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# **Genocide and its Threat to International Society**

*A Thesis submitted to the University of Sheffield  
for the Degree of Doctor of Philosophy*

**Adrian M. Gallagher**  
**Department of Politics**  
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## Abstract

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Whilst the impact of genocide on the populations being targeted is routinely studied, the impact of genocide on international society is routinely overlooked. With this in mind, this thesis brings the study of genocide into IR, via the English School, in order to understand the broader impact of genocide on the ordering structure of international society. The thesis puts forward a novel approach in that it explores the relationship between genocide and international legitimacy and how this relationship has critical implications for the United Nations. It will be argued that genocide holds a special relationship with international legitimacy because it is internationally regarded as the “crime of crimes” from both a legal and moral perspective. It is proposed therefore, that this particular injustice has more of a profound impact on the ordering structure of international society than is presently recognised. In sharp contrast to much of the thinking that underpins present foreign policymaking, it will be claimed that because of the special relationship that genocide holds with international legitimacy, genocide can be understood to pose a threat to international order as it erodes both the legitimate authority of the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the stabilising function in international relations) more than any other crime. It is hoped that through understanding the crime’s relationship with international legitimacy, and the post-Cold War legitimacy crisis, a more informed understanding of genocide can be achieved. Although the 2005 UN-led *Responsibility to Protect* initiative addressed some of the issues at hand, its endorsement has not resolved the fundamental problem of altering political will. If one accepts that genocide has a significant impact on international order, then one has to accept that the prevention of genocide is within the national interest of all states, that is, if they value international stability.

## **Acknowledgements**

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In thanking those that have helped me along the way it feels necessary to start at the beginning.

As a third year undergraduate at Kingston University, I choose an optional module taught within the History Department entitled *The Politics of Mass Murder*. The module engaged in a comparative study of four genocides and in doing so planted the 'genocide seed' in my thoughts. For this I am eternally indebted to Phillip Spencer and Brian Brivati for enlightening my mind, albeit on this very dark subject matter. I will simply never forget the thought provoking Thursday morning seminar discussions that Phillip led on this grave topic. At the time I was looking to complete BA Degree in International Studies whilst the genocide in Darfur became increasingly prominent in the mainstream press. It was within this period therefore that I first began to think about the relationship between Genocide and IR. I can honestly say that without that module this thesis would not have been written.

The next significant development occurred as I studied an MA in Research Methods in Politics and International Relations at the University of Sheffield. Unbeknown to me at the time, Andrew Vincent had just integrated the topic of genocide into his module on Human Rights and in doing so, unbeknown to him, Andrew provided me with the opportunity to develop my thinking on this subject further. It was here that I first began to explore the relationship between human rights and human wrongs which led me to engage with the subject matter of genocide from a more philosophical perspective. I would therefore like to take this opportunity to thank Andrew sincerely. It was Andrew who first suggested that my research in this area should become the basis of a Ph.D. Without such encouragement I would have not applied for ESRC funding, and therefore this Ph.D would not have been written. On that note, I would also like to thank the 'powers that be' for providing me with the funding lifeline that this project needed.

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To acknowledge an institution may seem somewhat strange. However, in July 2007 the University of Sheffield established its Centre for the Study of Genocide and Mass Violence under the leadership of its Director Juergen Zimmerer (editor of the *Journal of Genocide Research* and President of the International Network of Genocide Scholars). The Centre has provided me with an invaluable research tool. Primarily, the Centre has become home to an

on-going Genocide Lecture Series, in which leading genocide scholars from around the world have presented their research findings. Scholars such as Ian Kershaw, Martin Shaw, Dirk Moses, Mark Levene, and Ugur Üngör had helped create a specialist forum for contemporary intellectual debate in the field of genocide studies. In January 2009, the Centre hosted the first International Network of Genocide Scholars conference on the study of genocide and mass violence. The four day conference brought together leading genocide scholars from around the world and provided me with an opportunity to present my work to experts within the field. As well as this, the Centre established a Postgraduate Academy Series three years ago under the initial guidance of Ugur Üngör which I have co-convened with fellow Ph.D candidate David Patrick over the last two years. This Postgraduate forum has provided a highly stimulating environment as once a month, postgraduates from a broad interdisciplinary background, came together to present their work and in general discuss all things related to the study of genocide. Overall, I would like to give special thanks to Juergen Zimmerer for giving me the opportunity and responsibility of co-convening the Postgraduate Academy. I would also like to extend this special thanks to David Patrick, Henning Piper, and Ugur Üngör as well as guest speakers Mark Levene and Linda Melvern for helping to create an ongoing forum of Postgraduate discussion into this important subject matter. Notably, David, Henning, Ugur, and Mark have all taken time out of their busy schedules to read drafts of various chapters over the last twelve months and for this I am extremely grateful.

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# 1 Introduction

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How do we think about, conceptualise, and understand genocide in International Relations? It is this question that lies at the heart of this thesis. Whilst the impact of genocide on the populations being targeted is routinely studied, it seems clear that the impact of genocide on international relations is routinely ignored.<sup>1</sup> Yet how can we expect our actions to be right if our understanding is wrong? The way we understand genocide will naturally shape our behaviour toward it. Therefore, the premise of this thesis is that how we think about genocide and the implications of genocide for international relations is extremely important. To gauge this let us consider the following question: why is it so important to understand genocide within an international context?

## 1.1 Genocide prevention: *unrealistic*?

Genocide refers to the destruction of a group. However, if I am not a member of that group, why should I care about its destruction? Traditionally, in answering this controversial question, scholars have tended to espouse universal moral principles when advocating compassion and humanitarian intervention. Genocide, it is claimed, constitutes a crime against humanity. The problem is that such understanding tends to be built upon the assumption that humanity exists.<sup>2</sup> For those that refute the idea, the claim that genocide is a crime against humanity is flawed, as humanity is nothing more than a word. As Alexander Herzen bluntly stated: “The word ‘humanity’ is repugnant; it expresses nothing definite and only adds to the confusion of all remaining concepts a sort of piebald demi-god. What sort of unit is understood by the word ‘humanity’?”<sup>3</sup> Although this view may seem uncompassionate, the dominance of realism in 20<sup>th</sup> century political discourse has often seen such understanding upheld at the international level.<sup>4</sup> Since realists reject the idea that states have a moral obligation to anyone other than their own citizens, they have tended to oppose

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<sup>1</sup> This thesis will use capital letters (International Relations) to refer to the discipline of IR and small letters (international relations) to refer to the everyday sphere of international relations.

<sup>2</sup> Of particular relevance here is William Bain’s critique of the normative theory to be found within the English School. See William Bain, ‘One Order, Two Laws: Recovering the ‘Normative’ in English School theory’, Review of International Studies (vol. 33, no. 4, 2007, pp. 557-575).

<sup>3</sup> Alexander Herzen My Past and Thoughts translated by Constance Garnett (London: University of California Press, 1982), p.523.

<sup>4</sup> The dominance of realism is raised by Tim Dunne and Brian Schmidt: “From 1939 to the present, leading theorists and policy-makers have continued to view the world through realist lenses”, see Dunne and Schmidt, ‘Realism’, in John Baylis, Steve Smith and Patricia Owens (eds.), The Globalization of World Politics: An Introduction to International Relations, fourth edition (Oxford: Oxford University Press, 2008), p. 92.

genocide prevention as a humanitarian concern that is of little real concern to a state's national interest. From this perspective genocide prevention remains just another policy option; one that should only be opted for when there are national interests at stake.

This is put into context in Alex Alvarez's work, *Governments, Citizens and Genocide* in which the author explains that diplomats are often held hostage to *Realpolitik* strategies. Because of this, the prevention of genocide and mass violence in general, is given little political priority.<sup>5</sup> For instance, in 1975 prior to the Indonesian oppression in East Timor, the Australian ambassador to Indonesia wrote that Australia should assume a "pragmatic rather than a principled stand", because "that is what national interest and foreign policy is all about".<sup>6</sup> Such rhetoric was also to be found as James Wood, a US Deputy Assistant Secretary of Defence, placed Rwanda-Burundi on a list of potential trouble spots only to be informed by a superior: "Take it off the list....U.S. national interest is not involved....we can't put all these silly humanitarian issues on lists like important problems in the Middle East and North Korea and so on".<sup>7</sup> Similarly, as Slobodan Milosevic engineered a process of destruction and dispossession in the former Yugoslavia, George Bush's secretary of state, James Baker, repeatedly stated: "We don't have a dog in this fight".<sup>8</sup> The sentiment expressed within these statements underlines the central point that genocide prevention is not considered to be in a state's national interest.<sup>9</sup> Because of this, policymakers seem to view genocide prevention as somewhat altruistic and part of an *unrealistic* foreign policy agenda. As Nicholas J. Wheeler's seminal study succinctly concludes: "state leaders will accept anything other than minimal casualties only if they believe national interests are at stake".<sup>10</sup>

The interesting point to consider here is that genocide is also considered to be the "crime of crimes" in international law, yet carries much less political weight than 'lesser crimes' such as drug trafficking or piracy.<sup>11</sup> For instance, long-term *collective security* strategies are

<sup>5</sup> Alex Alvarez, *Governments, Citizens, and Genocide, a Comparative and Interdisciplinary Approach* (Indiana: Indiana University Press, 2001), p.137.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, p. 141.

<sup>9</sup> For further statements which reiterate such a policymaking attitude see, Richard Ashby Wilson and Richard D. Brown, (eds.), *Humanitarianism and Suffering. The Mobilization of Empathy* (Cambridge: Cambridge University Press, 2009), pp.3 – 4.

<sup>10</sup> Nicholas, J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 301.

<sup>11</sup> The idea that genocide constitutes the "crime of crimes" is taken from the ruling set out by the International Criminal Tribunal for Rwanda in 1998. This will be discussed in Chapter Four.

adopted when attempting to prevent crimes such as nuclear proliferation, international terrorism, drug trafficking, and piracy at the international level.<sup>12</sup> Yet at present there is no such long-term collective security strategy when it comes to genocide prevention. We have to question: why it is that collective security strategies are formulated to address crimes such as these, but not genocide. Essentially, it would seem that crimes such as drug trafficking are considered to be transnational crimes in that they pose a *transnational threat*. By which it is meant that such crimes outstrip the individual security capacity of states who then work collectively to address this security deficit. From this perspective, such crimes pose an international threat which transcends national boundaries. Accordingly, policymakers perceive that the collective interest furthers the national interest within such specific contexts. It seems fair to suggest that the failure of any long-term collective security strategy toward genocide implies that policymakers do not perceive that genocide poses a transnational threat. Although policymakers will undoubtedly recognise the horror of genocide and accept that genocide may cause mass migration - which can cause regional instability - it is clear that mass migration is not exclusive to genocide and genocide in itself remains a low priority issue.<sup>13</sup> Such understanding only goes to re-state the point that when it comes to genocide prevention, policymakers do not perceive that they have a “dog in the fight” and in turn do not treat the prevention of genocide as a matter of national interest.

This point is fleshed out further in Andrew Hurrell’s analysis on ‘War, Violence and Collective Security’:<sup>14</sup>

Although the collective security element in security management has increased, we remain as far away as ever from anything approaching a functioning system of collective security. Peace is not indivisible, and states and their citizens remain unwilling to bear the costs of collective security action in complex and dangerous conflicts in which their national interests are only weakly engaged. It may well be that the horrors of the Rwandan genocide prompted increased normative momentum in areas of human security and the responsibility to protect.

<sup>12</sup> For an overview see Bruce Jones, Pascual Carlos and Stephen John Stedman, Power and Responsibility, Building International Order in an Era of Transnational Threat (Washington: Brookings Institution, 2009). See also, Maryann Cusimano Love, (ed.), Beyond Sovereignty. Issues for Global Agenda, fourth edition (Boston: Wadsworth, 2007).

<sup>13</sup> For example, when addressing the impact of the Rwandan genocide, the 2001 Intervention Commission on Intervention and State Sovereignty stated, “Its consequence was not merely a humanitarian catastrophe for Rwanda: the genocide destabilized the entire Great Lakes region and continues to do so”. See Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa: International Development Research Centre, 2001), p.1. For an accompanying analysis, see Gérard Prunier, From Genocide to Continental War. The ‘Congolese’ Conflict and the Crisis in Contemporary Africa (London: Hurst & Company, 2009).

<sup>14</sup> Andrew Hurrell, On Global Order. Power, Values, and the Constitution of International Society (Oxford: Oxford University Press, 2007), chapter seven.

But the continued failure of outside states to undertake a collective action in Darfur highlights the continuity of the problem.<sup>15</sup>

The statement primarily underlines the fact that collective security is still in its infancy and that a functioning collective security system remains a long way off. However, the statement also underlines a stark point that despite the post-Cold War normative momentum and the 2005 UN endorsement of the *Responsibility to Protect* (R2P): *we do not even expect states to collectively confront the crime of genocide because the common perception is that the direct interests of states are not served by engaging in such "complex and dangerous conflicts"*. Yet whilst this is undoubtedly true (all genocide scholars would accept that genocide prevention may lead states into complex and dangerous foreign policy agendas), it is also quite clear that states are willing to engage in such complex and dangerous foreign policy agendas when they perceive that their national interests are at stake. Hurrell therefore also rightly points out that the lack of *political will* surrounding genocide prevention stems from the fact that states do not see a valid link between genocide prevention and national interest. Critically, this brings us back to the central question raised at the start: how do we think about, conceptualise, and understand genocide in International Relations? It is only through such understanding that we can hope to answer related, yet equally important questions, such as what is the impact of genocide upon the current world order? Does genocide pose a transnational threat to states? How realistic *is* the realist perspective when it comes to genocide prevention? What is the relationship between genocide prevention and national interest? The importance of such questions cannot be overstated for it is difficult to see how the *political will* of the *politically unwilling* can be altered without such questions being answered. A somewhat bizarre reality therefore is that the post-Cold War debate over humanitarian intervention has strangely overlooked the relationship between humanitarian intervention and political will. This was raised in 2001 as the International Commission on Intervention and State Sovereignty (ICISS) stated, "Although the international debate on humanitarian intervention has focused largely on questions of authority and capacity, the dearth of effective international responses has in most cases resulted from a lack of will. In neither Rwanda nor Srebrenica did a lack of authority or capacity stand in the way of

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<sup>15</sup> Ibid, p. 190.

action”.<sup>16</sup> The sentiment expressed remains relevant nearly ten years on as although the debate over humanitarian intervention has often referred to a general lack of political will amongst policymakers, it has done little to answer the question of why actors should intervene. As stated above, this question seems to have been somewhat overlooked because people believe that it is within the interest of humanity to prevent such crimes, yet policymakers act on behalf of the state rather than humanity (at least within the context of complex and dangerous foreign policy agendas). In turn the discourse has done little to alter the will of the politically unwilling.

This brings us back to the critical point that international society’s understanding of genocide within the context of international relations will undoubtedly shape policymaking attitudes toward the issue of genocide prevention. This relationship between understanding genocide and the prevention of mass atrocity crimes such as genocide was raised in 2007 by Gareth Evans (President of the International Crisis Group). In a key note speech entitled “Prevention of Mass Atrocities: From Mandate to Realisation,” Evans stated:

If ridding the world once and for all of mass atrocities is to be doable, we need three kinds of strategies: *conceptual*, to frame the issues involved, and to embed the framing in policymakers mind and instincts in a way that there’s no preliminary stumbling block to the kind of necessary global reflex action I have described; *institutional*, to create structures and processes, both in intergovernmental and national settings, which will be capable of delivering the preventative and reactive responses required; and *political*, to ensure that when each new atrocity or potential atrocity situation comes along the actual response is effective.<sup>17</sup>

Evans, (who also notably co-chaired the 2001 International Commission on Intervention and State Sovereignty), rightly places the conceptualisation of mass atrocity crimes as one of three primary strategies which it is hoped will aid the prevention of mass atrocity crimes such as genocide.<sup>18</sup> Whilst one cannot necessarily prioritise any of the three strategies, it seems clear that any attempt to develop *institutional* and *political* responses to genocide remain dependent on one’s *conceptualisation* of genocide. This brings us back to the central question of how we

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<sup>16</sup> Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect. Research. Bibliography. Background (Ottawa: International Development Research Centre, 2001), p. 207.

<sup>17</sup> Gareth Evans, ‘Preventing Mass Atrocities: Making the Responsibility to Protect a Reality’, Keynote address to the UN University and International Crisis Group Conference (10/10/2007). Available at <http://www.crisisgroup.org/home/index.cfm?id=5116&l=1> Accessed 01/04/2008.

<sup>18</sup> For an in-depth analysis see Gareth Evans, The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All (Washington: Brookings Institution Press, 2008). This will be discussed further in chapter six. For an accomplished overview on the means available for the prevention of genocide see John G. Heidenrich, How to Prevent Genocide. A Guide for Policymakers, Scholars, and the Concerned Citizen (London: Praeger, 2001). David, A. Hamburg, Preventing Genocide. Practical Steps Toward Early Detection and Effective Action (London: Paradigm, 2008).



understand genocide in international relations. It is this first strategy therefore that this thesis aims to engage with and its primary focus is on trying to establish a more informed understanding of genocide from an IR perspective.

## 1.2 The IR dimension

At this point the reader may be asking just how, over sixty years after genocide was codified into international law, are policymakers failing to correctly conceptualise genocide? The answer it seems may lie in academia. Kenneth J. Campbell is one of few IR scholars to put this into context in his 2001 publication *Genocide and the Global Village*.<sup>19</sup> Campbell claims that policymakers fail to formulate effective policy with regard to preventing genocide, precisely because they *misunderstand* the “transovereign threat” posed by genocide.<sup>20</sup> Intriguingly, he goes on to claim that the failure of scholars to consolidate knowledge from inter-related fields of study has in turn fuelled this *misunderstanding*. As Campbell explains:

For far too long, specialists in international law, human rights, humanitarian assistance, international security, peace and conflict resolution, ethnic conflict studies, and regional studies (for example, the Balkans and the Great Lakes region of Central Africa) have blithely assumed that we did not need the genocide scholars to tell us what genocide is. Most of the time we have been wrong! In virtually every case where a think tank, national government, or IGO put together a panel of “experts” to investigate the international community’s failure to stop contemporary genocide, the genocide scholars have been strangely absent.<sup>21</sup>

The statement highlights that even within the context of interdisciplinary research; the discipline of genocide studies has found itself marginalised. The absurdity being that genocide scholars are not invited to the debate even when genocide prevention is the topic of discussion. It would seem, therefore, that scholars have not necessarily provided policymakers with the tools that they have needed, as scholars have failed to provide a more informed understanding of genocide and its impact on international society.

Although the above statement highlights the broader omission of genocide from policy frameworks, Campbell also address the specific omission of genocide from the discipline of IR. Intriguingly, Campbell claims that between 1945 and 1995, neither of the leading IR journals, *Foreign Affairs* or *International Affairs* published a single article on genocide.<sup>22</sup> The example underlines the stark fact that genocide remains a peripheral issue not just within

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<sup>19</sup> Kenneth, J. Campbell, *Genocide and the Global Village* (New York: Palgrave, 2001).

<sup>20</sup> Ibid, see chapters one and two.

<sup>21</sup> Ibid, p.107.

<sup>22</sup> Ibid.

policymaking but also within the discipline of IR itself. Again this illustrates the point that the impact of genocide upon international relations remains under-researched and under-theorised, especially from an IR perspective. Whilst the international debate over the genocide in Darfur has seen both *Foreign Affairs* and *International Affairs* publish articles on genocide, it is evident that genocide remains outside the mainstream focus of IR.<sup>23</sup> For example, in what has become the first real comprehensive introductory text in the field of genocide studies, IR scholar Adam Jones presents an overview on the social science perspectives which are found in the discipline of genocide studies.<sup>24</sup> In doing so, the author presents the “Political Science and International Relations” perspectives to be found on genocide.<sup>25</sup> Primarily however, the analysis is grounded on the empirical investigations that have been carried out by Political Scientists such as R. J. Rummel, Barbara Harff and Ted Gurr, which, although important, do not compensate for the lack of IR analysis to be found on the subject of genocide. Whilst Jones touches upon the work of constructivists to highlight how the role of norms *could* be useful for the study of genocide, it is evident that this overview ultimately reveals more about what IR has failed to contribute, rather than what it actually *has* contributed.<sup>26</sup>

This omission is even more surprising when one considers the relationship between genocide and the central tenets of IR: war, power, sovereignty, and the role of the state. To put this into context let us consider R. J. Rummel’s famous empirical investigation aptly entitled, *Death by Government*.<sup>27</sup> The author’s extensive empirical research concludes that 169,198,000 people were murdered by governments (between 1900 and 1987) in acts of what the author labels as “domicide”. To go back to the central concepts within IR, this tragic outcome highlights the lethal cocktail that can arise from mixing together three of IR’s most central concepts: the state, power, and sovereignty (as the latter implies state immunity). Martin Shaw is both an IR and genocide scholar who notably addresses the role of the state, sovereignty, and power, yet goes one step further in stressing the need to better understand

<sup>23</sup> Two seminal publications appeared in relation to the genocide in Darfur, see Hugo Slim, ‘Dithering Over Darfur? A Preliminary Review of the International Response’, *International Affairs* (vol. 80, no. 5, 2004, pp. 811-828). Scott Straus, ‘Darfur and the Genocide Debate’, *Foreign Affairs* (vol. 84, no. 1, 2005, pp. 124-134).

<sup>24</sup> Adam Jones, *Genocide. A Comprehensive Introduction* (New York: Routledge, 2006), part three.

<sup>25</sup> *Ibid*, pp. 307 – 321.

<sup>26</sup> Whilst the focus on norms within the study of genocide remains a peripheral aspect, notable work has been produced in this area that supports Jones’ claim that the role of norms provides a useful tool for understanding genocide. See Lee Ann Fujii, ‘Transforming the Moral Landscape: The Diffusion of the Genocidal Norm in Rwanda’, *The Journal of Genocide Research* (vol. 6, no. 1, 2004, pp. 99 – 114).

<sup>27</sup> Rudolph J. Rummel, *Death By Government* (New Jersey: Transaction, 2008).

the relationship between war and genocide in international relations.<sup>28</sup> Furthermore, Dirk Moses claims that genocide should be understood as an extreme form of counter-insurgency in that state leaders seek to destroy the group[s] that they perceive to be a threat to the state, even if no such threat exists.<sup>29</sup> Both of these views tie in with Benjamin A. Valentino's claim that genocide and mass violence should be understood as brutal strategies utilised by state leaders to eradicate perceived threats (whether real or non-existent).<sup>30</sup> Such perspectives, stress the relationship between genocide and IR which allow us to refute the claim that the study of genocide falls outside the remit of what should constitute IR. Accordingly, it would seem that IR scholars have often failed to engage in how the central tenets underpinning the discipline of IR contribute to the ongoing phenomenon of genocide in international relations.

