted by Pattison in his proposal for an extended and improved UNSAS, conceding that any operationalisation of an enhanced UN military capacity would continue to be dependent on the *ad hoc* contribution of troops, with member states continuing to retain control over their deployment.[[891]](#footnote-891) Subsequently, a more cogent proposal would see the construction of a *large*[[892]](#footnote-892) cosmopolitan UN standing force, a recommendation put forward by Pattison and prominent advocates of both cosmopolitan democracy and the institutional form of cosmopolitan human protection. As outlined in Chapter 2, Held propagates the establishment of a permanent and independent military force composed of individuals who volunteer from all countries, whilst Archibugi supports the creation of a cosmopolitan force or ‘rescue army’ composed of soldiers, police and civilians drawn from around 50 of the largest and most wealthy nations.[[893]](#footnote-893) For Archibugi in particular, this force would come to occupy the space between peacekeeping and peace-enforcement, trained specifically for humanitarian relief and fulfilling a role more associated with international ‘policing’ - characterised by its inclusion of doctors, teachers, social workers and engineers - whilst at the same being composed of military personnel prepared to risk their lives and use force as a matter of last resort[[894]](#footnote-894) in order to protect human rights.[[895]](#footnote-895) Pattison, finally, echoes many of the sentiments put forward by Held and Archibugi, advocating a permanent UN standing force of between 75,000-175,000 troops at any one time that would - further to a smaller UN force - be truly cosmopolitan in character, composed of volunteers motivated by humanitarian concerns and who, crucially, would have no national allegiance.[[896]](#footnote-896)

Further to the proposals to fully enumerate R2P within international law and inculcate a positive duty to intervene in threshold-crossing situations, it should be emphasised at this point that the realisation of such an independent and voluntary military capacity unique to the UN remains - for the immediate term - a pipedream. For example, and as Pattison explains, a UN standing force would require autonomy, both through acquiring the requisite financial, military and logistical resources and, more importantly, through being freed from the self-interested decision-making of the major powers.[[897]](#footnote-897) Thus, any potential construction and effective deployment of this new standing army would necessitate adjustments to the way in which intervention - particularly through the use of force - is *authorised* at the global constitutional level. As explained previously, powerful states remain pre-eminent over the decision-making process in respect to the protection of vulnerable populations, with broader economic and political objectives continuing to play a prominent role in any decision to - or more precisely not to - intervene for humanitarian purposes. This is reflected in the continued retention of veto power by the UNSC’s permanent member states, with the cases of Kosovo and Syria, in particular, underlining the gap between political rhetoric and political reality manifest at the global constitutional level. However, the proposal to establish such an independent and *voluntary* cosmopolitan force unique to the UN would help to overcome the opposition of UN member states to incurring military casualties, negating the requirement for national approval in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. In addition, the feasibility of conflating humanitarianism with a state’s perception of its national interest would, in theory, heighten the potential for such a military capacity to be sanctioned and deployed in such conflict situations. Thus, both the construction and operationalization of a UN standing army - within the ambit of a supranational authority that already provides the groundwork for the adoption of a more ideational form of interests at the global constitutional level - could, in the longer term, be achievable. If so, not only would it abrogate the continued dependency of the UN on the military capabilities axiomatic of powerful states, it would also *modify* the role of state self-interest in both the decision-making and enforcement process relating to the protection of vulnerable populations. In the case of the latter, this is in view of eschewing recalcitrance to the loss of troops in conflict-situations and, in addition, human protection concerns coming to provide *as legitimate* a basis for self-interest as broader political or economic objectives. Thus, the introduction of such an independent and voluntary military capacity unique to the UN could, in practice, further strengthen international consensus over the implementation of R2P’s conceptual and legal principles and, relatedly, the *relevance* of the notion of criminal justice intimately bound up with both the doctrine and cosmopolitan human protection. At the same time, it would further counter realist antipathy centred on the pre-eminence of broader economic and political objectives intrinsic to powerful states. In this way, therefore, the creation of a cosmopolitan UN standing force would similarly help to adhere to - and indeed perpetuate - the normative expectations of the cosmopolitan typology.

Thus far, then, this chapter has considered the proposals to ensconce R2P within international law, confer a positive duty on UN member states to intervene in threshold-crossing situations and - most plausible of all - to modify a state’s perception of its national interest, all of which would, if implemented, come to strengthen the nexus between R2P and the cosmopolitan approach to human protection. In the process, the doctrine would move a step further towards fulfilling the demands of this cosmopolitan typology. In addition, this chapter has championed the construction and deployment of an independent and voluntary military capacity unique to the UN that would accentuate the relevance of the cosmopolitan vision of criminal justice, enabling R2P to both adhere to and perpetuate the expectations axiomatic of cosmopolitan human protection. Alongside the above proposals, a further recommendation would see the introduction and amalgamation of cosmopolitan democratic principles within R2P’s normative and conceptual framework, potentially enhancing the *implicit* nexus manifest between R2P and the concept of cosmopolitan distributive justice. As discussed in Chapter 4, and in accordance with the principles axiomatic of this cosmopolitan ideal, R2P imparts a responsibility on the international community to help *prevent* the conditions that can lead to violent and intractable conflict within endemically weak and abusive states. This responsibility has transcended the role of the international community in simply assisting domestic states in preventing the root causes of armed conflict, with R2P providing a nascent acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals in accordance with the principles associated with cosmopolitan distributive justice. Given that the cosmopolitan approach to human protection must incorporate principles of distributive global justice in order to remain fully consistent with broader cosmopolitan aims, the doctrine can be understood to have reinforced its relationship with this cosmopolitan typology. Indeed, and as explained, in tentatively bridging the lacuna between cosmopolitan distributive justice and cosmopolitan human protection, R2P has helped to enhance the veracity and credibility of the latter as a contemporary approach to international relations theory. However, and as espoused, R2P maintains an *imperfect* relationship with the concept of cosmopolitan distributive justice. This in view of its failure to sufficiently recognise the importance of the global socioeconomic realm in achieving justice for individuals[[898]](#footnote-898) or, in turn, providing recommendations on how the role of influential global actors and powerful states in widening global inequalities and social exclusion - and thus precipitating the conditions conducive to violent and protracted forms of intra-state conflict - could potentially be subverted. Consequently, and in view of the doctrine’s limitations, one can turn to the series of institutional and democratic propositions put forward under the aegis of cosmopolitan democracy. This approach, in contrast, assesses the role of the global socioeconomic realm in providing justice for individuals and, in addition, provides recommendations which, if implemented, could strengthen the relationship between R2P and the concept of cosmopolitan distributive justice. From a cosmopolitan democratic perspective, the current system of global governance is characterised by a persistent ‘democratic deficit’ in which there are few mechanisms of accountability accessible to the general population.[[899]](#footnote-899) Put another way, the global socioeconomic realm is characterised by a politics of *exclusion*, with the participation of individuals in the decision-making process of prominent global actors either non-existent or serving a merely aesthetic purpose.[[900]](#footnote-900) According to Held and Anthony McGrew, this democratic deficit is attributable in part to the impact of environmental, political and, in particular, *economic* globalisation on the nation-state, a phenomenon that transforms the spatial organisation of social relations and transactions and, in the process, generates transcontinental or international networks of interaction and the exercise of power,[[901]](#footnote-901) consequently disrupting the hierarchical structure of the state system.[[902]](#footnote-902) This process has resulted in the appearance of quasi-autonomous international institutions,[[903]](#footnote-903) transnational corporations and NGOs, influential global actors who have contributed to the failure of the current system of global governance to achieve human security and social development. In addition, Held and Archibugi acknowledge the impact of powerful states in distorting the current system and precipitating this persistent democratic deficit which, in turn, has restricted the realisation of greater social justice and human security.[[904]](#footnote-904) This is exemplified by their role in establishing new supra-state layers of political authority - more specifically international governmental organisations (IGOs) - in an effort to promote or regulate the forces of globalisation which, subsequently, have weak democratic credentials and, at the same time, stand in an ambiguous relationship to existing systems of national accountability.[[905]](#footnote-905) Furthermore, it is witnessed through the continued influence of states over the global *economic* decision-making process, underlined by the asymmetrical and hierarchical structure of such IGOs as the World Bank, IMF and World Trade Organisation (WTO).[[906]](#footnote-906) Crucially, it is the resulting system of elite global governance detached from responsibility to the general population[[907]](#footnote-907) that has widened global inequalities and social exclusion, offsetting the potential fulfilment of greater social justice and human security. In light of the democratic deficit symptomatic of the current system of global governance, Held advocates the construction of a global democratic polity and culture, the only framework in which, from a cosmopolitan democratic perspective, the ideals of autonomy and democracy - and, more specifically, *individual* participation in the global economic and political decision-making process - can be fully realised.[[908]](#footnote-908) Encompassing a broad gamut of political, environmental and economic measures, he postulates the creation of a new global democratic assembly (or global parliament) of democratic peoples - directly elected by them and accountable to them - that could potentially work alongside the existing UN General Assembly.[[909]](#footnote-909) An assembly of democratic nations that would, in principle, draw other nations in over time, and amalgamating states, IGOs, NGOs, citizen groups and social movements, this assembly would, according to Held, act as an authoritative centre for the examination of global problems including food supply and distribution of resources.[[910]](#footnote-910) As emphasised previously, these problems have contributed to the conditions of global poverty and inequality conducive to the appearance of violent and protracted forms of intra-state conflict in the post-Cold War period. Archibugi, meanwhile, echoes many of Held’s sentiments in supporting the creation of a World Parliamentary Assembly (WPA) that directly represents the peoples of the world rather than their governments, potentially comprising some 600 directly-elected deputies with a more than proportional representation accorded to the smaller countries and a less than proportional one to the larger countries.[[911]](#footnote-911) This WPA would have a wide jurisdiction, representing a forum for the discussion of such global problems as economic and social development, the defence of human rights and the promotion of political participation.[[912]](#footnote-912) Archibugi also highlights the need for greater democracy *within* existing international organisations, alluding to the continued influence of powerful states over the global economic decision-making process reflected in the imbalance in decision-making power within the World Bank, as well as in the IMF’s quota system.[[913]](#footnote-913)

In summary, then, and in accordance with the principles of cosmopolitan distributive justice, the model of cosmopolitan democracy propagated by Held and Archibugi can be understood to systematically acknowledge the role of the global socioeconomic realm, and in particular states, in precipitating injustice amongst individuals - evidenced by the politics of exclusion symptomatic of the current system of global governance - and, furthermore, to put forward recommendations on how to potentially remedy this democratic deficit. However, it is important to emphasise that the proposal to introduce and amalgamate cosmopolitan democratic principles within R2P’s normative and conceptual framework could be dismissed as a chimera, whilst a number of the propositions put forward under the aegis of cosmopolitan democracy *per se* require clarification. With regards to the latter, this is elucidated by the continued debate over the representative base of Held’s global democratic assembly,[[914]](#footnote-914) as well as in the polarisation between Held and Archibugi’s approach to *non-democratic* nations, with Held advocating their gradual integration and Archibugi, in contrast, eschewing the possibility of their inclusion within the WPA.[[915]](#footnote-915) As such, therefore, cosmopolitan democracy continues to provoke important and thus far *unresolved* questions pertaining to both its democratic praxis and structural efficacy. With regards to the quixotic nature of the cosmopolitan model’s institutional and democratic propositions, meanwhile, this is expounded by the prevalence of alternative realist and liberal explanatory accounts of global governance that assert the continuing pre-eminence of the *state* in domestic and international affairs. Realists, for example, argue that national governments still make the primary decisions relating to economic and political matters - and set the rules within which other actors function[[916]](#footnote-916) - whilst liberals propagate the existence of a neoliberal capitalist international order predicated on US hegemonic power,[[917]](#footnote-917) committed to the pursuit of the liberal goals of equal freedom under the rule of law in all states of the world.[[918]](#footnote-918)

Despite the caveats attached to cosmopolitan democracy and the nominal character of its institutional and democratic recommendations, it is important to remember that R2P can already be equated with a politics of prevention.[[919]](#footnote-919) Eliciting an international responsibility to help prevent the conditions that can lead to violent and protracted intra-state conflict, R2P can, as outlined previously, be seen to embody a theoretical consensus amongst member states pertaining to the *prevention* of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, a *nascent* acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals. This latter claim is expounded by the contents of Ban Ki-Moon’s 2014 report *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect* which, as explained, recognises the influence of both poorly-designed international support and technical advice in inadvertently creating or exacerbating social cleavages and, most importantly, the role of private sector actors in indirectly contributing to the commission of atrocity crimes through their operations and business practices.[[920]](#footnote-920) So, and whilst still focused primarily on the responsibility of domestic states to resolve the root sources of armed conflict, it is not inconceivable that a systematic analysis and *acceptance* of the role of influential global actors, including powerful states, in burgeoning global inequalities - thus precipitating the conditions conducive to violent and protracted forms of intra-state conflict - could manifest and coalesce with R2P. If so, the doctrine would provide the foundations of a more cogent relationship with the concept of cosmopolitan distributive justice intimately bound up with cosmopolitan human protection. In this way, therefore, a comprehensive acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals would, similarly to the introduction of a cosmopolitan UN standing force, help the doctrine to further adhere to - and indeed perpetuate - the expectations axiomatic of the cosmopolitan typology, assuaging criticism of the latter centred upon its primarily *ad hoc* approach to the protection of vulnerable populations.

**Strengthening the nexus between R2P and Habermas’ Global Constitutional Paradigm**

Thus far, then, this chapter has assessed the feasibility of a number of institutional and legal reforms which, if introduced, could enhance the nexus between R2P and the cosmopolitan approach to human protection. As discussed, the proposals to ensconce R2P within international law, inculcate a positive duty on UN member states to intervene in threshold-crossing situations and, finally, to modify a state’s perception of its national interest would all, if achieved, strengthen the cosmopolitan *zeitgeist* underpinning R2P, seeing the doctrine move a step further towards fulfilling the normative demands of the cosmopolitan typology. It is the latter recommendation to adjust a state’s perception of its national interest that remains the most viable of these propositions, a consequence of the institutional building blocks both the EU and, in particular, the UN provide for the creation and adoption of a more ideational form of interests at the global constitutional level. In addition, and as explained, the construction of an independent and voluntary military capacity unique to the UN and, furthermore, the integration of cosmopolitan democratic principles within R2P’s normative and conceptual framework would enable the doctrine to both adhere to and perpetuate the expectations of the cosmopolitan form of human protection. In the case of the former, this proposal would, in practice, further strengthen international consensus over the implementation of R2P and, relatedly, the relevance of the vision of criminal justice inextricably linked to both the doctrine and the cosmopolitan typology. In the case of the latter, this recommendation would establish the foundations of a more cogent relationship between R2P and the concept of cosmopolitan distributive justice, in the process helping to offset concerns over the predominantly reactive approach of cosmopolitan human protection to the perpetration of large-scale human rights atrocities.

Having considered a broad array of institutional and legal reforms that would conceivably strengthen the nexus between R2P and the cosmopolitan approach to human protection, this chapter will now outline a series of proposals which, if implemented, could strengthen the cosmopolitan legal *zeitgeist* underpinning the doctrine and, in the process, its nexus with Habermas’ constitutional cosmopolitan approach. As explained in Chapter 5, through its legal cogency, codification and incremental internalisation and invocation by UN member states, R2P has begun to tentatively bridge the lacuna between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms, accentuating the potential fulfilment of Habermas’ overarching cosmopolitan objective and, in the process, helping to foster a sense of enthusiasm over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. In addition, and whilst failing to address the asymmetrical relationships and non-cosmopolitan legal tenets manifest within the UN, the doctrine has established a normative and, to a lesser extent, empirical framework for offsetting wider concerns over the ‘misuse’ of the terminology of humanitarian intervention. At the same time, R2P has qualified a further weakness symptomatic of cosmopolitan human protection and, as a consequence, reinforced the sense of optimism that surrounds the transition towards this cosmopolitan typology. However, and as explained, the doctrine has - particularly in practice - fallen short of systematically advancing Habermas’ constitutional cosmopolitan approach, in the process failing to provide a secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms and, consequently, tempering enthusiasm over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period. Moreover, the doctrine has thus far provided a limited empirical framework for assuaging concerns over the self-motivated and potentially neo-imperialist inclinations of powerful states, largely failing in practice to reinforce the sense of optimism that surrounds the transition towards the cosmopolitan typology. Consequently, and given that the relationship between R2P and Habermas’ constitutional cosmopolitan approach is integral to the overarching contention of this thesis, this chapter will now assess the viability of a number of prospective institutional and legal reforms which, if introduced, would further help to perpetuate the limited progress thus far made towards a more cosmopolitan form of human protection and, normatively speaking, inculcate a greater sense of enthusiasm over the transition towards this cosmopolitan typology in the post-Cold War period.

As explained in Chapter 5, R2P has yet to acquire the status of a fully ensconced constitutional principle - with the discretionary and *ad hoc* nature of the language attached to the doctrine compounding its inconsistent and selective application by UN member states - and, in addition, to be invoked explicitly in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. With regards to the former, the proposal to fully enumerate the doctrine would help to overcome its status as a *weak* emerging norm within international law, with R2P instead conferring a legally-binding and collective obligation on UN member states to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity. Whilst in the short term this proposition remains a chimera,[[921]](#footnote-921) in the longer-term it could be achieved as a by-product of the subtle adjustment to a state’s perception of its ‘national interest’. As discussed previously, the UN already provides the building blocks for the creation and adoption of a more ideational form of interests at the global constitutional level. If implemented, the full enumeration of R2P in international law would have the effect of strengthening the doctrine’s legal cogency, for the first time engendering an obligation on the international community to intervene in threshold-crossing situations and, in the process, helping to further bridge the lacuna between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms. In short, it would see R2P evolve from a nascent and innovative legal principle into an established and legally-binding commitment at the global constitutional level, perpetuating Habermas’ constitutional cosmopolitan approach and, at the same time, strengtheningthe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. In the process, R2P would provide a more secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms - more specifically the notion of collective international responsibility - in theory helping to foster a greater sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

With regards to potentially offsetting the failure of R2P to be invoked explicitly in relation to the international community’s secondary responsibility, one can again turn to the proposal to modify a state’s perception of its national interest, as well as to the recommendation to establish an independent and voluntary military capacity unique to the UN. As discussed in Chapter 5, the notion of a residual responsibility to intervene in the event that state authorities fail to protect their populations is still contested by some members of the Security Council as an appropriate rationale for military action, testament to the lack of consensus over the implementation of R2P’s conceptual and legal principles in instances of genocide, war crimes, ethnic cleansing and crimes against humanity. In Libya, for example, the failure to invoke this secondary responsibility could be attributed to the prevailing concerns of Russia and China with preserving the territorial integrity of autonomous sovereign states and, in addition, the antipathy of the US to the loss of troops in conflict situations. In Syria, meanwhile, it has been the consequence of both R2P’s nexus with regime change in Libya and the predispositions of Russia and China respectively. It so follows, therefore, that the coalescence of humanitarianism with a state’s perception of its national interest - with human protection concerns coming to provide as legitimate a basis for self-interest as broader political or economic objectives - and, furthermore, the establishment of an independent and voluntary UN standing force that eschews both the requirement for national approval and opposition amongst states to the loss of troops in conflict situations could, in practice, help to remedy the absence of a secondary international responsibility to protect in instances of genocide, war crimes, ethnic cleansing and crimes against humanity. Put simply, the proposals to modify a state’s perception of its national interest and establish a military capacity unique to the UN could *strengthen* international consensus over the operationalization of R2P. Relatedly, the proposals to modify a state’s perception of its national interest and establish an independent and voluntary military capacity unique to the UN would, if implemented, see the doctrine take a further step towards reaching the ‘norm internalisation’ stage of Finnemore and Sikkink’s normative life-cycle model[[922]](#footnote-922) and, at the same time, potentially provide a blueprint for the evolution of a *customary international law* concerned with the protection and advancement of human rights in threshold-crossing situations. Thus, in remedying the absence of a secondary international responsibility to protect, R2P would come to further bridge the lacuna between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms, elevatingthe sense in which the institution reflects the foundations of a nascent global constitutional order resembling something comparable to a legally-constituted political community of states and their citizens. When once again assessed in the context of its relationship with cosmopolitan humanitarian principles - more specifically the re-conceptualization of state sovereignty, vision of criminal justice and provision of delineated and limited thresholds for intervention axiomatic of cosmopolitan human protection - R2P would, in practice, come to provide a more secure platform for the constitutionalisation and grounding of such normative cosmopolitan elements, once again engendering a greater sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

As emphasised, R2P has also thus far provided a limited empirical framework for assuaging concerns over the self-motivated and potentially neo-imperialist inclinations of powerful states. This is evidenced by the asymmetrical relationships and neo-imperialist trends that continue to manifest at the global constitutional level, with the former witnessed through the continued retention of veto power by the UNSC’s permanent member states and, most recently in the case of the latter, R2P’s implicit nexus with regime change in Libya. The continuation of such asymmetrical relationships and neo-imperialist trendsunder the aegis of constitutionalisation has, as explained in Chapter 5, run antithetical to Habermas’ linear and teleological assessment of the constitutionalisation process, re-affirming the weakness of the UN’s enforcement mechanisms - despite the progress made under the auspices of R2P - and, at the same time, qualifying the prospective fulfilment of Habermas’ overarching cosmopolitan objective. Given that cosmopolitan human protection adopts a quixotic approach to mitigating the influence of powerful states over the decision to intervene for humanitarian purposes and, in practice, fails to offset the possibility of humanitarian intervention being employed as a smokescreen for the perpetuation of political and economic objectives apposite to such states, one can discern that, from an empirical perspective, R2P has largely failed to address such weaknesses symptomatic of the cosmopolitan typology. In this sense, therefore, the doctrine has also failed to reiterate the sense of optimism that surrounds the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

In potentially remedying R2P’s failure to overcome - and, as explained in Chapter 5, in certain respects *reinforce* - the asymmetrical legal relationships manifest within the UN, one can again turn to the model of cosmopolitan democracy propagated by Held and Archibugi. Further to their acknowledgement of the role of the global socioeconomic realm in precipitating injustice amongst individuals and, subsequently, their promulgation of institutional and democratic recommendations that could potentially subjugate this democratic deficit, Held and Archibugi also examine the *political* connotations attached to the elite and undemocratic system of global governance and, more specifically, its implications for human rights. Held, for example, argues that despite its potential, the UN continues to be undermined as an autonomous agency,[[923]](#footnote-923) with the implementation of its initiatives in relation to conflict management and resolution continually undermined as a result of infighting amongst nations and groups wholly unable to settle pressing collective issues.[[924]](#footnote-924) Further to pursuing measures to enforce key elements of the UN Rights Conventions, the prohibition on the discretionary right to use force and the collective security system envisaged within the UN Charter *per se*, Held proposes extending the UN Charter model.[[925]](#footnote-925) This would take the form of providing means of redress in the case of human rights violations via a new international human rights court, making a near consensus vote in the General Assembly a legitimate source of international law (and recognised by the global democratic assembly), modifying the veto arrangement in the UNSC or, finally, rethinking representation within the Security Council so as to allow for adequate regional accountability.[[926]](#footnote-926) In doing so, a basis could be established for the UN to act as a politically-independent decision-making centre.[[927]](#footnote-927) Archibugi, meanwhile, argues that the five-country right to veto within the UN Security Council is a breach of all conventional democratic principles, reflecting a form of constitutional hypocrisy and imperial privilege within the international sphere.[[928]](#footnote-928) As a consequence, he proposes limiting the exercise of veto power to certain issues, broadening the representation of the UNSC to include ten more frequently rotating seats elected by the GA and opening up the UNSC to regional institutions such as the EU and, in time, NGOs.[[929]](#footnote-929) NGOs have, as Robert Gilpin acknowledges, already successfully influenced the policy areas of a number of national governments and international institutions,[[930]](#footnote-930) and given that the inclusion of such groups is, from a cosmopolitan perspective, intended to maximise the role that genuine humanitarian concerns play in deliberation leading up to any decision over the use of force,[[931]](#footnote-931) one can discern that their inclusion with the UNSC would have substantial and at the same time *positive* implications for the decision-making process in respect to the protection of vulnerable populations.