Somewhat worryingly, the state-centric nature of IR as a discipline may also help explain why genocide has been marginalised. Simply speaking, it would seem that violent attacks *against the state* (terrorism) have been studied extensively within IR, yet violent attacks made *by the state* against civilians (genocide or crimes against humanity) have not received anywhere near the same amount of academic interest. This is despite the fact that, as R. J. Rummel's study illustrates, the most destructive force in international relations remains the state as opposed to the terrorist. Tim Dunne is one of few IR scholars to address this issue in his co-authored analysis with Daniela Krosiak: 'Genocide: Knowing What It Is That We Want to Remember, or Forget, or Forgive'.<sup>31</sup> The title of the piece speaks volumes when one considers that it was written as part of a reflective work on the Kosovo crisis, a crisis which saw IR scholars having to engage with the question of whether the acts in Kosovo constituted

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<sup>28</sup> Martin Shaw, War and Genocide (Cambridge: Polity Press, 2003). Also of relevance here is Martin Shaw's critique of a special edition of the Review of International Studies in which the author claims that the contributors failed to consider the Rwandan genocide in an issue that specifically chose to focus on violence in international relations between 1989 and 1999. See Martin Shaw, 'Strategy and Slaughter', Review of International Studies (vol. 29, no. 2, 2003, pp. 269 – 277).

<sup>29</sup> Dirk A. Moses, 'Security and Pre-Emption: Genocide Studies and Holocaust Historiography – A Convergence?', keynote lecture, presented at the 2<sup>nd</sup> Global Conference on Genocide by the International Network of Genocide Scholars, at University of Sussex, (28<sup>th</sup> – 1<sup>st</sup> July 2010). See also, Dirk A. Moses, 'Moving the Genocide Debate Beyond the History Wars', Australian Journal of Politics and History (vol. 54, no. 2, 2008, pp. 248 – 270). As well as Moses, Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History (New York: Berghahn Books, 2010) esp. chapter one.

<sup>30</sup> Benjamin A. Valentino, Final Solutions. Mass Killing and Genocide in the 20<sup>th</sup> Century (New York: Cornell University Press, 2004).

<sup>31</sup> Tim Dunne and Daniela Krosiak, 'Genocide: Knowing What It Is That We Want to Remember, or Forget, or Forgive', in Ken Booth, (ed.), The Kosovo Tragedy. Human Rights Dimensions (London: Frank Cass, 2001), chapter one. The authors acknowledge that the title is adapted from the work of Colin Tatz: "it is essential that we know what it is we want to remember, or to forget, or to forgive", see p. 43.

genocide. Intriguingly, the authors provide an analysis of the definitional debate surrounding genocide (a similar approach will be put forward in Chapter Three). In doing so, the authors illustrate Campbell's point that IR scholars have to engage in such debates surrounding the definition of genocide rather than simply assuming they know what it is. Furthermore, Dunne and Krosiak draw upon the work of R. J. Rummel, as well as Ken Booth, to highlight a point of specific relevance here: "The discipline of International Relations needs to forget its habit of selectively describing and explain the past. Instead of taking 'family snaps' of human history, we must not forget the blood and immorality".<sup>32</sup> The statement addresses the fact that IR has selectively studied the history of international relations to the point that it has failed to engage, at least explicitly, with the impact of genocide on international relations.<sup>33</sup> The critical point is that IR needs to help explain and understand genocide in order to help prevent it.

For example, IR scholars often raise the post-Cold War 'humanitarian crises' that occurred in Somalia and Rwanda. In doing so, they critically fail to differentiate between the fact that Somalia represented a failed state plagued by chaos and anarchy, whereas Rwanda represented a genocidal state implementing a process of systematic destruction. To put this into context let us consider Mary Kaldor's seminal work on *New and Old Wars*, in which the author places genocide, failed states, terrorism, civil war and many other types of conflict within the melting pot of "new wars".<sup>34</sup> The example illustrates the growing tendency within IR to group conflicts and crises together despite the fact that the causes of such conflicts and crises will undoubtedly differ. Trying to establish a 'one size fits all remedy' therefore is futile as it is evident that our response to each conflict has to be built upon understanding the specific causes that underpin each particular problem. If IR scholars simply place all human rights violations within a single 'melting pot', they cannot hope to learn the relevant lessons

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<sup>32</sup> Ibid, p. 42.

<sup>33</sup> Richard Falk is one of few IR scholars to raise this point in his analysis, see Richard Falk, *Achieving Human Rights* (London: Routledge, 2009), chapter six. See also, Richard Falk, 'The Challenge of Genocide and Genocidal Politics in an era of Globalisation', in Tim Dunne and Nicholas J. Wheeler, (ed.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999). For further analysis on how genocide has impacted upon international society see R. J. Vincent, 'Racial Equality', in Hedley Bull and Adam Watson, *The Expansion of International Society* (Oxford: Clarendon Press, 1984), esp. pp. 250-254.

<sup>34</sup> Mary Kaldor, *New and Old Wars. Organised Violence in a Global Era* (Oxford: Polity, 2000). For a critical analysis see, Stathis Kalyvas, "'New" and "Old" Civil Wars: A Valid Distinction?" *World Politics* (vol. 54, no.1, 2001, pp. 99-118). Caroline Kennedy-Pipe, 'From Cold Wars to New Wars', in Clive Jones and Caroline Kennedy-Pipe, *International Security in a Global Age: Securing The Twenty-First Century* (London: Frank Cass, 2000, pp. 9-27).

involved in each.<sup>35</sup> Such over-simplification ultimately hinders international society's ability to prevent such crises in the future. This brings us back to a central point of this thesis: how we conceptualise and understand genocide in international relations shapes our reactions toward it.

The point here is not to get into any disciplinary blame game, or to overlook the valid contributions that some IR scholars have made to the study of genocide. Instead, the aim is to highlight the fact that it is not easy to answer the questions raised above (see page four), because so little research has been conducted into the broader implications of genocide in international relations. For instance, the discipline of genocide studies has produced a vast amount of excellent case study literature documenting individual cases of genocide.<sup>36</sup> More recently, a comparative approach has been adopted as genocide scholars have attempted (and succeeded) to highlight the common themes and patterns that can be attributed to the practice of genocide.<sup>37</sup> Yet critically, the discipline of genocide studies has little to say regarding the implications of genocide for the current world order. Despite the fact that issues of truth, justice, and reconciliation have often been studied within the context of the targeted groups,<sup>38</sup> the broader implications of genocide have not been addressed. At this point genocide scholars may raise the point that the case study analysis within the field has highlighted the transnational instabilities that arise from genocide via repercussions such as mass migration. However, although this is an important and valid point, the reality is that problems such as

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<sup>35</sup> For such analysis see, Barbara Harff, 'No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955', American Political Science Review (vol. 97, no. 1, 2003, pp. 57-73).

<sup>36</sup> It should be stressed here that there are a number of works within the discipline of genocide that demonstrate a thorough understanding of IR, albeit implicitly. For such analysis of 20<sup>th</sup> century genocides see Donald Bloxham, The Final Solution: A Genocide (Oxford: Oxford University Press, 2009). Donald Bloxham, The Great Game of Genocide (Oxford: Oxford University Press, 2005). Mark Levene, Genocide in the Age of the Nation State. vol. II: The Rise of the West and the Coming of Genocide (London: I. B. Tauris, 2005). Mark Levene, Genocide in the Age of the Nation State. vol. I: The Meaning of Genocide (London: I. B. Tauris, 2005). Gérard Prunier, The Rwanda Crisis. History of Genocide (New York: Columbia University Press, 1997). Ben Kiernan, The Pol Pot Regime. Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975 -79 (London: Yale University Press, 1995).

<sup>37</sup> For a broad overview see Ben Kiernan, Blood and Soil. A World History of Genocide and Extermination from Sparta to Darfur (London: Yale University Press, 2007). Eric D. Weitz, A Century of Genocide. Utopias of Race and Nation (Princeton: Princeton University Press, 2003). Benjamin Valentino, Final Solutions. Mass Killing and Genocide in the Twentieth Century (New York: Cornell University Press, 2004).

<sup>38</sup> For relevant discussion on transitional justice see, Alexander L. Hinton, Transitional Justice. Global Mechanisms and Local Realities after Genocide and Mass Violence (New Jersey: Rutgers University Press, 2010). Rosalind Shaw and Lars Waldorf with Pierre Hanzan, Localizing Transitional Justice. Interventions and Priorities After Mass Violence (Chicago: Stanford University Press, 2010). Phillip Clark and Zachary Kaufman (ed.), After Genocide. Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond (London: C Hurst and Co Publishers, 2009).

refugee movements are not exclusive to genocide and can be caused by a number of different issues such as climate change, failed states and other forms of internal conflict.<sup>39</sup> Whilst genocide scholars have predominantly focused on issues related to such case study research, they too come under scrutiny as they have failed to take into consideration more recent international developments regarding genocide in international relations. For example, neither of the two leading journals of genocide the journal of *Holocaust and Genocide Studies* or the *Journal of Genocide Research* have published a single article on the Responsibility to Protect. This is despite the fact that it was unanimously endorsed by the UN General Assembly in 2005, and is grounded upon the idea that states have a responsibility, both domestically and internationally, to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing (see Chapter Six). In summary, it would seem that the discipline of genocide studies is no better placed than that of IR when it comes to understanding the broader implications of genocide in international relations.

Again, it feels necessary to stress that the intention here is not to participate in some sort of academic blame game but to simply illustrate the point that, at present, the political will of the political unwilling remains unaltered as scholars have failed to explain why genocide should be given more political importance. As previously stated, scholars have tended to assume that this is self-evident, in that genocide is a crime against humanity, yet whether wrong or right, policymakers do not make policies on the behalf of humanity (this will be expanded upon in Chapter Two). From this perspective, the question naturally arises: so what now? It is here that the conclusions drawn from Campbell's work are of relevance as the author proposes a "remedy" in order to overcome the problem of misinformed state policy, namely that scholars need to establish a "normative consensus". As Campbell explains:

We "experts" must first overcome our own intellectual ignorance (and arrogance) regarding genocide if we hope to be effective in convincing busy policymakers to think differently about genocide and the national interest. Indeed, it is high time to bring in the genocide scholars. They are best prepared to address the definitional, historical, motivational, quantitative, process, and remedial controversies regarding genocide. And what the genocide scholars do not know about humanitarian intervention, regional politics, refugee problems, public opinion,

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<sup>39</sup> For an analysis of the problem see, Sodako Ogata, *The Turbulent Decade. Confronting the Refugee Crises of the 1990s* (New York: W. W. Norton, 2005). See also, Roberta Cohen and Francis M. Deng, 'Mass Displacement Caused By Conflicts and One Sided Violence: National and International Responses', *SIPRI Yearbook. 2009: Armaments, Disarmaments and International Security*, Available at [http://www.brookings.edu/~media/Files/rc/articles/2009/0608\\_internal\\_displacement\\_cohen/0608\\_internal\\_displacement\\_cohen.pdf](http://www.brookings.edu/~media/Files/rc/articles/2009/0608_internal_displacement_cohen/0608_internal_displacement_cohen.pdf) Accessed 25/05/2010.

the proper use of force, and global governance, we can provide. By bringing together the best minds and experience regarding the nature of genocide, the use of military force, and public opinion, we may finally be able to offer policymakers a way to stop the scourge of humanity.<sup>40</sup>

The statement embodies an important logic as it explains that in order for international society's actions to be effective, its understanding has to be informed. It is therefore of critical importance that we go back to the drawing board and *consolidate knowledge within interrelated fields*. Whilst no single volume can attempt to address the scale of the problem in its entirety, it is hoped that this research will make an important and heuristically valuable contribution.

Problematically, this link between genocide prevention and conceptualisation leaves us with a difficult starting point for inquiry regarding the way that we frame and conceptualise genocide. Notably, the above statement made by Gareth Evans regarding the three strategies needed for mass atrocity prevention places emphasis on framing the issues involved, in a way that removes the preliminary stumbling blocks that may hinder a global reflex action. Whilst it seems fair to say that most people would sympathise with such an approach, it is also very important that scholars do not fall into the trap of framing genocide as a transnational threat, and/or genocide prevention as a matter of national interest, just because they want genocide prevented. One cannot help but feel that Campbell himself falls into this trap. The reader is often bombarded with a series of overtly bold claims which are never fully substantiated: "Unchecked genocide has damaged the very fabric of our present liberal international society".<sup>41</sup> "Genocide is a transovereign problem, facing the international community. Indeed the worst problem".<sup>42</sup> "Unchecked genocide could destroy the very fabric that holds together our present international system".<sup>43</sup> "Genocide threatens to destroy whatever security, democracy, and prosperity exists in the present international system".<sup>44</sup> The real problem is not that such claims are wrong but that the author's overtly brief analysis can never justify such claims. For instance, Campbell's theoretical chapter on "The Grand Strategic Context" is less than eight pages long, in which his sub-section on "Contemporary Genocide as a Transovereign Threat" is less than two paragraphs.<sup>45</sup> This is despite the fact that these two paragraphs set out Campbell's focus on genocide and globalisation which leaves the reader

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<sup>40</sup> Campbell, *Genocide and the Global Village*, p. 107.

<sup>41</sup> *Ibid*, p.3.

<sup>42</sup> *Ibid*, p.11.

<sup>43</sup> *Ibid*, p.12.

<sup>44</sup> *Ibid*, p.16.

<sup>45</sup> *Ibid*, pp.11 – 12.

somewhat perplexed as it is simply ludicrous to present the relationship between these two (arguably) essentially contested concepts in less than one hundred and fifty words. Such an overtly brief analysis leaves Campbell's central claim that genocide prevention is in the "vital national interest" of states to be built on a series of assumptions.<sup>46</sup>

To return to Campbell's aforementioned "remedy", we may have a responsibility to inform "busy policymakers", but this does not dictate that we should somehow present genocide studies in a 'fast-food format' since few policymakers will be convinced of such unsubstantiated claims. Obviously this becomes a complex issue when one considers the relationship between understanding genocide and preventing genocide. For instance, Dirk Moses is a highly accomplished genocide scholar who claims: "'Genocide Studies' is no ordinary academic discipline. It seeks knowledge in the service of an urgent moral imperative: the prediction, prevention, and interdiction of genocides. An activist fervor drives the social scientist beyond the ivory tower".<sup>47</sup> Whilst anyone with any knowledge of genocide is bound to be sympathetic to this statement it seems that scholars have to approach such a statement with extreme caution. As Henry Huttenbach (the editor of the *Journal of Genocide Research*) rightly points out: whilst genocide scholars, and the discipline of genocide studies itself, has a role to play in advising policymaking, this cannot see academic inquiry lapse into political activism.<sup>48</sup> Huttenbach, therefore, distances himself from the idea that the discipline of genocide studies is above and beyond the ivory tower and that the genocide scholar is driven by an "activist fervor" (to use Moses's phrase). In doing so, Huttenbach aligns himself with the IR perspective put forward by Hedley Bull in that whilst scholars may never be able to be objective to the point that they can make value free claims, scholars have to at least attempt to detach themselves from the subject matter.<sup>49</sup> It is this latter perspective that is upheld here: the scholar's role remains the same regardless of the subject they are studying (this will be discussed further in Chapter Two).

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<sup>46</sup> Ibid, p. 16.

<sup>47</sup> Dirk Moses, [Why the Discipline of Genocide Studies Has Trouble Explaining How "Genocides" End?](http://howgenocidesend.ssrc.org/Moses/) (22/12/2006). Available at <http://howgenocidesend.ssrc.org/Moses/> Accessed, 26/02/ 2010.

<sup>48</sup> Henry R. Huttenbach, 'From the Editor: New Directions', *Journal of Genocide Research* (vol. 7, no. 2, 2005, pp. 169 -170), p. 170.

<sup>49</sup> Hedley Bull, [The Anarchical Society. A Study of World Order Politics](#), third edition, (London: Palgrave, 2002), p. xxxv. For further an analysis see Robert Jackson, 'International Relations as a Craft Discipline', in Cornelia Navari, [Theorising International Society. English School Methods](#) (New York: Palgrave, Macmillan, 2009), pp 24 – 27. This will be discussed further in Chapter Two.



The point is that even when it comes to the horror of genocide, the academic has to accept that we should not frame genocide in a certain light just because that is how we want it to be seen. Policymakers should not be duped through misrepresentation, but guided through conceptual rigour. Quite simply, within the context of this thesis, it is important to question whether genocide constitutes a transnational threat and whether its prevention is in the national interest of states. If one finds that it is not, then one has to accept this outcome and formulate a different line of inquiry. One could, for instance, advocate the aforementioned idea of humanity, yet it is clear that policymakers do not construct policy on behalf of humanity but rather on behalf of the national interest. This thesis, therefore, starts from the view that one should develop an *understanding of genocide and genocide prevention by beginning with the facts of the problem rather than from any specific faith in any particular form of response*. Accordingly, in order to gain an understanding of the facts within the context of genocide's impact on international relations, critically, we need to establish not just an understanding of genocide but also an understanding of international relations.

### **1.2.1 Meet the IR family**

The intent to bring the study of genocide into an IR framework raises the question of which IR theory should be utilised in order to best serve this objective. Whilst Campbell implies that genocide scholars need to be brought into IR, this is not as straightforward as one may think. These two disciplines do not represent two singular families of thought that can be simply introduced to each other. If one were to survey the contemporary landscape of IR as a discipline one would see an ever changing landscape. Realists, liberals, marxists (and their neo-counterparts), constructivists, feminists, post-structuralists, and English School scholars (to name a few), all strive to put forward their interpretation of the subject matter which, in turn, alters the remit of the subject matter itself. Amidst this complexity is an ever frustrating oversimplification, as IR scholars are continually categorised under simplistic headings. For example, can the richness of Thomas Hobbes be aptly portrayed by the label of realism, a title which Hobbes never laid upon himself? At times the discipline feels more like a music store as scholars strive to categorise, label, and present theorists in an easy to digest format: is Johnny Cash gospel or country? Is E. H. Carr a realist or an English School pluralist? On the one hand it seems that any attempt to present someone's life work (in any field) under a simple heading is a gross over-simplification. Yet on the other hand there seems to be an evident need to utilise such labels as a way of framing the complexities involved. The reality

is that if we were to label every musician in a music store using their name alone, the customer would be left bewildered.

The point here is that in addressing the suitability of an IR theory, one has to get to grips with the fundamental concerns of each theory to assess which holds most relevance for the study of genocide. One way of framing this is to think of each IR theory as a family of scholars. Just as mothers, fathers, sisters, and brothers may disagree on certain issues, it is clear that they remain bonded by a specific gene pool. The same is true for IR theory. Although realists may disagree over issues of security (defensive and offensive realism) they are still bonded by a theoretical 'gene pool' as they share a fundamental commitment to the study of state security, survival, and power within the anarchical realm. In much the same way, liberals may disagree over the role of institutions but still share a commitment to co-operation and liberty, whereas cosmopolitans may differ on the need for a world government yet still share a commitment to humanity.<sup>50</sup> It is here that the theoretical 'gene pool' of the English School is of particular interest as its focus on *justice and order* at the international level provides a fruitful framework for trying to understand the broader impact of genocide on the ordering structure of international society (this will be discussed in further detail in Chapter Two).

The term the English School was first coined by Roy Jones in 1981 in a critical piece entitled 'The English School of International Relations: A Case for Closure'.<sup>51</sup> Ironically, it was Jones who first referenced the existence of a so-called English School, yet in calling for its closure, he actually provided a collective title under which many subsequent IR scholars would operate.<sup>52</sup> Significantly, scholars such as Andrew Hurrell, Robert Jackson, Tim Dunne and Nicholas J. Wheeler sought to expand upon the English School legacy laid down by earlier scholars such as Martin Wight, Herbert Butterfield, Hedley Bull, John R. Vincent and Adam Watson, amongst others.<sup>53</sup> As Tim Dunne explains, these early English School

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<sup>50</sup> For a brief overview on the commitments of each IR theory, see Robert Jackson and Georg Sorensen, International relations. Theories and Approaches, second edition (Oxford: Oxford University Press, 2003), p. 6.

<sup>51</sup> Roy Jones, 'The English School of International Relations: A Case for Closure', Review of International Studies (vol. 7, no. 1, 1981, pp.1- 13). See also Ole Wæver, 'International Society – Theoretical Premises Unfulfilled?' Cooperation and Conflict (vol. 27, no. 1, 1992, pp. 97-128).

<sup>52</sup> For a historical overview which traces the origins of the English School back to the British Committee, see Tim Dunne, Inventing International Society. History of the English School, (New York: Palgrave, Macmillan, 1995),

<sup>53</sup> For an insightful overview see Andrew Linklater and Hidemi Suganami, The English School of International Relations. A Contemporary Reassessment (Cambridge: Cambridge University Press, 2006), see chapter one.

scholars “carried the torch for normative international relations theory during the long-positivist realist phase of American International Relations”.<sup>54</sup> In carrying forth this torch in the post-Cold War era, contemporary English School scholars have ensured that normative theorising continues to play an integral role in current International Relations theory. As a result, the English School has outlived Jones’s initial call for its closure and in stark contrast; it now has more pupils than ever before.

The title of this project, “Genocide and its Threat to International Society”, reflects the English School approach to be utilised throughout this study. In essence, this thesis wears its English School heart on its sleeve for as Barry Buzan explains: “International society is the flagship idea of the English School. It carves out a clearly bounded subject focused on the elements of society that states form amongst themselves”.<sup>55</sup> As the statement implies, the English School approach stems from the belief that an international society exists both in an abstract sense and in reality. The former suggest that international society can be used as an analytical tool that helps us make sense of international relations which leads scholars to view international society as an *ideal type*.<sup>56</sup> The latter suggests that states *have* constructed a society at the international level. This society actually exists and is evident in the norms, rules, values, principles, and institutions that states construct in an attempt to help create order within the anarchical realm, thereby creating what Hedley Bull famously described as an *Anarchical Society*.<sup>57</sup> The statement captures how states embed commitments to both order and justice within the anarchical realm of international relations. It is this order/justice framework therefore that underpins English School inquiry and is of particular relevance here as it helps us establish an understanding of how genocide impacts upon “the institutional structure of the relations between states”.<sup>58</sup> In other words, through exploring the

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Dunne, *Inventing International Society*, pp-12 -15. Hidemi Suganami, ‘C. A. W. Manning and the Study of International Relations’, *Review of International Studies* (vol. 27, no. 1, 2000, pp. 91-107).

<sup>54</sup> Tim Dunne, ‘International Society: Theoretical Promises Fulfilled?’ *Cooperation and Conflict* (vol. 30, no. 2, 1995, pp. 125- 154), p. 145 – 146.

<sup>55</sup> Barry Buzan, *From International Society to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2006), p.1.

<sup>56</sup> For such analysis, see Edward Keene, ‘The Development of the Concept of International Society: An Essay on Political Argument in International Theory’, in Michi Ebata and Beverly Neufeld, *Confronting the Political in International Relations* (New York: St. Martin’s Press, 2000), chapter two.

<sup>57</sup> Hedley Bull, *The Anarchical Society. A Study of World Order Politics*, third edition (London: Palgrave, 2002).