For both Held and Archibugi, therefore, the principles of cosmopolitan democracy provide a means through which to overcome the detrimental *political* connotations attached to the existing system of global governance, weakening the monopoly possessed by powerful states over the decision to intervene for human protection purposes and, as a consequence, strengthening the *prima facie* democratic and altruistic principles upon which the UN is currently predicated. With regards to R2P, modifying the decision-making process at the global constitutional level would help to ensure that the implementation of the doctrine is founded upon conventional democratic and altruistic principles. As such, therefore, and further to the reforms put forward under the aegis of cosmopolitan democracy, R2P would, at the very least, *consolidate* Habermas’ linear and teleological assessment of the constitutionalisation process. In addition, and given R2P’s status as an emerging and constitutive norm - and *novel* and nascent international legal principle - in relation to the duties conferred on the wider international community, modifying the decision-making process and, potentially, increasing the number of international interventions that occur under the aegis of the doctrine could further *enhance* the prospective fulfilment of Habermas’ overarching cosmopolitan objective. By situating R2P within such a comprehensive and robust programme of institutional reform, therefore, the doctrine would help to both consolidate and perpetuate Habermas’ constitutional cosmopolitan approach. Moreover, any adjustment to the decision-making process could extend directly to R2P’s normative and conceptual framework, principally through the insertion of a clause - potentially drawn up by the UN International Law Commission - that stipulates that interventions can occur in situations that both implicate and directly involve UNSC members. In the process, R2P would help to further negate the elitist and non-democratic principles upon which the existing system of global governance is purported to be based and, at the same time, the non-cosmopolitan legal tenets manifest within the UN. Correlatively, through enhancing the potential fulfilment of Habermas’ overarching cosmopolitan narrative, R2P would also help to address the failure of cosmopolitan human protection *in practice* to attenuate the influence of powerful states over the decision-making process. As a consequence, therefore, the doctrine would come to *further* reiterate the sense of optimism that surrounds the evolution towards a more cosmopolitan form of human protection in the post-Cold War period.

Whilst the proposals to situate R2P within a broader ambit of institutional reform and modify the doctrine’s normative and conceptual framework to reflect a greater level of democratic accountability could potentially enhance the prospective fulfilment of Habermas’ overarching cosmopolitan objective, it is important to emphasise that such recommendations remain for the immediate term both idealistic and highly utopian in outlook. In sum, their introduction would again be contingent upon the will and compliance of powerful states, set against the realities of an international order in which the inclinations of such states continue to supersede and take precedence over humanitarian objectives - illustrated by the UN’s anaemic response to the conflicts in Kosovo and Syria - whilst the power of veto remains a mechanism whereby intervention can be precluded despite transgressions under the auspices of international and international humanitarian law. For now, a more realistic proposition would again see the creation and adoption of a more ideational form of interests which, as discussed, could potentially *elevate* the role that human protection concerns play in the decision-making process. It should also be emphasised that the propositions put forward by Held and Archibugi raise further important and unresolved questions relating to both the democratic praxis and structural efficacy of the cosmopolitan democratic model. Held, for example, supports widening representation within the UNSC so as to allow for adequate regional accountability, however subsequently fails to specify *how* and in what form such representation would take. Archibugi, meanwhile, alludes to restrictions on the power of veto yet fails to specify *which* issues its use would be limited to. There are also problems with some of the more succinct and forthright proposals put forward under the aegis of cosmopolitan democracy. For example, and whilst Held supports making a near consensus in the GA a legitimate source of international law, it is highly unlikely that such an agreement could be secured given the current level of opposition to any form of intervention authorised outside the auspices of the Security Council,[[932]](#footnote-932) whilst the present option to bypass inaction within the UNSC - the GA’s ‘Uniting for Peace’ procedure - is both non-binding and considered a process of recommendation only.[[933]](#footnote-933) Archibugi’s proposal to eventually extend representation within the UNSC to NGOs, meanwhile, is similarly problematic, given their perceived lack of accountability and genuine ability to influence the policy-making process.[[934]](#footnote-934) Finally, and whilst both Held and Archibugi advocate opening up the UNSC to regional institutions, there is continued scepticism over the motivations and actions of such groups. For example, and whilst the LAS played a pivotal role in pressurising the UNSC into imposing sanctions and enforcing a Chapter VII mandate in the case of Libya, as explained in Chapter 4 the organisation has been unwilling to provide a strong lead in the case of Syria, primarily a consequence of the close relationship that many of its members - particularly Lebanon - share with the Assad regime. Furthermore, and despite its support for SCR1973, the AU was initially muted in its response to the crisis in Libya, with its irrevocable ties to the Gaddafi regime encapsulating how broader economic and political objectives continue to influence and shape the involvement of such organisations in humanitarian crises occurring within African states.[[935]](#footnote-935) It could also be argued that the AU’s subsequent support for military intervention in Libya was not *primarily* motivated by humanitarian concerns, despite claims to the contrary.[[936]](#footnote-936) In summary, then, the unlikelihood of making a near consensus in the GA a legitimate source of international law, concerns over the accountability and ability of NGOs within the ambit of the UNSC and the interests of regional organisations have further characterised the problematic nature of the reforms put forward under the auspices of cosmopolitan democracy. Further to the model’s idealistic approach to modifying the decision-making process, therefore, these caveats have - for the immediate term - compounded the impracticality of situating R2P within such a broad ambit of institutional and democratic reform at the global constitutional level.

Further to the continuation of asymmetrical legal relationships under the aegis of constitutionalisation, R2P has, as explained previously, largely failed in practice to eschew concerns over the ‘misuse’ of the terminology of humanitarian intervention. Indeed, the doctrine could be seen to have perpetuated such concerns following its nexus with regime change in Libya which, further to the continued retention of veto power by the UNSC’s permanent member states, has similarly compounded protestations to Habermas’ linear and teleological assessment of the constitutionalisation process. Whilst this thesis has contended that concerns with human protection were the primary objective of intervening states in the case of Libya - and the protection of human rights can in fact be conflated with the process of regime change - it is important to re-affirm that regime change was a *direct* consequence of the decision to implement the use of force for human protection purposes and, as acknowledged by Bellamy, an *intention* of those responsible for executing the Security Council’s decisions in response to the perpetration of widespread human rights abuses.[[937]](#footnote-937)Given that the provisions outlined under SCR1970 - which invoked the responsibility of the Libyan government to protect its own people - were to extend to SCR1973, and the coercive measures adopted under the latter were to fall within the scope of R2P, the doctrine can be understood to be *implicitly* connected to the process of regime change in Libya. As such, therefore, and as emphasised in Chapter 5, the broader implications of NATO’s military intervention have posed a substantial challenge to advocates of humanitarian intervention and, more importantly, to the operationalization of R2P in threshold-crossing situations. This contention is further supported by the UN’s anaemic response to the conflict in Syria, with the consequences of regime change in Libya in part accounting for the decision of China and Russia to veto proposed sanctions. As articulated in Chapter 5, it is important to emphasise that Libya has not sounded R2P’s death-knell,[[938]](#footnote-938) with the UN’s invocation of the doctrine in response to the atrocities committed in the Central African Republic (CAR)[[939]](#footnote-939) and, more recently, Malcolm Rifkind’s fleeting reference to the ‘responsibility to protect’ following the US’ decision to launch air strikes against ISIS/IS in Iraq underlining how the doctrine continues to occupy a space at the high end of the norm cascade spectrum. However, and as Bellamy explains, it is clear that the international community must address the difficult questions surrounding the implementation of R2P in order to maximise the protection afforded to vulnerable populations, whilst maintaining the global consensus that followed the endorsement and subsequent re-affirmation of the doctrine.[[940]](#footnote-940) As a consequence, Bellamy has championed the concept of *Responsibility while Protecting* (RwP) put forward by Brazilian President Dilma Rouseff at a General Assembly meeting in 2011 and expedited by the fall-out from the military intervention in Libya,[[941]](#footnote-941) the introduction of which could, potentially, help to address R2P’s ‘risk of relevance’.[[942]](#footnote-942) Whilst calling for a renewed focus on *‘*prevention’ - according to Bellamy, this would involve states providing real resources to strengthen preventive capacities and establishing the development of strategies for prevention including capacity building, early warning and assessment, information sharing and joint lesson learning[[943]](#footnote-943) - RwP also proposes stronger accountability for states acting under a UN mandate, as well as enhanced analysis and assessment to drive decision-making on the best responses to the manifestation or imminent perpetration of human rights atrocities.[[944]](#footnote-944) Whilst still in its infancy, Bellamy draws upon the RwP initiative to put forward a number of proposals which, if introduced, could balance the need to maintain a global consensus over the manner in which R2P is implemented with the requirement for timely and decisive action to protect vulnerable populations.[[945]](#footnote-945) With regards to the issue of accountability, he advocates the strengthening of existing procedures within the UNSC, potentially through the insertion of specific measures into Security Council resolutions.[[946]](#footnote-946) Such measures could include ‘sunset clauses’ - placing a time-limit on UN mandates - specific reporting requirements so as to ensure states relay their conduct directly to the UNSC, limits on certain practices, the possibility of direct action by the Security Council and information gathering mandated by the UNSC separate from the reporting of states.[[947]](#footnote-947) Crucially, the inclusion of such processes could help to offset the *unintended* consequences resulting from the enforcement of a Chapter VII mandate, as Bellamy explains allowing the tailoring of accountability measures to individual circumstances and, crucially, enabling the UNSC to more effectively hold individual states that act on its mandates to account.[[948]](#footnote-948)

Bellamy argues that the responsibility of assessing the best responses to the manifestation or imminent perpetration of acts of genocide, war crimes, ethnic cleansing and crimes against humanity should be assigned to the Joint Office for Genocide Prevention and the Responsibility to Protect within the UN Secretariat, an independent service that works for all member states.[[949]](#footnote-949) This service is already concerned with conducting early-warning assessment, building system-wide capacity and developing common policy on R2P situations,[[950]](#footnote-950) helping to frame the ensuing debate over the conflict in Libya as one concerning atrocity prevention and human protection.[[951]](#footnote-951) Moving forward, therefore, the Joint Office for Genocide Prevention and the Responsibility to Protect appears the most appropriate - and most attainable - organisation for re-shaping the decision-making process in relation to the protection and advancement of global human rights. Whilst the ultimate decision to intervene would still remain in the hands of powerful states, the Joint Office would provide detailed information relating to the merits and demerits of different courses of action,[[952]](#footnote-952) including the use of force for human protection purposes. As such, therefore, the international community would be in a position to weigh up coercive intervention against the possibility of regime change *prior* to any sanctioning of a Chapter VII mandate.

It should be acknowledged at this point that any introduction of the proposed accountability measures for states acting under a UN mandate and, in addition, enhanced decision-making under the aegis of the Joint Office for Genocide Protection and the Responsibility to Protect is once again contingent on the compliance of powerful states and, in particular, their willingness to elevate human protection concerns above broader - and potentially nefarious - political and economic objectives. In addition, even if RwP was to be endorsed and adopted by the international community *a la* R2P, regime change may, in practice, remain an *intended* consequence of those responsible for implementing the UN’s Chapter VII mandates, whilst states could eschew any consideration of the positives - and indeed negatives - linked to the decision to intervene for human protection purposes. However, incremental steps have already been taken to modify the decision-making process at the global constitutional level, exhibited by the gradual merging of humanitarianism with a state’s perception of its national interest - potentially amplifying the role that human protection concerns play in any decision to intervene - and, as discussed here, the importance of the Joint Office for Genocide Prevention and the Responsibility to Protect. Thus, it is not beyond the realms of possibility that, moving forward, UN member states could eventually accept a more prominent role for the Joint Office and, crucially, defer to its recommendations on the most appropriate responses to the manifestation or imminent perpetration of acts of genocide, war crimes, ethnic cleansing and crimes against humanity, including the merits and demerits of employing military force. Thus, the proposals outlined under RwP could reduce the likelihood of unintended regime change and, in particular, heighten global awareness of the phenomenon and its concomitant implications prior to any decision to intervene for human protection purposes. At the same time, the introduction of RwP could potentially strengthen international consensus over the implementation of R2P’s conceptual and legal principles in threshold-crossing situations, helping to assuage concerns over regime change and, more precisely, the ‘misuse’ of the terminology of humanitarian intervention. Through the ratification and adoption of the propositions outlined under the aegis of RwP, therefore, R2P would, in practice, further counter opposition to Habermas’ linear and teleological assessment of the constitutionalisation process, enhancing the potential fulfilment of his overarching cosmopolitan objective. In addition, R2P would provide a more secure *empirical* framework for addressing a further weakness symptomatic of cosmopolitan human protection - its failure in practice to offset the possibility of military force being used as a smokescreen for the pursuit of broader objectives apposite to powerful states - helping to further adhere to and perpetuate cosmopolitan humanitarian demands and, in the process, reiterating the sense of optimism that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

**Conclusion**

This chapter began by examining a series of institutional and legal reforms which, if introduced, could help to enhance the nexus between R2P and cosmopolitan human protection, seeing the doctrine move a step further towards fulfilling the normative demands of the cosmopolitan typology. These proposals include the full enumeration of the doctrine in international law - imparting a legally-binding and collective obligation on the international community to respond to acts of genocide, war crimes, ethnic cleansing and crimes against humanity - the inculcation of a *positive duty* on UN member states to intervene in such threshold-crossing situations and the modification of a state’s perception of its ‘national interest’. In addition, the construction of an independent and voluntary military capacity exclusive to the UN and, furthermore, the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework would further help the doctrine to both adhere to - and indeed perpetuate - the expectations of the cosmopolitan approach to human protection. In the case of the former, and as discussed, the construction of an independent and voluntary UN standing force would help to counter opposition amongst UN member states to the loss of troops in conflict situations, at the same time negating the requirement for national approval. Moreover, conflating humanitarianism with a state’s perception of its national interest would heighten the potential for such a military force to be sanctioned and deployed in conflict situations. As a consequence, therefore, the construction of an independent and voluntary military capacity exclusive to the UN could strengthen consensus over the implementation of R2P and, relatedly, the relevance of the vision of criminal justice inextricably linked to both the doctrine and the cosmopolitan form of human protection. With regards to the latter, meanwhile, the coalescence of cosmopolitan democratic principles with R2P’s normative and conceptual framework - and, more specifically, a systematic acknowledgement of the role of influential global actors and powerful states in precipitating the conditions conducive to violent and protracted forms of intra-state warfare - would establish the foundations of a more robust relationship between the doctrine and the concept of cosmopolitan distributive justice innate to cosmopolitan human protection, further assuaging criticism of the latter premised upon its predominantly reactive approach to the protection of vulnerable populations.

Further to systematically appraising a broad array of reforms that could strengthen the relationship between R2P and cosmopolitan human protection, this chapter has also critically assessed a series of proposals that would, if implemented, help to perpetuate the doctrine’s nexus with Habermas’ constitutional cosmopolitan approach. As discussed, these include the full enumeration of R2P within international law, alongside the earlier recommendations to both modify a state’s perception of its national interest and establish an independent military capacity exclusive to the UN. If introduced, such reforms would help to further bridge the lacuna between the UN’s normative commitment to human rights and the weakness of its enforcement mechanisms, accentuating the potential fulfilment of Habermas’ overarching cosmopolitan objective and, at the same time, enhancing this author’s claim that the UN reflects the foundations of a nascent global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens. In the process, R2P would, in both theory and in practice, come to provide a more secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms, eliciting a greater sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

This chapter finished by championing the introduction of a series of institutional and legal reforms that could equip R2P with the empirical tools to subjugate the asymmetrical relationships and neo-imperialist trends that continue to run antithetical to Habermas’ linear and teleological assessment of the constitutionalisation process. With regards to remedying the asymmetrical legal relationships that continue to manifest at the global constitutional level, this could be achieved through a re-structuring of the decision-making process in relation to the protection of vulnerable populations - in particular through modifying the power of veto - in accordance with the principles associated with cosmopolitan democracy. As discussed, such a proposal would help to ensure that the implementation of R2P is predicated on conventional democratic and altruistic principles, consolidating Habermas’ linear and teleological assessment of the constitutionalisation process. In addition, situating R2P within such a comprehensive and robust programme of institutional reform would help to perpetuate Habermas constitutional cosmopolitan approach, a consequence of the doctrine’s status as an emerging norm and novel international legal principle. Adjustments could also be made directly to R2P’s normative and conceptual framework, principally through the insertion of a clause stipulating that interventions can occur in situations that both implicate and directly involve UNSC members. At the same time, the doctrine would help to address a fundamental weakness symptomatic of cosmopolitan human protection, more specifically its quixotic approach to mitigating the influence of powerful states over the decision to intervene for humanitarian purposes. Thus, through modifying the decision-making process in relation to the protection of vulnerable populations, R2P would come to further reiterate the sense of optimism that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period. With regards to the manifestation and potential proliferation of neo-imperialist trends that have further qualified the prospective fulfilment of Habermas’ overarching cosmopolitan objective, this chapter has considered the recommendations put forward under the initiative of *Responsibility while Protecting* (RwP) which, if codified, could reduce the likelihood of unintended regime change and, in addition, heighten global awareness of the phenomenon and its concomitant implications prior to any decision to intervene for human protection purposes. As discussed, the introduction of RwP could potentially strengthen international consensus over the implementation of R2P in instances of genocide, war crimes, ethnic cleansing and crimes against humanity, further alleviating concerns over the ‘misuse’ of the terminology of humanitarian intervention - exacerbated by the doctrine’s nexus with regime change in Libya - and, in the process, perpetuating Habermas constitutional cosmopolitan approach. In addition, R2P would provide a more secure empirical framework for addressing a further caveat attached to the cosmopolitan form of human protection - its failure in practice to offset the possibility of military force being used as a ‘Trojan Horse’ for the pursuit of broader political and economic objectives - once more reiterating the sense of optimism that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

It is important to reiterate that a number of the institutional and legal reforms considered in this chapter remain in the short term a chimera, a consequence primarily - albeit not exclusively - of the prevailing inclinations and agendas of powerful states and their concomitant monopolisation of both the decision-making and enforcement process in respect to the protection of vulnerable populations. In addition, and as emphasised at the start of this chapter, the implementation of R2P - and its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors, whilst the complex transborder dynamics and fluid political identities prevalent in the post-Cold War period have enunciated the complexities of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity. However, both the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework and, in particular, the modification to a state’s perception of its national interest do remain a realistic and feasible proposition. In the case of the former, this is in view of R2P already being coterminous with a politics of prevention. As discussed, the doctrine elicits an international responsibility to help prevent the conditions that can lead to violent and protracted intra-state conflict, reflecting a theoretical consensus amongst member states pertaining to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, a nascent acknowledgement of the importance of the global socioeconomic realm in achieving justice for individuals. With regards to the viability of adjusting a state’s perception of its national interest, meanwhile, this is evidenced by the institutional building blocks both the EU and, in particular, the UN provide for the creation and adoption of a more ideational form of interests at the global constitutional level, in the case of the former a consequence of its internalised democratic experiences and practices and, in the case of the latter, reflected in its increasingly normative commitment to the protection of global human rights. In addition, this latter proposal could, if implemented, have much wider ramifications, increasing the possibility of R2P being fully ensconced in international law - and the plausibility of a clause pertaining to a positive duty to intervene in threshold-crossing situations - and, most importantly, strengthening international consensus over theimplementation of the doctrine, potentially elevating the role that human rights concerns play in the decision to intervene for human protection purposes. As discussed, this would result in the doctrine more consistently translating into practice its normative reconceptualization of state sovereignty, accentuating the relevance of the cosmopolitan vision of criminal justice and providing the groundwork for the cogent application of delineated and limited thresholds for international intervention. In addition, it would help to remedy the absence of a secondary international responsibility to protect in instances where state authorities fail to protect their populations, in the case of the latter providing a more *secure* platform for the constitutionalisation and grounding of cosmopolitan humanitarian elements. In short, the coalescence of humanitarianism with a state’s perception of its national interest constitutes a robust and potentially viable proposition which, in theory and in practice, would have significant and positive implications for the relationship between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. At the same time, it would perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism over the evolution towards this cosmopolitan typology in the post-Cold War period.

**Chapter 7: Conclusion**

This thesis has contended that the *Responsibility to Protect* can, in theory - and, to a more limited extent, in practice - be seen to have fostered a sense of optimism over the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period, when assessed within the framework of Jürgen Habermas’ theory of constitutionalisation with a ‘cosmopolitan purpose’. In doing so, it has undertaken a systematic and robust appraisal of the relationship between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach, making a number of significant contributions to the existing literature on R2P and contemporary forms of cosmopolitan theory. Firstly, and in view of the ephemeral analysis that has thus far taken place of the cosmopolitan moral tenets underpinning R2P, this thesis has contended that the ideas of collective responsibility and reconceptualization of state sovereignty, the cosmopolitan vision of criminal justice, the provision of delineated and limited thresholds for international intervention and, more implicitly, the concept of cosmopolitan distributive axiomatic of cosmopolitan human protection have come to constitute *prima facie* aspects of R2P, underscoring the relationship between the doctrine and the cosmopolitan typology. Furthermore, and despite the continued pre-eminence of realist objections centred on the prevailing inclinations, agendas and national interests of powerful states - as well as the role played by a number of complex and overlapping contextual factors which, as expounded, remain integral to the realisation of cosmopolitan humanitarian demands - this project has contended that R2P has accentuated the relevance of the vision of criminal justice that lies at the heart of the cosmopolitan approach to human protection. More precisely, R2P has helped to counter realist opposition predicated on the self-interested and potentially neo-imperialist inclinations of powerful states situated within the international community. This is a consequence of the doctrine’s codification and subsequent application which, as articulated, can be understood to reflect a theoretical consensus amongst UN member states to take the protection of civilians *more* seriously and an *increased* sense of willingness within the international community to intervene in order to protect vulnerable populations. This claim has been enhanced by the NATO-led military operation conducted in Libya in 2011, framed through the prism of R2P and - contextualised within a new politics of protection - representing the first time in history that the UNSC has authorised the use of force for human protection purposes against a functioning state without the consent of the incumbent government. In addition, through exhorting the virtues of responsibility in lieu of prioritisation, giving equal consideration to the rights and interests of all individuals and - whilst placing a primary duty on sovereign states to respect the dignity and basic human rights of their people - generating a collective international responsibility to intervene in threshold-crossing situations, the language and rhetoric paradigmatic of the doctrine have helped to weaken liberal and liberal nationalist narratives that run antithetical to the cosmopolitan vision of criminal justice.

Further to the absence of any systematic appraisal of the relationship prevalent between R2P and cosmopolitan human protection, nominal reference has been made to the cosmopolitan legal tenets intimately bound up with R2P and, more precisely, the doctrine’s nexus with Habermas’ constitutional cosmopolitan approach. As such, therefore, this thesis has again contributed to the existing literature by examining more closely the relationship that exists between R2P and Habermas’ global constitutional paradigm. As discussed, through its status as an innovative legal and conceptual principle that establishes clear jurisdictional relationships and assigns specific roles and responsibilities to the wider international community in threshold-crossing situations, R2P has come to embody an emerging constitutive norm within international law, *further* encapsulating how the collective international responsibility to promote international peace and security under the auspices of the UN has been increasingly extended to the protection of global human rights in the post-Cold War period. At the same time, the doctrine’s novel legal cogency, codification and, to a lesser extent, application have helped to begin to bridge the lacuna between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms. As a consequence, R2P can be understood to have tentatively advanced Habermas’ global constitutional paradigm and, more specifically, strengthenedthe claim that the UN reflects the foundations of a budding global constitutional order resembling something analogous to a legally-constituted political community of states and, most importantly, their citizens. Given the doctrine’s existing relationship with cosmopolitan humanitarian principles - in particular the ideas of collective responsibility, reconceptualization of state sovereignty and the cosmopolitan vision of criminal justice - R2P can be seen to have provided a platform for the constitutionalisation and grounding of such normative cosmopolitan elements, in the process helping to engender a sense of enthusiasm over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period. Further to encompassing a novel and nascent international legal principle ratified and adopted by UN member states, R2P’s locus as an emerging and constitutive legal norm within international law has, as explained, been consolidated by the position the doctrine occupies at the far end of the ‘norm cascade’ stage of Finnemore and Sikkink’s normative life cycle model. Whilst yet to be fully internalised and consequently reach a ‘tipping point’ between the stages of norm cascade and norm internalisation at the global constitutional level, the language and rhetoric axiomatic of the doctrine have been increasingly adopted by the international community - and, in particular, UN member states - in response to the manifestation or imminent perpetration of systematic and nefarious human rights abuses, with the doctrine prevalent in the foreign policies that these states have pursued. The case of Libya, in particular, has demonstrated how the doctrine’s conceptual and legal principles have been gradually internalised and used to shape the foreign policies that these states have pursued in response to violations of human rights and international humanitarian law. Indeed, and as articulated, the relationship between Libya and R2P could be seen as testament to the fact that humanitarian intervention is no longer dependent upon a ‘modification’ to the existing principle of non-intervention contained within the UN Charter, whilst in meeting the relevant watermark and thresholds for military action outlined under the aegis of the doctrine, the NATO operation has helped to clarify the scope of a human rights exception to existing international law. Consolidated by the doctrine’s presence in more than 25 resolutions since 2006, the operationalization of R2P in Libya can be understood to reflect an *increased* willingness amongst UN member states to intervene in order to protect vulnerable populations, in the process further helping to bridge the gap between the UN’s normative commitment to global human rights and the weakness of its enforcement mechanisms. At the same time, through its incremental internalisation and invocation by UN member states, R2P has come to comprise an additional ‘step’ in the potential evolution of a customary international law concerned with the protection of global human rights in threshold-crossing situations. In practice, therefore, R2P has further enhanced the claim that the UN embodies the foundations of a weak yet nascent global constitutional order resembling something analogous to a legally-constituted political community of states and their citizens. When again once assessed within the context of its relationship with cosmopolitan human protection - in particular the latter’s vision of criminal justice and provision of delineated and limited thresholds for intervention - R2P can be seen to provide a further budding platform for the constitutionalisation and grounding of such normative cosmopolitan elements, in the process helping once again to generate a sense of enthusiasm over the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

Further to the doctrine’s locus as a nascent legal principle and emerging constitutive norm within international law, this thesis has argued that through its normative language and, more nominally, empirical connotations, R2P has helped to assuage concerns over the self-interested and potentially neo-imperialist inclinations of powerful states exacerbated by the constitutionalisation process, similarly helping to strengthen the potential fulfilment of Habermas’ overarching cosmopolitan objective. As discussed, R2P postulates a transition away from the ‘right of intervention’ of any state to the ‘responsibility to protect’ of everystate - underpinned by the broader endeavours of the international community to transcend the lexicon of humanitarian intervention - engages with a broad gamut of preventive and reactive humanitarian measures and, finally, provides a high watermark and limited thresholds for intervention which, in turn, can only proceed with the authority of the UNSC. In principle, therefore, R2P has alleviated fears that the language of humanitarian intervention and international humanitarian law will be used as a ‘Trojan Horse’ to further the objectives of powerful states, countering antipathy towards Habermas’ linear and teleological assessment of the constitutionalisation process and, at the same time, strengthening the potential fulfilment of his constitutional cosmopolitan approach. Moreover, and whilst more contentious, the invocation of R2P in response to the Libyan conflict could, from an empirical perspective, be seen to extoll the virtues of the doctrine in assuaging concerns over the manifestation and potential proliferation of such self-interested and neo-imperialist trends. As discussed, a multi-faceted approach was initially adopted in response to the conflict, military intervention subsequently framed exclusively within the context of the international community’s broader normative commitment to the protection of human rights, consensus for military action garnered from a broad ambit of regional organisations - as well as states - and the use of force deemed legitimate in view of the conflict meeting the relevant watermark and thresholds for international intervention. As such, therefore, the operationalization of R2P in this instance could similarly be seen to have countered reservations over the ‘misuse’ of the terminology of humanitarian intervention and, in the process, opposition to Habermas’ linear and teleological approach to the constitutionalisation of international law, once more helping to strengthen the potential fulfilment of his overarching cosmopolitan objective. At the same time, the doctrine has come to provide a normative and, to a lesser extent, empirical framework through which a fundamental weakness symptomatic of cosmopolitan human protection - more specifically, its failure in practice to offset the possibility of intervention being employed as a smokescreen for the perpetuation of political and economic inclinations apposite to powerful states - can begin to be addressed. In both theory and, to a lesser degree, in practice, therefore, R2P has helped to reinforce the sense of enthusiasm that surrounds the evolution towards a more cosmopolitan approach to human protection in the post-Cold War period.

Relatedly, and by way of a further contribution to the existing literature on R2P and contemporary forms of cosmopolitan theory, this thesis has *critically* assessed the relationship between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach. As discussed, the nexus between R2P and cosmopolitan human protection remains weak, with the doctrine continuing - particularly in practice - to fall short of fulfilling the normative demands of this cosmopolitan typology. Furthermore, R2P has yet to fit perfectly into Habermas’ cosmopolitan narrative, failing to impart a legally binding and collective obligation on UN member states to intervene in the event of genocide, war crimes, ethnic cleansing and crimes against humanity and, in addition, yet to be invoked explicitly in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. In this way, therefore, the doctrine has fallen short of systematically advancing Habermas’ constitutional cosmopolitan approach and, at the same time, failed to provide a secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms. Furthermore, R2P has yet to address the unequal power relationships prevalent within the UN which, alongside the doctrine’s nexus with regime change in both the Ivory Coast and, in particular, Libya, has similarly qualified the prospective fulfilment of Habermas’ overarching cosmopolitan objective. Thus, and given that cosmopolitan human protection adopts a quixotic approach to mitigating the influence of powerful states over the decision to intervene for humanitarian purposes and, as espoused, fails in practice to offset the possibility of intervention being employed as a smokescreen for the perpetuation of political and economic objectives apposite to such states, one can discern that R2P has so far provided a limited empirical framework for addressing such caveats attached to the cosmopolitan typology. In this respect, therefore, the doctrine has largely failed to reinforce the sense of optimism that surrounds the transition towards a more cosmopolitan approach to human protection in the post-Cold War period.

Finally, and in view of the limits of this author’s heuristic approach to R2P and its nexus with contemporary forms of cosmopolitanism, this thesis has assessed the feasibility of a series of potential institutional and legal reforms which, if implemented, could help to perpetuate the limited progress thus far made towards a more cosmopolitan approach to human protection and, normatively speaking, heighten the sense of optimism that surrounds the evolution towards this cosmopolitan typology in the post-Cold War period. The project has conceded that the implementation of the doctrine’s conceptual and legal principles - and, at the same time, its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors, whilst the complex transborder dynamics and fluid political identities prevalent in the post-Cold War period have compounded the complexities of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity, a detriment R2P has thus far failed to acknowledge and address. Moreover, a number of the recommendations put forward remain in the short term a chimera, a consequence primarily - albeit not exclusively - of the prevailing inclinations and agendas of powerful states and their concomitant monopolisation of both the decision-making and enforcement process in respect to the protection of vulnerable populations. However, and as contended, both the introduction and amalgamation of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework and, in particular, the modification to a state’s perception of its ‘national interest’ do remain an attractive and viable proposition. In the case of the former, and as explained, this is in view of R2P already being coterminous with a politics of prevention, generating an international responsibility to help prevent the conditions that lead to violent and protracted forms of intra-state conflict, reflecting a theoretical consensus amongst member states pertaining to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity and, finally, providing a nascent recognition of the importance of the global socioeconomic realm in achieving justice for individuals. It is not inconceivable, therefore, that a comprehensive acknowledgement of the role of influential global actors and, in particular, powerful states in widening global inequalities and social exclusion could eventually manifest and coalesce with R2P. If so, the doctrine would provide the foundations of a more cogent relationship with the concept of cosmopolitan distributive justice intimately bound up with cosmopolitan human protection, helping the doctrine to further adhere to - and indeed perpetuate - the expectations axiomatic of the cosmopolitan typology and, in the process, assuaging criticism of the latter centred upon its primarily *ad hoc* approach to the protection of vulnerable populations. With regards to the viability of adjusting a state’s perception of its national interest, meanwhile, this is evidenced by the institutional ‘building blocks’ both the EU and, in particular, the UN provide for the creation and adoption of a more ideational form of interests at the global constitutional level, in the case of the former a consequence of its internalised democratic experiences and practices and, in the case of the latter, witnessed through its increasingly normative commitment to the protection of global human rights. In addition, this latter proposal could, if implemented, have much wider ramifications, increasing the possibility of R2P being fully ensconced in international law - and the plausibility of a clause pertaining to a positive duty to intervene in threshold-crossing situations - and, most importantly, strengthening international consensus over theimplementation of the doctrine, potentially elevating the role that human rights concerns play in the decision to intervene for human protection purposes. This would result in the doctrine more consistently translating into practice its normative reconceptualization of state sovereignty, accentuating the relevance of the cosmopolitan vision of criminal justice and providing the groundwork for the cogent application of delineated and limited thresholds for international intervention. In addition, it would help to remedy the absence of a secondary international responsibility to protect in instances where state authorities fail to protect their populations, providing a more secure platform for the constitutionalisation and grounding of cosmopolitan humanitarian norms. In short, the coalescence of humanitarianism with a state’s perception of its national interest constitutes a robust and potentially viable proposition which, in theory and in practice, would have significant and positive implications for the relationship between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach.

In summary, then, this thesis has contended that, when framed through the prism of Habermas’ global constitutional model, R2P can be seen to have fostered a sense of optimism over the evolution towards a more cosmopolitan form of human protection in the post-Cold War period. In addition, it has promulgated a broad array of institutional and legal reforms that would conceivably strengthen the nexus between R2P and both cosmopolitan typologies, perpetuating the limited progress thus far made towards a more cosmopolitan approach to human protection and heightening the sense of optimism that surrounds the evolution towards this cosmopolitan typology in the post-Cold War period. Having done so, it is prudent to finish by considering the project’s potential implications for future debates, discussions and research on R2P and contemporary forms of cosmopolitan theory. As a starting point, it is important to reiterate the motivations behind one’s overarching research objective. As explained in the introduction, the foundations of this thesis can be found primarily in the limits of modern cosmopolitanism, its underdevelopment in the context of such post-Cold War international advances as R2P and, conversely, the fact that debates over the doctrine’s moral and legal efficacy have yet to be systematically tied in to discussions pertaining to contemporary forms of cosmopolitan theory. For example, through its correspondence with a politics of prevention, R2P has helped to enhance the veracity and credibility of cosmopolitan human protection as a contemporary approach to international relations theory, whilst the doctrine has also amplified the relevance of the vision of criminal justice that lies at the heart of this cosmopolitan typology. In addition, and as discussed, the doctrine provides a normative and, to a lesser extent, empirical framework through which concerns relating to the self-interested and potentially neo-imperialist inclinations of powerful states can begin to be subjugated. Moreover, through its locus as an emerging and constitutive legal norm that establishes clear jurisdictional relationships and assigns specific roles and responsibilities to the wider international community in instances of genocide, war crimes, ethnic cleansing and crimes against humanity - consolidated by the space the doctrine occupies at the high end of the norm cascade spectrum - R2P has amplified the potential fulfilment of Habermas’ overarching *constitutional* cosmopolitan objective. Thus, through its systematic and robust appraisal of the relationship that exists between R2P and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach, this thesis has helped to transcend the limits of both cosmopolitan typologies. Furthermore, this project has assessed the moral and legal *advances* that have occurred under the aegis of R2P and, through linking these developments into broader discussions and debates over cosmopolitan human protection and Habermas’ constitutional cosmopolitan approach, enunciated the sense of *cosmopolitan* moral and legal progress that has occurred in the post-Cold War period. This is evidenced primarily by R2P’s locus as a doctrinal innovation, conceptual development and, in particular, emerging constitutional principle in international law which, through its tentative advancement of Habermas’ global constitutional paradigm, has offered a prospective footing for the constitutionalisation and grounding of cosmopolitan humanitarian norms. However, and as acknowledged throughout the course of this thesis, contention and incredulity continues to surround the relationship between R2P and such contemporary forms of cosmopolitan theory. As discussed, the nexus between the doctrine and cosmopolitan human protection remains weak, with R2P continuing - particularly in practice - to fall short of fulfilling the normative expectations of this cosmopolitan approach. Furthermore, R2P has yet to fit perfectly into Habermas’ cosmopolitan narrative, enunciated by its failure to impart a legally binding obligation on UN member states and to be invoked explicitly in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. This contention is re-affirmed by the asymmetrical relationships that continue to manifest within the UN and the doctrine’s implicit nexus with regime change in Libya which, in turn, have similarly qualified the prospective fulfilment of Habermas’ overarching cosmopolitan objective. Thus, and given R2P’s endeavours to address the weaknesses symptomatic of both cosmopolitan typologies, the moral and legal developments that have occurred under the auspices of the doctrine and, finally, the cosmopolitan *zeitgeist* prevalent in the post-Cold War period are all intimately bound up with this project’s overarching research objective, it is this author’s hope that such dynamics will help to stimulate further international debate and discussion on R2P, cosmopolitan human protection and Habermas’ constitutional cosmopolitan approach, prompting further research on the themes covered in the course of this thesis.

Further to the themes outlined above, the series of institutional and legal reforms postulated in Chapter 6 that would stand to potentially strengthen the nexus between the doctrine and both cosmopolitan typologies could similarly have important implications for future debates, discussions and research on R2P and contemporary forms of cosmopolitan theory. As discussed, and aside from the introduction and coalescence of the principles axiomatic of cosmopolitan democracy within R2P’s normative and conceptual framework and, in particular, the modification to a state’s perception of its ‘national interest’, a number of the reforms intended to strengthen the relationship between the doctrine and both the cosmopolitan form of human protection and Habermas’ constitutional cosmopolitan approach remain in the short term a chimera, a consequence primarily - albeit not exclusively - of the prevailing inclinations and agendas of powerful states and their concomitant monopolisation of both the decision-making and enforcement process in respect to the protection of vulnerable populations. Subsequently, further research could be undertaken on alternative ways to modify the decision-making and enforcement process or - and transcending this author’s support for the creation and adoption of a more ideational form of interests at the global constitutional level - on how to elevate *further* the role that human rights concerns play in the decision to intervene in order to protect vulnerable populations. It is also important to reiterate that the implementation of R2P - and its adherence to cosmopolitan humanitarian demands - will continue to be dependent on a broad confluence of context-specific factors including the role of regional organisations - which themselves remain driven by a wide range of economic and political objectives - the international and domestic standing of political regimes and both the clarity of threat and short timeframe for international action. In addition, the emergence and subsequent gains of the extremist Sunni militant group ISIS/IS in Africa and the Middle East, in particular, have enunciated the complexities of modern conflict and, subsequently, of responding to acts of genocide, war crimes, ethnic cleansing and crimes against humanity. In short, context and complexity remain very real barriers to the continued evolution of R2P and, whilst tacitly acknowledged in the existing literature, no attempt has as yet been made to address such potentially inhibitive factors. Thus, it is also hoped that this project will provoke future debates and discussions on the impact of context and complexity on R2P, with a view to both improving the implementation of the doctrine and, either as an intention or by-product, strengthening the relationship between R2P and the cosmopolitan approach to human protection.