<sup>58</sup> This is taken from Suganami, see Linklater and Suganami, *The English School of International Relations* p. 42. This focus leads Suganami to claim that a more accurate title to describe English School scholars would

relationship between order, justice, and genocide, we can gauge the impact of genocide upon international order which therefore helps us to answer the questions raised above, such as whether genocide prevention is in the national interest of states.

Essentially, this thesis will argue that in preventing genocide, international society saves more than 'just' strangers (to use Nichols J. Wheeler's central idea).<sup>59</sup> To validate this claim this project explores the relationship between genocide and international legitimacy and how this relationship has critical implications for the United Nations (UN). It will be argued that genocide holds a special relationship with international legitimacy because it is internationally regarded as the "crime of crimes" from both a legal and moral perspective. It is from this perspective that we can see genocide as a threat to international order as it erodes the legitimate authority of both the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the stabilising function in international relations) more than any other crime. It is hoped that through understanding the crime's relationship with international legitimacy, and the post-Cold War legitimacy crisis, a more informed understanding of genocide can be established. Whilst the 2005 UN-led Responsibility to Protect initiative addressed some of the issues at hand, as Andrew Hurrell touched on above, its endorsement has not resolved the fundamental problem of altering political will. As a result, genocide prevention is not deemed to be in the national interest of states because genocide is not considered to pose a transnational threat. It is here that this thesis challenges such mainstream thinking, for if one accepts that genocide has an impact upon international order, then one has to accept that the prevention of genocide is within the national interest of all states; that is, if they value international stability.

### **1.3 Genocide and its threat to international society: an overview**

With any attempt to adopt an interdisciplinary approach it is important to specify the parameters of one's research. Notably, this thesis *does not* engage with many of the central questions to be found within the discipline of genocide studies; what are the causes of genocide, is genocide a modern phenomenon, how should genocide be prevented. Although such questions are important, the focus here is specifically on the relationship between

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have been "institutionalists". However he accepts that this term is associated with neo-liberalism and that since the English School is now widely accepted within the IR community this latter term is the most appropriate.

<sup>59</sup> Nicholas, J. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University press, 2000).

genocide and the current world order. It is also worth noting that this thesis does not engage in case study research. Quite simply the field of genocide studies is saturated with case study research and as previously stated; the focus here is not on studying the impact of genocide upon the targeted populations, but on how genocide impacts on the ordering structure of international society itself. To achieve this, a series of interdisciplinary steps will be taken throughout this thesis.

Chapter Two will address *The Suitability of the English School* and, in doing so, set out the IR framework for this thesis which subsequent chapters will then build upon. Quite simply, if one is to understand the broader impact of genocide in international relations it is imperative that one has an understanding of both genocide *and* international relations. It is here that this chapter sets out an IR framework for this thesis. The intention is not to answer any research questions as such, but to flesh out the core assumptions within the English School approach and their relevance for understanding genocide from an IR perspective. At the same time, the chapter also aims to highlight that genocide could be studied from alternative IR perspectives and that the assumptions embodied within alternative IR approaches will undoubtedly shape one's view of genocide in international relations. It is hoped that this sheds light on potential areas of further research, for as previously stated there is much work to be done on bringing the disciplines of IR and genocide studies closer together.

In Chapter Three the thesis moves on to the question of what is genocide. If we are to bring the study of genocide into the discipline of IR, it is important that IR scholars understand the definitional debates surrounding the term's use. As Campbell rightly pointed out, IR scholars are not necessarily well versed in this debate and it is imperative that any such analysis is not grounded on the assumption that IR scholars already know what genocide is. As will be discussed, the concept of genocide remains highly contested within the discipline of genocide studies, and these debates, as well as their relation to the legal definition of genocide have to be factored into our understanding. This point is made even more important when one considers the common *misuse* of the term genocide in international relations as it is often wrongly associated with an array of international issues such as deforestation, H.I.V., and abortion. Critically, such misuse debases the central meaning of the word genocide which fuels the fire of misunderstanding. If IR scholars are to help provide policymakers with a

more informed understanding of genocide, then it is imperative that such problems are addressed, hence the title of the chapter: *Words Matter: Genocide and the Definitional Debate*.

Chapter Four and Chapter Five go hand in hand as they aim to support the central claim of this thesis that genocide poses a threat to international order. To substantiate this claim, Chapter Four provides the theoretical groundwork, in that it explores the relationship between *Genocide and International Legitimacy*. Chapter Four sets out an understanding of international legitimacy prior to addressing the relationship between genocide and international legitimacy. It will be claimed that genocide holds a special relationship with international legitimacy because it is internationally regarded as the “crime of crimes” from both a legal and moral perspective. Yet at the same time, it also highlights that from a political perspective, genocide is not viewed in the same light. Despite the fact there is an international expectation that genocide should be prevented, policymaking remains entrenched in the understanding that states should not engage in such “complex and dangerous” foreign policy initiatives unless national interests are at stake. Hence, this explains that they do not see a link between the prevention of genocide and the national interest.

It is this latter aspect that naturally leads us into Chapter Five’s focus: *Genocide as a Threat to International Stability*. Utilising the relationship between genocide and the first-order institution of international legitimacy, the chapter shifts its focus to exploring how genocide impacts upon the secondary-institution of the United Nations. It is proposed that genocide poses a threat to international order as it erodes the authority of the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the stabilizing function in international relations) more than any other crime. Such understanding helps shed light on how genocide impacts upon the legitimacy process that underpins international relations. From this perspective one can see how the Rwandan genocide played an integral role in the post-Cold War legitimacy crisis that arose over Kosovo. This novel approach, therefore, helps us understand just why genocide should be viewed as a transsovereign threat. From this perspective, the prevention of genocide should be considered within the national interest of all states, if, that is, they value international order.

Chapter Six, *The Responsibility to Protect: Resolving the Legitimacy Crisis?*, simply picks up where Chapter Five left off. Essentially, the endorsement of the Responsibility to Protect in 2005 saw international society come together to try and resolve the legitimacy crisis. Although the R2P has helped address certain problems to be found within the post-Cold War legitimacy debate, it has done little to further the prevention of genocide and may actually have created certain obstacles that hinder the prevention of genocide in the future. However, in failing to acknowledge the role that genocide played in creating the legitimacy crisis, international society failed to address certain fundamental questions, which in turn leaves unresolved tensions within the legitimacy process. Five years on from the endorsement of the R2P it seems that the R2P has become somewhat of the ‘master concept’ (in relation to mass atrocity crimes), yet it is clear that a more informed understanding of the relationship between the R2P, the 1948 Genocide Convention (UNGC), genocide prevention, and the legitimacy crisis is needed.

It seems clear that in a post-R2P world states have a choice whether to embed the normative principles embodied in the R2P or not. It is here that Chapter Seven, *The Three Traditions Re-visited*, re-engages with the realist, rationalist, and revolutionist foreign policy perspectives set out in Chapter Two. Utilising the understanding set out in previous chapters, the analysis evaluates the legitimacy of the three alternative perspectives toward the prevention of genocide in a post-R2P world. Essentially, international society can progress, or regress upon its R2P commitment. It is here that the crime of genocide is utilised to highlight how difficult it is to see how states can legitimately regress back to the rules that underpin realism and English School pluralism. From this perspective it is claimed that English School solidarists and cosmopolitans provide a more legitimate framework for advancing the R2P norm in international relations as we try and answer the question of how international society should develop in a post-R2P world.

Chapter Eight offers a brief overview of the thesis by engaging with the “East Tennessee Question”. The “East Tennessee Question” is taken from the work of Ken Booth and provides an apt context for re-visiting the central debates within this thesis. It also provides a fruitful framework for considering more critical questions regarding the relationship between genocide and international society. This helps shed light on potential areas for further research.

In summary, the intention of this thesis is to bring the study of genocide into IR via the English School in order to understand genocide and its broader impact upon the ordering structure of international society. At present, the disciplines of IR and genocide studies have failed to provide more informed answers in relation to the question: why should policymakers prioritise genocide prevention? In addressing this question, this thesis puts forward a new approach in that it explores the relationship between genocide and international legitimacy and how this relationship has critical implications for the United Nations. It will be argued that genocide holds a special relationship with international legitimacy because it is internationally regarded as the “crime of crimes” from both a legal and moral perspective. In sharp contrast to much of the thinking that underpins present foreign policymaking, it will be claimed that because of the special relationship that genocide holds with international legitimacy, genocide can be understood to pose a threat to international stability as it erodes both the legitimate authority of the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the stabilising function in international relations) more than any other crime. It is hoped that through understanding the crime’s relationship with international legitimacy, and the post-Cold War legitimacy crisis, a more informed understanding of genocide can be established. Whilst the 2005 UN-led Responsibility to Protect initiative addressed some of the issues at hand, its endorsement has not resolved the fundamental problem of altering political will. If one accepts that genocide has an impact upon international order, then one has to accept that the prevention of genocide is within the national interest of all states, that is, if they value international stability.



## 2 The Suitability of the English School

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As stated in Chapter One, the disciplines of IR and genocide studies do not represent two singular families of thought that can be simply introduced to one another. Understanding genocide within the context of international relations requires *not* only an understanding of genocide, but also of international relations. Accordingly, this chapter addresses the suitability of the English School as a relevant framework for serving the needs of this thesis. Primarily, this chapter will address the “three traditions” identified by Martin Wight (realism, rationalism, and revolutionism), as the assumptions embodied within these three alternative world views help illustrate the point that one’s view of IR, will shape one’s understanding of genocide within it (section 2.1). Having established this, the chapter will flesh out the central tenets to be found within the idea of an international society and why these have relevance for the study of genocide (section 2.2). The chapter will finish with an analysis of English School methods and their relevance for the study of genocide (section 2.3). The intention therefore is to provide a framework in this chapter for understanding genocide from an English School perspective which subsequent chapters can then build on.

### 2.1 The three traditions

It was in the 1950’s, whilst lecturing at the London School of Economics, that Martin Wight first identified the three traditions of realism, rationalism, and revolutionism as a teaching tool to help students navigate the realist - idealist dichotomy that dominated the discipline of IR in the inter-war period.<sup>1</sup> As Andrew Linklater explains, “In his lectures, Wight lamented the way in which debates between realism and utopianism in the inter-war years had neglected the *via media* with its distinct focus on international society”.<sup>2</sup> For Wight, there was middle ground to be found between the overt pessimism embodied within realism and the overt optimism embodied within what he labelled as revolutionism. Responding to this neglected middle ground; Wight brought the rationalist tradition, which he associated with Hugo Grotius, back into his analysis of international theory. It is here that the three traditions are of

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<sup>1</sup> See Hedley Bull’s thoughtful introductory essay in Martin Wight, International Theory, The Three Traditions Gabriele Wight and Brian Porter (ed.), (New York: Holmes and Meier, 1992). Wight was obviously influenced by the idealist-realist framework presented by E. H. Carr, The Twenty Year Crisis 1919-1939 (London: Macmillan, 2001). For a discussion on Carr’s position within the English School see, Tim Dunne, Inventing International Society, History of the English School (New York: Palgrave Macmillan, 1995), chapter two.

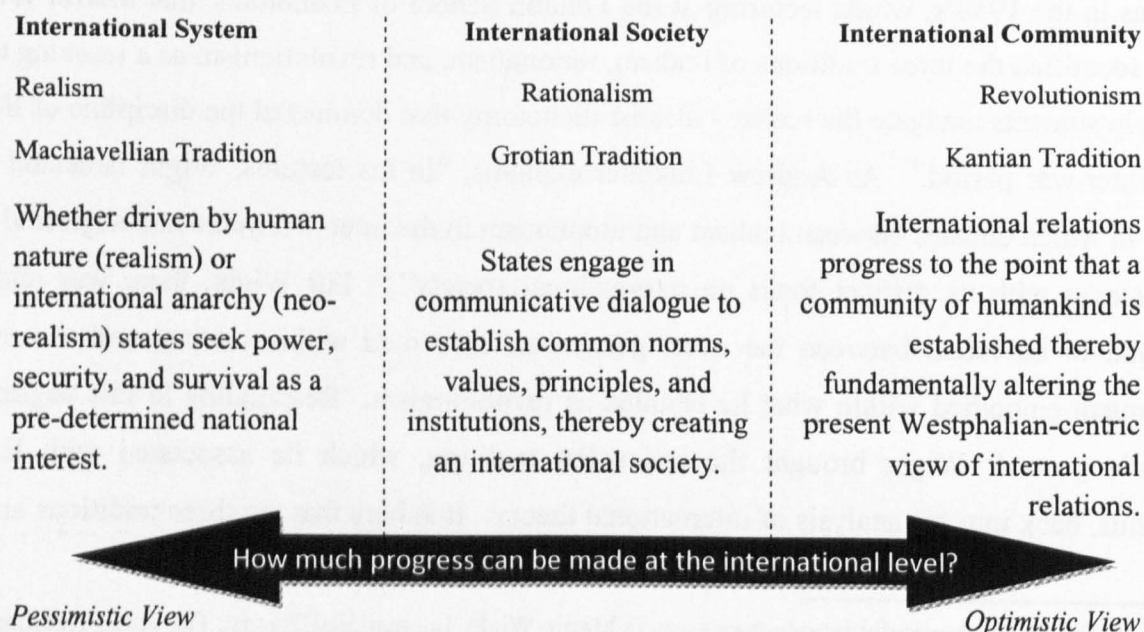
<sup>2</sup> Andrew Linklater, ‘The English School’, in Scot Burchill, Andrew Linklater, et al, Theories of International Relations, fourth edition (New York: Palgrave, Macmillan, 2009), p. 87.

particular relevance as they present an understanding of how the English School approach fits within the broader context of IR. Furthermore, the three traditions illustrate how the assumptions embodied in alternative IR approaches shape one's world view which is an important point to consider when one approaches the study of genocide from an IR perspective.

To flesh out what is meant by the three traditions, let us turn to Andrew Linklater's work on 'Progress and its Limits: System, Society and Community in World Politics'.<sup>3</sup> Notably, Linklater equates system, society, and community with the three traditions of Martin Wight to discuss the potential for progress in international relations. For Linklater, the realist perspective represents a more pessimistic approach (international system), whereas the revolutionist approach is much more optimistic (international community), leaving the English School to occupy the middle ground (international society).

Whilst the complexities involved in this overview will be discussed below, in Fig 1.1, I attempt to bring the Linklater/Wight juxtaposition to life in order to help illustrate the three alternative world views.

**Fig. 1.1, an overview of the Linklater/Wight juxtaposition.**<sup>4</sup>



<sup>3</sup> See Andrew Linklater and Hidemi Suganami, The English School of International Relations, A Contemporary Reassessment (Cambridge: Cambridge University Press, 2006), chapter four.

<sup>4</sup> The dotted lines between the three traditions aim to represent the idea of blurred boundaries.

Prior to engaging in an analysis of Fig.1.1, it is necessary to acknowledge that the simplicity of the spectrum accentuates many of the overt stereotypes to be found in any use of Martin Wight's three traditions. As Hedley Bull explains, Wight himself feared that such reification of the three traditions would only further simplify and distort the three concepts which Wight himself never published.<sup>5</sup> Indeed, the attempt to classify the history of ideas within three traditions has come under understandable scrutiny. For instance, Edward Keene explains that such an approach focuses on the continuities of thought to be found within the history of ideas, yet this critically dictates that discontinuities of thought may be forgotten.<sup>6</sup> However, as touched upon in Chapter One, there is no IR theory that does not fall foul of using such intellectual stereotypes and despite the limitations involved, these stereotypes remain important because they are needed to make sense of the complexities involved.

Figure 1.1, therefore aims to simply illustrate the point that the three traditions of realism, rationalism, and revolutionism offer different perspectives on the potential for progress in international relations. This is important because one can see that one's position on this spectrum consequently holds implications for how one starts to theorise the impact of genocide on international relations, just as it would with any other concept, such as war, sovereignty, diplomacy, or justice. Each tradition embodies assumptions that one has to be aware of when attempting to understand genocide from an IR perspective. To consider this further, let us first of all address the tradition of *realism*.

### 2.1.1 International system: realism

In Linklater's analysis on the potential for progress in international relations, Linklater equates the tradition of realism with the idea of an international system. As he explains, "The Hobbesian or Machiavellian perspective represents the anti-progressivist approach to international relations which contends that states belong to an international *system* in which there is seldom relief from competition and conflict".<sup>7</sup> The statement encapsulates the scepticism embodied in the realist view of international relations. Unlike English School scholars, realists tend to see a world of international *instability* rather than international order.

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<sup>5</sup> See Hedley Bull's introductory essay in Martin Wight, International Theory. The Three Traditions, esp. xiii.

<sup>6</sup> This is taken from David Boucher's discussion on this topic in which he presents an alternative to Carr's two traditions and Wight's three traditions with a focus on Empirical Realism and Universal Moral Order. See David Boucher, The Limits of Ethic in International Relations. Natural Law, Natural Rights and Human Rights in Transition (Oxford: Oxford University Press, 2009), p.7.

<sup>7</sup> Linklater and Sukanami, The English School of International Relations p. 117.

The origins of this instability are traced back to the anarchical structure (neorealism) or human nature juxtaposed with the anarchical structure (realism).<sup>8</sup> With no world government to constrain the conditions of anarchy or human nature, states remain embroiled in a never ending competition for power, security, and survival.<sup>9</sup> Essentially, states are locked into this *international system* of competition and conflict which prevents any potential for progress toward an international society or international community.

This helps explain why realist policymakers see genocide as just another insoluble problem. Significantly, realists reject the so-called idealistic belief that “no problems – however hopeless they may appear to be – are really insoluble, given well-meaning, well-financed, and competent efforts”.<sup>10</sup> Although realists would like to live in a world without problems such as genocide, they do not see how such problems can be resolved without the establishment of a world government. At the same time realists remain highly sceptical toward the idea that a world government can be established. This is important because it begins to illustrate why realist policymakers do not believe that genocide prevention is in the national interest of states. Critically, this realist view does not stem from a commitment to amorality but a genuine fear that “the path of justice and honour involves one in danger”.<sup>11</sup> As stated in Chapter One, genocide prevention has the potential to lead states into “complex and dangerous” foreign policy agendas (to use Andrew Hurrell’s phrase).<sup>12</sup> For realists, complex and dangerous foreign policy agendas have the potential to undermine state security and should, therefore, only be pursued when matters of vital national interest are at stake. Moral crusades do not fall within this realist framework for as Morgenthau succinctly stated, whilst the individual has the right to say, “let justice be done, even if the world perish”, the state does not have the right to say this on behalf of its citizens.<sup>13</sup> From this perspective states

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<sup>8</sup> For the neo-realist view, see Kenneth Waltz, Theory of International Politics (New York: McGraw-Hill, 1979). For the realist view see Hans Morgenthau, revised by Kenneth W. Thompson, Politics Amongst Nations, The Struggle for Power and Peace (New York: McGraw-Hill, 1985). For an analysis on the relationship between the two theories, see Kenneth Waltz, Realism and International Politics (New York: Routledge, 2008), chapter five.

<sup>9</sup> For a relevant overview see Michael Joseph Smith, Realist Thought From Weber to Kissinger (Baton Rouge: Louisiana State University Press, 1987).

<sup>10</sup> Hans Morgenthau, Politics Amongst Nations, p.9.

<sup>11</sup> This classic Athenian rationale comes from Thucydides, History of the Peloponnesian War translated by Rex Warner, (New York: Penguin, 1972), p. 405.

<sup>12</sup> This phrase will be utilised throughout this thesis.

<sup>13</sup> Hans Morgenthau, Politics Amongst Nations p.12.

should not send their 'sons and daughters' to die "saving strangers".<sup>14</sup> It is for this reason that genocide is viewed as an insoluble problem. This is something that genocide scholars need to consider carefully as too often genocide scholars naively dismiss such policymaking as amoral.

On the other hand, realists need to consider whether their view of genocide stems from their understanding of human nature, cooperation, national interest, anarchical structure – a mix of these – or, more importantly, genocide itself.<sup>15</sup> By this I mean that despite realists having a pessimistic view of human nature, a narrow understanding of national interest, a relative gains approach toward cooperation, and/or, a neo-realist belief that the anarchical system can push states to behave in certain ways, realists *do* accept that on certain issues: states *do* cooperate within the anarchical realm. As stated in Chapter One: states often cooperate on security issues when they perceive that the threat posed outstrips their individual security capacity. Although realists reject the liberal appeal to the idea of absolute gains, they do acknowledge that cooperation is a vital feature of international relations.<sup>16</sup> This is important because it highlights that the realist view - that genocide prevention is not within the national interest of states - stems not from their view of cooperation, human nature et al., but their view of genocide. In other words, realists do not believe that genocide poses a security threat to states. It is this perception of genocide, therefore, that drives realists to claim states should not, whether unilaterally or multilaterally, engage in genocide prevention unless there are matters of national interest at stake. This brings us back to the fact that policymakers do not view genocide as a transnational threat.

Yet as stated in Chapter One, IR scholars have given very little thought as to how genocide impacts upon the current world order. As a result, the realist understanding of genocide seems to be built on a series of assumptions rather than any serious critical analysis. The

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<sup>14</sup> This is taken from Nicholas, J. Wheeler, Saving Strangers Humanitarian Intervention in International Society (Oxford: Oxford University Press, 2000). Wheeler provides an apt critique of the realist position with regard to humanitarian intervention.

<sup>15</sup> For a relevant analysis on the national interest see, Wight, International Theory. The Three Traditions chapter six. Also, Scott Burchill, The National Interest in International Relations Theory (New York: Palgrave, 2005). For a neo-realist analysis of cooperation see, Joseph M. Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism', International Organisation (vol. 42, no. 3, 1988, pp. 485-507).

<sup>16</sup> For an insightful overview see Joseph M. Grieco, Robert Powell, Duncan Snidal, 'The Relative-Gains Problem for International Cooperation', The American Political Science Review (vol. 87, no. 3, 1993, pp. 727-743).

intention of this thesis therefore is to shed light on this specific issue, which may help provide policymakers with a more informed understanding of genocide. This will allow this thesis to re-engage with the realist view of genocide in Chapter Seven's analysis of the three traditions. With this in mind, let us turn our attention to the tradition of revolutionism, prior to moving onto a more detailed analysis of rationalism and its suitability for this thesis.

### 2.1.2 International community: revolutionism

The tradition of revolutionism remains the most under-theorised tradition (at least from an English School perspective), identified by Martin Wight. For Wight, revolutionism was a hybrid category which captured the "soft" revolutionaries from Kant to Nehru, as well as the "hard" revolutionaries of Jacobins and Marxists.<sup>17</sup> Despite the fact that this in itself, provides enough food for thought, Wight created subdivisions within this tradition as he attempted to distinguish the non-violent revolutionism of Pacifism (which he labelled as "inverted revolutionism") and Wilsonianism (which he labelled as "evolutionary revolutionism") from the more hard-line approach of Marx.<sup>18</sup> Amidst such complexity, it is clear that English School scholars need to develop a stronger theoretical understanding of revolutionism. However, it is also clear that the revolutionist tradition transcends the present Westphalian state-centric perspective embodied in the English School understanding of international society. Whether one upholds a Kantian commitment to an international community, or a more critical utopian commitment to a world society, the variety of revolutionist perspectives act to remind both realism and rationalism of the moral imperfections to be found in the present state-centric model.<sup>19</sup> Essentially, this ethic of radical change is what defines the core of the revolutionist position.

It is important then to stress that Fig.1.1, reflects Linklater's focus on the "softer" revolutionary position of Kant, and the idea of an international community. As Linklater

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<sup>17</sup> Wight, International Theory. The Three Traditions p. 267.

<sup>18</sup> *Ibid*, pp. 159 – 160. It should be noted that Wight also experimented with other sub-divisions within realism and rationalism.

<sup>19</sup> The idea that revolutionism acts to remind the other two traditions that the present state centric system is morally deficient is taken from Andrew Linklater, Beyond Realism and Marxism. Critical Theory in International Relations (Hampshire: Macmillan Press, 1990), p. 8. Notably there is considerable work to be done on the relationship between the concept of international society and the idea of an international community and/or world society. See, Ian Clark, International Legitimacy and World Society (New York: Oxford University Press, 2007). Ken Booth, Theory of World Security (Cambridge: Cambridge University Press, 2007). Barry Buzan, From International Society to World Society? English School Theory and the Social Structure of Globalisation (Cambridge: Cambridge University Press, 2006). Iver B. Neumann, 'The English School and the Practices of World Society', Review of International Studies (vol. 27, no. 3, 2001, pp. 503-507).

explains, “The Kantian tradition represents the progressivist tendency in international thought since its members believe in the existence of a latent *community* of humankind, and are confident that all political actors have the capacity to replace strategic orientations with cosmopolitan political arrangements governed by dialogue and consent rather than power and force”.<sup>20</sup> Perhaps the best way of viewing this Kantian perspective is in terms of what humanity should move away from, rather than exactly what humanity should move toward. For example, a Kantian commitment to humanity implies that we should move away from the present Westphalian state-centric model as this serves the interests of states rather than the interests of humanity. Yet at the same time there remains significant debate amongst Kantians as to how societal relations should be ordered instead.<sup>21</sup> The pressing point is that this perspective prioritises the value of humanity over that of the present state system (realism), or society of states (rationalism).

To relate this revolutionist focus back to the study of genocide, it seems clear that revolutionists could utilise the occurrence of genocide to illustrate just how the present state system is failing humanity. In doing so, revolutionists would pose a direct challenge to the realist and rationalist dependency on states and state policymakers.<sup>22</sup> Indeed, many moral theorists have appealed to the idea of humanity, human nature, and human essence, to condemn acts, such as genocide, as *inhuman*.<sup>23</sup> However, as raised in Chapter One, this approach seems to be built upon an assumption that humanity and human essence exists.<sup>24</sup> One cannot help but think that the widespread participation of “ordinary people” in the genocidal process highlights the tragic reality that such acts are, in fact, human.<sup>25</sup> This somewhat profound philosophical argument was put into sharp context in the aftermath of the Nazi atrocities (which later became known as genocide and the Holocaust<sup>26</sup>) as news and

<sup>20</sup> Linklater and Sukanami, The English School of International Relations, p. 117.

<sup>21</sup> See, Garret. W. Brown, ‘State Sovereignty, Federation and Kantian Cosmopolitanism’, European Journal of International Relations, (vol. 11, no. 4, 2005, pp. 495–522).

<sup>22</sup> See Booth, Theory of World Security.

<sup>23</sup> Norman Geras, ‘Genocide and Crimes Against Humanity’, in John K. Roth, (ed.), Genocide and Human Rights. A Philosophical Guide (New York: Palgrave Macmillan, 2005), chapter fourteen.

<sup>24</sup> For a seminal critique see Richard Rorty, Contingency, Irony and Solidarity (Cambridge: Cambridge University Press, 1989). For an overview of this debate which notably draws on both Rorty and Geras amongst others, see Boucher, The Limits of Ethics in International Relations, chapter nine.

<sup>25</sup> The term and the idea of ordinary people committing such acts is taken from Christopher Browning, Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland (London: Penguin, 2001). For such analysis see also, Yehuda Bauer, Rethinking the Holocaust (New Haven: Yale University Press, 2001), p. 21.

<sup>26</sup> For an analysis on the relationship between the two terms see, Dirk Moses, ‘The Holocaust and Genocide’, in Dan Stone, (ed.), The Historiography of the Holocaust (New York: Palgrave, Macmillan, 2004, pp. 533 – 551).

images of events began to filter through mainstream British society. After viewing a *Daily Express* exhibition on the horrors that took place in Belsen, one thirty year old woman when interviewed stated, "I'm afraid it didn't make me feel anti-German; it made me feel anti-humanity. Would the same have happened here, I wonder, if we'd had the same government? I've heard some violent anti-Semitic talk which makes me think it would. I feel it's the fault of humanity at large, not the Germans in particular."<sup>27</sup> The statement highlights that just as one can appeal to the idea of humanity to condemn the crime of genocide, one can equally appeal to the crime of genocide to refute the existence of common humanity.

To link this back to the relevance of this thesis, the pressing point is not that this thesis rejects the idea of humanity, but that this thesis is not built upon the assumption that humanity exists. By this I mean that I do not uphold the Kantian premise that human beings are inextricably connected: "a violation of rights in one part of the world is felt *everywhere*".<sup>28</sup> The problem that this author has with such sentiment is the fact that between April-July 1994, the Rwandan genocide took place, yet quite clearly this was not felt everywhere as the world's attention was focused not on Rwanda but on events such as the World Cup in America (which also took place in June-July 1994). Whilst, as will be discussed in Chapter Five, the Rwandan genocide did have an impact upon the authority of the UN thereby impacting upon the current world order, the fact that its impact was not felt everywhere demonstrates that international society has not progressed to the point that "a community of humankind" (to use Linklater's phrase) has been established. This brings us back to the understanding set out in Fig.1.1. Whereas cosmopolitans believe that international relations *should* progress toward an international community, English School scholars do not believe that this represents an accurate picture of where international relations stand at present and remain sceptical toward the idea that an international community can be established. Perhaps this is best summarised in Paul Keal's English School study on the historical expansion of international society. Keal highlights that the laws and ideas embodied within the expansion of international society led international society to be constructed upon the dispossession of indigenous lands, the

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The term Holocaust with a capital H, is usually used to refer to the Jewish tragedy, for such discussion see, 'Is There a New Anti-Semitism? A Conversation with Raul Hilberg', *Logos* (vol. 6, no 1-2, 2007). Available [http://www.logosjournal.com/issue\\_6.1-2/hilberg.htm](http://www.logosjournal.com/issue_6.1-2/hilberg.htm) Accessed (12/05/2008). The author is unknown.

<sup>27</sup> Joanne Reilly, *Belsen: The Liberation of a Concentration Camp* (London: Routledge, 1998), p.69.

<sup>28</sup> Immanuel Kant cited in Garrett. W. Brown, *Grounding Cosmopolitanism. From Kant to the Idea of a Cosmopolitan Constitution* (Edinburgh: Edinburgh University Press, 2009), p.1. Emphasis in original.



dehumanisation of indigenous peoples, and ultimately genocide.<sup>29</sup> However, despite acknowledging the “moral backwardness” of international society, Keal intriguingly concludes that international society remains the most appropriate framework for resolving the issues at hand. This neatly brings us back to the point raised in Chapter One: this thesis starts from the view that one should develop an understanding of genocide and genocide prevention by beginning with the facts of the problem rather than from any specific faith in any particular form of response.

### 2.1.3 Summary

Prior to engaging in a more in-depth focus of what the English School is, rather than what it is not (realism and revolutionism), it is hoped that this broad IR overview underlines the point that one’s understanding of IR shapes one’s understanding of genocide within international relations. This is a simple yet important point. For example, genocide scholars continually refer to the failure of the ‘international community’ to prevent genocide, yet it is clear that most IR theorists do not actually accept that an international community exists. Kantians may hope that international relations progress toward the establishment of an international community; nevertheless, they do not believe that an international community already exists. When genocide scholars use the term ‘international community’, they seem to be simply repeating a political mantra often put forward by politicians. Such political rhetoric does not provide an accurate portrayal of international relations. Of course, one can study genocide utilising any IR perspective they see fit, yet the overarching point here is that one has to understand the assumptions embodied within each IR approach and how they shape the subsequent understanding of genocide put forward.

It is here that the relevance of the English School for this thesis comes to the fore. To gauge this let us consider Martin Wight’s use of a statement made by the historian A. J. P. Taylor, “There is a third way between Utopianism and despair. That is to take the world as it is and improve it; to have faith without creed, hope without illusions, love without God”.<sup>30</sup> The statement underpins the critical point that English School scholars do not have a pre-determined world view. Significantly, the rationalist tradition does not uphold the view that

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<sup>29</sup> Paul Keal, European Conquest and the Rights of Indigenous Peoples. The Moral Backwardness of International Society (Cambridge: Cambridge University Press, 2003). Perhaps somewhat bizarrely, the author does not engage with Zygmunt Bauman’s seminal thesis: Modernity and the Holocaust (Cambridge: Polity, 1989).

<sup>30</sup> A. J. P. Taylor, cited in Wight, International Theory. The Three Traditions p. 29.

human nature is, essentially good, or essentially bad.<sup>31</sup> Instead, it sees international society as a construction, rather than a natural outcome, and shares a much discussed common ground with constructivism, as both schools of thought uphold the classic Wendtian view that “Anarchy is What States Make of It”.<sup>32</sup> This brings us back to the logic put forward in Chapter One, that one should develop an understanding of genocide and genocide prevention by beginning with the facts of the problem rather than from any specific faith in any particular form of response. The English School approach, therefore, allows this study of genocide to escape any pre-determined commitment to ideas regarding the national interest (realism), or humanity (revolutionism). With its focus on the relationship between justice and order, the English School offers a highly relevant framework for assessing the impact of genocide upon the ordering structure that underpins international relations. With this in mind, it is important to flesh out the English School approach in more detail as this will aid our understanding of why the English School provides a suitable framework for studying the impact of genocide on international order

## 2.2 International society: rationalism

For English School scholars, international society is both an idea and a reality that cannot be bracketed off from the traditions of realism and revolutionism. A distinctive feature therefore of the English School is the *theoretical pluralism* that underpins its view of IR. As Wight was keen to point out, “The three traditions are not like three railroad tracks running parallel into infinity...the three traditions are streams, with eddies and cross-currents, sometimes interlacing and never for long confined to their own river bed”.<sup>33</sup> This seminal statement demonstrates Wight’s theoretical pluralism, as he saw IR as a three way conversation between the traditions of realism, rationalism, and revolutionism.<sup>34</sup> To suggest that an informed understanding of IR could be achieved from studying either tradition in isolation was, for Wight, a fallacy. For Wight the “eddies and cross-currents” to be found between the

<sup>31</sup> See Wight, *International Theory. The Three Traditions*, p. 28.

<sup>32</sup> Alexander Wendt, ‘Anarchy is what states make of it: The Social Construction of Power Politics’, *International Organization* (vol. 46, no. 2, 1992, pp. 391-425). Notably, English School scholars do not uphold the positivism within Wendt and therefore distance themselves from Wendt’s subsequent famous claim, see Alexander Wendt, ‘Why a World State is Inevitable’, *European Journal of International Relations* (vol. 9, no. 4, 2003, pp. 491-542). For such analysis see, Christian Reus-Smit, ‘The Constructivist Challenger after September 11’, in Alex J. Bellamy, (ed.), *International Society and its Critics* (Oxford: Oxford University Press, 2005).

<sup>33</sup> Wight, *International Theory. The Three Traditions*, p. 260.

<sup>34</sup> The idea of a three way conversation is taken from Dunne, *Inventing International Society*, p. xiii.

three traditions dictates that one cannot find a *pure* realist stream, a *pure* rationalist or a *pure* revolutionist stream. The logic being, that if one were to trace the history of ideas then one would reveal an interwoven tapestry of realism, rationalism, and revolutionism. To return to Fig.1.1, English School scholars see IR as a three way conversation between the three traditions as no single tradition can lay claim to hold a “monopoly of legitimate knowledge”.<sup>35</sup>

Having established an understanding of the conversation to be found in realism and revolutionism, the focus here is on the conversation to be found in rationalism, which will allow us to re-engage with in a broader conversation at a later date (see Chapter Seven). To flesh out this idea of an international society let us return to Linklater:

The Grotian tradition occupies the intermediate position since it believes there has been qualified progress in world politics exemplified by the existence of a *society of states* which places constraints on the state’s power to hurt and facilitates international cooperation. States in this condition are orientated towards communicative action –to participation in diplomatic dialogues in which they advance claims and counterclaims with a view of establishing global standards of legitimacy which distinguish between permissible and proscribed behaviour.<sup>36</sup>

The statement encapsulates the spirit of the international society approach as English School scholars believe that although societal relations have developed beyond that of an international system, they have not progressed, and indeed are unlikely to progress, to the point of an international community. As a result, international society represents the middle-ground position. As Hidemi Suganami explains, even if one does not accept the Walzian neo-realist claim that the anarchical realm is the permissive cause of war, it is evident that the international environment is “*undoubtedly war-conducive*”.<sup>37</sup> The statement captures why English School scholars are more optimistic than neo-realists as English School scholars do not believe that the structure of the anarchical realm itself, *causes* war. However, it also underlines why English School scholars remain less optimistic than revolutionists as the nature of the anarchical realm increases the likelihood of conflict, thereby reducing the possibility of harmonious relations. The idea of an international society therefore, stems from the belief that just as individuals at the domestic level create a society based upon establishing collective understandings, states create an *international society* by establishing, what Linklater refers to as, “global standards of legitimacy”. These standards of legitimacy

<sup>35</sup> Bellamy, *International Society and its Critics*, p. 11.

<sup>36</sup> Linklater and Suganami, *The English School of International Relations*, pp.117-118.

<sup>37</sup> Hidemi Suganami, ‘Understanding Man, The State, and War’, *International Relations* (vol. 23, no. 3, 2009, pp. 72 – 388), p. 378. Emphasis in original.

are expressed via the norms, values, principles, and institutions found in international relations (these will be discussed below). It is claimed that these collective understandings enable and/or constrain the behaviour of states, thereby increasing the likelihood of order at the international level.<sup>38</sup>

It is worth pausing here to consider the role of Hugo Grotius within this tradition as it is clear that contemporary English School scholars have distanced themselves from both the Grotian and Wight appeal to the legitimacy of natural law. Notably, Wight (who was a passionate Christian and wrote extensively on the subject matter<sup>39</sup>), associated rationalism with reason and the capacity of human beings to discover: “a system of eternal and immutable principles radiating from a moral source that transcends earthly power (either God or nature)”.<sup>40</sup> Whilst such faith led Wight to accept Grotius’s commitment to natural law, the majority of contemporary English School scholars have rejected such thinking. Rationalism is now commonly utilised by English School scholars as shorthand for international society rather than any commitment to ideas such as reason or natural law.<sup>41</sup> The implication of this distinction is therefore critical and needs to be clarified to avoid potential confusion. Essentially, seminal English School scholars such as Hedley Bull reject the idea of natural law, yet remain within the Grotian tradition as they uphold the central idea that collective understandings, such as those expressed in international law, can, and indeed do, shape the behaviour of states at the international level, as they do individuals at the domestic level.<sup>42</sup> Although Bull’s interpretation of Grotius has come under scrutiny,<sup>43</sup> the focus here is not upon the history of ideas that underpin the English School approach, but on the central tenets that underpin the concept of international society.

<sup>38</sup> Critics such as Martin Shaw highlight that this state-centric approach overlooks the complexities within states regarding the relationship between individuals and/or citizens and states, see Martin Shaw, Global Society and International Relations. Sociological Concepts and Political Perspectives (Cambridge: Polity Press, 1994), chapter five.

<sup>39</sup> See Ian Hall, The International Political Thought of Martin Wight (New York: Palgrave, 2006), chapter two.

<sup>40</sup> Martin Wight, International Theory. The Three Traditions, p. 14.

<sup>41</sup> This idea is taken from Paul Keal’s succinct overview of this debate, see Paul Keal, European Conquest and the Rights of Indigenous Peoples, introduction, esp. pp. 4-5.

<sup>42</sup> Hedley Bull, ‘The Importance of Grotius’, in Hedley Bull, Benedict Kingsbury and Adam Roberts, (ed.), Hugo Grotius and International Relations (Oxford: Clarendon Paperbacks, 1992). See also, Edward Keene, Beyond the Anarchical Society. Grotius, Colonialism and Order in World Politics (Cambridge: Cambridge University Press, 2002). For a legal analysis which rejects the Grotian commitment to natural law yet acknowledges the importance of his work, see C. Van Vollenhoven, ‘Grotius and the Study of Law’, The American Journal of International Law (vol. 19, no. 1, 1925, pp. 1-11).

<sup>43</sup> Renee Jeffrey, Hugo Grotius in International Thought (New York: Palgrave, 2006), chapter five. For further relevant scrutiny of Bull’s position see, John Williams, ‘Hedley Bull and Just War: Missed Opportunities and Lessons to be Learned’, European Journal of International Relations (vol. 16, no. 2, 2010, pp. 179 – 196).

The idea that a society is constructed at the international level, as it is at the domestic, brings us back to the centrality of international legitimacy.<sup>44</sup> In appealing to the idea of communicative dialogue between states, Linklater also rejects the idea of natural law. Whilst states may appeal to such ideas within the deliberative process, it is clear that such ideas in themselves are not regarded as legitimate by most contemporary English School scholars. Instead, English School scholars focus on the collective understandings that are forged at the international level and how these collective understandings facilitate the likelihood of international order. This is *not* to suggest that international legitimacy acts as a causal effect, but through forging international agreements, states increase the likelihood of international stability within the anarchical realm.<sup>45</sup> The English School position, therefore, seeks to prioritise the value of international order over values such as power (realism) and/or humanity (revolutionism). It is for this reason that English School scholars focus on standards of legitimacy forged between states as these act to tame the anarchical realm. The fear being that just as international relations can progress, they can also regress, and the survival of international society requires a consensus being forged over the basic principles of international order.<sup>46</sup>

For English School scholars, the existence of order within anarchy demonstrates that states engage in civilising processes.<sup>47</sup> It is here that the English School's focus on universal human rights and humanitarian intervention is of specific relevance as it is clear that states have attempted to incorporate a commitment to international justice into existing understandings of international order. Scholars such as R. J. Vincent, Tim Dunne, James Mayall, Nicholas J. Wheeler and Robert Jackson have discussed whether it is possible to integrate transnational commitments to human rights into the present Westphalian order. As is well documented, this has seen English School scholars play a prominent role in the post-Cold War debate over the legitimacy of humanitarian intervention in international relations. The reason for this perhaps lies with the legacy of Hugo Grotius, for as R. J. Vincent explains, whilst Grotius upheld the idea of sovereignty and non-intervention, he accepted that in certain exceptional

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<sup>44</sup> For an excellent overview see, Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford University Press, 1990), chapter one.

<sup>45</sup> For such analysis see Ian Clark, *Legitimacy in International Society*, (Oxford: Oxford University Press, 2005), esp. p.248. This will be returned to in Chapter Four's focus on international legitimacy.

<sup>46</sup> Tim Dunne, 'Sociological Investigations: Instrumental, Legitimist and Coercive Interpretations of International Society', *Millennium* (vol. 30, no. 1, 2001, pp. 67 – 91).

<sup>47</sup> Such thinking is taken from Andrew Linklater, see Linklater and Suganami, *The English School of International Relations*, p. 130.

cases, such as state tyranny, intervention could be deemed legitimate.<sup>48</sup> Obviously, as Vincent himself accepts, such ideas can predate Grotius. The idea that war can be used as an instrument of justice (as suggested by humanitarian intervention advocates) can be traced back to the theory of *just war* presented by St. Augustine and St. Aquinas.<sup>49</sup> The debate has obvious relevance here as genocide stands as the paradigm example of state tyranny. However, it is also important to note that despite the fact that the debate over humanitarian intervention has been around for centuries, the array of legal, moral, and political perspectives involved dictates that this remains one of the most unresolved and divisive debates in IR.

To put this into context, let us consider Nicholas Wheeler's seminal statement: "humanitarian intervention exposes the conflict between order and justice at its starkest".<sup>50</sup> The statement underlines Wheeler's belief that - more than any other debate - the debate over humanitarian intervention exposes the tensions to be found between order and justice. The reason for this is quite straightforward in that the debate draws upon the fundamental principles that are seen to underpin both order (state sovereignty) and justice (human rights) in international society. Within this context, the humanitarian intervention debate poses the question: can states use war as an instrument of justice to alleviate mass suffering in another state (without the target state's permission).<sup>51</sup> Significantly, the position that one takes within this debate reflects one's view of how international society *should* be ordered. It is for this reason that Wheeler rightly claims that the debate over humanitarian intervention exposes the tensions to be found between order and justice more than any other debate. Yet to take this logic one step further, it seems evident that since genocide prevention is internationally regarded as the benchmark example of what constitutes a *just cause* (within the context of humanitarian intervention),

<sup>48</sup> R. J. Vincent, 'Grotius, Human rights, and Intervention', in Hedley Bull, Benedict Kingsbury and Adam Roberts, (ed.), Hugo Grotius and International Relations (Oxford: Clarendon Paperbacks, 1992), chapter eight.

<sup>49</sup> For an overview see, Alex, J. Bellamy, Just Wars. From Cicero to Iraq (Cambridge: Polity, 2008). Oliver, O, Donovan, Just War Revisited (Cambridge: Cambridge University Press, 2004). Michael Walzer, Just and Unjust Wars. a Moral Argument with Historical Illustrations. third edition (New York: Basic Books, 2000). Michael Walzer, Arguing about War. (London: Yale University Press, 2004). James Turner Johnson, Morality and Contemporary Warfare (New York: Yale University Press, 1999).

<sup>50</sup> Vincent, 'Grotius, Human rights, and Intervention', pp. 246 – 248.

<sup>51</sup> For an overview of the relevant debates, see Thomas, G. Weiss, Humanitarian Intervention (Cambridge: Polity Press, 2007). Jennifer M. Welsh, (ed.), Humanitarian Intervention in International Relations (Oxford: Oxford University Press, 2006). D. K. Chatterjee and D. E. Scheid. (eds.), Ethics and foreign intervention in International Society (Cambridge: Cambridge University Press, 2003). J. L., Holzgrefe, and Robert O. Keohane, Humanitarian Intervention: Ethical, Legal and Political Dilemmas (Cambridge: Cambridge University Press, 2003).

then one could make the case that genocide prevention exposes the conflict between order and justice in an even starker light than the broader debate over humanitarian intervention. As will be discussed in Chapter Four, genocide holds a relationship with international legitimacy that 'lesser' human rights violations do not. This needs to be considered carefully when assessing the legitimacy of humanitarian intervention.