1. See Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.23. [↑](#footnote-ref-1)
2. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.138). [↑](#footnote-ref-2)
3. Ibid. , [↑](#footnote-ref-3)
4. Ibid. , (para.139). [↑](#footnote-ref-4)
5. Ibid. , [↑](#footnote-ref-5)
6. Ban-Ki Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN 2014) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013), (para.11 & 49). See also Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.35-9 & Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.14. [↑](#footnote-ref-6)
7. See David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012), p.218. [↑](#footnote-ref-7)
8. See Ronald Tinnevelt and Gert Verschraegen, ‘Global Justice between Cosmopolitan Ideals and State Sovereignty: An Introduction’, in Between Cosmopolitan Ideals and State Sovereignty, eds. Ronald Tinnevelt and Gert Verschraegen (Basingstoke, Palgrave Macmillan, 2006), p.8. [↑](#footnote-ref-8)
9. Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford, OUP, 2001), in particular pages 113 & 126-7. [↑](#footnote-ref-9)
10. Again, it should be noted that ‘Operation Turquoise’, sanctioned under a Chapter VII mandate, was not deployed until *after* the worst of the atrocities had been committed in Rwanda. [↑](#footnote-ref-10)
11. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), pp.827-8. [↑](#footnote-ref-11)
12. See both The Commission on Human Security, ‘Human Security Now’, (CHS, 2003) http://reliefweb.int /sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf (accessed 11th February 2016) & The High Level Panel on Threats, Challenges and Change, ‘A More Secure World: Our Shared Responsibility’ (UN, 2004) http://www. un.org/en/peacebuilding/pdf/historical/hlp\_more\_secure\_world.pdf (accessed 12th February 2016). [↑](#footnote-ref-12)
13. Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.826. [↑](#footnote-ref-13)
14. Ibid. , [↑](#footnote-ref-14)
15. Ibid. , [↑](#footnote-ref-15)
16. Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), in particular pp.140-44. [↑](#footnote-ref-16)
17. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.825. [↑](#footnote-ref-17)
18. Ibid. , See also Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.32) & Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed 13th September 2013), (para.1). [↑](#footnote-ref-18)
19. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.70. [↑](#footnote-ref-19)
20. See Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.73. [↑](#footnote-ref-20)
21. Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.11. [↑](#footnote-ref-21)
22. Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’, (International Crisis Group, 2006) <http://www.crisisgroup.org/en/publication-type/speeches/2006/from-humanitarian-intervention-to-the-responsibility-to-protect.aspx> (accessed 4th March 2013), (para.4). [↑](#footnote-ref-22)
23. Jennifer Welsh, ‘Turning Words into Deeds? The Implementation of the Responsibility to Protect’ Global Responsibility to Protect, 1 (2010), p.424. [↑](#footnote-ref-23)
24. To clarify, under the aegis of R2P, the four specified crimes of genocide, war crimes, ethnic cleansing and crimes against humanity must be either occurring or *expected* to occur in order for intervention to take place (see Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect’ International Security, 37 (2013), p.204). [↑](#footnote-ref-24)
25. *Cosmopolitan* humanitarian intervention, for example, conceives of the process as a ‘military intervention’ based principally on the use of *police actions*. Whilst such actions transcend traditional modes of international peacekeeping, it is important to emphasise that force is only justified as a means of last resort. For further discussion, see Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), pp.83-4 & Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2007), pages 133 & 138. [↑](#footnote-ref-25)
26. Definitions of humanitarian intervention are highly varied, underlining the contention that surrounds this process. See among others J.L. Holzgrefe, ‘The Humanitarian Debate’, in Humanitarian Intervention: Ethical, Legal and Political Dilemmas, eds. Robert Keohane and J.L. Holzgrefe (Cambridge, CUP, 2003), Noam Chomsky, The New Military Humanism: Lessons from Kosovo (London, Pluto Press, 1999), Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), Wil Verwey in Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996) & James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010). [↑](#footnote-ref-26)
27. See Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.36-8, Ramesh Thakur, The United Nations, Peace and Security: from Collective Security to the Responsibility to Protect (Cambridge, CUP, 2006), p.257 & Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.72. [↑](#footnote-ref-27)
28. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.138). [↑](#footnote-ref-28)
29. Ibid. , [↑](#footnote-ref-29)
30. Whilst all three pillars are deemed to be of equal importance, Ban Ki-Moon’s 2009 report stressed in particular the value of prevention in its preamble. See Ban Ki-Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN, 2009) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013). This view was also widely endorsed by the UN General Assembly (see Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.44). [↑](#footnote-ref-30)
31. See Fine’s appraisal of Wheeler in ‘Cosmopolitanism and Violence: Difficulties of Judgement’ British Journal of Sociology, 57 (2006), p.60.It is a matter of debate, however, whether Wheeler can be considered a *cosmopolitan* theorist. [↑](#footnote-ref-31)
32. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.145. [↑](#footnote-ref-32)
33. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), pp.8-9. [↑](#footnote-ref-33)
34. See in particular Cecile Fabre, Cosmopolitan War (Oxford, OUP, 2012), Chapter 1. Discussions of cosmopolitan distributive justice are also provided by Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.234, David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.379-80 & Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-34)
35. See Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-35)
36. Fabre, for example, has contextualised cosmopolitanism within broader debates over human rights and humanitarian intervention, using cosmopolitan logic to postulate that a *people* should be able to resort to war in order to overthrow an illegitimate state, and that individuals - as well as states or global institutions - have the right to go to war against unlawful foreign belligerents. However, her approach remains both controversial and highly speculative and, in addition, has yet to be discussed within the framework of such post-Cold War developments as R2P. See Cecile Fabre, ‘Cosmopolitanism, Just War Theory and Legitimate Authority’ International Affairs, 84 (2008). [↑](#footnote-ref-36)
37. Karina Sangha, ‘The Responsibility to Protect: A Cosmopolitan Argument for the Duty of Humanitarian Intervention’ (University of Victoria, 2012) <http://web.uvic.ca/~cpssa/articles/2012winter001.pdf> (accessed 8th April 2015), (para. 9-14 & abstract). [↑](#footnote-ref-37)
38. Johan Alberth and Henning Carlsson, ‘Cosmopolitanism, State Sovereignty and UN Reform 2003-2005’ (Linkoping University, 2008) [www.iei.liu.se/stat/.../c.../C-uppsatsJohanAlberthHenningCarlsson.pdf](http://www.iei.liu.se/stat/.../c.../C-uppsatsJohanAlberthHenningCarlsson.pdf) (accessed 12th December 2010), (para.73). [↑](#footnote-ref-38)
39. Ibid. , (para.76). [↑](#footnote-ref-39)
40. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.16. [↑](#footnote-ref-40)
41. Ibid. , pp.8-9. [↑](#footnote-ref-41)
42. This is reinforced by the fact that Brown and Bohm talk specifically in relation to a cosmopolitan approach to *humanitarian intervention*. [↑](#footnote-ref-42)
43. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.313. [↑](#footnote-ref-43)
44. Ibid. , pp.335-6. [↑](#footnote-ref-44)
45. See Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), pp.1-40 & Karel Wellens, ‘Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections’, in Solidarity: A Structural Principle of International Law, eds. Rudiger Wolfrum and Chie Kojima (Springer, Heidelberg, 2009), pp.3-39. This will be discussed further in Chapter 5. [↑](#footnote-ref-45)
46. Blagovesta Tacheva and Garrett Brown, ‘Global Constitutionalism and the Responsibility to Protect’ Global Constitutionalism, 1 (2015), pp.1-40. [↑](#footnote-ref-46)
47. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.895. [↑](#footnote-ref-47)
48. Spencer Zifcak, ‘The Responsibility to Protect’, in International Law, ed. Malcolm Evans (Oxford, OUP, 2010), pp.523-525. [↑](#footnote-ref-48)
49. Blagovesta Tacheva and Garrett Brown, ‘Global Constitutionalism and the Responsibility to Protect’ Global Constitutionalism, 1 (2015), p.35. [↑](#footnote-ref-49)
50. See in particular James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), Chapter 8. [↑](#footnote-ref-50)
51. See Heather Roff, Global Justice, Kant and the Responsibility to Protect (Routledge, Abingdon, 2013), Chapter 5. [↑](#footnote-ref-51)
52. Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), pp.1-40. [↑](#footnote-ref-52)
53. Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013). [↑](#footnote-ref-53)
54. Again, see Heather Roff, Global Justice, Kant and the Responsibility to Protect (Routledge, Abingdon, 2013), Chapter 5. [↑](#footnote-ref-54)
55. Ibid. , [↑](#footnote-ref-55)
56. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.5. [↑](#footnote-ref-56)
57. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.103. [↑](#footnote-ref-57)
58. For a definition and discussion of cosmopolitan democracy, see Chapter 6. [↑](#footnote-ref-58)
59. David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012), p.218. [↑](#footnote-ref-59)
60. As will be explained further in Chapter 2, these can be understood to constitute such ‘crimes against humanity’ as state-sponsored mass murder, mass population expulsions and genocide. [↑](#footnote-ref-60)
61. See Antje Weiner *et al*, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ Global Constitutionalism, 1 (2012), p.8. [↑](#footnote-ref-61)
62. For a definition and analysis of constitutional patriotism, see Chapter 3. [↑](#footnote-ref-62)
63. See in particular Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), p.10. [↑](#footnote-ref-63)
64. To clarify, under the aegis of R2P, the four specified crimes of genocide, war crimes, ethnic cleansing and crimes against humanity must be either occurring or *expected* to occur in order for intervention to take place (see Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect’ International Security, 37 (2013), p.204). [↑](#footnote-ref-64)
65. Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.32. [↑](#footnote-ref-65)
66. For further discussion and analysis, see Chapter 2**.** [↑](#footnote-ref-66)
67. By definition, such states are characterised by economic misery coupled with virtual government anarchy, representing economically and politically unstable members of international society. For further discussion, see Donald Snow, Uncivil Wars: International Security and the New Internal Conflicts(London, Lynne Rienner, 1996), pp.98-100. [↑](#footnote-ref-67)
68. See Nicholas Wheeler, ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), pp.32-3. [↑](#footnote-ref-68)
69. David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012), p.218. [↑](#footnote-ref-69)
70. As will explained further in Chapter 2, these can be taken to constitute ‘crimes against humanity’ including state-sponsored mass murder, mass population expulsions and genocide. [↑](#footnote-ref-70)
71. See Nicholas Wheeler, ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), pp.32-3. [↑](#footnote-ref-71)
72. See Donald Snow, Uncivil Wars: International Security and the New Internal Conflicts(London, Lynne Rienner, 1996), p.104. [↑](#footnote-ref-72)
73. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), pp.106-7. [↑](#footnote-ref-73)
74. For figures, see Ian Martin, ‘Hard Choices after Genocide: Human Rights and Political Failures in Rwanda’, in Hard Choices: Moral Dilemmas in Humanitarian Intervention, ed. Jonathan Moore (Oxford, Rowman & Littlefield, 1998), p.158. [↑](#footnote-ref-74)
75. For figures, see Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.178. [↑](#footnote-ref-75)
76. Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.178. [↑](#footnote-ref-76)
77. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.141. [↑](#footnote-ref-77)
78. Juliane Kokott, ’Human Rights Situation in Kosovo 1989-1999’, in Kosovo and the International Community: a Legal Assessment, ed. Christian Tomuschat ((London, Kluwer International, 2002), pp.26-7. [↑](#footnote-ref-78)
79. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.141. [↑](#footnote-ref-79)
80. Whilst Buchan emphasises the role of liberal states in the modification of existing legal rules so as to allow for the effective protection of cross-border human rights, authors such as Snow, Graubart and Chesterman have also focused on the importance of global civil society and prominent individuals such as Mikhail Gorbachev in accounting for the growth of a global human rights agenda. For further discussion, see Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), pp.51-9, Donald Snow, Uncivil Wars: International Security and the New Internal Conflicts(London, Lynne Rienner, 1996), pp.46-7, Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), pages 72 and 77 & Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford, OUP, 2001), pp.120-1. [↑](#footnote-ref-80)
81. See in particular James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.46, Pekka Niemela, The Politics of Responsibility to Protect: Problems and Prospects (Helsinki, Erik Castren Institute, 2008), p.18, Adam Roberts, ‘The UN and Humanitarian Intervention’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), p.81 & Michael Barnett and Thomas Weiss, Humanitarianism Contested: Where Angels Fear to Tread (Abingdon, Routledge, 2011), pp.72-5. [↑](#footnote-ref-81)
82. Again, see James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.2. It is important to emphasise that concerns with human rights and the use of military forces pre-date the collapse of the former Soviet Union, underlined by UN action in South Rhodesia in 1965, India’s intervention in East Pakistan in 1971, France’s intervention in the Central African Republic in 1979 and the US operation in Grenada in 1983. For further discussion, see Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), pp.141-2, James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.49 & Peter Hilpold, ‘Intervening in the Name of Humanity: R2P and the Power of Ideas’ Journal of Conflict and Security Law, 17 (2012), p.62. [↑](#footnote-ref-82)
83. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.53. [↑](#footnote-ref-83)
84. Ibid. , p.60. [↑](#footnote-ref-84)
85. See in particular Dominick McGoldrick, ‘‘The Principle of Non-Intervention: Human Rights’, in The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst, eds. A. Vaughan Lowe and Colin Warbrick (London, Taylor and Francis, 1994), pp.87-8. However - and as McGoldrick himself acknowledges - the UN Charter does not define such human rights and is traditionally concerned with their *promotion* rather than protection. [↑](#footnote-ref-85)
86. See Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.54 & Michael Doyle, ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.73. [↑](#footnote-ref-86)
87. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.61. [↑](#footnote-ref-87)
88. Ibid. , [↑](#footnote-ref-88)
89. See both Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.66 & Dominick McGoldrick, ‘‘The Principle of Non-Intervention: Human Rights’, in The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst, eds. A. Vaughan Lowe and Colin Warbrick (London, Taylor and Francis, 1994), p.88. [↑](#footnote-ref-89)
90. Again, it should be noted that ‘Operation Turquoise’, sanctioned under a Chapter VII mandate, was not deployed until *after* the worst of the atrocities had been committed in Rwanda. [↑](#footnote-ref-90)
91. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.62. This is however contentious, given the implications and negative consequences of unilateral intervention in Kosovo which, as will become clear, provided a touchstone for the evolution of R2P. [↑](#footnote-ref-91)
92. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.60. [↑](#footnote-ref-92)
93. Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.72. [↑](#footnote-ref-93)
94. See both Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), pages 27 and 34 & Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.60. [↑](#footnote-ref-94)
95. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), pp.61-2. As explained previously, the UN failed to sanction multilateral coercive measures in Kosovo - resulting in a US-led NATO operation *illegal* under the terms of international law - whilst the absence of delineated and limited thresholds opened up the possibility of humanitarian intervention being used as a smokescreen for the pursuit of state interests (*a la* the US-led invasion of Iraq). [↑](#footnote-ref-95)
96. See David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012), p.218. [↑](#footnote-ref-96)
97. Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford, OUP, 2001), in particular pages 113 & 126-7. [↑](#footnote-ref-97)
98. For Rwanda, see in particular Romeo Dallaire, ‘The End of Innocence’, in Hard Choices: Moral Dilemmas in Humanitarian Intervention, ed. Jonathan Moore (Oxford, Rowman & Littlefield, 1998). For Somalia, Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996). Finally, for Bosnia-Herzegovina, Spyros Economides and Paul Taylor, ‘Intervention in Former Yugoslavia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996). [↑](#footnote-ref-98)
99. Amongst others, see in the case of Rwanda, Romeo Dallaire, ‘The End of Innocence’, in Hard Choices: Moral Dilemmas in Humanitarian Intervention, ed. Jonathan Moore (Oxford, Rowman & Littlefield, 1998). For Somalia, Terrence Lyons, Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction (Washington, Brookings Institution, 1995) & Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996). For Bosnia-Herzegovina, Spyros Economides and Paul Taylor, ‘Intervention in Former Yugoslavia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996) & Robert Donia & John Fine, Bosnia-Herzegovina: a Tradition Betrayed(London, Hurst, 1994). And finally in the case of Kosovo, Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001). [↑](#footnote-ref-99)
100. See in particular Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.79 & Conor Foley, The Thin Blue Line: How Humanitarianism Went to War (New York, Verso, 2013), pp.152-4. [↑](#footnote-ref-100)
101. For Graubart, Kosovo essentially represented an opportunity for NATO to strengthen its credibility through re-affirming its position as a regional organisation - in the process undermining European attempts to adopt an independent security policy - and transforming itself into a vehicle for the global projection of US-led military power (see p.81). [↑](#footnote-ref-101)
102. Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.196. [↑](#footnote-ref-102)
103. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), p.100. [↑](#footnote-ref-103)
104. Ibid. , p.100. [↑](#footnote-ref-104)
105. Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.196. [↑](#footnote-ref-105)
106. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), p.100. [↑](#footnote-ref-106)
107. Ibid. , p.105. [↑](#footnote-ref-107)
108. Chen Kertcher, ’Same Agenda, Different Results: The UN Interventions in Cambodia and Somalia after the Cold War’, in International Intervention in Local Conflicts : Crisis Management and Conflict Resolution since the Cold War, ed. Uzi Rabi (New York, I.B.Tauris, 2010), p.27. [↑](#footnote-ref-108)
109. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), p.106. [↑](#footnote-ref-109)
110. Paolo Tripodi, The Colonial Legacy in Somalia: Rome and Mogadishu(Basingstoke, Macmillan, 1999), p.138. [↑](#footnote-ref-110)
111. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), p.106. [↑](#footnote-ref-111)
112. Ibid. , p.106. [↑](#footnote-ref-112)
113. Ibid. , pp.106-7. [↑](#footnote-ref-113)
114. Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.199. [↑](#footnote-ref-114)
115. Ibid. , p.200. [↑](#footnote-ref-115)
116. Terrence Lyons, Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction (Washington, Brookings Institution, 1995), p.32. This is, however, highly contested, particularly given the US’ ambivalence towards the conflict in Bosnia-Herzegovina. [↑](#footnote-ref-116)
117. Ioan Lewis & James Mayall, ‘Intervention in Somalia’, in The New Interventionism: 1991-1994, ed. James Mayall (Cambridge, CUP, 1996), p.109. [↑](#footnote-ref-117)
118. Ibid. , p.109. [↑](#footnote-ref-118)
119. Paolo Tripodi, The Colonial Legacy in Somalia: Rome and Mogadishu(Basingstoke, Macmillan, 1999), p.141. [↑](#footnote-ref-119)
120. Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.199. [↑](#footnote-ref-120)
121. Terrence Lyons, Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction (Washington, Brookings Institution, 1995), p.30. [↑](#footnote-ref-121)
122. Ibid. , p.30. [↑](#footnote-ref-122)
123. Oliver Ramsbotham & Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict: a Reconceptualization (Cambridge, Polity, 1996), p.203. [↑](#footnote-ref-123)
124. As will be discussed in Chapter 2, Kaldor promulgates the need to involve locally-based civil society groups in any decision relating to the use of force for humanitarian purposes. [↑](#footnote-ref-124)
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279. James Gow, ‘International Engagement and the Yugoslav War of Dissolution’, in International Intervention in Local Conflicts : Crisis Management and Conflict Resolution since the Cold War, ed. Uzi Rabi (New York, I.B.Tauris, 2010), p.72 [↑](#footnote-ref-279)
280. Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.163. [↑](#footnote-ref-280)
281. As will become clear in the course of this thesis, critics have come to view the terminology of humanitarian intervention as a smokescreen for the pursuit of political and economic objectives relevant to powerful states, compounded by events in Iraq in 2003. [↑](#footnote-ref-281)
282. Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.164. [↑](#footnote-ref-282)
283. Ibid. , in particular p.204. [↑](#footnote-ref-283)
284. Ibid. , p.176. [↑](#footnote-ref-284)
285. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.186. [↑](#footnote-ref-285)
286. Ibid. , [↑](#footnote-ref-286)
287. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.141. [↑](#footnote-ref-287)
288. Ibid. , [↑](#footnote-ref-288)
289. Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.81. [↑](#footnote-ref-289)
290. See Patrick Hayden, ‘Security Beyond the State: Cosmopolitanism, Peace and the Role of Just War Theory’, in Just War Theory: a Reappraisal, ed. Mark Evans (Edinburgh, Edinburgh University Press, 2005), p.168-9, Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.248 & Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), pp.119-20. [↑](#footnote-ref-290)
291. For those that have, see Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015) & Cecile Fabre, ‘Cosmopolitanism, Just War Theory and Legitimate Authority’ International Affairs, 84 (2008). [↑](#footnote-ref-291)
292. As will be returned to, this cosmopolitan approach neglects to consider or provide a cogent response to the underlying structural *causes* of protracted internal conflict in the post-Cold War period. [↑](#footnote-ref-292)
293. See Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-293)
294. See in particular Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.7. [↑](#footnote-ref-294)
295. Cecile Fabre, ‘Cosmopolitanism, Just War Theory and Legitimate Authority’ International Affairs, 84 (2008), p.965. [↑](#footnote-ref-295)
296. See both Thomas Pogge, ‘Cosmopolitanism and Sovereignty’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.115 & Cecile Fabre, ‘Cosmopolitanism, Just War Theory and Legitimate Authority’ International Affairs, 84 (2008), p.964. [↑](#footnote-ref-296)
297. Ibid. , [↑](#footnote-ref-297)
298. Again, see Thomas Pogge, ‘Cosmopolitanism and Sovereignty’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.115. [↑](#footnote-ref-298)
299. Ibid. , [↑](#footnote-ref-299)
300. Karina Sangha, ‘The Responsibility to Protect: A Cosmopolitan Argument for the Duty of Humanitarian Intervention’, (University of Victoria, 2012) <http://web.uvic.ca/~cpssa/articles/2012winter001.pdf> (accessed 8th April 2015), (para.14). [↑](#footnote-ref-300)
301. The idea of cosmopolitan public right will be examined further in Chapter 3. [↑](#footnote-ref-301)
302. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), pp.437-8. [↑](#footnote-ref-302)
303. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.118. [↑](#footnote-ref-303)
304. This idea is linked to Kant’s *Democratic Peace Theory*, postulated by Michael Doyle and predicated on the notion that democracies promote peace between other and that, as a consequence, people sharing similar conditions of popular sovereignty are more likely to agree upon universal principles of justice. For further discussion, see Michael Doyle, ‘Kant, Liberal Legacies and Foreign Affairs’ Philosophy and Public Affairs, 12 (1983), pp.204-235. See also Burleigh Wilkins, ‘Kant on International Relations’ The Journal of Ethics, 11 (2004), p.158 & George Cavallar, ‘Kantian Perspectives on Democratic Peace: Alternatives to Doyle’ Review of International Studies, 27 (2001), p.231.  [↑](#footnote-ref-304)
305. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.436. [↑](#footnote-ref-305)
306. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), pp.138-9. [↑](#footnote-ref-306)
307. Ibid. , p.109. See also Burleigh Wilkins, ‘Kant on International Relations’ The Journal of Ethics, 11 (2004), p.152, George Cavallar, ‘Kantian Perspectives on Democratic Peace: Alternatives to Doyle’ Review of International Studies, 27 (2001), p.242, George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), p.471 & James Wilson and Jonathan Monten, ‘Does Kant Justify Liberal Intervention?’ The Review of Politics, 73 (2011), p.637. [↑](#footnote-ref-307)
308. See also footnote no.436. [↑](#footnote-ref-308)
309. Burleigh Wilkins, ‘Kant on International Relations’ The Journal of Ethics, 11 (2004), p.150. It should be emphasised, however, that academics such as Cavallar see a contrast between Doyle’s and Kant’s language of ‘rights’ (see ‘Kantian Perspectives On International Peace’, p.240), demonstrated by the fact that Kant is concerned exclusively with establishing a form of *cosmopolitan* right that transcends the boundaries of sovereign states. [↑](#footnote-ref-309)
310. Michael Doyle, ‘Kant, Liberal Legacies and Foreign Affairs’ Philosophy and Public Affairs, 12 (1983), pp.204-235 & 323-356. For a brief overview, see also George Cavallar, ‘Kantian Perspectives on Democratic Peace: Alternatives to Doyle’ Review of International Studies, 27 (2001), p.231 & 238. [↑](#footnote-ref-310)
311. See Antonio Franceschet, ‘Kant, International Law and the problem of Humanitarian Intervention’ Journal of International Political Theory, 6 (2010). [↑](#footnote-ref-311)
312. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.79. [↑](#footnote-ref-312)
313. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2007), pp.120-1. [↑](#footnote-ref-313)
314. See footnote no.307. [↑](#footnote-ref-314)
315. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.79. It should be noted that unlike Kant’s theory of international law, no reference is made to the protection afforded to *stateless* people. [↑](#footnote-ref-315)
316. Ibid. , [↑](#footnote-ref-316)
317. Patrick Hayden, ‘Security Beyond the State: Cosmopolitanism, Peace and the Role of Just War Theory’, in