Prior to engaging in such analysis, it is important to take stock of the English School pluralist-solidarist divide in order to gain a more informed understanding of the divisions that exist in the international society approach. At present, pluralists and solidarists remain divided over what principles, values, norms and institutions should be prioritised to resolve the tension between justice and order international society. The intention here is to gain a more informed understanding of this pluralist-solidarist divide prior to engaging in an analysis of norms and institutions and their relevance for the study of genocide.

### 2.2.1 The pluralist-solidarist divide

The English School pluralist-solidarist distinction was first raised by Hedley Bull and has since been analysed by leading figures in the field such as Linklater, Dunne, and Wheeler.<sup>52</sup> To return to Linklater's spectrum regarding system (realism), society (rationalism), and community (revolutionism), then it is clear that questions arise over where the boundaries between these three traditions lie. It is here that the pluralist-solidarist divide is of relevance as pluralists have more in common with realists and solidarists have more in common with revolutionists. The divide is put into the overarching context of the three traditions in Linklater's analysis:

The underlying idea is that relations between political communities can progress from one in which they treat one another as simply a brute fact to take into account in deciding how to act ('a system') towards a more fully societal one in which they share interest in governance through common institution ('a society'). *Societal relations can in turn develop from a minimalist ('pluralist') one, in which the common goal is restricted to the maintenance of the orderly coexistence of separate political communities, towards a more advanced ('solidarist') one, in which the goal increasingly incorporates the protection of human rights across separate communities.* Where the evolution progresses to an exceptionally high point where the society can no longer appropriately be said to consist of separate political communities which are determined to maintain their sovereignty or independence, the label 'community' comes to be used.<sup>53</sup>

<sup>52</sup> See Hedley Bull, 'The Grotian Conception of International Society' in Hebert Butterfield and Martin Wight, *Diplomatic Investigations*, (eds.), *Diplomatic Investigations: Essays in the Theory of International Politics*. (London: Allen and Unwin, 1966).

<sup>53</sup> Linklater and Sukanami, *The English School of International Relations*, p.8. Emphasis added.

The statement primarily reiterates the three traditions whilst also going one step further to explain just how the English School pluralist-solidarist divide fits into the *via media* position of international society. Essentially, English Schools pluralist believes that societal relations can, and indeed have, moved beyond that of an *international system*, yet question the ability of states to progress beyond a minimal level of orderly co-existence. In sharp contrast, English School solidarists believe that international society can, and indeed has, entrenched notions of international justice within a society of separate communities (this nevertheless remains less optimistic than the Kantian view of a community of human kind).

To illustrate the pluralist-solidarist divide, Fig. 2.1.1, utilises the understanding set out above to offer an overview of how the divide fits within the context of three traditions:

**Fig. 2.1.1, an overview of the pluralist solidarist divide within the context of the three traditions.**

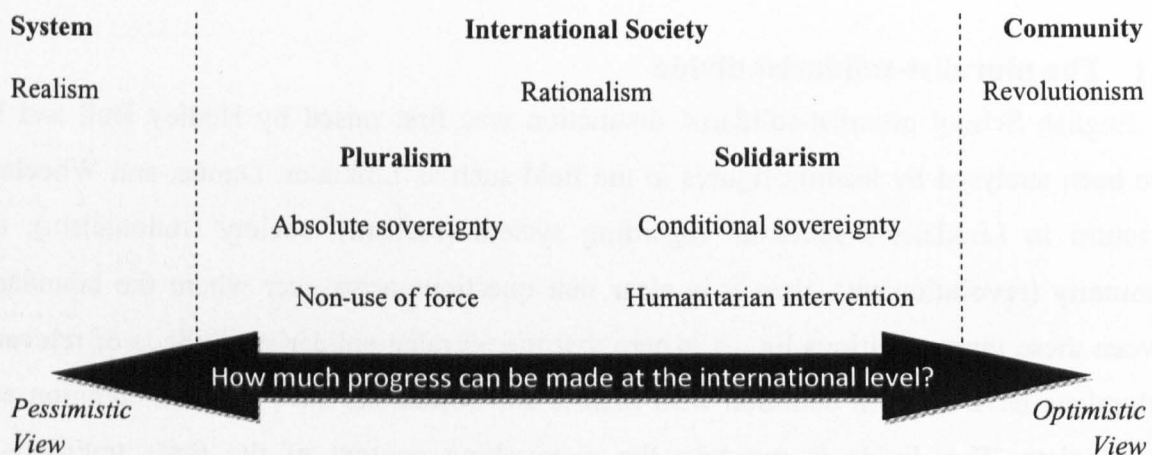


Fig. 2.1.1, simply illustrates the point that English School pluralists are located at the realist wing of international society, whereas English School solidarists are located at the revolutionary wing of international society. Significantly, English School pluralists and solidarists appeal to different norms, values, principles, and institutions when putting forward their normative argument of how international society *should* be ordered.

Let us first of all take stock of the English School pluralist position. As Nicholas Wheeler explains, “Pluralists focus on how the rules of international society provide for an international order among states sharing different conceptions of justice”.<sup>54</sup> The focus on different concepts of justice highlights that English School pluralists are more sceptical than

<sup>54</sup> Wheeler, *Saving Strangers*, p.11.



English School solidarists. Essentially, English School pluralists believe that in a world full of competing legal, moral, and political claims, establishing a universal understanding of justice is highly unlikely. In turn they claim that international society should be ordered upon the principles of absolute sovereignty, non-intervention and non-use of force.<sup>55</sup> To go back to the idea - that societal relations are shaped by the legitimate standards that states establish through communicative dialogue - pluralists tend to champion those understandings that support their commitment to sovereignty, non-intervention and non-use of force. Whilst English School solidarists attempt to advocate a more universal understanding of justice, English School pluralists share a realist fear that powerful states will exploit their powerful position to impose their understanding of justice upon weaker powers. Embodied in this pluralist approach, therefore, is a highly normative commitment to upholding these principles of order in an anarchical realm plagued by competing moral claims.

On the contrary, English School solidarists offer a more optimistic approach toward the potential for progress in international relations. This is again raised by Wheeler (who is himself a solidarist), as he explains that solidarism, “looks to strengthen the legitimacy of international society by deepening its commitment to justice. Rather than see order and justice locked in perennial tensions, solidarism looks to the possibility of overcoming this conflict by developing practices that recognise the mutual inter-dependence between the two claims”.<sup>56</sup> The statement aptly underlines the sentiment to be found in English School solidarism as solidarists believe that states can forge common understandings of universal justice which in turn help overcome the tension to be found between order and justice at the international level. As previously stated, English School solidarists reject the pluralist view that order and justice are locked in a state of perennial tension. Despite the fact that there are many competing legal, political, and moral claims, solidarists believe that it is still possible to forge global standards of legitimacy regarding a commitment to both order and international justice. To go back to the idea - that societal relations are shaped by the legitimate standards that states establish through communicative dialogue - solidarists tend to champion those understandings that support their commitment to conditional sovereignty and humanitarian intervention. This illustrates why solidarism reflects a more optimistic view of international relations as

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<sup>55</sup> The seminal English School pluralist account remains, Robert Jackson, The Global Covenant. Human Conduct in a World of States (Oxford: Oxford University Press, 2000). This will be discussed in further detail in Chapter Seven.

<sup>56</sup> Wheeler, Saving Strangers, p.11.

solidarists believe that states can progress beyond levels of minimal co-existence to establish a broader commitment to international justice.

Evidently, the English School should not be considered as a harmonious school of thought. There remains substantial division between pluralists and solidarists over the relationship between order and justice in international relations. It is here that the crime of genocide raises some interesting questions. To consider this further it is important to address the idea of norms, values, principles and institutions. Despite the fact such terms are frequently used by English School scholars, at times their meaning remains unclear and confused.<sup>57</sup> Clarity is therefore important in aiding the objective of introducing the study of genocide into an English School framework. Of specific interest here are two terms, *norms* and *institutions*. The reason for focusing on these two terms is two-fold. Primarily, the vague nature of these two terms dictates that they are open to much more interpretation than terms such as value or principle. More importantly, alternative IR approaches attribute different meanings to these two terms. It is important, therefore, to flesh out exactly what these terms mean from an English School perspective in order to illustrate why they hold relevance for the study of genocide.

### 2.2.2 Norms

The use of the term norm can be found in a variety of IR traditions which only goes to add to the confusion surrounding the term's use. As Robert Jackson explains, for positivists, norms simply refer to "reoccurring patterns of behaviour", whereas English School scholars view norms as: "a standard of conduct by which to judge the rightness or wrongness, the goodness and badness of human activity".<sup>58</sup> Significantly, the two meanings represent starkly different understandings that reflect contrasting IR approaches. Whilst positivists focus on the *causal power* of norms, English School scholars claim that the power of norms comes from their perceived moral worth.<sup>59</sup> States forge collective understandings of what constitutes *proper*

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<sup>57</sup> For an overview on the definitional problems surrounding these terms see Buzan, *From International to World Society*, pp. 163 – 167. For example, Buzan claims, "The terms 'norms', 'rules', 'values' and 'principles' are scattered throughout the literature of both regime theory and the English school, yet it is seldom clear what, if anything, differentiates them, and in many usages they seem interchangeable", p. 163.

<sup>58</sup> Robert Jackson, 'International Relations as a Craft Discipline', in Cornelia Navari (ed.), *Theorising International Society. English School Methods* (Basingstoke: Palgrave, 2009), p. 22.

<sup>59</sup> Traditionally English School scholars have not viewed causal explanations in a favourable light, however, there is an increasing number of scholars that seek to explain the causal nature inherent within the traditional English School approach, see K. J. Holsti, 'Theorising the Causes of Order: Hedley Bull's *The Anarchical Society*', in Cornelia Navari, *Theorising International Society*, chapter six.

behaviour which are then expressed formally (legal norms) or more informally (moral norms). Accordingly, this is one of the many areas of overlap between the English School and constructivism as both schools of thought claim that the behaviour of states are shaped by more than conflict and competition alone.<sup>60</sup> Although norms do not guarantee that states will act in a certain manner, English School scholars claim that they do increase the likelihood of international order. Through the construction of norms, states establish a ‘yardstick’ by which to measure one another’s actions. States, in turn, appeal to such understandings when attempting to justify their actions, thus norms act to enable, yet also constrain, even the most powerful actors in international relations.<sup>61</sup> Norms therefore, feedback into the central idea raised by Linklater, that international society is constructed upon states establishing “global standards of legitimate behaviour”.

This focus on norms in the English School has specific relevance for the incorporation of genocide into the study of IR. This is perfectly illustrated by the crime of genocide itself. As Adam Jones explains, Raphael Lemkin, (the man who invented the word genocide): “is an exceptional example of a norm entrepreneur”,<sup>62</sup> which Jones understands to mean: “an individual or organisation that sets out to change the behaviour of others”.<sup>63</sup> Drawing upon Samantha Power’s award winning publication *A Problem From Hell*,<sup>64</sup> Jones reflects that Lemkin became inspired by a radio address made by British Prime minister Winston Churchill for the BBC in August 1941. Describing the policy of extermination utilised by the Nazis as their armies advanced into Eastern Europe, Churchill claimed, “We are in the presence of a crime without a name”.<sup>65</sup> Responding to this statement, Lemkin (who had been a student of Philology, Philosophy, and Law), constructed the term genocide by combining the Greek *genos* (meaning race or tribe) and the Latin *cide* (meaning kill). It was then in 1944 that the word genocide first appeared in his seminal publication *Axis Rule in Occupied*

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<sup>60</sup> Whilst there is significant overlap between the English school and constructivism, this English School approach to norms, differs substantially, from the positivist strand of constructivism. See Christian Reus-Smit, ‘The Constructivist Challenger after September 11’, in Bellamy, *International Society and its Critics*, chapter four. For a seminal constructivist analysis see Martha Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996), chapter three.

<sup>61</sup> For such analysis see, Wheeler, *Saving Strangers*, p.6.

<sup>62</sup> Adam Jones, *Genocide. A Comprehensive Introduction* (London: Routledge, 2006), p.8, also, pp. 316 – 320.

<sup>63</sup> *Ibid*, p. 317.

<sup>64</sup> See Samantha Power, *A Problem From Hell. America and the Age of Genocide*, (London: Flamingo, 2003).

<sup>65</sup> *Ibid*, p. 20.

*Europe*.<sup>66</sup> Accordingly, Jones claims that Lemkin attempted to fill a void in international law.<sup>67</sup> This attempt was successful as within just four years of Lemkin inventing the term, the word genocide was codified into international law with Lemkin himself playing a central role in forging the consensus needed to establish the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention, or UNGC). Whilst this will be discussed in more detail in Chapter Three, the point here is that one can see how the English School's focus on norms has explicit relevance for the study of genocide.

It is the act therefore, that international society has recognised as a crime called genocide, that this thesis incorporates into the English School's framework. Evidently, the 1948 Genocide Convention raises many intriguing questions regarding the state of international society. As will be discussed in Chapter Five, the 1948 Genocide Convention placed a conditional limitation on state sovereignty yet states accepted the Genocide Convention. As a result, genocide prevention was deemed to constitute rightful conduct from both a legal and moral perspective. However, any glance at the historical record since 1948 illustrates that states have continually failed to uphold this legal and moral obligation. Although English School scholars and constructivists speak of "life cycles" when discussing norms, it seems misconceived to think that the "anti-genocide norm",<sup>68</sup> embodied in the Genocide Convention has come to an end of its lifecycle.<sup>69</sup> As the three points below demonstrate, the anti-genocide norm has continuing relevance:

1. In the post-Cold War era, the ad hoc tribunals for both Rwanda and Yugoslavia invoked the 1948 Genocide Convention and in 1998 genocide was classified as the "crime of crimes" by the International Criminal Tribunal for Rwanda (ICTR).
2. In 1998, the 1948 legal definition was incorporated directly into the establishment of the Rome Statute of the International Criminal Court (ICC).
3. In 2005, the Responsibility to Protect reiterated international society's responsibility to prevent genocide (see Chapter Six).

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<sup>66</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New Jersey: Lawbook Exchange Ltd, 2005), esp. chapter nine.

<sup>67</sup> Jones, *Genocide. A Comprehensive Introduction*, 317.

<sup>68</sup> This is taken from Jack Donnelly, *Universal Human Rights. In Theory and Practice* (London: Cornell University Press, 2003), p. 251.

<sup>69</sup> For an analysis on the life cycle of a norm, see Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization* (vol. 52, No. 4, 1998, pp. 887–917), p. 895.

This chronology of events raises interesting questions regarding i) what is the power of this norm, ii) what does this say about the power of norms in general, iii) what is the relationship between this norm and international society. In doing so, the anti-genocide norm highlights the tension between the realist claim that such moral norms have no real power, and the English School claim that such norms enable and constrain power in international relations.<sup>70</sup> It is here that the idea of institutions comes to the fore as English School scholars recognise that whilst norms play an important role in international relations, institutions have a greater impact on shaping the behaviour of states in international society. Essentially, institutions have more power than norms.

### 2.2.3 Institutions

Again the idea of institutions can be found in a number of IR theories, most notably the English School and neo-liberal institutionalism. To gauge the English School perspective let us consider the five institutions identified in Hedley Bull's seminal study, *The Anarchical Society*.<sup>71</sup> As Bull explained, his understanding of institution had a specific focus which differed from that found in alternative approaches: "By an institution we do not necessarily imply an organisation or administrative machinery, but rather a set of habits and practices shaped towards the realisation of common goals."<sup>72</sup> Such understanding led Bull to identify the five institutions of the balance of power, international law, great power management, war, and diplomacy. In doing so, Bull clearly attempted to distinguish between non-administrative institutions such as the balance of power and administrative institutions such as the UN. For instance, writing at a time when the UN was highly ineffective as an organisation, Bull could see that the great powers, rather than the UN, represented a more profound institution in international relations. This is not to say that Bull did not believe that organisations such as the UN play an important role in international society. Instead, his approach toward such organisations was to analyse how administrative institutions, such as NATO, contribute to the workings of non-administrative institutions, such as the balance of power.<sup>73</sup>

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<sup>70</sup> For an excellent analysis on this issue see Ward Thomas, *The Ethics of Destruction, Norms and Force in International Relations* (London: Cornell University Press, 2001), chapter one.

<sup>71</sup> Hedley Bull, *The Anarchical Society, A Study of World Order Politics, third edition* (London: Palgrave, 2002).

<sup>72</sup> *Ibid.* p. 74.

<sup>73</sup> *Ibid.* p. xxxv.

The relationship between these two types of institutions is put into a sharper context in Barry Buzan's analysis on the 'the primary institutions of international society' in which Buzan differentiates between *primary* and *secondary institutions*.<sup>74</sup> The former aligns itself with Bull's understanding of non-administrative institutions, such as the balance of power, whilst the latter refers to administrative institutions, such as NATO. This primary/secondary division reiterates Bull's focus on how the latter contribute to the workings of the former, for instance, how does the UN as a secondary institution contribute to the primary institution of international law? Although these primary institutions are not fixed (they may evolve, rise and/or decline over long periods of time), for Buzan, they represent: "durable and recognised patterns of shared practices rooted in values held commonly by the members of interstate societies and embodying a mix of norms, rules and practices".<sup>75</sup> From this perspective, primary institutions act as the master concept within the context of norms, values, rules, principles, and institutions as the former feed into the establishment and workings of the latter. Historically, primary institutions play more of a profound role in shaping societal relations. For instance, one would expect the institution of international law to shape the behaviour of states more than an informal moral norm that may have arisen over a much shorter period of time.

On analysing the secondary literature on institutions, Buzan claims that one cannot help but sense that there needs to be a hierarchy.<sup>76</sup> As Buzan notes, Wight, Bull, Mayall, Holsti, James, and Jackson have all identified a different number of primary institutions within their own work.<sup>77</sup> Despite the fact that such divergent perspectives may add to any conceptual confusion, the central point that Buzan raises is whether certain primary institutions hold more power in international society than others? This leads Buzan into deconstructing the idea of primary institutions into Masters and Derivatives:

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<sup>74</sup> Buzan, *From International to World Society*, chapter six.

<sup>75</sup> *Ibid.*, p.181. Buzan provides a list of characteristics to underpin his understanding of norms, see pp. 181-182.

<sup>76</sup> *Ibid.*, p. 182.

<sup>77</sup> *Ibid.*, p. 174.

Fig. 2.1.4, Buzan's list of contemporary international institutions.<sup>78</sup>

Primary Institutions		Secondary Institutions
Master	Derivative	(examples of)
Sovereignty	Non-Intervention International Law	UN General Assembly Most regimes, ICJ, ICC
Territorial Diplomacy	Boundaries Bilateralism Multilateralism	Some PKOs Embassies United Nations Conferences, Most IGO's regimes
Great Power management	Alliances	NATO
Equality of people	Human rights Humanitarian intervention	UNHCR
Market	Trade liberalisation Financial liberalisation Hegemonic stability	IBRD, IMF, BIS
Nationalism	Self-determination Popular sovereignty Democracy	Some PKOs
Environmental stewardship	Species survival Climate stability	CITES, UNFCCC, Kyoto Protocol, IPCC, Montreal Protocol, etc.

This overview clearly underlines the difference between primary and secondary institutions which will be upheld throughout this thesis. It also highlights the complexity to be found within the English School understanding of primary institutions, as Buzan raises the idea of Master and Derivative.

Responding to the obvious question of what relevance does this have for the study of genocide, it is clear that the crime of genocide exposes tensions to be found between the primary institutions outlined by Buzan. For example, Buzan identifies the Master Institution of Sovereignty which is 'served' by the Derivative institution of non-intervention. On the contrary, the Master institution of equality of people is 'served' by humanitarian intervention. This is of specific relevance when one considers the norm embodied within the 1948 Genocide Convention, as evidently the legal obligation to prevent and punish the crime of genocide exposes a *clash of institutions* between sovereignty and equality of people. For English School pluralists, humanitarian intervention should not be considered as an institution of international relations it challenges the ordering institution of sovereignty. In sharp contrast, English School solidarists claim that international society has increasingly

<sup>78</sup> This is taken directly from Buzan, *Ibid*, p. 187.

moved toward accepting humanitarian intervention as a legitimate practice in contemporary international relations. It is here that the idea of legitimate practice or more specifically, *international legitimacy* is of particular relevance as it not only plays an integral role in resolving the tension that arises between institutions, but also the tension that arises between norms, values, and principles. This in turn has a profound impact upon the pluralist-solidarist debate over what type of international society *should* be favoured? In order to bring this section to a close then, it is important to return to the idea of international legitimacy in order to establish an understanding of how the pluralist-solidarist debates can be resolved.

#### 2.2.4 Summary

As Ian Clark and Tim Dunne have noted, international society should not be anchored upon any fixed set of norms, values, principles or institutions: “international society is essentially neither pluralist nor solidarist: it is essentially legitimist”.<sup>79</sup> Essentially, Dunne and Clark put forward the view that international legitimacy underpins the construction of international society, and it is this view that is upheld throughout this thesis.<sup>80</sup> For instance, in Buzan’s analysis of institutions, the author acknowledges that even primary institutions can rise, evolve, and decline. From this perspective, the primary institutions identified by Buzan, are not fixed, and therefore remain dependent upon *something*. This something, it is claimed here, is international legitimacy and therefore, this thesis upholds the view that international society should be anchored upon the central concept of international legitimacy (the meaning of the term will be discussed in Chapter Four). As Clark explains,

We should acknowledge that international society is constituted by its changing principles of legitimacy (first order), which express its commitment to be bound: we can then trace its evolving (second order) rules, revealed in its practices with regard to sovereignty, non-intervention, and non-use of force.<sup>81</sup>

The implications of this statement cannot be overstated as Clark puts forward the idea that the international society is primarily constructed upon the process and practice of international legitimacy. This understanding goes to reaffirm the premise here, that international society should not be grounded upon any pre-determined pluralist or solidarist view of what

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<sup>79</sup> See Clark’s discussion of Dunne, *Legitimacy in International Society*, p. 23 – 24.

<sup>80</sup> Perhaps one could adapt the understanding set out by James Mayall as he claims that international law is the “bedrock institution on which international society stands or falls”, Mayall, cited in Buzan, *From International to World Society*, p. 170. The premise of Clark’s analysis being that international legitimacy, as opposed to international law, is the “bedrock institution on which international society stands or falls”.

<sup>81</sup> Clark, *Legitimacy in International Society* p. 24.



institutions, norms, values, and principles should be prioritised in international society. These are second order rules that remain dependent upon the first order principle of international legitimacy. When one comes to answer the question then of what type of international society, it is imperative that one engages in an understanding of international legitimacy, and how this shapes international society's commitment to be bound by any set of norms, values, principles and institutions

It is with such understanding in mind that this thesis explores the relationship between genocide and international legitimacy in chapters Four, Five, Six, and Seven. In doing so, it attempts to bring the study of genocide into IR, via the English School, with a specific focus on international legitimacy. The pluralist-solidarist divide therefore has significant relevance for trying to understand the problems facing international society in any attempt to put the theory of genocide prevention into practice. Having set out an understanding of the English School debates in international society, this chapter now turns its attention to the final question: how should international society be studied?

### **2.3 Methodological considerations**

The English School's commitment to theoretical pluralism outlined above (see section 2.2), raises the question of whether the idea of international society should be prioritised over that of international system and international community. This brings in the secondary, yet equally important question, of whether or not, the interpretivist approach that is commonly associated with the study of international society should also be prioritised over that of alternative methodological approaches utilised in the study of realism or revolutionism.<sup>82</sup> This section will therefore engage in this debate as it attempts to justify this thesis's position that the concept of international society, and the interpretivist methodology aligned with it, *should* be prioritised in the English School approach.

As is well documented, the methodological questions facing the English School are made more challenging by the fact that seminal English School scholars, such as Wight and Bull, tended not to engage in any in-depth methodological analysis.<sup>83</sup> This has left critics outside the English School somewhat struck by its methodological ambivalence. Putting this into context, leading constructivist, Martha Finnemore, claimed: "simply figuring what its

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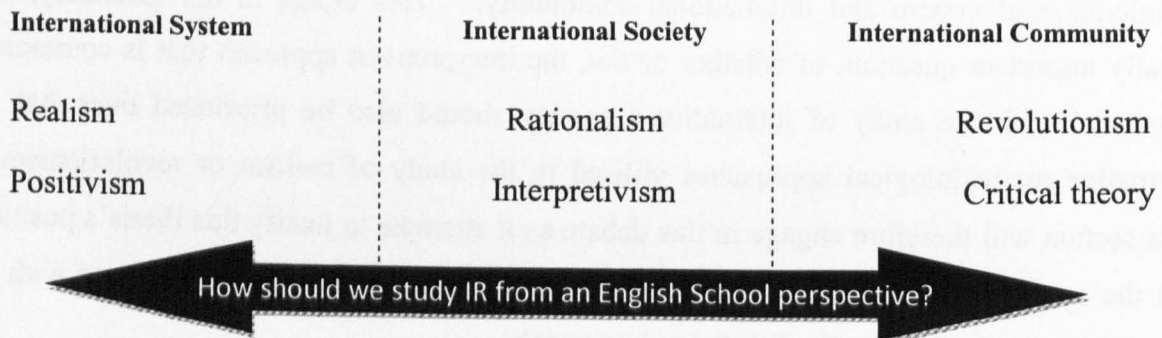
<sup>82</sup> For a brief analysis see Dunne, *Inventing International Society*, pp. 6- 12.

<sup>83</sup> For an overview see Navari, *Theorising International Society*, introduction.

methods *are* is a challenge".<sup>84</sup> Responding to such criticism, 2009 saw English School scholars come together to establish the first real comprehensive collection of essays addressing this problem, *Theorising International Society, English School Methods*.<sup>85</sup> This provided a notable follow up to the 2005 publication *International Society and its Critics* which, along with a series of other key texts, demonstrates that English School scholars are attempting to address the intellectual deficits to be found within the English School approach.<sup>86</sup> Whilst the contemporary nature of such on-going debates provides a problematic starting point for inquiry, the focus here is on the central question: how should we study international relations from an English School perspective?

Let us first of all pause to consider the question of methodological pluralism. Notably, Linklater associated the three traditions of Martin Wight with three different methodologies: realism with positivism, rationalism with interpretivism, and revolutionism with critical theory.<sup>87</sup> In doing so Linklater formulated a framework for the juxtaposition of theoretical pluralism with methodological pluralism. Again, such an overview can cause confusion rather than clarity to those less familiar with the English School. As a result, in Fig 3.3.1, I attempt to provide an overview of Linklater's juxtaposition.

**Fig. 3.3.1, an overview of the relationship between methodological and theoretical pluralism.**



In relation to the question of how we should study IR from an English School perspective, Fig 3.3.1, illustrates how the commitment to theoretical pluralism leads into complex debates

<sup>84</sup> Cited in Linklater and Suganami, *The English School*, p. 79.

<sup>85</sup> Cornelia Navari, *Theorising International Society, English School Methods* (New York: Palgrave, Macmillan, 2009).

<sup>86</sup> See Alex J. Bellamy, (ed.), *International Society and its Critics* (Oxford: Oxford University Press, 2005).

Also, Andrew, Linklater and Hidemi Suganami, *The English School of International Relations, A Contemporary Reassessment* (Cambridge: Cambridge University Press, 2006).

<sup>87</sup> Andrew Linklater, *Beyond Realism and Marxism* (London: Macmillan, 1990), chapter one.

over methodological, ontological, and epistemological pluralism. Primarily, the debate over methodological pluralism is quite straight forward in that if we are to uphold a three way conversation between the three traditions, then one has to be open to engaging with alternative research methods (though the relationship between Kant and critical theory remains problematic<sup>88</sup>). However, the more pressing question is whether a commitment to theoretical pluralism entails a commitment to ontological and epistemological pluralism as well?

It is here that Richard Little's focus on 'The English School's Contribution to the Study of International Relations' is of particular relevance. Significantly, Little expands on the methodological pluralism set out by Andrew Linklater to advocate the rather more radical position of methodological and ontological pluralism.<sup>89</sup> In contrast to the mainstream position upheld by English School scholars, Little claims that the concepts of system, society, and community should be understood as having equal status within English School theorising. By this he means that the idea of an international society should *not* be given priority over the idea of an international system or an international community. Furthermore, this leads Little to reject the idea the rationalist tradition should be viewed as a *via media position* between that of realism and revolutionism. Instead, Little claims that the natural orientation of the English School is one of methodological and ontological pluralism: "the school, from an early stage, has been committed to developing a pluralist approach to the subject expressed in both methodological and ontological terms".<sup>90</sup>

To address this understanding, let us first consider the point that the three traditions should be understood as having an equal status within English School inquiry. Notably, Linklater, whose original work forms the basis of Little's analysis, refutes the claim that English School scholars should understand international society as one of three dimensions of study.<sup>91</sup> On the contrary, Linklater claims that "explaining international society is its [the English School's] central purpose, and its observations about the dimensions of world politics which

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<sup>88</sup> This draws us back to the point that the relationship between international society and international community and/or world society is under-theorised. In relation to this point, Barry Buzan noted, "the conjunction of world society, revolutionism and Kant rings several alarm bells", From International to World Society, p. 27.

<sup>89</sup> Richard Little, 'The English School's Contribution to the Study of International Relations', European Journal of International Relations (vol. 6, no. 3, 2000, pp. 395-422).

<sup>90</sup> *Ibid*, p. 395. Notably Buzan claims that Little's idea is promising yet cannot understand why one cannot study each tradition using alternative method, see Buzan, From International to World Society, pp. 23 – 24.

<sup>91</sup> Linklater and Suganami, The English School of International Relations, p. 119.

are central to Hobbesian and Kantian approaches must be viewed in this light”.<sup>92</sup> The statement provides much needed clarity as it demonstrates that in focusing purely upon international society, one does not necessarily have to sacrifice one’s commitment to theoretical pluralism. Essentially, English School scholars draw insight from the traditions of realism and revolutionism but utilise this insight to further their understanding of international society and how it relates to both the international system and international community. To return to the idea of a three way conversation, one does not have to give equal weight to all of the claims made in a conversation. Whilst Little is perfectly entitled to suggest that system, society, and community *should* be understood in equal terms, his claim that this is how the founding fathers of the English School envisaged English School inquiry is misconceived.

This is even more explicit as Little advocates a commitment to ontological pluralism. As Cornelia Navari explains, “A plurality of methods does not imply a plurality of ontologies, much less epistemologies. So far as the English school is concerned, not everything goes”.<sup>93</sup> The point is that even within the context of theoretical pluralism, there remain limits. Methodological pluralism does not entail ontological and epistemological pluralism. To use Marsh and Furlong’s phrase, one’s ontological and epistemological foundation is “a skin not a sweater”.<sup>94</sup> From this perspective, Little’s attempt to advocate ontological pluralism represents a methodological step too far as scholars should not change their ontological and epistemological foundation at will. Although it is somewhat unclear in Little’s analysis as to whether each ontological unit (system, society, community) can be studied utilising different methods, the key point here is that one cannot simply alter their ontological position when adopting an alternative research method. To put this into context let us re-engage with Dunne’s claim that the English School represents a conversation between three schools of thought. Quite simply, I am willing to listen to realists and I accept that they may provide insightful views but I do not accept the foundational claims made by realists. If I did accept such foundational claims, then I would be accepting that they had provided me with the truth, which I believe to be unobtainable within the study of societal relations. It is imperative,

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<sup>92</sup> Ibid.

<sup>93</sup> Navari, *Theorising International Society*, p. 5

<sup>94</sup> David Marsh and Paul Furlong, ‘A Skin, not a Sweater: Ontology and Epistemology in Political Science’ in David Marsh and Gerry Stoker (eds.), *Theory and Methods in political Science, second edition* (Hampshire: Palgrave Macmillan, 2002).

therefore, that one upholds the central tenets of one's methodological approach when engaging in theoretical pluralism. Again, it is important to stress that Little has the right to make such a claim, yet it is evident that such understanding does not represent the work of Wight, or Bull, or the 'classical approach' that this analysis now turns its attention to.

### 2.3.1 Genocide and the 'classical approach'

To relate this debate back to the question of how we should study IR from an English School perspective, this thesis prioritises the idea of international society and the interpretivist approach that is traditionally aligned with it. From an English School perspective this tradition is indebted to the classical approach first outlined by Hedley Bull who remained heavily sceptical toward the idea that human relations could be studied in a scientific way.<sup>95</sup> Unlike Wight, Bull *was* willing to engage in a conversation with the 'science' embodied in the Behaviouralist approach that was prominent at the time. However, as Bull states, he only did this so that he could "turn on them and slaughter them in an academic Massacre of Glencoe".<sup>96</sup> The statement explicitly underlines the anti-scientific sentiment expressed in Bull's approach to the study of IR. The classical approach, therefore, that Bull advocated embodied a clear interpretivist commitment to understanding (*Verstehen*) as opposed to causal explanation (*Erklaren*).<sup>97</sup> As a result, the classical approach helps serve the objective of this thesis as this work sets out an understanding of how genocide impacts on international society.

Addressing the Wight-Bull axis to be found in the English School study of IR, Robert Jackson explains the foundations of this classical approach: "What we are concerned with in the English School approach is not technical facts but human relations, and human relations understood in terms of normative standards. Inquiry into world politics is inseparable from normative inquiry. I refer to this as the classical approach, following Hedley Bull."<sup>98</sup> The statement captures the anti-positivist ethic found within the classical approach as the English School never set out to uphold a scientific form of inquiry. One only has to note the title of Jackson's analysis: 'International Relations as a Craft Discipline', to understand that

<sup>95</sup> Hedley Bull, 'International theory: The Case for a Classical Approach', *World Politics* (vol. 18, no. 3, 1966, pp. 361-377).

<sup>96</sup> This is taken from Hedley Bull's introduction in Wight, *International Theory. The Three Traditions*, p. xi.

<sup>97</sup> For a related IR perspective see Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Clarendon Press, 2003). For a more research specific account see Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2004).

<sup>98</sup> Jackson, 'International Relations as a Craft Discipline', p. 21.

advocates of the classical approach do not believe that human relations can be studied in a scientific way. For example, a central element in understanding and defining genocide is that of “intent”. Essentially, genocide scholars try and establish an understanding of the perpetrators intentions when defining whether genocide has or has not been committed (see Chapter Three). To claim that such a question can be answered utilising scientific methods seems grossly misconceived for it is evident that a perpetrator’s physiological state of mind cannot be measured in a scientific manner. Yet at the same time, just because we cannot make a scientific measure of “intent”, does not mean that we cannot use our capacity for judgement in attempting to establish whether a perpetrator intended to destroy a group of people or not. The capacity for judgment, therefore, is central within both the study of genocide and the English School approach.<sup>99</sup>

This common ground is also apparent when one considers the interdisciplinary nature of both genocide studies and the English School approach. From an English School perspective, the interdisciplinary nature of IR was explicit in Martin Wight’s seminal paper: ‘Why is there no International Theory?’ As Hedley Bull points out, this paper was originally entitled: ‘Why is there no *body* of international theory?’<sup>100</sup> In highlighting the difference, Bull upholds Brian Porter’s original interpretation: “What Wight meant was that the student will not find the history of thought about International Relations in ready-made and accessible form: the pieces of the jigsaw puzzle have to be put together”.<sup>101</sup> Accordingly, Wight’s intention was to stress the relationship between International Relations Theory and Political Theory in order to escape the ahistorical dominance of positivism. Whilst realists strive to uphold a scientific methodology, the English School scholar, in this classical mould, tends to view international relations as a jigsaw with different disciplines providing different pieces of information. This jigsaw of information was unmistakable as Wight stressed the importance of History, International Law, Philosophy, Political theory and Literature when attempting to understand

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<sup>99</sup> For a relevant analysis, see Linklater and Suganami, The English School of International Relations, pp. 97 – 108. For a relevant analysis which expands the debate beyond the central concern here into the relationship between theory and practice, see Richard Shapcott, IR as a ‘Practical Philosophy’: Defining the ‘Classical Approach’, British Journal of International Politics (vol. 6. no. 3, 2004, pp. 271 – 291).

<sup>100</sup> Hedley Bull’s introduction in Martin Wight, International Theory. The Three Traditions, p. xxi.

<sup>101</sup> *Ibid.*

the relations between states at the international level.<sup>102</sup> This became a central component of Bull's 'classical approach' as he drew upon philosophy, history, and law.<sup>103</sup>

The interdisciplinary nature of this classical approach is extremely compatible with the study of genocide. Just as one of the English School's founding fathers (Martin Wight) stressed the need for international disciplinary research into international relations, it was Raphael Lemkin, "the father of genocide research",<sup>104</sup> who is noted to have "stressed the interdisciplinary concepts of psychology, sociology, anthropology and economics when he taught on genocide".<sup>105</sup> Like Wight, Lemkin upheld an interdisciplinary approach toward his subject matter. It would seem that both scholars believed that one has to put as many of the interdisciplinary jigsaw pieces together, as one can, in order to gain a more informed understanding of either international relations or genocide. However, as one would expect, the broad scope of such research can be highly problematic. Putting this issue within the context of genocide studies, Adam Jones explains that the proliferation of academic production, with schools and sub-schools, has essentially obliterated the idea of the "renaissance" man which in turn hinders such interdisciplinary research.<sup>106</sup> With this in mind, it is imperative that one sets clear research parameters when attempting such interdisciplinary inquiry and ultimately accepts one's research limitations. To be clear, the focus of this thesis is very specific: understanding the impact of genocide upon the ordering structure of international society.

### 2.3.2 Conclusion

Hopefully, the above analysis of the three traditions, theoretical pluralism, and methodological considerations, provides some insight into how the study of genocide can be brought into the discipline of IR. To put this into context, let us consider Kenneth J. Campbell's aforementioned study of genocide from an IR perspective. Intriguingly, Campbell states that his theoretical framework is a "hybrid of realism, neo-liberal

<sup>102</sup> For an insightful analysis see, Hall, The International Thought of Martin Wight, esp. pp – 88 – 97.

<sup>103</sup> Bull, 'International theory: the Case for a Classical Approach', p.361.

<sup>104</sup> This label is taken from an in-depth analysis of Lemkin see, Dominik J. Schaller and Jürgen Zimmerer, (eds.), 'Raphael Lemkin: the 'Founder of the Genocide Convention' as a Historian of Mass Violence', Journal of Genocide Research, special issue (vol.7, No. 4, 2005).

<sup>105</sup> This is taken from Tanya Elder's primary research conducted upon Raphael Lemkin, see Tanya Elder. 'What you see before your eyes: documenting Raphael Lemkin's life by exploring his archival papers 1990-1959'. Journal of Genocide Research (vol. 7, no. 4, 2005, pp. 25 – 55), p. 490. Notably, Lemkin was a lawyer and arguably a historian, so obviously felt no such need to include these fields of study on his list.

<sup>106</sup> Jones, Genocide. A Comprehensive Introduction, p, xxiii.

institutionalism, and social constructivism”.<sup>107</sup> In adopting this so-called hybrid position, Campbell seemingly commits himself to a theoretically pluralistic approach. To go back to the idea of a conversation, it seems his intention is to engage in a three way conversation between realism, neo-liberal institutionalism, and social constructivism. However, the problem is that Campbell makes no real attempt to justify this approach, and therefore does not address the implications that such an approach has upon the knowledge claims subsequently made. At no point are the methodological, ontological, and epistemological implications of such an approach given any consideration. This chapter, therefore, has addressed certain key aspects that illustrate the potential compatibility for studying genocide from an English School perspective. This helps shed light on how this thesis aims to bring genocide into the study of IR, via the English School. In doing so, it lays the foundations for the chapters that follow.

Overall, it is clear that to understand genocide within the context of international relations, one has to have an understanding, not just of genocide, but also of international relations. However, the task of bringing genocide into an IR framework is not as straightforward as it may first seem. As the three traditions highlight, each IR theory carries with it certain assumptions that shape one’s understanding of genocide. At present, English School scholars have utilised the approach outlined throughout this chapter to address concepts such as war, diplomacy, human rights, and humanitarian intervention within an overarching framework of order and justice. The intention therefore is to apply the English School approach to the study of genocide in order to explore the relationship between genocide, justice, and order. The reason being, that this allows us to gain a more informed understanding of how genocide impacts upon the ordering structure of international relations. The intent therefore, to study genocide from an English School perspective, leads us naturally into the pressing question: what is genocide?

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<sup>107</sup> Campbell, *Genocide and The Global Village*, p. 5.



### 3 Words Matter: Genocide and the Definitional Debate

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“Few ideas are as important, but in few cases are the meaning and relevance of a key idea less clearly agreed”,  
Martin Shaw.<sup>1</sup>

As discussed in Chapters One and Two, the intention of this thesis is to bring the study of genocide into IR via the English School in order to understand the impact of genocide on international relations. The question of what genocide is therefore naturally arises for as Kenneth J. Campbell suggested in Chapter One, IR scholars are not necessarily well versed in this definitional debate. The debate is not just important for identifying *what genocide is*, but also identifying *what genocide is not*. Problematically, genocide is now commonly associated with a wide range of non-genocidal related issues such as H.I.V., environmental degradation, and slavery. This has created a bizarre reality in which, as Helen Fein explains, “Virtually everything but genocide as Raphael Lemkin first defined it – “the destruction of a nation of ethnic group” – is called genocide”.<sup>2</sup> For example, Michael Freeman states, “a conservative, British journalist, described the budgetary proposals of the Labour Party in 1992 as “fiscal genocide”, by which he meant that the proposed tax rates were higher than he thought desirable”.<sup>3</sup> Within such a context, one cannot even attempt to justify using the term genocide; however, one can understand why it was used, as its use implies that something is fundamentally wrong. In explaining such *misuse*, Frank Chalk and Kurt Jonassohn explain that language is used to convey feelings as well as information.<sup>4</sup> It would seem that genocide embodies an element of ‘shock and awe’ and is therefore used to convey emotionally charged feelings in relation to a whole host of perceived injustices. The need for clarity is therefore essential as the boundaries between *unintentional* misuse and *intentional* abuse of the term genocide are becoming increasingly blurred.

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<sup>1</sup> Martin Shaw, *What is Genocide?* (Cambridge: Polity Press, 2007), p.3.

<sup>2</sup> Helen Fein, ‘Genocide, Terror, Life Integrity and War Crimes: The Care for Discrimination’, in George J., Andreopoulos, (ed.), *Genocide. Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, pp. 95 – 107), p. 95.

<sup>3</sup> Michael Freeman, ‘Never Again! Genocide and the International Community’, *CEIC PAPELES* (vol.1, March 2007, pp 1-16), p.2. Available at [http://www.ceic.ehu.es/p285-content/fr/contenidos/noticia/ceic\\_noticias\\_07/es\\_notici/adjuntos/freeman27.pdf](http://www.ceic.ehu.es/p285-content/fr/contenidos/noticia/ceic_noticias_07/es_notici/adjuntos/freeman27.pdf) Accessed 22/09/07.

<sup>4</sup> Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide. Analyses and Case Studies* (London: Yale University Press, 1990), p.1.

Yet as Martin Shaw implies in his statement above, with regard to the definition of genocide, there remains very little common ground amongst genocide scholars that can provide the clarity needed. In reality, the term's very existence was called into question within two years of the term genocide being coined by Raphael Lemkin. As Samantha Power explains, in 1946 a *New York Times* reporter challenged Lemkin: "What good will it do to write mass murder down as a crime; will a piece of paper stop a new Hitler or Stalin?" To which Lemkin replied, "Only man has law. Law must be built, do you understand me? You must build the law!"<sup>5</sup> Whether right or wrong, the law was built and on the 9<sup>th</sup> December 1948 the United Nations Convention on the Prevention and Punishment of the Crime of Genocide was endorsed.<sup>6</sup> It is this legal definition however that remains the source of contention. Since the discipline of genocide studies began to flourish in the 1960s and 1970s scholars have increasingly questioned the legitimacy of the legal definition on the grounds that it embodies certain moral deficiencies that need to be rectified.<sup>7</sup> This has essentially divided genocide scholars from across the interdisciplinary spectrum into two camps, those that uphold the legal definition and those that reject it. Significantly, the debate has real-life implications as scholars remain divided over whether events such as those in Darfur (2003 – present day) constitute genocide? To go back to the understanding set out in Chapter One, such a lack of clarity may help explain why policymakers often view genocide as just another humanitarian crisis.<sup>8</sup>

The purpose of this chapter is therefore straightforward in that it highlights the definitional debates to be found within the discourse. At present there is no universally accepted definition of genocide because there remains no universally accepted understanding of genocide. This central problem provides the context for this chapter, which will set out the

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<sup>5</sup> Samantha Power, *A Problem From Hell. America and the Age of Genocide* (London: Flamingo, 2003). p.55. Whilst Power devotes four chapters to Raphael Lemkin, a more detailed accomplished overview has since been published, see John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (New York: Palgrave, 2008).

<sup>6</sup> The 1948 Genocide Convention and a host of related material can be found at, Prevent Genocide International, 'Convention on the Prevention and Punishment of the Crime of Genocide', <http://www.preventgenocide.org/law/convention/text.htm> Accessed 07/01/08.

<sup>7</sup> For an overview on the origins of the discipline see, Robert Gellately and Ben Kiernan, (ed.), *The Spectre of Genocide. Mass Murder in a Historical Perspective* (Cambridge: Cambridge University Press, 2003), chapter one, esp. pp.5-9. George J., Andreopoulos, (ed.), *Genocide. Conceptual and Historical Dimensions*, introduction. Chalk and Jonassohn also illustrate this point well within their literature review, see *The History and Sociology of Genocide*, chapter one. It should be noted that scholarly engagement with the definition of genocide somewhat dwindled in the 1990s, see, Shaw, *What is Genocide?* p. 8.