Just War Theory: a Reappraisal, ed. Mark Evans (Edinburgh, Edinburgh University Press, 2005), p.162. [↑](#footnote-ref-317)
318. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.100. [↑](#footnote-ref-318)
319. Ibid. , p.34. [↑](#footnote-ref-319)
320. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.82. [↑](#footnote-ref-320)
321. This model of law-enforcement will be explored later in the chapter. [↑](#footnote-ref-321)
322. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.100. [↑](#footnote-ref-322)
323. For definitions of these terms, see Chapter 4. [↑](#footnote-ref-323)
324. See footnote no.315. [↑](#footnote-ref-324)
325. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007, p.81. [↑](#footnote-ref-325)
326. As will become clear, a prominent criticism of the cosmopolitan approach relates to its primary concern with responding to rather than *preventing* systematic abuses of human rights. [↑](#footnote-ref-326)
327. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.96. [↑](#footnote-ref-327)
328. This is discussed specifically in relation to its approach to *humanitarian intervention*. See Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.7. [↑](#footnote-ref-328)
329. This can be linked to Moellendorff’s broader discussion of cosmopolitan sovereignty and justified intervention - see Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), in particular pages 119 & 125. [↑](#footnote-ref-329)
330. Ibid. , p.109. [↑](#footnote-ref-330)
331. See Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.232. [↑](#footnote-ref-331)
332. Ibid. , p.233. [↑](#footnote-ref-332)
333. Again, see Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), p.104. [↑](#footnote-ref-333)
334. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.83. [↑](#footnote-ref-334)
335. Ibid. , [↑](#footnote-ref-335)
336. Ibid. , [↑](#footnote-ref-336)
337. Ibid. , [↑](#footnote-ref-337)
338. Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), pp.623-4. Again, this will be examined further in Chapter 4. [↑](#footnote-ref-338)
339. For further discussion, see Chapter 4. [↑](#footnote-ref-339)
340. See Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.83, Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.133 & Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), pages 88 and 111. [↑](#footnote-ref-340)
341. This is the idea that military action should have a reasonable chance of not causing more harm than it resolves. [↑](#footnote-ref-341)
342. See Patrick Hayden, ‘Security Beyond the State: Cosmopolitanism, Peace and the Role of Just War Theory’, in Just War Theory: a Reappraisal, ed. Mark Evans (Edinburgh, Edinburgh University Press, 2005), pp.168-9, Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.248 & Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), pp.119-20. [↑](#footnote-ref-342)
343. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.83, Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.84. [↑](#footnote-ref-343)
344. Ibid. , pp.84-5. [↑](#footnote-ref-344)
345. See Robert Fine, ‘Cosmopolitanism and Violence: Difficulties of Judgement’ British Journal of Sociology, 57 (2006), p.61. It should be emphasised that Fine is referring explicitly to Daniel Archibugi however, rather than a World Court, Archibugi advocates the establishment of a World Parliamentary Assembly (WPA) within the UN that would help determine the necessity of humanitarian intervention in matters of survival. [↑](#footnote-ref-345)
346. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.124. [↑](#footnote-ref-346)
347. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.84. [↑](#footnote-ref-347)
348. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.121. [↑](#footnote-ref-348)
349. Ibid. , p.135. [↑](#footnote-ref-349)
350. Ibid. , in particular pp.120-1 & p.135. This is of course a highly contentious claim, given that the international community’s failings were attributable to a broad confluence of factors including the antagonism between human rights and state sovereignty endemic to the UN & perennial concerns relating to the loss of troops in conflict situations. For further discussion and analysis, see Chapter 1. [↑](#footnote-ref-350)
351. See Chapter 1 footnotes 129-133. [↑](#footnote-ref-351)
352. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.130. [↑](#footnote-ref-352)
353. Ibid. , p.131. [↑](#footnote-ref-353)
354. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.85. [↑](#footnote-ref-354)
355. Ibid. , [↑](#footnote-ref-355)
356. See Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford, OUP, 2001), p.119. [↑](#footnote-ref-356)
357. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.133. [↑](#footnote-ref-357)
358. See Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.85 & Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.138. [↑](#footnote-ref-358)
359. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.85. [↑](#footnote-ref-359)
360. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.139. [↑](#footnote-ref-360)
361. One can extrapolate that under the aegis of the ethical form of cosmopolitan human protection, states are still integral to the *implementation* of cosmopolitan law-enforcement measures, and thus retain their control over the use of military force. As will become clear, this claim is given further credence by Archibugi’s appraisal of the institutional variant of the cosmopolitan typology, with the construction and composition of such ‘cosmopolitan-minded’ militaries still dependent upon the will and compliance of powerful states. [↑](#footnote-ref-361)
362. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), pp.135-6. For specific discussion in relation to Somalia, see Chapter 1. [↑](#footnote-ref-362)
363. This is evidenced in particular by their continued retention of veto power, a counter-argument that will be returned to in Chapters 3 and 5. [↑](#footnote-ref-363)
364. David Chandler, ‘The Limits of Human Rights and Cosmopolitan Citizenship’, in Rethinking Human Rights: Critical Approaches to Human Rights, ed. David Chandler (Basingstoke, Palgrave Macmillan, 2002), pp.119-20. [↑](#footnote-ref-364)
365. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.86. [↑](#footnote-ref-365)
366. See James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247 & Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-366)
367. This argument will be returned to in Chapter 6. [↑](#footnote-ref-367)
368. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.4. [↑](#footnote-ref-368)
369. Ibid. , pp.6-7. This is in light of the tension between human rights and state sovereignty that has continued to manifest under the auspices of the UN. [↑](#footnote-ref-369)
370. Ibid. , p.7. [↑](#footnote-ref-370)
371. For further discussion and analysis, see Chapter 1. [↑](#footnote-ref-371)
372. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.8. Archibugi makes particular reference to the unilateral measures undertaken by NATO in Kosovo. [↑](#footnote-ref-372)
373. Ibid. , p.9. [↑](#footnote-ref-373)
374. For further discussion and analysis, see Chapters 4 and 5. [↑](#footnote-ref-374)
375. Neta Crawford *et al*, ‘Roundtable: Humanitarian Intervention after 9/11’ International Relations, 19 (2005), p.19. [↑](#footnote-ref-375)
376. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.10. [↑](#footnote-ref-376)
377. Ibid. , [↑](#footnote-ref-377)
378. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), pp.173-5. [↑](#footnote-ref-378)
379. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.11. [↑](#footnote-ref-379)
380. Ibid. , p.12. [↑](#footnote-ref-380)
381. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.111. [↑](#footnote-ref-381)
382. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.12. [↑](#footnote-ref-382)
383. Ibid. , [↑](#footnote-ref-383)
384. For further discussion and analysis, see Chapter 6. [↑](#footnote-ref-384)
385. David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), p.276. [↑](#footnote-ref-385)
386. Ibid. , [↑](#footnote-ref-386)
387. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), pp.13-15. [↑](#footnote-ref-387)
388. Ibid. , p.14. [↑](#footnote-ref-388)
389. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.202. [↑](#footnote-ref-389)
390. See footnote no.381. [↑](#footnote-ref-390)
391. Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), pp.13-15. [↑](#footnote-ref-391)
392. Ibid. , p.15. [↑](#footnote-ref-392)
393. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.203. [↑](#footnote-ref-393)
394. See in particular Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.255. [↑](#footnote-ref-394)
395. See James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247 & Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-395)
396. See footnote no.307. [↑](#footnote-ref-396)
397. See Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.257. This claim is, however, highly contentious, particularly when one considers the contention and ambiguity attached to any definition of ‘humanitarian intervention’ as outlined in the introduction of this thesis. This is consolidated by Cramer’s analysis of the EU and the use of force for humanitarian purposes (see Per Cramer, ‘Reflections on European Effective Multilateralism and the Use of Force’, in Beyond the Established Legal Borders, eds. Malcolm Evans and Panos Koutrakos (Oxford, Hart Publishing, 2011), p.231). [↑](#footnote-ref-397)
398. See Fine’s appraisal of Wheeler in ‘Cosmopolitanism and Violence: Difficulties of Judgement’ British Journal of Sociology, 57 (2006), p.60.As alluded to previously, however, it is a matter of debate whether Wheeler can be considered a *cosmopolitan* theorist. [↑](#footnote-ref-398)
399. Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.145. [↑](#footnote-ref-399)
400. See footnote no.368. [↑](#footnote-ref-400)
401. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), in particular pages 9 & 12. [↑](#footnote-ref-401)
402. Ibid. , p.7. [↑](#footnote-ref-402)
403. See in particular Cecile Fabre, Cosmopolitan War (Oxford, OUP, 2012), Chapter 1. Discussion of cosmopolitan distributive justice is also provided by Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.234, David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.379-80 & Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-403)
404. See Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-404)
405. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), pp.8-9. [↑](#footnote-ref-405)
406. Ibid. , p.7. [↑](#footnote-ref-406)
407. See Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.36-8, Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge: Polity Press, 2009), p.72 & Ramesh Thakur, The United Nations, Peace and Security: from Collective Security to the Responsibility to Protect (Cambridge, CUP, 2006), p.257. [↑](#footnote-ref-407)
408. See footnote no.329. [↑](#footnote-ref-408)
409. Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.233. [↑](#footnote-ref-409)
410. See Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p.29. [↑](#footnote-ref-410)
411. See in particular Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.397-99. [↑](#footnote-ref-411)
412. David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.390-1. [↑](#footnote-ref-412)
413. Cecile Fabre, ‘Cosmopolitanism, Just War Theory and Legitimate Authority’ International Affairs, 84 (2008), p.965. Fabre does acknowledge, however, that in general individuals ought not to resort to war where there is a ‘legitimate authority’ in a better position to do so (p.975). [↑](#footnote-ref-413)
414. Ibid. , p.969. [↑](#footnote-ref-414)
415. Ibid. , p.964. [↑](#footnote-ref-415)
416. Ibid. , p.968. [↑](#footnote-ref-416)
417. Ibid. , in particular pp.971-975. [↑](#footnote-ref-417)
418. As discussed previously, Kaldor does advocate the inclusion of local populations and therefore individuals in any discussions surrounding intervention however, no consideration or acknowledgement is given to the rights of individuals *per se* to use force in the event of large-scale human rights atrocities within endemically weak and abusive states. [↑](#footnote-ref-418)
419. See Antje Weiner *et al*, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ Global Constitutionalism, 1 (2012), p.8. [↑](#footnote-ref-419)
420. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.332. [↑](#footnote-ref-420)
421. See in particular Heather Roff, Global Justice, Kant and the Responsibility to Protect (Routledge, Abingdon, 2013), Chapters 1 & 2. [↑](#footnote-ref-421)
422. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.15. [↑](#footnote-ref-422)
423. See Garrett Brown, ‘The European Union and Kant’s Idea of Cosmopolitan Right: Why the EU is Not a Cosmopolitan Federation’ European Journal of International Relations, (online, 2010), p.11. [↑](#footnote-ref-423)
424. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), pp.437-8. [↑](#footnote-ref-424)
425. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.31. [↑](#footnote-ref-425)
426. Ibid, , p.32. [↑](#footnote-ref-426)
427. Ibid. , [↑](#footnote-ref-427)
428. Garrett Brown, ‘‘Kant’s Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.51. [↑](#footnote-ref-428)
429. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.20. [↑](#footnote-ref-429)
430. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.9. [↑](#footnote-ref-430)
431. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.34. [↑](#footnote-ref-431)
432. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.33. [↑](#footnote-ref-432)
433. Garrett Brown, ‘‘Kant’s Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.53. [↑](#footnote-ref-433)
434. See Charles Covell, Kant and the Law of Peace: A Study in the Philosophy of International Law and International Relations (New York, Palgrave, 1998), p.49. [↑](#footnote-ref-434)
435. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.33. [↑](#footnote-ref-435)
436. This idea is linked to Kant’s theory of *democratic peace,* postulated by Michael Doyle and predicated on the notion that democracies promote peace between other and, subsequently, people sharing similar conditions of popular sovereignty are more likely to agree upon universal principles of justice. For further discussion, see Michael Doyle, ‘Kant, Liberal Legacies and Foreign Affairs’ Philosophy and Public Affairs, 12 (1983), pp.204-235. [↑](#footnote-ref-436)
437. Garrett Brown, ‘The European Union and Kant’s Idea of Cosmopolitan Right: Why the EU is Not a Cosmopolitan Federation’ European Journal of International Relations, (online, 2010), p.12. [↑](#footnote-ref-437)
438. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.112. [↑](#footnote-ref-438)
439. Garrett Brown, ‘‘Kant’s Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.55. [↑](#footnote-ref-439)
440. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.112. [↑](#footnote-ref-440)
441. Seyla Benhabib, ‘Hospitality, Sovereignty and Democratic Iterations’, in Another Cosmopolitanism, ed. Robert Post (Oxford, OUP, 2006), p.149. [↑](#footnote-ref-441)
442. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.113 & William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.7. [↑](#footnote-ref-442)
443. George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), p.476. [↑](#footnote-ref-443)
444. See Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), pp.435-6. [↑](#footnote-ref-444)
445. See footnote no.304. [↑](#footnote-ref-445)
446. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.115. [↑](#footnote-ref-446)
447. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.436. [↑](#footnote-ref-447)
448. See George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), p.463. [↑](#footnote-ref-448)
449. Ibid. ,p.469. [↑](#footnote-ref-449)
450. Ibid. [↑](#footnote-ref-450)
451. This is as opposed to a ‘world republic’ or universal state predicated on a system of coercive law (see George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), pp.462-66). Whilst the subject of perennial debate, Kant can be seen to reject the idea of a world republic, theorising that such a political arrangement would be more prone to conflict and impractical in view of widespread differences in language and religion. For further discussion, see also Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.125, Thomas Mertens, ‘Cosmopolitanism and Citizenship: Kant against Habermas’ European Journal of Philosophy, 4 (1996), p.330 & Garrett Brown, Grounding Cosmopolitanism: from Kant to the Idea of a Cosmopolitan Constitution (Edinburgh, Edinburgh University Press, 2009), p.68.

 Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), pp.435-6. [↑](#footnote-ref-451)
452. See George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), p.461. [↑](#footnote-ref-452)
453. See footnote no.451. [↑](#footnote-ref-453)
454. See in particular George Cavallar, ‘Kant’s Society of Nations: Free Federation or World Republic?’ Journal of the History of Philosophy, 32 (1994), p.471, George Cavallar, ‘Kantian Perspectives on Democratic Peace: Alternatives to Doyle’ Review of International Studies, 27 (2001), p.242, Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.109, Burleigh Wilkins, ‘Kant on International Relations’ The Journal of Ethics, 11 (2004), p.152 & James Wilson and Jonathan Monten, ‘Does Kant Justify Liberal Intervention?’ The Review of Politics, 73 (2011), p.637. [↑](#footnote-ref-454)
455. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.436. [↑](#footnote-ref-455)
456. Immanuel Kant:Perpetual Peace and Other Essays on Politics and Morals, ed. & trans. Ted Humphrey (Indianapolis, Hackett Publication Company, 1983), p.118. [↑](#footnote-ref-456)
457. Ibid. , [↑](#footnote-ref-457)
458. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.437. [↑](#footnote-ref-458)
459. Ibid. , p.436. [↑](#footnote-ref-459)
460. For further discussion and analysis, see Chapter 2**.**  [↑](#footnote-ref-460)
461. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.437. [↑](#footnote-ref-461)
462. Ibid. , pp.437-8. [↑](#footnote-ref-462)
463. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.9. [↑](#footnote-ref-463)
464. Garrett Brown, ‘‘Kant’s Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.55. [↑](#footnote-ref-464)
465. Motohide Saji, ‘On an East European Community, or Kant’s Cosmopolitan Right Reconsidered’, in Globalization and Regional Integration in Europe and Asia, ed. Dr Nam-Kook Kim (Farnham, Ashgate Publishing, 2009), p.125. [↑](#footnote-ref-465)
466. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.436. [↑](#footnote-ref-466)
467. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.40. [↑](#footnote-ref-467)
468. Habermas places particular emphasis on the economic consequences of globalisation. For further discussion, see Jürgen Habermas, ‘The Postnational Constellation and the Future of Democracy’, in The Postnational Constellation: Political Essays, ed. Max Pensky (Massachusetts, MIT Press, 1998), pp.66-8. [↑](#footnote-ref-468)
469. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.40. [↑](#footnote-ref-469)
470. Ibid. , [↑](#footnote-ref-470)
471. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.312. [↑](#footnote-ref-471)
472. See in particular Jan Klabbers, An Introduction to International Institutional Law (Cambridge, CUP, 2009), p.17. [↑](#footnote-ref-472)
473. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.312. [↑](#footnote-ref-473)
474. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.132. [↑](#footnote-ref-474)
475. See Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), pp.72-73. [↑](#footnote-ref-475)
476. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.132. [↑](#footnote-ref-476)
477. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.15. [↑](#footnote-ref-477)
478. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.332. [↑](#footnote-ref-478)
479. Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), pp.2-6. [↑](#footnote-ref-479)
480. Habermas is, as will become clear, concerned with ‘shaping’ the global order according to specific normative principles, contributing to the process of global constitutionalism through concrete proposals for legal and political innovation. For discussion on a number of schools of thought intimately bound up with the practice of constitutionalisation, see Antje Weiner *et al*, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ Global Constitutionalism, 1 (2012), pp.6-10. [↑](#footnote-ref-480)
481. For a definition of global constitutionalism, again see Antje Weiner *et al*, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ Global Constitutionalism, 1 (2012), p.8. [↑](#footnote-ref-481)
482. Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), pp.17-18. [↑](#footnote-ref-482)
483. Ibid. , p.18. [↑](#footnote-ref-483)
484. Ibid. , [↑](#footnote-ref-484)
485. A detailed appraisal of constitutional patriotism will be provided later in the chapter. [↑](#footnote-ref-485)
486. Jürgen Habermas, ‘The Postnational Constellation and the Future of Democracy’, in The Postnational Constellation: Political Essays, ed. Max Pensky (Massachusetts, MIT Press, 1998), pp.108-9. [↑](#footnote-ref-486)
487. See Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), pp.70-71. This will be returned to in Chapter 6. [↑](#footnote-ref-487)
488. See Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), p.6. [↑](#footnote-ref-488)
489. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.332. [↑](#footnote-ref-489)
490. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.132. [↑](#footnote-ref-490)
491. Ibid. , p.133. [↑](#footnote-ref-491)
492. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), pp.15-16. [↑](#footnote-ref-492)
493. See Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.4 & Mark Duffield, Global Governance and the New Wars: The Merging of Development and Security*,* (London, Zed Books, 2001), in particular pages 3-4 & 48-9. [↑](#footnote-ref-493)
494. Mary, Kaldor, New and Old Wars: Organised Violence in a Global Era (Stanford, Stanford University Press, 2004), p.4. There are, of course, a multitude of definitions relating to this process. [↑](#footnote-ref-494)
495. Mark Duffield, Global Governance and the New Wars: The Merging of Development and Security*,* (London, Zed Books, 2001), pp.48-9. [↑](#footnote-ref-495)
496. See William Reno, ‘War, Markets and the Reconfiguration of West Africa’s Weak States’ Comparative Politics, 29 (1997), p.496 & Mark Duffield, Global Governance and the New Wars: The Merging of Development and Security*,* (London, Zed Books, 2001), p.167. [↑](#footnote-ref-496)
497. Antje Weiner *et al*, ‘Global Constitutionalism: Human Rights, Democracy and the Rule of Law’ Global Constitutionalism, 1 (2012), p.6. [↑](#footnote-ref-497)
498. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.16. [↑](#footnote-ref-498)
499. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.175. [↑](#footnote-ref-499)
500. Jürgen Habermas, ‘Toward a Cosmopolitan Europe’ Journal of Democracy, 14 (2003), p.89. [↑](#footnote-ref-500)
501. Ibid. , pp.87-8. For a summary, see also Jürgen Habermas, ‘The Postnational Constellation and the Future of Democracy’, in The Postnational Constellation: Political Essays, ed. Max Pensky (Massachusetts, MIT Press, 1998), in particular pp.76-7. [↑](#footnote-ref-501)
502. For Habermas, the economic, cultural and ecological ramifications of intense globalisation would be addressed by *transnational* negotiation systems. See Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.332. [↑](#footnote-ref-502)
503. William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.16. [↑](#footnote-ref-503)
504. Ibid. , See also Jürgen Habermas, ‘The Postnational Constellation and the Future of Democracy’, in The Postnational Constellation: Political Essays, ed. Max Pensky (Massachusetts, MIT Press, 1998), p.88. [↑](#footnote-ref-504)
505. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), pp.174-6. [↑](#footnote-ref-505)
506. Ibid. , p.177. See also Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), p.18. [↑](#footnote-ref-506)
507. Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), pp.42-3. [↑](#footnote-ref-507)
508. Ibid. , p.41. [↑](#footnote-ref-508)
509. Ibid. , p.42. [↑](#footnote-ref-509)
510. Ibid. , p.41. [↑](#footnote-ref-510)
511. Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), p.18. [↑](#footnote-ref-511)
512. Ibid. , [↑](#footnote-ref-512)
513. Garrett Brown, ‘Moving from Cosmopolitan Legal Theory to Legal Practice: Models of Cosmopolitan Law’ Legal Studies, 28 (2008), p.450. [↑](#footnote-ref-513)
514. Jürgen Habermas, ‘The Postnational Constellation and the Future of Democracy’, in The Postnational Constellation: Political Essays, ed. Max Pensky (Massachusetts, MIT Press, 1998), pp.108-9. [↑](#footnote-ref-514)
515. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.133. [↑](#footnote-ref-515)
516. Ibid. , p.134. [↑](#footnote-ref-516)
517. Ibid. , p.160. [↑](#footnote-ref-517)
518. Ibid. , p.161. Again, and whilst not the focus of this chapter, in contrast to Kant’s theory of international law no reference is made to the protection afforded to *stateless* people. [↑](#footnote-ref-518)
519. Ibid. , p.160. [↑](#footnote-ref-519)
520. Dan Sarooshi, The United Nations and the Development of Collective Security: the Delegation by the UN Security Council of its Chapter VII powers (Oxford, OUP, 1999), p.2. [↑](#footnote-ref-520)
521. Ibid. , p.5. [↑](#footnote-ref-521)
522. Ibid. , p.6. [↑](#footnote-ref-522)
523. The United Nations Charter, ‘Chapter VII: Action with Respect to Threats to Peace, Breaches of the Peace, and Acts of Aggression’, (UN, 2015) <http://www.un.org/en/documents/charter/chapter7.shtml> (accessed 14th February 2015), (para.3-4). [↑](#footnote-ref-523)
524. Nicholas Wheeler, ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), pp.32-3. [↑](#footnote-ref-524)
525. See in particular James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.46, Pekka Niemela, The Politics of Responsibility to Protect: Problems and Prospects (Helsinki, Erik Castren Institute, 2008), p.18, Adam Roberts, ‘The UN and Humanitarian Intervention’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), p.81 & Michael Barnett and Thomas Weiss, Humanitarianism Contested: Where Angels Fear to Tread (Abingdon, Routledge, 2011), pp.72-5. [↑](#footnote-ref-525)
526. The United Nations Charter, ‘Chapter VII: Action with Respect to Threats to Peace, Breaches of the Peace, and Acts of Aggression’, (UN, 2015) <http://www.un.org/en/documents/charter/chapter7.shtml> (accessed 14th February 2015), (para.3). [↑](#footnote-ref-526)
527. Ibid. , (para.4). [↑](#footnote-ref-527)
528. Alex Bellamy and Paul Williams, The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.845. [↑](#footnote-ref-528)
529. The latter was the vocabulary employed by Libya’s deputy ambassador to the UN - see Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.85. [↑](#footnote-ref-529)
530. The United Nations, ‘Security Council Approves ‘No-Fly’ Zone over Libya’, (UN, 2011) <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm> (accessed 6th February 2012), (para.7). [↑](#footnote-ref-530)
531. With the expressed permission of the authors, see Jason Ralph and Adrian Gallagher, ‘Legitimacy Faultlines in International Society: the Responsibility to Protect and Prosecute After Libya’ Review of International Studies, 41 (2015), p.562. [↑](#footnote-ref-531)
532. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.165. [↑](#footnote-ref-532)
533. Ibid. , [↑](#footnote-ref-533)
534. Ibid. , p.136. [↑](#footnote-ref-534)
535. Ibid. , p.141. [↑](#footnote-ref-535)
536. For further discussion, see Chapter 1. [↑](#footnote-ref-536)
537. Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.29. This argument has been re-affirmed by the 2007 International Court of Justice (ICJ) judgement in the case of Bosnia versus Serbia, which found Serbia responsible for failing to both prevent the genocide and punish the perpetrators and, subsequently, reiterated the obligation of all states to prevent the perpetration of genocide. See William Bain, ‘Responsibility and Obligation in the Responsibility to Protect’ Review of International Studies, 36 (2011), pp.15-32. [↑](#footnote-ref-537)
538. This form of law is established by states engaging in a repetitive and on-going practice so far as to be regarded a compulsory rule (see James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.50 & Spencer Zifcak, ‘The Responsibility to Protect’, in International Law, ed. Malcolm Evans (Oxford, OUP, 2010), p.524)). [↑](#footnote-ref-538)
539. Michael Barnett and Thomas Weiss, Humanitarianism Contested: Where Angels Fear to Tread (Abingdon, Routledge, 2011), p.93. [↑](#footnote-ref-539)
540. Again, see Chapter 1. [↑](#footnote-ref-540)
541. See in particular Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.255. [↑](#footnote-ref-541)
542. Again, see James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247 & Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-542)
543. See among others Grahame Thomson, ‘The Limits of Globalisation’, in Debating Globalisation, ed. David Held (Cambridge: Polity Press, 2005), Robert Cox, Production, Power and Global Order: Social Forces in the Making of History (New York, Columbia University Press, 1987) & Stephen Gill, ‘Constitutionalising Inequality and the Clash of Globalisations’ International Studies Review, 4 (2002). [↑](#footnote-ref-543)
544. Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), p.13. [↑](#footnote-ref-544)
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546. Ibid. , [↑](#footnote-ref-546)
547. The contention surrounding this claim will be examined in Chapter 5. [↑](#footnote-ref-547)
548. For further discussion, see Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.164. [↑](#footnote-ref-548)
549. Dan Sarooshi, The United Nations and the Development of Collective Security: the Delegation by the UN Security Council of its Chapter VII powers (Oxford, OUP, 1999), p.39. [↑](#footnote-ref-549)
550. See Garrett Brown, ‘The Constitutionalisation of What?’ Global Constitutionalism, 1 (2012), p.20. [↑](#footnote-ref-550)
551. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.139). [↑](#footnote-ref-551)
552. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.3. [↑](#footnote-ref-552)
553. See Jennifer Welsh, ‘Implementing the “Responsibility to Protect”: Where Expectations Meet Reality’ Ethics and International Affairs, 24 (2010), pp.418-9 & Thomas Weiss, Humanitarian Intervention: Ideas in Action (Cambridge, Polity Press, 2012), pp.100-104. [↑](#footnote-ref-553)
554. Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.23 & Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.9. [↑](#footnote-ref-554)
555. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013),

p.67. [↑](#footnote-ref-555)
556. On the subject of Kosovo, see Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.36. [↑](#footnote-ref-556)
557. Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’ The Washington Quarterly, 36 (2013), p.65. [↑](#footnote-ref-557)
558. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.3. [↑](#footnote-ref-558)
559. Ibid. , [↑](#footnote-ref-559)
560. Peter Hilpold, ‘Intervening in the Name of Humanity: R2P and the Power of Ideas’ Journal of Conflict and Security Law, 17 (2012), p.68. [↑](#footnote-ref-560)
561. As well as stipulating ‘just cause’ thresholds in the form of large scale loss of life and large-scale ethnic cleansing, the report also promulgated four additional precautionary principles that humanitarian intervention must meet in order for it to be deemed legitimate, These are ‘right intention’, ‘last resort’, ‘proportional means’ and ‘reasonable prospects’. See ICISS, ‘Report of the International Commission on Intervention and State Sovereignty’, (International Development Research Centre, 2001) http://responsibility toprotect.org/ICISS%20Report.pdf (accessed 12th December 2010), (para.5-6). The notion of a *collective* international responsibility to protect, meanwhile, was also advanced by the 2004 High Level Panel on Threats, Challenges and Change commissioned by Kofi Annan, which subsequently laid the foundations for the model of R2P that emerged from the World Summit meeting in 2005. For further discussion, see both Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.11 & Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.356. [↑](#footnote-ref-561)
562. Ramesh Thakur, The United Nations, Peace and Security: from Collective Security to the Responsibility to Protect (Cambridge, CUP, 2006), p.257. [↑](#footnote-ref-562)
563. See Graham Harrison, ‘No More Rwandas? The Manifest Failings of R2P in Theory and Practice’ (forthcoming, 2013), p.12. [↑](#footnote-ref-563)
564. Jennifer Welsh, ‘Implementing the “Responsibility to Protect”: Where Expectations Meet Reality’ Ethics and International Affairs, 24 (2010), p.416. [↑](#footnote-ref-564)
565. Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), p.622. [↑](#footnote-ref-565)
566. Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.10. [↑](#footnote-ref-566)
567. Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), p.621. [↑](#footnote-ref-567)
568. Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.36. [↑](#footnote-ref-568)
569. ICISS, ‘Report of the International Commission on Intervention and State Sovereignty’, (International Development Research Centre, 2001) <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed 12th December 2010), (para.7). See also James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.43. [↑](#footnote-ref-569)
570. See Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.104 & Jennifer Welsh, ‘Civilian Protection in Libya: Putting Coercion and Controversy Back into R2P’ Ethics and International Affairs, 25 (2011), p.257. [↑](#footnote-ref-570)
571. Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’, (International Crisis Group, 2006) <http://www.crisisgroup.org/en/publication-type/speeches/2006/from-humanitarian-intervention-to-the-responsibility-to-protect.aspx> (accessed 4th March 2013), (para.30). [↑](#footnote-ref-571)
572. See Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), pp.354-5 & Alex Bellamy, ‘The Responsibility to Protect and the Problem of Regime Change’, (E-International Relations, 2011) <http://www.e-ir.info/2011/09/27/the-responsibility-to-protect-and-the-problem-of-regime-change> (accessed 14th April 2013), (para.7). [↑](#footnote-ref-572)
573. See James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247 & Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-573)
574. Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.39. [↑](#footnote-ref-574)
575. See Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), pages 354 & 361. [↑](#footnote-ref-575)
576. For a summary, see Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.68. [↑](#footnote-ref-576)
577. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247. [↑](#footnote-ref-577)
578. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.362. [↑](#footnote-ref-578)
579. Whilst its origins can be traced back to the early 1990s, the concept of human security became prominent following the release of a report by the Commission on Human Security in 2003, bringing under its remit physical protection, rights and development centred upon the individual. This report was consolidated by the High Level Panel on Threats, Challenges and Change, which asserted that sovereign states remain the most important actors for protecting individuals and thus realising the human security agenda. It is a concept concerned with switching the focus from military threats to the state to political, economic, environmental and gender-based threats to individuals, all of which have occurred in an increasingly globalised era. For further discussion, see S. Neil MacFarlane and Yuen Khong, Human Security and the UN: a Critical History (Bloomington and Indianapolis, Indiana University Press, 2006), pp.225-259. The subject is also touched upon in David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012). [↑](#footnote-ref-579)
580. See in particular Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.105. Discussion of the High Level Panel’s report and its importance in the evolution of R2P is also provided in Thomas Weiss, Humanitarian Intervention: Ideas in Action (Cambridge, Polity Press, 2012), p.126 & Eki Omorogbe, ‘The African Union, Responsibility to Protect and the Libyan Crisis’ Netherlands International Law Review, 59 (2012), pp.146-7. [↑](#footnote-ref-580)
581. Whilst outside the scope of this thesis, it is worth emphasising that similarly to Kant’s theory of international law, R2P also affords protection to *stateless* people. [↑](#footnote-ref-581)
582. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.139). [↑](#footnote-ref-582)
583. Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.44. [↑](#footnote-ref-583)
584. See Jennifer Welsh, ‘Turning Words into Deeds? The Implementation of the Responsibility to Protect’ Global Responsibility to Protect, 1 (2010), p.151. [↑](#footnote-ref-584)
585. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.139). [↑](#footnote-ref-585)
586. Ban-Ki Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN 2014) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013), (para.11 & 49). See also Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.35-9 & Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.14. [↑](#footnote-ref-586)
587. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.138). [↑](#footnote-ref-587)
588. Whilst outside the scope of this project, Adrian Gallagher has argued that a substantial degree of ambiguity and inconsistency surrounds this term and, more specifically, how it is interpreted and applied. For further discussion and analysis, see Adrian Gallagher, ‘What Constitutes a ‘Manifest Failing’? Ambiguous and Inconsistent Terminology and the Responsibility to Protect’ International Relations, 28 (2014), pp.428-444. [↑](#footnote-ref-588)
589. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.356. [↑](#footnote-ref-589)
590. Ibid. , [↑](#footnote-ref-590)
591. See Carsten Stahn’s critique of R2P in Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), pp.68-9. [↑](#footnote-ref-591)
592. See Annan in Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.92. [↑](#footnote-ref-592)
593. See Edward Luck, ‘The Responsibility to Protect: Growing Pains or Early Promise?’ Ethics and International Affairs, 24 (2010), pp.349-65. [↑](#footnote-ref-593)
594. Michael Doyle, ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.80. [↑](#footnote-ref-594)
595. See The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.139). [↑](#footnote-ref-595)
596. For a summary of positive and negative duties in relation to human rights, see Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), pp.100-102. [↑](#footnote-ref-596)
597. Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ The American Journal of International Law, 101 (2007), pages 109 & 120. [↑](#footnote-ref-597)
598. Alex Bellamy, ‘The Responsibility to Protect: Added Value or Hot Air?’ Cooperation and Conflict, 48 (2013), pp.333-357. [↑](#footnote-ref-598)
599. For further discussion, see Chapter 2. [↑](#footnote-ref-599)
600. See Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), pp.232-3 & Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), pp.109. [↑](#footnote-ref-600)
601. Again, see both Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), pp.232-3 & Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), p.104. [↑](#footnote-ref-601)
602. See footnote no.555. [↑](#footnote-ref-602)
603. See Johan Alberth and Henning Carlsson, ‘Cosmopolitanism, State Sovereignty and UN Reform 2003-2005’, (Linkoping University, 2008) [www.iei.liu.se/stat/.../c.../C-uppsatsJohanAlberthHenningCarlsson.pdf](http://www.iei.liu.se/stat/.../c.../C-uppsatsJohanAlberthHenningCarlsson.pdf) (accessed 12th December 2010), (para.76). [↑](#footnote-ref-603)
604. See in particular Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), pp.68-9, Dominick McGoldrick, ‘‘The Principle of Non-Intervention: Human Rights’, in The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst, eds. A. Vaughan Lowe and Colin Warbrick (London, Taylor and Francis, 1994), p.106 & Graham Harrison, ‘No More Rwandas? The Manifest Failings of R2P in Theory and Practice’ (forthcoming, 2013), p.8. [↑](#footnote-ref-604)
605. The former is reflected in the work of former Sudanese diplomat Francis Deng in the early 1990s, whilst the latter is conveyed by the idea of ‘international criminal responsibility’ contained within Article 19 of the International Law Commission’s *Draft Articles on State Responsibility* adopted in 2001. For further discussion of international criminal responsibility, see Dominick McGoldrick, ‘‘The Principle of Non-Intervention: Human Rights’, in The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst, eds. A. Vaughan Lowe and Colin Warbrick (London, Taylor and Francis, 1994), p.106 & Marcel Brus, ‘Bridging the Gap Between State Sovereignty and International Governance: The Authority of Law’, in State, Sovereignty and International Governance, ed. Gerard Kreijen (Oxford, OUP, 2002), p.12. Criticism of the sense of novelty attached to the term ‘sovereignty as responsibility’ can also be found in Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ The American Journal of International Law, 101 (2007), pp111-115 & Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), p.139. [↑](#footnote-ref-605)
606. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.70. [↑](#footnote-ref-606)
607. Ibid. , [↑](#footnote-ref-607)
608. Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’ The Washington Quarterly, 36 (2013), p.65 & The United Nations, Peace and Security: from Collective Security to the Responsibility to Protect (Cambridge, CUP, 2006), pp.250-1. [↑](#footnote-ref-608)
609. Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect International Security, 37 (2013), p.202. [↑](#footnote-ref-609)
610. See Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.53. [↑](#footnote-ref-610)
611. See both Michael Barnett and Thomas Weiss, Humanitarianism Contested: Where Angels Fear to Tread (Abingdon, Routledge, 2011), p.96 & James Traub, ‘Unwilling and Unable: The Failed Response to the Atrocities in Darfur’, (Global Centre for the Responsibility to Protect, 2010) <http://responsibilitytoprotect.org/GCR2P_UnwillingandUnableTheFailedResponsetotheAtrocitiesinDarfur.pdf> (accessed 12th December 2010), (para.78). [↑](#footnote-ref-611)
612. See Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012)

<http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.46-51).