<sup>8</sup> This point is made explicit within Gérard Prunier's analysis of Darfur, see Prunier, *Darfur. The Ambiguous Genocide* (London: Hurst & Company, 2005). p.124.

understanding embodied within the legal definition of genocide. It will go onto engage in a more specific analysis of four definitional themes to be found within the literature: i) *intent*, ii) *destroy*, iii) *in whole or in part* and iv) *group identity*. Whilst this author's initial intention was to provide a critical overview of the definitional debates – rather than present my own definition – the conclusion draws upon the understanding set out in each of these debates in order to put forward my own definition of genocide. This, of course, reflects the fact that I do not believe that the legal definition offers an accurate understanding of genocide. With this in mind, let us first of all turn our attention to the legal definition.

### 3.1 The legal definition

To understand the legal definition of genocide, one has to be aware of the drafting process that underpinned the 1948 Genocide Convention. The legal definition itself is often presented as a clear and concise development, yet in reality the legal draft became somewhat of a political 'hot potato' as the relevant actors involved debated which UN body would oversee the drafting procedure.<sup>9</sup>

The drafting process took just under two years from the initial 1946 General Assembly Resolution 96 (I) on December 11<sup>th</sup> 1946 to the final endorsement of the UN Convention on the Prevention and Punishment of the Crime of Genocide on December 9<sup>th</sup> 1948.<sup>10</sup> It is here that political complexities arise. For instance, in early 1947, the UN Secretary-General passed the issue of drafting the legal definition of genocide on to the Economic and Social Council (ECOSOC), who then passed it back to the Secretary-General. The Secretary-General then gauged the considerations of John Humphrey (Director of the Division of Human Rights) Professor Giraud (Chief of Research Section of Division of Human Rights), and Mr Klavia (representing the UN Legal Department), who themselves consulted three experts (including Raphael Lemkin). It was then that the Secretary-General produced an eighty-five page Secretariat draft that brought all these considerations together.<sup>11</sup> Since UN

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<sup>9</sup> William Schabas spends sixty pages detailing this drafting process, see Genocide In International Law (Cambridge: Cambridge University Press, 2000).p. 51 – 101. See also, Matthew Lippman, 'A Road Map to the 1948 Genocide Convention', Journal of Genocide Research (vol. 4, no. 2, 2002, pp. 177 – 195). Pieter Nicolaas Drost, Genocide. United Nations Legislation on International Criminal Law (Leyden: Sythoff, 1959).

<sup>10</sup> This overview draws upon primary research carried out at the United Nations Archive (8<sup>th</sup> June – 11<sup>th</sup> June 2009). With regard to the drafting of the 1948 Genocide Convention, much of it can be found on-line and can be accessed via the United Nations Bibliographic System. There have also been a number of publications on this drafting process reflecting alternative interdisciplinary perspectives.

<sup>11</sup> UN Doc. E/447. The other two experts consulted were Professor Donnedisu de Vabres (Paris Faculty of Law) and Professor Pelle (President of the international Association of Penal Law).

member states had not commented on the draft, the Chairman of the Committee on the Progressive Development of International Law and its Codification was unable to express any opinion on the matter. As a result, on the 6<sup>th</sup> August 1947, the ECOSOC (at its fifth session) instructed the Secretary-General to obtain member state observations. States responded in an ad hoc manner, with some states providing detailed reports and some providing no report at all.<sup>12</sup> It was around this time that a sense of urgency emerged. Following the recommendation of the Sixth Committee's sub-committee (that the ECOSOC oversee the drafting process), the General Assembly, in November 1947, requested that the ECOSOC continue the work they had begun *without* waiting for further member state input.<sup>13</sup> Ironically then, after nearly a year, the draft was passed back to the ECOSOC who then set up an ad hoc drafting committee. The committee drafted a legal convention which was subsequently reviewed by the Sixth Committee and endorsed by the UN General Assembly in 1949. In all then, the word genocide had only been in existence for four years, yet nearly two of them had been spent drafting what was to become the 1948 Genocide Convention.

Amidst this confusion, political and economic problems arose. For example, the UN Secretary-General proposed that eight consultants spend ten days analysing the legal definition which in turn would cost an estimated \$6,400 that needed to be raised.<sup>14</sup> Evidently, it was clear that the necessary budget requirements had not been considered which hindered the progress made in this time period. Moreover, political problems arose as states accused one another of committing genocide (within this two year time span), even though the concept itself had not been finalised. For example, in January 1948, the Pakistani government claimed that the state of India had carried out an "extensive campaign of 'genocide'" directed against the Muslim population of East Punjab, Delhi, Ajmer (as well as a number of other places), in June 1947.<sup>15</sup> Whilst the focus here is not on assessing the

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<sup>12</sup> For example the US submitted a detailed twenty-two page report) on the Secretariat proposal (30/09/ 1947). See UN Doc. A/401/Add.2.

<sup>13</sup> UN Doc. E/CNAA6/ADD,I Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/GL9/000/64/PDF/GL900064.pdf?OpenElement> Accessed/09/06/09.

<sup>14</sup> United Nations Archives. S-0991-0008-14. Economic and Social Council. Convention on the Prevention and Punishment of the Crime of Genocide. (11/02/1948). See note 30 regarding budget requirements.

<sup>15</sup> United Nations Archives. S-0991-0008-14. Economic and Social Council Secretariat. Prevention and Punishment of Genocide. Extract From Government of Pakistan's Document II Submitted to the Security Council. (15/01/ 1948). In further correspondence, the Pakistan government claimed that over one million Muslims had been killed in less than six months. See United Nations Archives. S-0991-0008-14. Economic and Social Council Secretariat – genocide. Prevention and Punishment of Genocide. Pakistan Delegation to the United Nations. (04/02/1948).

validity of such claims, such economic and political issues highlight that the drafting procedure was not a neat little step-by-step process. This is an important point to consider when assessing the legitimacy of the final definition.

The pressing question, therefore, remains what is the legal definition of genocide? Whilst Article I of the 1948 Genocide Convention sets out the legal obligation to prevent genocide (see Chapter Five), Article II defines the crime itself:

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

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>16</sup>

To offer a brief overview of the UN Genocide Convention (UNGC) definition, if one or more of the acts listed (a - e) are carried out with an intent to destroy one of the protected groups, either in whole or in part, then this constitutes genocide. The acts (a) – (e) are subordinate to the *intent* to destroy a group. Intent, therefore, stands as the primary element which differentiates the crime of genocide from other crimes. For example, if someone killed members of one of the protected groups then this would constitute murder, or mass murder, but if it could be proven that the murder was carried out within the context of a broader intent to destroy the group in whole or in part, then this would constitute genocide. It is, therefore, at least at first glance, quite precise and straightforward. However, of central concern here is the wording of the UNGC definition and the implications that this holds for one's understanding of genocide. For example, the list of protected groups within the UNGC definition does not cover political groups and, therefore, if a political group was completely destroyed, then this would not constitute genocide. From this perspective, the legal definition sets extremely *narrow definitional parameters* regarding *group identity*. On the other hand, the list of acts includes forcibly transferring children which implies that genocide can be committed without any killing involved. From this perspective, the definition sets extremely *broad definitional parameters* regarding how a group can be *destroyed*. From this perspective,

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<sup>16</sup> Article II of 'The Convention on the Prevention and Punishment of the Crime of Genocide', Available at [http://www.unhcr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhcr.ch/html/menu3/b/p_genoci.htm) Accessed 12/11/07.

one can begin to see how debates arise out of pivotal issues such as intent and group identity, which will be discussed below.

Despite such fundamental problems to be found in the legal definition of genocide, the majority of genocide scholars utilise the UNGC either implicitly or explicitly. The focus here is upon those that utilise it explicitly, in that they defend its use. Their stance is neatly summed up by Jacques Semelin: “Their position is fairly coherent, noting that scholars are unable to agree on a common definition of genocide, they feel justified in sticking to its legal definition”.<sup>17</sup> The statement underpins the common ground to be found within what Semelin labels as the “UN school”.<sup>18</sup> Advocates of this approach accept that the legal definition has its weaknesses yet continue to use the legal definition because it reflects an established international consensus. With no collective agreement on what should replace the 1948 legal definition, the UNGC offers much needed definitional guidance. This is put into context by Eric Weitz, whose use of the legal is justified on the following grounds: “Through its focus on intentionality, the fate of a defined population group, and physical annihilation, the Genocide Convention, despite its weaknesses, provides us with a fruitful working definition that can guide the study of past regimes and events”.<sup>19</sup> The statement underpins the “UN school” defence of the legal definition from a social science perspective. Advocates claim that the legal definition embodies the central tenets needed to understand genocide such as intent, group identity, and methods of destruction. Despite its limitations, advocates claim that its usefulness lies in the fact that it provides common ground whereas there is no such common ground amongst those who reject the UNGC definition.

Furthermore, the 1948 Genocide Convention has *legal utility* which should not be overlooked, even by those that reject the definition found within the Genocide Convention. This point is raised in William Schabas’s pioneering work entitled *Genocide in International Law*.<sup>20</sup> As Schabas explains: “Most academic research on the Genocide Convention has been undertaken

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<sup>17</sup> Jacques Semelin, Purify and Destroy, the Political uses of Massacre and Genocide translated from the French by Cynthia Schoch (London: Hurst and Thompson, 2007), p.321.

<sup>18</sup> Ibid.

<sup>19</sup> Eric D. Weitz, A Century of Genocide. Utopias of Race and Nation (Princeton: Princeton University Press, 2003), p.10.

<sup>20</sup> William A. Schabas, Genocide In International Law (Cambridge: Cambridge University Press, 2000). The text has since been praised by Daryl Mundis (Senior Trial Attorney at the International Criminal Tribunal for Former Yugoslavia) as “the first treatise on the international law of genocide in more than two decades”. Daryl A. Mundis’, book review of Schabas’ ‘Genocide in International Law’. Available at <http://www.ess.uwe.ac.uk/GENOCIDE/reviewsgenocide4.htm> Accessed 26/11/2007.

by historians and philosophers. They have frequently ventured onto judicial terrain, not so much to interpret the instrument and to wrestle with legal intricacies of the definition as to express frustration with its limitations”.<sup>21</sup> Understandably, Schabas highlights that philosophical and historical inquiry into the UNGC definition often fails to come to terms with the legal utility of the Genocide Convention itself. It is the practical value therefore of the UNGC which drives Schabas to accept that the legal definition is both “adequate and appropriate”.<sup>22</sup> From a legal perspective, its strength lies in the fact that it provides international lawyers with a matter-of-fact framework that can be implemented to prosecute those suspected of committing genocide.<sup>23</sup> Yet whilst one should not overlook the legal utility of the Genocide Convention, this in itself is not enough to justify the “UN school” approach amongst social scientists for as Frank Chalk correctly observes, “international lawyers and scholars in the social sciences have their own legitimate set of objectives when laying out the boundaries of the subject”.<sup>24</sup> This statement aptly captures the interdisciplinary complexity involved within the definitional debate, as scholars in different fields have different, yet equally legitimate needs. For example, lawyers may claim that if a state systematically destroys a group *not* identified in the Genocide Convention then this still constitutes a “crime against humanity” and can be enacted upon accordingly.<sup>25</sup> Nonetheless, as Chapter One stated, the idea of a “crime against humanity” is built upon the assumption that humanity exists. It is questionable, therefore, whether social scientists should accept such categories as the basis of non-legal enquiry.

To put this into context let us consider the work of aforementioned IR scholar Kenneth J. Campbell who actually goes much further than Weitz in his criticism of the UNGC definition, yet ultimately upholds the definition because of its legal usefulness. Addressing the fact that the Genocide Convention omits political groups within its definition of group identity, Campbell highlights that the Soviet Union representative at the time blocked any attempt to include political groups as they feared that Soviet leaders could become the target of criminal

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<sup>21</sup> Schabas, Genocide in International Law, p.7.

<sup>22</sup> *Ibid*, p.9.

<sup>23</sup> *Ibid*, p.4.

<sup>24</sup> Frank Chalk, ‘Redefining Genocide’, in George J. Andreopoulos (ed.), Genocide Conceptual and Historical Dimensions, p.47.

<sup>25</sup> For a relevant analysis see, Larry May. Crimes Against Humanity. A Normative Account (Cambridge: Cambridge University Press, 2005), esp., ‘Identifying International Crimes’, pp.5-8.

prosecution for their liquidation of the Kulaks.<sup>26</sup> Intriguingly, this leads Campbell to conclude that “the legal definition is therefore the product of political compromise, as well as justice and morality”.<sup>27</sup> The important point to consider is that despite acknowledging that the final draft represents a compromise in justice and morality, Campbell utilises the legal definition because: “International law offers the one authoritative source for legitimate collective action”.<sup>28</sup> The logic embodied within Campbell’s approach perfectly illustrates the division to be found between those that uphold the legal definition and those that reject it. On the one hand, Campbell acknowledges the moral deficiency of the legal definition yet chooses to uphold this definition because of its legal utility. From this perspective, the legal utility of the UNGC is prioritised over all other concerns. Yet it is precisely the moral deficiency of the legal definition that leads many scholars to reject it. Ultimately, the analysis presented within this chapter concurs with the latter camp.

As Chapter Four will discuss, legitimacy should *not* be seen as synonymous with law. If the case can be made therefore, that the UNGC definition is unjust and/or immoral (as Campbell states), then this opens the door for scholars to question the legitimacy of the legal definition on moral grounds. Moreover, it is important to stress here that if scholars reject the legal definition of genocide this does not mean that they reject the 1948 Genocide Convention itself, but the *definition within it*. By this I mean that scholars can reject Article II (outlined above) which defines genocide in the hope that a more informed definition can be constructed, yet this does not mean that scholars are at the same time rejecting the legal obligation to prevent genocide as set out in Article I. Quite obviously, international society’s obligation to prevent and prosecute the crime of genocide stems from its definition *of* genocide, yet at the same time, those that reject the legal definition do not wish to hinder the prevention and punishment of genocide in the meantime. They simply hope that a more informed understanding of genocide can be constructed through academic dialogue, which will ultimately help to provide a more useful legal framework. With this in mind, this chapter will now shift its focus to a more in-depth analysis of central terminology debates regarding

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<sup>26</sup> Kenneth J. Campbell, Genocide and the Global Village (New York: Palgrave, 2001). p.21.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, p33.



“intent”, “destroy”, “in whole or in part”, and “group identity”, to put forward the case that the legal definition of genocide should be re-defined.<sup>29</sup>

### 3.2 The debate over “intent”

Within the context of the UNGC definition the list of crimes (a - e) are themselves crimes. However, in order to constitute the crime of genocide it has to be proven that these crimes were conducted with “intent”. The legal definition therefore is dependent upon international society’s ability to establish “intent”. This was put into explicit context within the debate over whether genocide had occurred in Darfur. After three months researching the atrocities in Darfur, in January 2005, the Report of the International Commission of Inquiry on Darfur concluded that whilst the “crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide”, the crimes could not be classed as genocide because it could not be proven that the Government of Sudan (GoS) possessed a “genocidal intent”.<sup>30</sup> The conclusion classically illustrated the UNGC’s dependency upon a term that is extremely difficult to establish: how can we prove the intentions of individuals? This leads us onto the secondary problem of what “intent” actually means? At the root of this problem lies the seemingly simplistic relationship between “intent” and motive. Whilst the legal definition does not concern itself with motive, some scholars establish a motive-based understanding of “intent” which crucially reflects an alternative understanding of genocide.

Let us first of all consider the debate regarding what “intent” actually means. To put this into context we can turn to Barbara B. Green’s analysis of the famine within the Soviet Union in 1932-1933.<sup>31</sup> As Green notes, scholars have been divided over whether Stalin’s Terror was genocidal and this division revolves around the central question of “intent” within the context

<sup>29</sup> There are grounds for a debate here over whether genocide scholars should try and engage with law or distance themselves from it. This approach upholds the former. For an example of the former see Helen Fein, ‘Defining Genocide as a Sociological Concept’, *Current Sociology* (vol. 38, no.1, 1990, pp. 8-31). For a debate over the latter see Semelin, *Purify and Destroy*, esp. pp. 320-322.

<sup>30</sup> United Nations. ‘Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General’ (25/01/2005), p.4. Available at [http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf) Accessed 12/11/07. For an overview see Scot Straus, ‘Darfur and the Genocide Debate’. *Foreign Affairs* (vol. 84, no. 1, 2005, pp. 124-134). See also, Prunier’s case study analysis which claims that the events fulfil the 1948 definition upon genocide, even though it did not fulfil his own definition, Gérard Prunier *Darfur, Ambiguous Genocide* (London: Hurst and Company, 2005). For the opposing stance see Alex De Waal, *Famine that kills: Darfur, Sudan* (Oxford: Oxford University Press, 2005).

<sup>31</sup> Barbara, B. Green, ‘Stalinist Terror and the Question of Genocide: The Great Famine’, in Alan S. Rosenbaum (ed.), *Is the Holocaust Unique? Perspectives on Comparative Genocide?* (Oxford: Westview Press, 2001). chapter nine.

of the 1932-1933 famine.<sup>32</sup> Green explains that on one side of the debate there are scholars such as Robert Conquest, James E. Mace, and Marco Carynnyk who argue that the famine was genocide, because the millions who died did so because Stalin had engineered a plan to crush the Ukrainian people.<sup>33</sup> Stalin was, in this explanation, specifically *motivated* by the “intent” to destroy Ukrainians. In sharp contrast, scholars such as Robert Tucker, Adam Ulam, and Martin Malia have focused upon the social and cultural motivation of Stalin.<sup>34</sup> Within this explanation Stalin was motivated by reasons other than that of Ukrainian destruction and as a result these scholars claim that the famine did not constitute genocide. Green aligns herself with the latter position as she states: “Unlike the Holocaust, the Great Famine was not an intentional act of genocide. The purpose was not to exterminate Ukrainians as a people simply because they were Ukrainians. Extermination was not an end in itself”.<sup>35</sup> The example illustrates the debate over “intent” perfectly, as whilst all the scholars involved agree on the same outcome, they disagree on whether this constitutes genocide. For Conquest, Mace, and Marco, the specific motive was the destruction of the Ukrainian people and therefore the crime was an end within itself and constitutes genocide. This is markedly different to Green’s understanding of Stalin’s motive as she views the famine as a means to an end, rather than an end within itself, which dictates that the crime does *not* constitute genocide. Thus the example highlights how such potential interpretations hold important implications when answering the question of what genocide is.

Intriguingly, a motive-based understanding of “intent” was to be found within the drafting process of the 1948 Genocide Convention, yet this was omitted by the time the final draft was constructed. As Leo Kuper explains in his pioneering analysis:

The draft of the Ad Hoc Committee had offered a more complex formulation of intent in its definition of genocide as ‘any of the following *deliberate* acts committed with the *intent* to destroy a national, racial, religious or political group, *on the grounds of the national or racial origin, religious belief, or political opinion of its members*’.<sup>36</sup>

Within this formulation there is a clear link between “intent” and motive as the “intent” to destroy had to be carried out “on the grounds of” national or racial origin etc. Evidently, the

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<sup>32</sup> Ibid, p. 169.

<sup>33</sup> Ibid, pp, 169-170.

<sup>34</sup> Ibid, p. 170.

<sup>35</sup> Ibid, p. 188. For further analysis on this issue see, Yaroslav Bilinsky, ‘Was the Ukrainian famine of 1932-1933 genocide?’ *The Journal of Genocide Research* (vol. 1, no. 2, 1999, pp. 147 – 156).

<sup>36</sup> Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (London: Yale University Press, 1982), p. 32. Emphasis in the original.

legacy of the Nazi genocide looms large here as it was proposed that the intention to destroy a group had to constitute an end in itself rather than a means to an end.<sup>37</sup> If, for example, a group is destroyed for economic reasons, then the crime may have the same outcome as genocide but does not constitute genocide. Thus, scholars such as Green uphold the view that the destruction of the Ukrainians was not genocide, because she believes that their destruction was a by-product of economic and cultural reforms – a means to an end – rather than a specifically motivated ethnic destruction - an end in itself. As Kuper explains, the complex formulation opened up a heated debate which saw the phrase “on grounds of” substituted within the final UNGC draft for the phrase “as such”.<sup>38</sup> In doing so, the final definition distanced itself from the motive-based understanding of “intent” to be found within the Ad Hoc Committee draft, yet the phrase “as such”, remains highly ambiguous.<sup>39</sup> Scholars, therefore, remain divided over whether to uphold the motive-based understanding of “intent” put forward by the Ad Hoc Committee draft.

The division over “intent” begins to illustrate just why legal scholars and non-legal scholars uphold alternative understandings of genocide. Whilst definitions of genocide are dependent upon “intent”, what “intent” means in international law can be very different to the meaning upheld by many genocide scholars. As Ben Kiernan and Robert Gellately explain:

What is “intent” to destroy a group? There are two different views on this. The everyday meaning tends to confuse intent with “motive”. If a colonial power, motivated by conquest of a territory, or revolutionary regime with the aim of imposing a new social order, in the process destroys all or part of a human group, does that not constitute genocide? Not according to most popular definitions of intent. But in criminal law, including international criminal law, the specific motive is irrelevant. Prosecutors need only prove that the criminal act was intentional, not accidental.<sup>40</sup>

The statement highlights that whilst the destruction of a group for territorial reasons - a means to an end - does not constitute genocide within most popular definitions, this does constitute genocide in international law, because international law does not look to establish motive. The understanding put forward within the UNGC therefore encompasses any group destroyed as a

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<sup>37</sup> As Samantha Power notes, “The link between Hitler’s Final Solution and Lemkin’s hybrid term would cause endless confusion for policymakers and ordinary people who assumed that genocide occurred only when the perpetrators of atrocity could be shown, like Hitler, to possess an intent to exterminate every last member of an ethnic, national, or religious group”, see Problem From Hell, p. 43.

<sup>38</sup> Ibid, p.33.

<sup>39</sup> For further discussion on the term “as such”, see Benjamin Valentino, Final Solutions. Mass Killing and Genocide in the Twentieth Century (New York: Cornell University Press, 2004).p.12. Kiernan and Gellately, The Spectre of Genocide, pp, 15-16.

<sup>40</sup> Kiernan and Gellately, The Spectre of Genocide, p.15.

*means to an end* within the same understanding as a group destroyed as an end within itself. This is at odds therefore with Green's analysis on the Ukrainian famine, discussed above, as the economic motivation behind Stalin's "intent" would be irrelevant in international law and the crime would constitute genocide. However, as highlighted in the context of Darfur, the omission of motive in establishing "intent" does not make it any easier to prove that genocide has, or has not, taken place.