In addition, and whilst the agreement within the UNSC on a draft resolution to rid Syria of its chemical weapons was not explicitly linked with or framed through the prism of R2P, it can be seen within the broader context of concerns with human protection, with Ban Ki-Moon arguing that the use of such weapons against civilians - if proven - would constitute a ‘crime against humanity’. [↑](#footnote-ref-612)
613. For a summary, see Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para. 51-56). [↑](#footnote-ref-613)
614. This can be extrapolated from the reports published by the Independent International Commission of Inquiry on Syria - which will be returned to later in this chapter - the continued references to R2P in the UN’s draft resolutions on Syria and, furthermore, the fact that the actions of the Assad regime can be understood to comprise a ‘crime against humanity’ as per the provisions of the Rome Statute of the International Criminal Court (ICC). [↑](#footnote-ref-614)
615. This is based on Brown and Bohm’s analysis of cosmopolitan *humanitarian intervention*. See ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.7. [↑](#footnote-ref-615)
616. See Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002),), p.125. [↑](#footnote-ref-616)
617. Ibid. , p.109. [↑](#footnote-ref-617)
618. Again, such a duty falls primarily on powerful states in ‘supreme humanitarian emergencies’. For further discussion on cosmopolitanism and the idea of collective international responsibility, see Chapter 2. [↑](#footnote-ref-618)
619. Moellendorff, for example, considers some of the more general criticisms pertaining to cosmopolitan justice, including theoretical objections based upon the ideas of relativism, pacifism and self-emancipation (see Cosmopolitan Justice (Oxford, Westview Press, 2002), pp.111-116). Caney, meanwhile, explores some of the more general counter-arguments to humanitarian intervention, including its failure to respect a people’s right to self-government, its arrogance, its destruction of international stability and its questionable levels of success (see Justice Beyond Borders (Oxford, OUP, 2006), pp.235-244). Doyle, finally, assesses both the correlation and incongruence between socialism and intervention (see ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.75). [↑](#footnote-ref-619)
620. Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p.29. [↑](#footnote-ref-620)
621. This idea was first propagated by the political theorist Hans Morgenthau. For a summary, again see Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), pp.30-32. [↑](#footnote-ref-621)
622. Robert Gilpin, ‘A Realist Perspective on International Governance’ in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.238. [↑](#footnote-ref-622)
623. Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p.30. [↑](#footnote-ref-623)
624. See in particular Darrel Moellendorff, Cosmopolitan Justice (Oxford, Westview Press, 2002), p.112. This argument is also put forward by Chandler in his critique of cosmopolitan human rights (David Chandler, ‘The Limits of Human Rights and Cosmopolitan Citizenship’, in Rethinking Human Rights: Critical Approaches to Human Rights, ed. David Chandler (Basingstoke, Palgrave Macmillan, 2002), pp.132-3). [↑](#footnote-ref-624)
625. As explained in Chapter 1, and whilst the *initial* objectives of the UN mandate in Somalia were humanitarian, such altruism was to be trumped by the political inclinations of both the UN Secretary-General and US administration, who employed a Chapter VII mandate for the purposes of capturing the warlord Mohammed Aideed. [↑](#footnote-ref-625)
626. See William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.11 & Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.48. [↑](#footnote-ref-626)
627. See in particular Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.397-99. [↑](#footnote-ref-627)
628. For a summary, see Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.397-99. Discussion of Rawls is also provided in Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), Erin Kelly, ‘Human Rights as Foreign Policy Imperatives’, in The Ethics of Assistance: Morality and the Distant Needy, ed. Deen Chatterjee (Cambridge, CUP, 2004), Richard Miller, ‘Respectable Oppressors, Hypocritical Liberators: Morality, Intervention and Reality’, in Ethics and Foreign Intervention, eds. Deen Chatterjee and Don Scheid (Cambridge, CUP, 2003), Peter Singer, ‘Outsiders: Our Obligations to those Beyond our Borders’, also in The Ethics of Assistance: Morality and the Distant Needy, ed. Deen Chatterjee (Cambridge, CUP, 2004), and finally William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004). [↑](#footnote-ref-628)
629. Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), p.398. [↑](#footnote-ref-629)
630. Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.65. [↑](#footnote-ref-630)
631. See in particular Peter Singer, ‘Outsiders: Our Obligations to those Beyond our Borders’, in The Ethics of Assistance: Morality and the Distant Needy, ed. Deen Chatterjee (Cambridge, CUP, 2004), pp.26-7, Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.398-9, William Smith and Robert Fine, ‘Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant’s *Foedus Pacificum’* King’s College Law Journal, 15 (2004), p.10 & Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), pp.64-5. [↑](#footnote-ref-631)
632. Thomas Nagel, ‘The Problem of Global Justice’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.397-8. [↑](#footnote-ref-632)
633. Ibid. , pp.402-3. [↑](#footnote-ref-633)
634. As opposed to ‘particularistic’ nationalists who theorise that a particular nation or people are valuable specifically from the moral point of view itself. For a summary, see Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p.36. [↑](#footnote-ref-634)
635. David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.377-393. [↑](#footnote-ref-635)
636. Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p.41. [↑](#footnote-ref-636)
637. David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.384-5. In addition, for Miller the acknowledgement of a national identity equates to an acceptance of a ‘special obligation’ to fellow members of a nation that are not owed to humanity as a whole (see Debra Satz, ‘Equality of What Among Whom? Thoughts on Cosmopolitanism, Statism and Nationalism’, in Global Justice, eds. Ian Shapiro and Lea Brilmayer (New York, NYU Press, 1999), p.68). [↑](#footnote-ref-637)
638. See Jon Mandle, Global Justice: An Introduction (Cambridge, Polity Press, 2006), p p.41. [↑](#footnote-ref-638)
639. Ibid. , [↑](#footnote-ref-639)
640. David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.390-1. [↑](#footnote-ref-640)
641. See Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.73. [↑](#footnote-ref-641)
642. Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.11. [↑](#footnote-ref-642)
643. Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’, (International Crisis Group, 2006) <http://www.crisisgroup.org/en/publication-type/speeches/2006/from-humanitarian-intervention-to-the-responsibility-to-protect.aspx> (accessed 4th March 2013), (para.4). [↑](#footnote-ref-643)
644. Jennifer Welsh, ‘Turning Words into Deeds? The Implementation of the Responsibility to Protect’ Global Responsibility to Protect, 1 (2010), p.424. [↑](#footnote-ref-644)
645. For a definition, see Chapter 2. [↑](#footnote-ref-645)
646. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.100. [↑](#footnote-ref-646)
647. See footnotes 620-623. [↑](#footnote-ref-647)
648. Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), p.153. [↑](#footnote-ref-648)
649. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.45). [↑](#footnote-ref-649)
650. Ibid. , (para.56). [↑](#footnote-ref-650)
651. Ibid. , (para.99). [↑](#footnote-ref-651)
652. See footnote no.614. [↑](#footnote-ref-652)
653. These include perceptions, legal considerations, world opinion, perceived costs and social relations between states. Whilst not discussed specifically in relation to the Syrian conflict, the importance of these factors in the decision to - or indeed not to - intervene for human protection purposes is considered by Alex Bellamy in ‘The Responsibility to Protect: Added Value or Hot Air?’ Cooperation and Conflict, 48 (2013), p.342 & The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.119. [↑](#footnote-ref-653)
654. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.78). [↑](#footnote-ref-654)
655. Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), pp.289-90. [↑](#footnote-ref-655)
656. For further discussion, see Alex Bellamy and Paul Williams, The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), pp.833-8. [↑](#footnote-ref-656)
657. Ibid. , p.826. [↑](#footnote-ref-657)
658. Ibid. , p.843. Bellamy emphasises on the impact of the LAS on US policy, with the US in turn playing an integral role in persuading South Africa and Russia to ‘support’ the Resolution. [↑](#footnote-ref-658)
659. Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), p.153. As will become clear in Chapter 6, however, it is open to debate whether these organisations were themselves motivated by *humanitarian* concerns. [↑](#footnote-ref-659)
660. This argument will be returned to in Chapter 5. [↑](#footnote-ref-660)
661. This is of course contentious - for counter-arguments, see Tim Dunne and Jess Gifkins, Libya and the State of Intervention’ Australian Journal of International Affairs, 65 (2011), p.9 & Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’ (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.81). [↑](#footnote-ref-661)
662. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.78). [↑](#footnote-ref-662)
663. Alex Bellamy and Paul Williams, The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), pp.848-9. [↑](#footnote-ref-663)
664. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.78). [↑](#footnote-ref-664)
665. Ibid. , In the case of Russia in particular, such hesitancy was intimately bound up with the country’s broader economic and political objectives in the Middle East. [↑](#footnote-ref-665)
666. Alex Bellamy and Paul Williams, The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.842. [↑](#footnote-ref-666)
667. Ibid. , [↑](#footnote-ref-667)
668. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.79). [↑](#footnote-ref-668)
669. Ibid. , (para.91). [↑](#footnote-ref-669)
670. See Robert Pape, ‘When Duty Calls: A Pragmatic Standard of Humanitarian Intervention’ International Security, 37 (2012), p.66. [↑](#footnote-ref-670)
671. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.79). [↑](#footnote-ref-671)
672. Ibid. , [↑](#footnote-ref-672)
673. Ibid. , [↑](#footnote-ref-673)
674. Ibid. , [↑](#footnote-ref-674)
675. Ibid. , (para.91). [↑](#footnote-ref-675)
676. Robert Pape, ‘When Duty Calls: A Pragmatic Standard of Humanitarian Intervention’ International Security, 37 (2012), p.71. [↑](#footnote-ref-676)
677. BBC News, ‘Syria Crisis: Guide to Armed and Political Opposition’, (BBC, 2013) <http://www.bbc.co.uk/news/world-middle-east-15798218> (accessed 10th August 2014), (para.1-2). [↑](#footnote-ref-677)
678. Zifcak argues there was a perception within the international community that sectarian violence was less likely to result from an armed intervention in Libya (para.77), which may have served as a further incentive for military action. [↑](#footnote-ref-678)
679. See Graham Harrison, ‘No More Rwandas? The Manifest Failings of R2P in Theory and Practice’ (forthcoming, 2013), p.21. As will be returned to in Chapters 5 and 6, R2P has thus far failed to acknowledge and address the complexity of modern conflict and, in turn, the difficulties of responding to human rights crises within endemically weak and abusive states. [↑](#footnote-ref-679)
680. Ibid. , p.14. [↑](#footnote-ref-680)
681. Alex Bellamy and Paul Williams, The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.838. [↑](#footnote-ref-681)
682. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.75). [↑](#footnote-ref-682)
683. Alex Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ Ethics and International Affairs, 25 (2011), p.265. [↑](#footnote-ref-683)
684. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.75). [↑](#footnote-ref-684)
685. Alex Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ Ethics and International Affairs, 25 (2011), p.266. [↑](#footnote-ref-685)
686. Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.845. [↑](#footnote-ref-686)
687. As emphasised in Chapter 3, this was the vocabulary employed by Libya’s deputy ambassador to the UN. See Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.85. [↑](#footnote-ref-687)
688. Whilst not stated explicitly, this is intimated in James Pattison, ‘The Ethics of Humanitarian Intervention in Libya’ Ethics and International Affairs, 25 (2011), p.272. [↑](#footnote-ref-688)
689. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.75). [↑](#footnote-ref-689)
690. See in particular See Robert Pape, ‘When Duty Calls: A Pragmatic Standard of Humanitarian Intervention’ International Security, 37 (2012), p.70. Once again, this is a highly contentious claim, particularly given that latest estimates chart the number of deaths resulting from the conflict at over 200,000, whilst millions more have been displaced (see Amnesty International, ‘Syria: Turn the Lights Back on’ (Amnesty International UK, 2015) [https://www.amnesty.org.uk/actions/syria-crisis-turn-lights-back-four-years-aleppo?gclid=CMLX3aSr0McC FQMFwwod06sIvA](https://www.amnesty.org.uk/actions/syria-crisis-turn-lights-back-four-years-aleppo?gclid=CMLX3aSr0McC%20FQMFwwod06sIvA) (accessed 30th August 2015), (para. 2-3)). [↑](#footnote-ref-690)
691. Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.169. [↑](#footnote-ref-691)
692. Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford, OUP, 2001), p.146. [↑](#footnote-ref-692)
693. Tvankchian Parkev, ‘Debate Continues Over What Constitutes Genocide’, (World Focus, 2009) <http://www.armeniandiaspora.com/showthread.php?158763-Debate-Continues-Over-What-Constitutes-Genocide> (accessed 4th March 2014), (para.6). A useful analysis of the continued gap between rhetoric and reality on the subject of genocide can also be found in Robert Pape, ‘When Duty Calls: A Pragmatic Standard of Humanitarian Intervention’ International Security, 37 (2012), pp.46-7. [↑](#footnote-ref-693)
694. Adrian Gallagher, Genocide and its Threat to Contemporary International Order (Basingstoke, Palgrave Macmillan, 2013), p.14. [↑](#footnote-ref-694)
695. Ibid. , p.13. [↑](#footnote-ref-695)
696. Ibid. , in particular pages 32 & 128. [↑](#footnote-ref-696)
697. See Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), pp.623-4. [↑](#footnote-ref-697)
698. The United Nations, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, (UN, 1948) <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf> (accessed 13th September 2013), (para.2). [↑](#footnote-ref-698)
699. See ICC, ‘Rome Statute of the International Criminal Court’, (ICC, 2002), <http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf> (accessed 13th September 2013), (para.8). [↑](#footnote-ref-699)
700. Ibid. , (para.7). Discussion of the Rome Statute is also provided in Michael Doyle, ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.81 & Thomas Weiss, Humanitarian Intervention: Ideas in Action (Cambridge, Polity Press, 2012) , p.114. [↑](#footnote-ref-700)
701. This was the definition provided in a 1993 report by a Commission of Experts established by then-UN Secretary-General Boutros Boutros-Ghali, with the Commission subsequently confirming acts of ethnic cleansing had occurred in the former Yugoslavia. For further discussion, see The United Nations, ‘Letter dated 24th May 1994 from the UN Secretary General to the President of the Security Council’, (UNSC, 1994) http://www.icty.org/x/file/About/OTP/un\_commission\_of\_experts\_report1994\_en.pdf (accessed 3rd December 2014), (para.129). [↑](#footnote-ref-701)
702. Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.69. [↑](#footnote-ref-702)
703. For a summary, see Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), pp.354-374. [↑](#footnote-ref-703)
704. Ibid. , p.362. [↑](#footnote-ref-704)
705. Ibid. , p.355. [↑](#footnote-ref-705)
706. The United Nations, ‘UNSC Resolution 2118: Adopted by the Security Council on 27th September 2013’, (UNSC, 2013) http://www.un.org/en/ga/search/view\_doc.asp?symbol=S/RES/2118(2013) (accessed 29th August 2014), (para.1-10). [↑](#footnote-ref-706)
707. See in particular the first and second reports of the Commission (UNOHCHR, 2011 & 2012), available at <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/AboutCoI.aspx> (accessed 15th January 2016). [↑](#footnote-ref-707)
708. Adrian Gallagher, Genocide and its Threat to Contemporary International Order (Basingstoke, Palgrave Macmillan, 2013), p.128. [↑](#footnote-ref-708)
709. See in particular Cecile Fabre, Cosmopolitan War (Oxford, OUP, 2012), Chapter 1. Discussion of cosmopolitan distributive justice is also provided by Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.234, David Miller, ‘Cosmopolitanism’, in The Cosmopolitanism Reader, eds. Garrett Brown and David Held (Cambridge, Polity Press, 2010), pp.379-80 & Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-709)
710. Kok-Chor Tan, Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism (Cambridge, CUP, 2004), p.53. [↑](#footnote-ref-710)
711. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), pages 9 & 12. [↑](#footnote-ref-711)
712. Ibid. , p.16. This caveat is also touched upon in David Chandler, ‘The Paradox of the Responsibility to Protect’ Cooperation and Conflict, 45 (2010), p.132. [↑](#footnote-ref-712)
713. Garrett Brown and Ali Bohm, ‘Introducing *Jus Ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention’ European Journal of International Relations, 1 (2015), p.17. [↑](#footnote-ref-713)
714. See Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.36-8, Ramesh Thakur, The United Nations, Peace and Security: from Collective Security to the Responsibility to Protect (Cambridge, CUP, 2006), p.257 & Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.72. [↑](#footnote-ref-714)
715. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.138). [↑](#footnote-ref-715)
716. Whilst all three pillars are deemed to be of equal importance, Ban Ki-Moon’s 2009 report stressed in particular the value of prevention in its preamble. See Ban Ki-Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN, 2009) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013). This view was also widely endorsed by the UN General Assembly (see Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.44). [↑](#footnote-ref-716)
717. Ban-Ki Moon, ‘Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect’, (UN, 2014) <http://responsibilitytoprotect.org/N1446379.pdf> (accessed 25th June 2014), (para.28 & 30). [↑](#footnote-ref-717)
718. Ibid. , (para.28 & 39-58). [↑](#footnote-ref-718)
719. Ibid. , (para.28 & 59-69). [↑](#footnote-ref-719)
720. Ban-Ki Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN 2014) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013), (para.35). [↑](#footnote-ref-720)
721. Ban-Ki Moon, ‘Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect’ (UN, 2014) <http://responsibilitytoprotect.org/N1446379.pdf> (accessed 25th June 2014), (para.32). [↑](#footnote-ref-721)
722. Ibid. , (para.22). [↑](#footnote-ref-722)
723. Ibid. , (para.6-11). [↑](#footnote-ref-723)
724. Ibid. , (para.26). [↑](#footnote-ref-724)
725. Ibid. , (para.26). [↑](#footnote-ref-725)
726. See footnote no.716. [↑](#footnote-ref-726)
727. For further discussion, see Chapter 2. [↑](#footnote-ref-727)
728. See in particular Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), p.10. [↑](#footnote-ref-728)
729. To clarify, under the aegis of R2P, the four specified crimes of genocide, war crimes, ethnic cleansing and crimes against humanity must be either occurring or *expected* to occur in order for intervention to take place (see Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect’ International Security, 37 (2013), p.204). [↑](#footnote-ref-729)
730. Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.11. [↑](#footnote-ref-730)
731. Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.32. [↑](#footnote-ref-731)
732. For further discussion and analysis, see Chapter 2**.** [↑](#footnote-ref-732)
733. Jürgen Habermas, Between Naturalism and Religion (Cambridge, Polity, 2008), p.332. [↑](#footnote-ref-733)
734. Jürgen Habermas, The Divided West (Cambridge, Polity, 2006), p.133. [↑](#footnote-ref-734)
735. For a definition of constitutional patriotism, see Chapter 3. [↑](#footnote-ref-735)
736. Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), p.10. [↑](#footnote-ref-736)
737. Ibid. , p.12. [↑](#footnote-ref-737)
738. See Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.891. [↑](#footnote-ref-738)
739. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.358. [↑](#footnote-ref-739)
740. Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.29. Relatedly, the legal stature of the Genocide Convention has been confirmed by the 2007 International Court of Justice (ICJ) judgement in the case of Bosnia versus Serbia. This judgement found Serbia responsible for failing to both prevent the genocide and punish the perpetrators, subsequently re-affirming the obligation of all states to prevent acts of genocide. See William Bain, ‘Responsibility and Obligation in the Responsibility to Protect’ Review of International Studies, 36 (2011), pp.15-32. [↑](#footnote-ref-740)
741. The United Nations, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, (UN, 1948) <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf> (accessed 13th September 2013), (para.4). [↑](#footnote-ref-741)
742. Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.29. [↑](#footnote-ref-742)
743. See Office of the High Commissioner for Human Rights, ‘International Covenant on Civil and Political Rights’, (UN, 1966) <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed 27th July 2015), (para.1-7) & Office of the High Commissioner for Human Rights, ‘International Covenant on Economic, Social and Cultural Rights’, (UN, 1966) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (also accessed 27th July 2015), (para.2 & 12). [↑](#footnote-ref-743)
744. Patrick Capps, Human Dignity and the Foundations of International Law (Oxford, Hart, 2009), p.107. [↑](#footnote-ref-744)
745. The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.138). [↑](#footnote-ref-745)
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749. Ibid. , [↑](#footnote-ref-749)
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752. See Karel Wellens, ‘Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections’, in Solidarity: A Structural Principle of International Law, eds. Rudiger Wolfrum and Chie Kojima (Springer, Heidelberg, 2009), p.4. [↑](#footnote-ref-752)
753. Ibid. , p.5. [↑](#footnote-ref-753)
754. Ibid. , p.13. [↑](#footnote-ref-754)
755. Ibid. , p.6. [↑](#footnote-ref-755)
756. Ibid. , p.4. [↑](#footnote-ref-756)
757. Ibid. , p.13. [↑](#footnote-ref-757)
758. Ibid. , p.12. [↑](#footnote-ref-758)
759. See Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), p.10. [↑](#footnote-ref-759)
760. See in particular Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), p.140. [↑](#footnote-ref-760)
761. Anne Peters, ‘The Security Council’s Responsibility to Protect’ International Organisations Law Review, 8 (2011), p.10. [↑](#footnote-ref-761)
762. As will become clear, R2P has yet to be *explicitly* invoked in relation to the secondary international responsibility to intervene in instances where state authorities fail to protect their populations. [↑](#footnote-ref-762)
763. More specifically, these include the absence of a legal obligation conferred on the wider international community to respond to egregious violations of human rights and the primacy of independent state interests over broader global humanitarian concerns. [↑](#footnote-ref-763)
764. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.895. [↑](#footnote-ref-764)
765. Ibid. , p.897. [↑](#footnote-ref-765)
766. See Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), p.620. [↑](#footnote-ref-766)
767. Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.71. [↑](#footnote-ref-767)
768. Ibid. , p.75. [↑](#footnote-ref-768)
769. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.359. [↑](#footnote-ref-769)
770. This is seen specifically through R2P’s codification and operationalisation by UN member states. For Finnemore and Sikkink, institutionalisation within specific sets of rules and organisations is integral to an emergent norm moving towards the second stage of ‘norm cascade’ (see p.900). [↑](#footnote-ref-770)
771. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.898. [↑](#footnote-ref-771)
772. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.360. [↑](#footnote-ref-772)
773. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.901. [↑](#footnote-ref-773)
774. Ibid. , p.902. [↑](#footnote-ref-774)
775. Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.92. [↑](#footnote-ref-775)
776. See in particular Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), pp.35-9. [↑](#footnote-ref-776)
777. Aidan Hehir and Anthony Lang, ‘The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect’ Criminal Law Forum, 26 (2015), p.160. [↑](#footnote-ref-777)
778. Cristina Badescu and Thomas Weiss, ‘Misrepresenting R2P and Advancing Norms: an Alternative Spiral?’ International Studies Perspectives, 11 (2010), p.360. [↑](#footnote-ref-778)
779. See Alex Bellamy, ‘The Responsibility to Protect: Added Value or Hot Air?’ Cooperation and Conflict, 48 (2013), pp.343-6. [↑](#footnote-ref-779)
780. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.895. [↑](#footnote-ref-780)
781. Alex Bellamy, ‘The Responsibility to Protect: Added Value or Hot Air?’ Cooperation and Conflict, 48 (2013), in particular pages 337 & 346. [↑](#footnote-ref-781)
782. As outlined in the introduction to this chapter, under the aegis of R2P the four specified crimes of genocide, war crimes, ethnic cleansing and crimes against humanity must be either occurring or *expected* to occur in order for intervention to take place. See Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect’ International Security, 37 (2013), p.204. [↑](#footnote-ref-782)
783. Again, for a definition see both James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.50 & Spencer Zifcak, ‘The Responsibility to Protect’, in International Law, ed. Malcolm Evans (Oxford, OUP, 2010), p.524. [↑](#footnote-ref-783)
784. Global Centre for the Responsibility to Protect, ‘About R2P’, (GCR2P, 2016) http://www.globalr2p.org /about\_r2p (accessed 20th January 2016), (para.9). [↑](#footnote-ref-784)
785. See both Michael Doyle, ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.81 & Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.4) [↑](#footnote-ref-785)
786. David Chandler, ‘The Paradox of the Responsibility to Protect’ Cooperation and Conflict, 45 (2010), p.130. [↑](#footnote-ref-786)
787. The United Nations, ‘UNSC Resolution 1975: Adopted by the Security Council on 30th March 2011’, (UN, 2011), <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975(2011)> (accessed 12th October 2013), (preamble). For a summary, see also Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.13. [↑](#footnote-ref-787)
788. See Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.26. [↑](#footnote-ref-788)
789. Cristina Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (New York, Routledge, 2010), p.113. [↑](#footnote-ref-789)
790. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.825, Heinz Gartner, ‘The Responsibility to Protect and Libya’, (OIIP, 2011) [http://www.oiip.ac.at/fileadmin/Unterlagen/Dateien/Kurzanalysen /Responsibility\_to\_Protect\_and\_Libya.pdf](http://www.oiip.ac.at/fileadmin/Unterlagen/Dateien/Kurzanalysen%20/Responsibility_to_Protect_and_Libya.pdf) (accessed 5th September 2013), (para.11) & Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.3). [↑](#footnote-ref-790)
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792. See footnote no.612. [↑](#footnote-ref-792)
793. Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), in particular pp.140-44. [↑](#footnote-ref-793)
794. See Jon Western and Joshua S. Goldstein, ‘Humanitarian Intervention Comes of Age’, (Foreign Affairs, 2011) <https://www.foreignaffairs.com/articles/2011-11-01/humanitarian-intervention-comes-age> (accessed 20th January 2016) & Ivo H. Daalder and James G. Stavridis, ‘NATO’s Victory in Libya’, (Foreign Affairs, 2012) <https://www.foreignaffairs.com/articles/libya/2012-02-02/natos-victory-libya> (also accessed 20th January 2016). [↑](#footnote-ref-794)
795. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.825. [↑](#footnote-ref-795)
796. Ibid. , See also Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.32) & Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed 13th September 2013), (para.1). [↑](#footnote-ref-796)
797. Alex Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ Ethics and International Affairs, 25 (2011), pp.263-4. [↑](#footnote-ref-797)
798. Ibid. , p.264. [↑](#footnote-ref-798)
799. Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’ International Security, 38 (2013), in particular pp.146-8. [↑](#footnote-ref-799)
800. See in particular Rafal Tarnogorski, ‘Libya and Syria: Responsibility to Protect at a Crossroads’, (PISM, 2012) <https://www.pism.pl/files/?id_plik=12260> (accessed 13th September 2013), (para.16). [↑](#footnote-ref-800)
801. The United Nations, ‘Security Council Approves ‘No-Fly’ Zone over Libya’, (UN, 2011), <http://www.un.org/press/en/2011/sc10200.doc.htm> (accessed 6th February 2012), (para.6-7). [↑](#footnote-ref-801)
802. See Jason Ralph and Adrian Gallagher, ‘Legitimacy Faultlines in International Society: the Responsibility to Protect and Prosecute After Libya’ Review of International Studies, 41 (2015), p.9. [↑](#footnote-ref-802)
803. See footnote no.687. In addition, ‘war crimes’ and ‘crimes against humanity’ were increasingly reported by the media (Russell Buchan, International Law and the Construction of the Liberal Peace (Oxford, Hart Publishing, 2013), p.34), whilst Resolution 1973 condemned the gross and systematic violation of human rights by the Libyan authorities and stated that such an act may amount to ‘crimes against humanity’ **(**Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), pp.290-1). [↑](#footnote-ref-803)
804. See footnote no.688. [↑](#footnote-ref-804)
805. Tim Dunne and Jess Gifkins, Libya and the State of Intervention’ Australian Journal of International Affairs, 65 (2011), p.9. The decision to abstain rather than support military action, however, does re-affirm their continued reservations over the use of force for human protection purposes (see Alex Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ Ethics and International Affairs, 25 (2011), p.267). [↑](#footnote-ref-805)
806. As explained, the consequences of SCR1970 - invoking the responsibility of the Libyan government to protect its own people - did extend to SCR1973, whilst the coercive measures adopted by the international community, including the use of military force, did fall within the scope of R2P. [↑](#footnote-ref-806)
807. See in particular Rafal Tarnogorski, ‘Libya and Syria: Responsibility to Protect at a Crossroads’, (PISM, 2012) <https://www.pism.pl/files/?id_plik=12260> (accessed 13th September 2013), (para.16-21) & Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’ (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.30). [↑](#footnote-ref-807)
808. Jonathan Gilmore, ‘Protecting the Other: Considering the Process and Practice of Cosmopolitanism’ European Journal of International Relations, 20 (2014), p.703. [↑](#footnote-ref-808)
809. See Michael Ignatieff, Virtual War: Kosovo and Beyond (London, Vintage, 2001), p.164. [↑](#footnote-ref-809)
810. Jonathan Gilmore, ‘Protecting the Other: Considering the Process and Practice of Cosmopolitanism’ European Journal of International Relations, 20 (2014), p.703. [↑](#footnote-ref-810)
811. Jonathan Gilmore, The Cosmopolitan Military: Armed Forces and Human Security in the 21st Century (Basingstoke, Palgrave Macmillan, 2015), pp.187-191. [↑](#footnote-ref-811)
812. The implications of the Somali intervention for future US foreign policy are touched upon in Linda Melvern, Conspiracy to Murder: the Rwandan Genocide(London, Verso, 2006), p.98 & Donald Snow, Uncivil Wars: International Security and the New Internal Conflicts(London, Lynne Rienner, 1996), p.48. [↑](#footnote-ref-812)
813. Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.843. [↑](#footnote-ref-813)
814. Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed

13th September 2013), (para.33). [↑](#footnote-ref-814)
815. Jonathan Gilmore, ‘Protecting the Other: Considering the Process and Practice of Cosmopolitanism’ European Journal of International Relations, 20 (2014), p.703. [↑](#footnote-ref-815)
816. BBC News, ‘Libyan Cabinet Minister Hassan al-Droui killed in Sirte’, (BBC, 2014), <http://www.bbc.co.uk/news/world-africa-25701470> (accessed 4th February 2014), (para.8-9). [↑](#footnote-ref-816)
817. Graham Harrison, ‘No More Rwandas? The Manifest Failings of R2P in Theory and Practice’ (forthcoming, 2013), p.21. [↑](#footnote-ref-817)
818. Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ International Organisation, 52 (1998), p.895. [↑](#footnote-ref-818)
819. See in particular Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’ The Washington Quarterly, 36 (2013), p.69. [↑](#footnote-ref-819)
820. See Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect’ International Security, 37 (2013), p.206. [↑](#footnote-ref-820)
821. The United Nations, ‘UNSC Resolution 2127: Adopted by the Security Council on 3rd December 2013’, (UN, 2013) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127(2013)> (accessed 6th September 2013), (para.21). [↑](#footnote-ref-821)
822. This concession will be returned to later in the chapter. [↑](#footnote-ref-822)
823. Again, a more general explanation is provided in Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), p.71. [↑](#footnote-ref-823)
824. See James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.247 & Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ Ethics and International Affairs, 19 (2005), p.37. [↑](#footnote-ref-824)
825. Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ Human Rights Law Review, 12 (2012), p.11. [↑](#footnote-ref-825)
826. Alex Bellamy, The Responsibility to Protect: the Global Effort to End Mass Atrocities (Cambridge, Polity Press, 2009), pp.72-3. [↑](#footnote-ref-826)
827. Ban Ki-Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN, 2009) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013), (para.66). It is important to emphasise, however, that Ban-Ki Moon’s report still recommends that the UNSC’s permanent member states not apply veto power in situations of manifest failure (para.61), whilst also re-affirming the use of the UN’s ‘Uniting for Peace’ procedure should the UNSC fail to exercise its responsibility in relation to matters of international peace and security (para. 63). [↑](#footnote-ref-827)
828. This is despite incredulity surrounding European interests in the Arab World in general, more specifically those pertaining to the region’s vast oilfields and concerns with stemming the flow of migrants. For further discussion, see Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), p.294. [↑](#footnote-ref-828)
829. This position is supported both by Pattison and Weiss. See James Pattison, ‘The Ethics of Humanitarian Intervention in Libya’ Ethics and International Affairs, 25 (2011), p.273 & Thomas Weiss, ‘RtoP Alive and Well after Libya’ also in Ethics and International Affairs, 25 (2011), p.291. [↑](#footnote-ref-829)
830. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), pp.839-41 & Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.9). [↑](#footnote-ref-830)
831. See The UN General Assembly, ‘Resolution Adopted by the General Assembly: 60/1’, (UN, 2005) <http://www.ifrc.org/docs/idrl/I520EN.pdf> (accessed 15th August 2013), (para.139). [↑](#footnote-ref-831)
832. See Alex Bellamy, ‘The Responsibility to Protect and the Problem of Military Intervention’ International Affairs, 84 (2008), p.621. [↑](#footnote-ref-832)
833. Ban Ki-Moon, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, (UN, 2009) <http://www.unrol.org/doc.aspx?d=2982> (accessed 3rd September 2013), (para.61). [↑](#footnote-ref-833)
834. For further discussion and analysis, see Chapter 2. [↑](#footnote-ref-834)
835. Ae explained in the case of Libya, the consequences of SCR1970 did extend to SCR1973, whilst the coercive measures adopted by the international community, including the use of military force, did fall within the scope of R2P. [↑](#footnote-ref-835)
836. In relation to Libya, see both Jennifer Welsh, ‘Civilian Protection in Libya: Putting Coercion and Controversy Back into R2P’ Ethics and International Affairs, 25 (2011), p.255 & Tim Dunne and Jess Gifkins, Libya and the State of Intervention’ Australian Journal of International Affairs, 65 (2011), p.7. [↑](#footnote-ref-836)
837. The United Nations, ‘UNSC Resolution 1975: Adopted by the Security Council on 30th March 2011’, (UN, 2011) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975(2011)> (accessed 12th October 2013), (preamble). [↑](#footnote-ref-837)
838. Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed 13th September 2013), (para.34). [↑](#footnote-ref-838)
839. The United Nations, ‘UNSC Resolution 1973: Adopted by the Security Council on 17th March 2011’, (UN, 2011) http://www.un.org/en/ga/search/view\_doc.asp?symbol=S/RES/1973(2011) (accessed 12th October 2013), (preamble). [↑](#footnote-ref-839)
840. See footnotes 862-3. [↑](#footnote-ref-840)
841. Michael Doyle, ‘International Ethics and the Responsibility to Protect’ International Studies Review, 13 (2011), p.81. [↑](#footnote-ref-841)
842. Alex Bellamy, Global Politics and the Responsibility to Protect: from Words to Deeds (New York, Routledge, 2011), p.54. [↑](#footnote-ref-842)
843. Jennifer Welsh, ‘Civilian Protection in Libya: Putting Coercion and Controversy Back into R2P’ Ethics and International Affairs, 25 (2011), p.255. [↑](#footnote-ref-843)
844. Chandler, for example, argues that this failure can be attributed more generally to the appearance of a post-interventionist paradigm of human security concerned with policies of *prevention*. See David Chandler, ‘Resilience and Human Security: the post-Interventionist Paradigm’ Security Dialogue, 43 (2012), pp.220-21. [↑](#footnote-ref-844)
845. See Hannah VanHoose, ‘Understanding the Russian Response to the Intervention in Libya’, (Center for American Progress, 2011) [https://www.americanprogress.org/issues/security /news/2011/04/12/9529/understanding-the-russian-response-to-the-intervention-in-libya/](https://www.americanprogress.org/issues/security%20/news/2011/04/12/9529/understanding-the-russian-response-to-the-intervention-in-libya/) (accessed 7th August 2014), (para.3) & Julian Borger, ‘Libya No-Fly Resolution Reveals Global Split in UN’, (The Guardian, 2011) <http://www.theguardian.com/world/2011/mar/18/libya-no-fly-resolution-split> (also accessed 7th August 2014), (para.10). [↑](#footnote-ref-845)
846. See Michael Barnett and Thomas Weiss, Humanitarianism Contested: Where Angels Fear to Tread (Abingdon, Routledge, 2011), p.81. [↑](#footnote-ref-846)
847. See footnotes 613-4. [↑](#footnote-ref-847)
848. Graham Harrison, ‘No More Rwandas? The Manifest Failings of R2P in Theory and Practice’ (forthcoming, 2013), p.16. [↑](#footnote-ref-848)
849. See Jonathan Graubart, ‘R2P and Pragmatic Liberal Interventionism: Values in the Service of Interests’ Human Rights Quarterly, 35 (2013), p.74. [↑](#footnote-ref-849)
850. As discussed, through stipulating that ‘collective action’ - including the use of force - can only proceed through the UNSC, R2P eschews the possibility of unilateral intervention *a la* Kosovo and Iraq and has, in theory, made it more difficult for powerful states to authorise military intervention for anything other than genuine human protection reasons. [↑](#footnote-ref-850)
851. For further discussion and analysis, see Chapter 2. [↑](#footnote-ref-851)
852. See Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), pp.835-6. [↑](#footnote-ref-852)
853. Alex Bellamy, ‘The Responsibility to Protect and the Problem of Regime Change’, (E-International Relations, 2011) <http://www.e-ir.info/2011/09/27/the-responsibility-to-protect-and-the-problem-of-regime-change> (accessed 14th April 2013), (para.9). [↑](#footnote-ref-853)
854. Ibid. , [↑](#footnote-ref-854)
855. Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.845. [↑](#footnote-ref-855)
856. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.18-19). [↑](#footnote-ref-856)
857. Ibid. , (para.32). [↑](#footnote-ref-857)
858. Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.845. [↑](#footnote-ref-858)
859. Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.32). [↑](#footnote-ref-859)
860. Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed 13th September 2013), (para.27). [↑](#footnote-ref-860)
861. See footnote no.829. [↑](#footnote-ref-861)
862. See Alex Bellamy, ‘The Responsibility to Protect and the Problem of Regime Change’, (E-International Relations, 2011) <http://www.e-ir.info/2011/09/27/the-responsibility-to-protect-and-the-problem-of-regime-change> (accessed 14th April 2013), (para.9) & Ramesh Thakur, ‘R2P, Libya and International Politics as the Struggle for Competing Normative Architectures’, (E-International Relations, 2011) <http://www.e-ir.info/2011/09/07/r2p-libya-and-international-politics-as-the-struggle-for-competing-normative-architectures/> (also accessed 14th April 2013), (para.10). [↑](#footnote-ref-862)
863. See Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’, (University of Melbourne, 2012) <http://www.law.unimelb.edu.au/files/dmfile/downloaddad11.pdf> (accessed 12th September 2012), (para.83) & Rafal Tarnogorski, ‘Libya and Syria: Responsibility to Protect at a Crossroads’, (PISM, 2012) <https://www.pism.pl/files/?id_plik=12260> (accessed 13th September 2013), (para.16). [↑](#footnote-ref-863)
864. See in particular Simon Caney, Justice Beyond Borders (Oxford, OUP, 2006), p.255. [↑](#footnote-ref-864)
865. This is based upon Archibugi’s claim that the Commission is the most appropriate body to draw up guidelines relating to the process of humanitarian intervention. For further discussion, see Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), pp.6-7. [↑](#footnote-ref-865)
866. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.100. [↑](#footnote-ref-866)
867. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.249. [↑](#footnote-ref-867)
868. See Chris Abbott, ‘Rights and Responsibilities: The Dilemma of Humanitarian Intervention’ Global Dialogue, 7 (2005), p.5. [↑](#footnote-ref-868)
869. Ibid. , [↑](#footnote-ref-869)
870. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.249. [↑](#footnote-ref-870)
871. Ibid. , [↑](#footnote-ref-871)
872. Ibid. , [↑](#footnote-ref-872)
873. Chris Brown, ‘Selective Humanitarianism: In Defence of Inconsistency’, in Ethics and Foreign Intervention, eds. Deen Chatterjee and Don Scheid (Cambridge, CUP, 2003), pages 39 & 46. [↑](#footnote-ref-873)
874. For further discussion, see Chapter 1. This claim is also supported by Nicholas Wheeler (see ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society’, in Humanitarian Intervention and International Relations, ed. Jennifer Welsh (Oxford, OUP, 2006), pp.48-9). [↑](#footnote-ref-874)
875. See Seyla Benhabib, ‘Hospitality, Sovereignty and Democratic Iterations’, in Another Cosmopolitanism, ed. Robert Post (Oxford, OUP, 2006), p.159. [↑](#footnote-ref-875)
876. Ibid. , p.170-1. [↑](#footnote-ref-876)
877. Ibid. , pp.168-70. [↑](#footnote-ref-877)
878. This is reflected in the creation of the EU Battlegroups, the operational military components of the European Security and Defence Policy (ESDP) and Common Security and Defence Policy (CSDP). These will be returned to later in the chapter. [↑](#footnote-ref-878)
879. Dan Sarooshi, The United Nations and the Development of Collective Security: the Delegation by the UN Security Council of its Chapter VII powers (Oxford, OUP, 1999), p.4. [↑](#footnote-ref-879)
880. For details of current pledges undertaken made by UN member states, see Office of Military Affairs, ‘UNSAS Website - UN Force Link’, (UN, 2013) [https://cc.unlb.org/UNSAS%20Training %20Documents /TCC%20 Meeting%20UNSAS%20presentation%2030%20Jan%202013.pdf](https://cc.unlb.org/UNSAS%20Training%20%20Documents%20/TCC%20%20Meeting%20UNSAS%20presentation%2030%20Jan%202013.pdf) (accessed 12th August 2014). [↑](#footnote-ref-880)
881. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.228. [↑](#footnote-ref-881)
882. Ibid. , [↑](#footnote-ref-882)
883. See in particular Per Cramer, ‘Reflections on European Effective Multilateralism and the Use of Force’, in Beyond the Established Legal Borders, eds. Malcolm Evans and Panos Koutrakos (Oxford, Hart Publishing, 2011), pp.226-239 & Directorate-General for External Policies of the Union, ‘The European Security and Defence Policy: from the Helsinki Headline Goal to the EU Battlegroups’ , (European Parliament, 2006)

<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede030909noteesdp_/sede030909noteesdp_en.pdf> (accessed 27th February 2013), (para.36). [↑](#footnote-ref-883)
884. Directorate-General for External Policies of the Union, ‘The EU Battlegroups’, (European Parliament, 2006)

<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede030909notebattkegroups_/sede030909notebattlegroups_en.pdf> (accessed 9th May 2013), (para.11). [↑](#footnote-ref-884)
885. Official Journal of the European Union, ‘Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community’, ,(EU, 2007) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN> (accessed 9th May 2013), (para.275). [↑](#footnote-ref-885)
886. A comprehensive assessment of the EU’s broader military/civilian crisis management missions is provided by Jeannette Ladzik, ‘EU Military and Civilian Crisis Management Operations: the First Six Years’, (Global Policy Institute, 2009) <http://www.fedtrust.co.uk/filepool/Crisis_Management_Policy_Brief.pdf> (accessed 14th March 2013). [↑](#footnote-ref-886)
887. For further discussion and analysis, see Chapter 2. [↑](#footnote-ref-887)
888. This is illustrated both by the EU’s endorsement of the *Headline Police Goal* in 2000 and the establishment of the European Gendarmerie (or Police) Force by France, Italy, the Netherlands, Portugal and Spain in 2004, albeit outside the EU framework. See both Timothy Chafos, ‘The European Union’s Rapid Reaction Force and the North Atlantic Treaty Organisation Response Force: a Rational Division of Labour for European Security’, (Faculty of the US Army, 2003) <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA416120> (accessed 31st January 2013), (para.163) & Directorate-General for External Policies of the Union, ‘The European Security and Defence Policy: from the Helsinki Headline Goal to the EU Battlegroups’ , (European Parliament, 2006)

<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede030909noteesdp_/sede030909noteesdp_en.pdf> (accessed 27th February 2013), (para.37). [↑](#footnote-ref-888)
889. According to Wade Jacoby and Christopher Jones, a question mark continues to hang over the relationship between strategic vision and military capacity within the EU, illustrated by the fact that the Battlegroups are only currently ‘operational’ in Sweden and the Czech Republic. For further discussion of the Swedish and Czech Battlegroups, see Wade Jacoby and Christopher Jones, ‘The EU Battle Groups in Sweden and the Czech Republic: What National Defence Reforms Tell us about European Rapid Reaction Capabilities’ European Security, 17 (2008), in particular pp.315-7. [↑](#footnote-ref-889)
890. See Terry Terriff, ‘The European Rapid Reaction Force: an Embryonic Cosmopolitan Military?’, in Forces for Good: Cosmopolitan Militaries in the Twenty-First Century, eds. Lorraine Elliott and Graeme Cheeseman (Manchester, Manchester University Press, 2004), p.152. [↑](#footnote-ref-890)
891. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), pp.228-9. [↑](#footnote-ref-891)
892. Pattison does discuss the possibility of a small cosmopolitan UN force however, despite eschewing the need for national approval, such an army would, in his opinion, have a limited capability in responding to large-scale humanitarian crises (see pp.229-31). [↑](#footnote-ref-892)
893. See David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), p.276 & Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), pp.13-15. [↑](#footnote-ref-893)
894. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), in particular pages 88 and 111. [↑](#footnote-ref-894)
895. See Daniele Archibugi, ‘Cosmopolitan Guidelines for Humanitarian Intervention’ Alternatives, 29 (2004), p.14 & ‘The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), pp.199-202. [↑](#footnote-ref-895)
896. James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), pages 230 & 233. [↑](#footnote-ref-896)
897. Ibid, p.233. [↑](#footnote-ref-897)
898. As will be argued, R2P offers a budding assessment - and acceptance - of the role of influential global actors in precipitating the conditions that can lead to violent and protracted internal conflict. [↑](#footnote-ref-898)
899. David Held and Anthony McGrew, ‘Introduction’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.14 & Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), pp.24-5. [↑](#footnote-ref-899)
900. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), pp.93-4. [↑](#footnote-ref-900)
901. David Held and Anthony McGrew, ‘Introduction’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), pp.1-2. [↑](#footnote-ref-901)
902. See Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.26 & David Held and Anthony McGrew, ‘Introduction’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.7. [↑](#footnote-ref-902)
903. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.77. Archibugi describes these institutions as performing an ‘autonomous role’, whilst also acknowledging that they are bound by the will of their governments. [↑](#footnote-ref-903)
904. See David Held and Anthony McGrew, ‘Introduction’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.14 & Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.13. [↑](#footnote-ref-904)
905. David Held and Anthony McGrew, ‘Introduction’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.14. [↑](#footnote-ref-905)
906. Ibid. , p.14. See also Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.7 & Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), pp.93-4. [↑](#footnote-ref-906)
907. Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.25. [↑](#footnote-ref-907)
908. Ibid. , pp.26-7. [↑](#footnote-ref-908)
909. See David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), pp.273-4 & Patrick Hayden, Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), p.28. [↑](#footnote-ref-909)
910. David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), p.274. [↑](#footnote-ref-910)
911. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.174. [↑](#footnote-ref-911)
912. Ibid. , pp.172-3 [↑](#footnote-ref-912)
913. Ibid. , pp.93-4. [↑](#footnote-ref-913)
914. David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), pp.273-4. [↑](#footnote-ref-914)
915. Ibid. , See also Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), p.173. [↑](#footnote-ref-915)
916. Robert Gilpin, ‘A Realist Perspective on International Governance’, in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.238. [↑](#footnote-ref-916)
917. See Hayden’s discussion of liberal internationalism in Cosmopolitan Global Politics (Aldershot, Ashgate, 2005), in particular p.30. [↑](#footnote-ref-917)
918. Neil Walker, ‘‘Making a World of Difference? Habermas, Cosmopolitanism and the Constitutionalisation of International Law’, in Multiculturalism and the Law: a Critical Debate, ed. Omid Shabani (Cardiff, University of Wales Press, 2007), p.220. Habermas himself acknowledges the US’ commitment to the creation of such a neoliberal capitalist international order, with the US’ proclamation of National Security Strategy in 2002 and, more pertinently, the decision to invade Iraq in 2003 seen as testament to the US’ attempts to establish a *Pax Americana,* evoking debate over whether international law remains an appropriate - and indeed *relevant* - medium for realising the declared goals of achieving peace and international security and, in addition, promoting democracy and human rights throughout the world. However, Habermas’ himself tempers such cynicism by arguing that the US’ shift to hegemonic liberalism encompasses a recent and potentially *temporary* reversal of its more enduring commitment to an internationalist strategy, as well as a neglect of its own long-term interest in binding powerful states to the legal rules and procedures indicative of a politically-constituted international community. Moreover, the US’ endorsement and re-affirmation of R2P, decision to consent to and *support* - rather than actively lead - military intervention in Libya under the auspices of Security Council Resolution 1973 and, more recently, deployment of air strikes against ISIS and jihadist militants in Iraq and Syria as part of a wider multinational effort under the aegis of ‘Operation Inherent Resolve’ all help to emphasise the continued importance and relevance of international norms and procedures. In addition, the US’ invasion of Iraq is considered to be less a reflection of a positive commitment to - and promotion of - core liberal values than an expression of nefarious political and economic objectives. In addition to Walker, see also Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.72 & Joseph Micallef, ‘The Enemy of my Enemy: Islamic State and the Internationalization of the Syrian and Iraqi Civil Wars’, (Huffington Post, 2015) <http://www.huffingtonpost.com/joseph-v-micallef/the-enemy-of-my-enemy-isl_b_6541952.html> (accessed 14th February 2015), (para.1-2). [↑](#footnote-ref-918)
919. See footnote no.714. [↑](#footnote-ref-919)
920. Ban-Ki Moon, ‘Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect’, (UN, 2014) <http://responsibilitytoprotect.org/N1446379.pdf> (accessed 25th June 2014), (para.26). [↑](#footnote-ref-920)
921. As discussed previously, this is a consequence of the pre-eminence of self-motivated political and economic objectives, the monopolisation of powerful states over the decision-making and enforcement process and, finally, the absence of consensus over the operationalization of R2P following its implicit nexus with regime change in Libya. [↑](#footnote-ref-921)
922. For further discussion and analysis, see Chapter 5. [↑](#footnote-ref-922)
923. See David Held, Democracy and the Global Order: from the Modern State to Cosmopolitan Governance (Stanford, Stanford University Press, 1995), p.268. [↑](#footnote-ref-923)
924. Ibid. , [↑](#footnote-ref-924)
925. Ibid. , p.269. [↑](#footnote-ref-925)
926. Ibid. , [↑](#footnote-ref-926)
927. Ibid. , [↑](#footnote-ref-927)
928. Daniele Archibugi,The Global Commonwealth of Citizens: Towards Cosmopolitan Democracy (Princeton New Jersey, Princeton University Press, 2008), in particular pp.92-3 & 156-7. [↑](#footnote-ref-928)
929. Ibid. , pp.163-4. [↑](#footnote-ref-929)
930. Robert Gilpin, ‘A Realist Perspective on International Governance’ in Governing Globalisation: Power, Authority and Global Governance, eds. David Held and Anthony McGrew (Cambridge, Polity Press, 2002), p.244. [↑](#footnote-ref-930)
931. See Robert Fine, Cosmopolitanism: Key Ideas (London, Routledge, 2007), p.84. [↑](#footnote-ref-931)
932. See James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (Oxford, OUP, 2010), p.47. [↑](#footnote-ref-932)
933. Nadir Dalal, ‘The R2P is Dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect’, (Seton Hall, 2013) <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1208&context=student_scholarship> (accessed

13th September 2013), (para.43). [↑](#footnote-ref-933)
934. David Chandler, ‘The Limits of Human Rights and Cosmopolitan Citizenship’, in Rethinking Human Rights: Critical Approaches to Human Rights, ed. David Chandler (Basingstoke, Palgrave Macmillan, 2002), pp.119-20. [↑](#footnote-ref-934)
935. See in particular Eki Omorogbe, ‘The African Union, Responsibility to Protect and the Libyan Crisis’ Netherlands International Law Review, 59 (2012), pp.155-8. [↑](#footnote-ref-935)
936. In sum, this can be attributed to the disproportionate influence of the pro-US Gulf Co-operation Council (GCC) faction of the Arab League, Gaddafi’s ‘pariah’ status within the African region as a whole and efforts by Arab League states to divert attention away from their own political troubles. See both Alex Bellamy and Paul Williams, ‘The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect’ International Affairs, 87 (2011), p.842 & Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), p.296. [↑](#footnote-ref-936)
937. Alex Bellamy, ‘The Responsibility to Protect and the Problem of Regime Change’, (E-International Relations, 2011) <http://www.e-ir.info/2011/09/27/the-responsibility-to-protect-and-the-problem-of-regime-change> (accessed 14th April 2013), (para.9). [↑](#footnote-ref-937)
938. See Gareth Evans, Ramesh Thakur and Robert Pape, ‘Correspondence: Humanitarian Intervention and the Responsibility to Protect International Security, 37 (2013), p.206. [↑](#footnote-ref-938)
939. See The United Nations, ‘UNSC Resolution 2127: Adopted by the Security Council on 3rd December 2013’ , (UN, 2013) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127(2013)> (accessed 6th September 2014), (para.12). [↑](#footnote-ref-939)
940. Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.42). [↑](#footnote-ref-940)
941. For further discussion regarding Libya and the evolution of RwP, see Aidan Hehir, Humanitarian Intervention: An Introduction (London, Palgrave Macmillan, 2013), p.138. [↑](#footnote-ref-941)
942. Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.9). [↑](#footnote-ref-942)
943. Ibid. , (para.43). [↑](#footnote-ref-943)
944. Maria Luiza Ribeiro Viotti, ‘Letter from the Permanent Representative of Brazil to the United Nations addressed to the Secretary General’, (UN, 2011) [http://cpdoc.fgv.br/sites/ default/files/2011%2011%2011%20UN%20conceptual%20paper%20on%20RwP.pdf](http://cpdoc.fgv.br/sites/%20default/files/2011%2011%2011%20UN%20conceptual%20paper%20on%20RwP.pdf) (accessed 7th August 2014), (para.19-20). [↑](#footnote-ref-944)
945. Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), (para.53). [↑](#footnote-ref-945)
946. Ibid. , (para.47). [↑](#footnote-ref-946)
947. Ibid. , (para.48). [↑](#footnote-ref-947)
948. Ibid. , (para.48-9). [↑](#footnote-ref-948)
949. Ibid. , (para.51). [↑](#footnote-ref-949)
950. International Coalition for the Responsibility to Protect, ‘Joint Office of the Special Adviser on the Prevention of Genocide and the Responsibility to Protect’, (ICRtoP, 2013) <http://www.responsibilitytoprotect.org/index.php/component/content/article/3618> (accessed 14th October 2013), (para.11). [↑](#footnote-ref-950)
951. Alex Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ Ethics and International Affairs, 25 (2011), pp.263-4. [↑](#footnote-ref-951)
952. Alex Bellamy, ‘R2P - Dead or Alive?’, (ISN, 2012) <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?Ing=en&id=155246> (accessed 15th September 2013), para.51). [↑](#footnote-ref-952)