In an attempt to provide clarity on this issue, Adam Jones puts forward a knowledge-based understanding of "intent" (as opposed to a motive-based understanding of "intent") which he claims represents a more "liberal interpretation" of "intent". By this Jones means: "regardless of the claimed objective of the actions in question, they are intentional if they are perpetrated with the knowledge *or reasonable expectation* that they will destroy a human group in whole or in part".<sup>41</sup> In essence, it would seem that in utilising this approach, Jones attempts to bridge the gap between destruction as a means to an end and as an end in itself, for as Jones explains, this knowledge-based understanding of "intent" combines *specific "intent"* with *constructive "intent"*.<sup>42</sup> Interestingly, Jones cites the International Criminal Tribunal for Rwanda's (ICTR) Akeyesu judgement to highlight how international law is moving in this direction: "The offender is culpable because he knew or should have known that the act committed would destroy, in whole or in part, a group".<sup>43</sup> Whilst this knowledge-based approach has an appealing nature to it, it is difficult to see how defining genocide in these terms keeps genocide as something qualitatively different from other forms of mass violence such as war crimes. For example, the blanket bombings of German cities in the Second World War were carried out with the *knowledge* that Germans would be killed yet they were not carried out with the intention of destroying the group "as such" but with the intention of trying to end the war. Whilst there remains an intense debate over whether such bombing constitutes genocide, one cannot help but feel that the appeal to a knowledge-based understanding of "intent" does not resolve the problem of motive.

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<sup>41</sup> Adam Jones, Genocide. A Comprehensive Introduction (New York: Routledge, 2006), p. 21.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid. The debate has also recently been raised in the context of the International Criminal Tribunal for Former Yugoslavia, 'The Prosecutor v. Enver Hadzihasanovic'. The Appeals Chamber specifically looked at whether Hadzihasanovic had "reason to know" that his subordinates would commit certain acts. For an interesting overview of this in relation to command responsibility see UN General Assembly, 'Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General', Fundamental Standards of Humanity (A/HRC/8/14, 03/06/08), p. 9.

In an effort to resolve the “intent”/motive dilemma, Helen Fein attempts to draw a clear line between motive and “intent”. Having spent many years thinking about the subject matter and having studied much legal documentation, Fein concluded, “One can demonstrate “intent” by showing a pattern of purposeful action, constructing a plausible prima facie case for genocide in terms of the Convention”.<sup>44</sup> The rationale put forward by Fein seems perfectly logical, in that a pattern of purposeful action would suggest the action committed was intentional rather than accidental or an accumulation of ad hoc acts. The problem arises as Fein shifts the grounding of her analysis to claim, “Critics who dwell upon the inability to prove “intent” do not understand the difference between “intent” and motive”.<sup>45</sup> Attempting to illustrate this claim Fein cites Reisman and Norchi’s discussion of the “intent” to destroy the Afghan people: “Intent is demonstrated on the prima facie grounds by deliberate or repeated (criminal) acts – acts violating laws of war or peace – with foreseeable results, leading to the destruction of a significant part of the Afghan people, regardless of the political motives behind intent”.<sup>46</sup> The problem with Fein’s rationale is that it is built upon the assumption that Reisman and Norchi’s understanding of “intent” is somehow more objective than alternative understandings of “intent”. As the example of the Ukrainian famine highlighted, scholars do not simply seek to establish motive because they misunderstand “intent”. Conversely, many scholars see motive as playing a pivotal role in distinguishing between cases of mass violence and cases of genocide. It seems overly simplistic, therefore, to suggest that a clear line can be drawn between “intent” and motive and in turn argue that this approach is ‘right’ and the other ‘wrong’. After all, this is not a scientific matter of fact.

The intense debate over the meaning of “intent” naturally sees the question arise: should “intent” be included in a definition of genocide? This is precisely the point raised by Herbert Hirsch in his analysis as he claims one cannot use the term “intent” precisely because of the term’s ambiguity.<sup>47</sup> Whilst the centrality of “intent” within defining genocide dictates that this approach is highly controversial, Hirsch offers a potential solution as he states: “instead of emphasizing an obscure and impossible-to-define psychological state of intent, the

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<sup>44</sup> Helen Fein, ‘Genocide, Terror, Life Integrity and War Crimes: The Care for Discrimination’, in George J. Andreopoulos (ed.), Genocide, Conceptual and Historical Dimensions (Philadelphia: University of Pennsylvania Press, pp. 95 – 104), p.97.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Herbert Hirsch, Anti-Genocide. Building An American Movement to Prevent Genocide (London: Praeger, 2002), p. 6.

Convention should focus on an easily identifiable action or behaviour and infer from that behaviour".<sup>48</sup> In essence, Hirsch attempts to overcome the endless debate that has arisen over "intent" by claiming that we should *infer* "intent" by focusing on behaviour. It would seem here that Hirsch offers a *behavioural-based* understanding of "intent" as opposed to the aforementioned motive-based and knowledge-based approaches. Intriguingly, this reiterates much of the sentiment to be found within Helen Fein's analysis as Fein claimed that "One can demonstrate intent by showing a pattern of purposeful action". Such understanding, therefore, is echoed within Hirsch's behavioural-based approach, but whereas Fein attempts to distinguish motive from "intent" in her understanding, Hirsch claims that one should focus on *inferring* "intent", by trying to establish behavioural patterns. Quite simply, since we can never know the psychological motives of the actors involved, it is more practical to infer "intent" by focusing on state policy.

Notably, this approach also holds weight within the context of international law as recent legal developments have also upheld a behavioural-based understanding of "intent". The more traditional focus of international law, as William Schabas explains, has been to focus on the "mental element" or *mens rea* of genocide.<sup>49</sup> This "mental element" embodies two components, *knowledge* referring to an awareness of the circumstance or consequence, and "*intent*" which refers to the desire to commit the crime.<sup>50</sup> However, in a more recent publication, Schabas brings this traditional legal understanding into question, asking: "can a State have a "mental element"?"<sup>51</sup> Drawing upon the rulings of the International Criminal Tribunal for former Yugoslavia (ICTY) as well as the Darfur Commission, Schabas highlights: "In practice, what we look for is not a "mental element" but rather a "plan or policy".<sup>52</sup> Accordingly, Schabas highlights that in practice, actors such as the ICJ and/or the Darfur Commission have actually attempted to infer "intent" by focusing on *state policy*. From this perspective: "A State would commit genocide if there is evidence of a plan or policy indicating an intent to destroy, in whole or in part, a national, ethnic, racial or religious

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<sup>48</sup> Ibid.

<sup>49</sup> Schabas, *Genocide in International Law*, chapter five.

<sup>50</sup> Ibid. Knowledge was outlined in the Rome Statute, p.207 whilst the definition of intent is taken from The International Criminal Tribunal for Rwanda, p.213.

<sup>51</sup> William Schabas, 'Whither Genocide? The International Court of Justice finally pronounces'. *Journal of Genocide Research* (vol. 9, no. 2, 2007, pp. 183-192), p. 188.

<sup>52</sup> Ibid, p. 188.

group as such”.<sup>53</sup> Such understanding reiterates the sentiment expressed by both Hirsch and Fein. Significantly, Schabas takes this one step further as he highlights that this is not some abstract appeal to an alternative understanding of “intent” but reflects the fact that this is actually the way that recent decision-making has been conducted. The reality of international relations is that actors such as the ICJ and the Darfur Commission have not tried to establish the “mental element” of individuals but have instead sought to establish a behavioural-based understanding of “intent”, in that *“intent” is inferred by focusing on state policy*. Whilst, as Darfur proves, this focus does not necessarily make it any easier to prove genocide is taking place, it does overcome the problem of trying to establish the psychological element of motive whilst also highlighting the role of the state which has to be factored into any understanding of genocide.

For many genocide scholars, the omission of the state within the Genocide Convention dictates that the legal definition fails to capture the true nature of the crime. Although individuals often hate ‘other’ groups, they cannot destroy ‘other’ groups because they do not have the means. It is here that the centrality of the state is pivotal. Whilst concerns over the omission of the state were raised during the drafting process of the Genocide Convention, the final legal definition omitted any mention of the state and/or state policy in defining the crime of genocide.<sup>54</sup> Consequently, the legal definition misrepresents genocide as a crime that can be committed by individuals alone. As genocide is a crime against a group, or a collective of groups, the role of the state has to be understood.<sup>55</sup> This was put into context in Irving L. Horowitz’s work entitled, *Taking Lives, Genocide and State Power* in which the author defines genocide as, “a structural and systematic destruction of innocent people by a state bureaucratic apparatus”.<sup>56</sup> The title of the book alone speaks volumes as it underlines the fact that if one is to destroy a group then one needs more than just motive, one needs power. Within contemporary international relations, states hold a monopoly on the use of violence, and it is this power-base that has to be factored into our understanding. Mark Levene makes this point well as he states: “whilst there is no prima facie case why the state has to be the genocidal agent”, he goes on to accept Scott Straus’s position that: “it is hard to imagine a

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<sup>53</sup> Ibid, p.190.

<sup>54</sup> For an analysis on the reservations raised within the drafting process see, Schabas, Genocide in International Law, p.79.

<sup>55</sup> For such analysis see, Larry May, Crimes Against Humanity. A Normative Account (Cambridge: Cambridge University Press, 2005), p.146.

<sup>56</sup> Irving L. Horowitz, Taking Lives, Genocide and State Power (London: Transaction, 2002).

modern annihilation campaign without state involvement”.<sup>57</sup> Whilst I uphold such understanding it seems clear that one has to also consider that genocide could occur within a weak and/or failed state in which alternative sources of authority may be able to carry out widespread destruction without the central government being able to stop them. With this in mind, the phrase, a “collective power” is utilised within the definition put forward at the end of this chapter as it is feasible that within certain contexts, such as a failed state, a *collective power* could commit genocide whilst not itself being a state.

To summarise, the debate over “intent” will no doubt continue as the ambiguity of the term dictates that it is open to interpretation. One can, from this single debate alone, see why the concept of genocide is widely regarded as an essentially contested concept. Having surveyed a number of views on the issue, the idea of inferring “intent” from focusing on state policy seems to hold considerable merit. Whilst this does not provide an objective benchmark, the behavioural-based understanding of “intent” seems to provide a more accomplished understanding of genocide than that of the motive-based and/or knowledge-based alternatives, as it also highlights the role of the state whilst allowing us to infer the motives and/or knowledge base of the actors involved.

### 3.3 The debate over “destroy”

The debate over “destroy” essentially poses the question: how can a group be destroyed? The reader may be perplexed by the simplicity of the question as the obvious answer, and the answer that is actually upheld by the majority of genocide scholars, is that to “destroy” a group, one has to kill it. Those that uphold this view claim that just as homicide refers to the killing of an individual, genocide refers to the killing of a group. The mainstream use of “destroy”, therefore, focuses purely upon the *physical destruction* of groups. Whilst this is quite simple and straightforward, a problem arises as one considers the fact that neither Raphael Lemkin, nor the 1948 Genocide Convention, views the destruction of a group as synonymous with mass killing.<sup>58</sup> On the contrary, both Lemkin and the UNGC put forward a much broader understanding of how a group can actually be destroyed. This section will provide an overview of the debate involved, before concluding that whilst mass murder is an

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<sup>57</sup> Cited in Levene, *Genocide in the Age of the Nation State, vol. I: The Meaning of Genocide* (London: I. B. Tauris, 2005).p.77.

<sup>58</sup> For such analysis see, Jones, *Genocide, A Comprehensive Introduction* p.21.



integral part of the genocidal process, it should be viewed as one element within a *destruction process* that embodies far more than mass killing alone.

Let us first of all turn our attention to the understanding of genocide set out in Lemkin's original work. In a famous passage much cited amongst conceptual accounts upon genocide, Lemkin outlines his broad understanding:

Genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves....Genocide has two phases: one the destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.<sup>59</sup>

The statement is critical for the simple fact that the man who invented the word genocide did not see genocide as synonymous with mass killing. In putting forward the idea that genocide should be understood as a "co-ordinated plan of different actions", Lemkin attempted to convey a multidimensional understanding of genocide that is very different from most contemporary uses. For Lemkin, anything that aimed to "destroy the essential foundations" of a group had to be factored into any understanding of genocide. A central concern of Lemkin's therefore was the idea that groups do not just exist in the physical sense as their existence is shaped by a whole host of other factors such as tradition, culture and identity. Whilst genocide is often used in a contemporary context as a short-hand for mass murder, it is imperative that one considers how the essential foundations of groups are constructed, and in turn how they can be destroyed, when one tries to understand genocide.

Addressing the issue of what constitutes a "co-ordinated plan of different actions", Lemkin provides us with an insight into his multi-dimensional understanding of "destroy" within another key passage:

Genocide is effected through a synchronized attack on different aspects of life of the captive peoples: in the political field (by destroying institutions of self-government and imposing a German pattern of administration, and through colonization by Germans); in the social field (by disrupting the social cohesion of the nation involved and killing or removing elements such as the intelligentsia, which provide spiritual leadership-according to Hitler's statement in *Mein Kampf*, "the greatest of spirits can be liquidated if its bearer is beaten to death with a rubber truncheon"); in the cultural field (by prohibiting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts, in order to prevent humanistic thinking, which the occupant considers dangerous because it promotes national thinking); in the economic field (by shifting the wealth to Germans and by

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<sup>59</sup> Raphael Lemkin, Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress (New Jersey: Lawbook Exchange Ltd, 2005),p.79

prohibiting the exercise of trades and occupations by people who do not promote Germanism “without reservation”); in the biological field (by a policy of depopulation and by promoting procreation of Germans in the occupied countries); in the field of physical existence (by introducing a starvation rationing system for non Germans and by mass killings, mainly of Jews, Poles, Slovenes, and Russians); in the religious field (by interfering with the activities of the Church, which in many countries provides not only spiritual but also national leadership); in the field of morality (by attempts to create an atmosphere of moral debasement through promoting pornographic publications and motion pictures, and the excessive consumption of alcohol.<sup>60</sup>

The passage details eight ways in which Lemkin believed that the essential foundations of a group could be destroyed. The focus, not just on physical and biological destruction, but also on political, social, cultural, economic, religious and moral forms of destruction to be found within genocide highlights a much broader understanding of “destroy” than to be found in the majority of contemporary works. Quite obviously, the idea that the “promotion of pornographic publications” may be utilised to “destroy” the moral foundations of a group will undoubtedly not sit well amongst most contemporary scholars. However, it does illustrate the multi-dimensional understanding of genocide that was at the heart of Lemkin’s approach.

To gauge this it is important to consider the rationale that underpinned Lemkin’s approach and to do this one has to be aware of the fact that Lemkin had spent decades thinking about this grave issue. As Samantha Power notes, Lemkin had become “oddly consumed by the subject of atrocity” from an early age.<sup>61</sup> In time, this would see Lemkin draft a legal proposal for the Madrid Conference in 1933 that claimed the acts of acts of “barbarity” and “vandalism” should be recognised as crimes in international law. As Power explains:

Lemkin felt that both the physical and cultural existence of groups had to be preserved. And so he submitted to the Madrid conference a draft law banning two linked practices—“barbarity” and “vandalism”. Barbarity he defined as the “premeditated destruction of national, racial, religious and social collectivities”. “Vandalism” he classified as the “destruction of works of art and culture being the expression of the particular genius of these collectivities.”<sup>62</sup>

Whilst Lemkin’s efforts on this occasion were unsuccessful, it highlights the fact that Lemkin saw the *physical* and *cultural* destruction of a group as two sides of the same coin. On the one hand, the crime of “barbarity” refers to the physical destruction of a specified group and on the other hand “vandalism” refers to the social and/or cultural destruction of a group. Lemkin’s rationale therefore was to link the two crimes together in his work upon genocide a

<sup>60</sup> Ibid, p. xi-xii

<sup>61</sup> Lemkin cited in Power. *A Problem From Hell*, p.20. For a more detailed look at Lemkin’s childhood and background see Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, chapters one, two and three.

<sup>62</sup> Power. *A Problem From Hell*, p.21.

decade later. Contemporary uses of the term genocide have therefore abandoned the crime of “vandalism” within their understanding as scholars have chosen to focus purely upon the physical aspect of “barbarity”. Yet as Mark Levene rightly points out, the concept of genocide constructed by Lemkin is entirely consistent with his earlier work on “barbarity” and “vandalism”. As Levene states: “the crime of ‘barbarity’, had its counterpoint in the crime of ‘vandalism’, where the groups found themselves emasculated through the stifling of their culture, language, national feelings, religion and economic existence”.<sup>63</sup> Indeed, when one juxtaposes the understanding of genocide set out in the two passages above with the understanding of “barbarity” and “vandalism” set out in his Madrid draft, one can see that these concepts are entirely compatible. It seems fair to say that whilst groups may live through genocide in the physical sense, they do not necessarily survive it, as a group that has been attacked from a political, economic, social and cultural perspective will have undoubtedly had its “essential foundations” eroded. However, as Levene points out the problem with Lemkin’s understanding is that one is left somewhat unclear as to whether Lemkin meant that a synchronised attack which involved no physical or biological dimension could still be understood as genocide.<sup>64</sup>

It is here where the legal definition is of interest as it sets out an understanding of genocide that implies that genocide can be committed *without* any mass killing being carried out. As Kuper’s analysis reveals, the commitment to the cultural rights of groups was refined within the drafting process as Western powers rejected the idea of including cultural rights.<sup>65</sup> However, the final outcome still upholds a much broader understanding of “destroy” than that of present use. Whilst crimes (a) and (c) fit within the *physical dimension* of “destroy”, crimes (d) and (e) broaden the definitional parameters to include a *biological dimension*.<sup>66</sup> Whilst this in itself is broader in scope than the mainstream focus on mass killing, crime (b) defines an act of genocide as: “Causing serious bodily or mental harm to members of the group”. In doing so, the UNGC definition clearly states that if intent could be established, then imposing mental harm upon a protected group constitutes genocide. This suggests that in international

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<sup>63</sup> Levene, *Genocide in the Age of the Nation State*, vol. I: *The Meaning of Genocide* p.20.

<sup>64</sup> *Ibid*, p.47.

<sup>65</sup> Kuper, *Genocide*, p. 61.

<sup>66</sup> To offer a reminder, the UNGC’s list of crimes is as following, (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

law, genocide can be committed *without* any killing involved. To re-raise the question: can genocide be committed without any physical killing? The Genocide Convention does not suffer from the ambiguity found in Lemkin's analysis; the legal definition states that genocide can be committed without any physical or biological destruction being carried out.

For many genocide scholars, both Lemkin and the Genocide Convention set the bar too low when it comes to this specific issue of "destroy". For example, in Barbara Harff and Ted Gurr's seminal empirical study on cases of genocide and 'politicide' between 1946 and 1987, the authors rejected crime (b) in their empirical identification.<sup>67</sup> In attempting to justify their position the authors claimed this would, "extend the definition to innumerable instances of groups which have lost their cohesion and identity, but not necessarily their lives, as a result of processes of socioeconomic change".<sup>68</sup> The statement captures the sentiment expressed by most contemporary genocide scholars. As Adam Jones notes, genocide scholars such as Fein, Charny, Horowitz, Katz, and Jones himself, all focus upon the physical dimension of "destroy" which reflects the more mainstream position.<sup>69</sup> Significantly, all of these scholars have actually rejected the legal definition and provided their own definitions which put forward a much narrower understanding of "destroy" than that to be found in the Genocide Convention. For example, Chalk and Jonassohn claim: "*Genocide* is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator".<sup>70</sup> As the authors go on to explain: "we hope that the term ethnocide will come into wider use for those cases in which a group disappears without mass killing".<sup>71</sup> The statement illustrates that Chalk and Jonassohn were sympathetic toward the fact that groups could be destroyed without mass killing taking place yet attempted to overcome this problem by claiming that the word genocide should be used for cases of physical destruction and the term ethnocide (a term which Lemkin rejected) should be used for cases of non-physical destruction. Problematically, the term ethnocide has taken on contradictory meanings since Chalk and Jonassohn's publication.<sup>72</sup> However, this does not detract from the fact that Chalk and Jonassohn felt that an alternative word was needed to

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<sup>67</sup> Barbara Harff and Ted R. Gurr, 'Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases since 1945', *International Studies Quarterly* (vol. 32, no. 3, 1988, pp. 359-371).

<sup>68</sup> *Ibid.* p.360.

<sup>69</sup> Jones, *Genocide. A Comprehensive Introduction* p.21.

<sup>70</sup> Chalk and Jonassohn, *The History and Sociology of Genocide*, p. 23.

<sup>71</sup> *Ibid.* It should be noted that Lemkin did address the term ethnocide yet ultimately rejected this definition as appropriate for defining such crimes.

<sup>72</sup> See Shaw's short yet well framed analysis, *What is Genocide*, pp.65-67.

capture non-physical group destruction. At the heart of the debate therefore lies the question of whether the destruction of a group's culture should be placed within the same comparative framework as the physical destruction of a group.

It is here that the work of Martin Shaw is important as he vehemently opposes the narrow focus upon mass killing to be found within contemporary literature. Shaw's conceptual critique is formulated upon two key criticisms of the mainstream understanding, i) the focus upon mass killing neglects the "sociological foundations" of the crime, and ii) such definitions fail to address the relationship between genocide and war.<sup>73</sup> Attempting to address this problem, Shaw defines genocide as: "*A form of violent social conflict, or war, between armed power organisations that aim to destroy civilian social groups and those groups and other actors who resist them*".<sup>74</sup> With regard to Shaw's understanding of "destroy", Shaw utilises the phrase "violent social conflict" and in doing so seemingly brings the crime of "vandalism" back within the definitional parameters of genocide.<sup>75</sup> In an analysis which sets out to restate the importance of Lemkin's understanding of genocide within a contemporary context, Shaw reiterates Lemkin's belief that killing is just one of many ways in which a group can be destroyed. Killing therefore should not be seen as the "primary meaning" of group destruction.<sup>76</sup> However, as with Lemkin, there remains ambiguity surrounding the question of whether Shaw believes that genocide can be committed *without* mass killing taking place. For example: Shaw states, "Defining genocide by killing misses the social aims that lie behind it. *Genocide involves mass killing but it is much more than mass killing*".<sup>77</sup>

In attempting to restate the social aims that lie behind genocide, Shaw highlights that genocide should be understood as a *process* rather than an *act*. For example, Auschwitz represented the final step in the destruction of the Jews yet one cannot understand Auschwitz without understanding the road that led to it. The question is: when did the Nazi genocide start? Was it in 1933 as Hitler took power, in 1935 as the Nuremburg Laws were established,

<sup>73</sup> Ibid, chapter two. Shaw's discussion of genocide as a form of warfare is central within his work and extends upon his earlier work, *War and Genocide* (Cambridge: Polity Press, 2003).

<sup>74</sup> Shaw, *What is Genocide*, p.154. Emphasis in the original. It is worth bearing in mind that Shaw's definition is presented in his final chapter and therefore draws upon a detailed conceptual analysis which cannot be discussed in full here.

<sup>75</sup> For an analysis of alternative terms such as eradicate, eliminate, exterminate, annihilate and nullify that could be used as an alternative substitute to the term "destroy", see Henry Huttenbach, 'Towards a Conceptual Definition of Genocide', *The Journal of Genocide Research* (vol. 4, no. 2, 2002, pp. 167-176).

<sup>76</sup> Shaw, *What is Genocide*, p.33. Emphasis in the original.

<sup>77</sup> Ibid, p. 34.

in 1939 as the Second World War broke out or in 1941 with the establishment of the 'Final Solution'? The question provides the basis of a heated debate within both genocide and Holocaust studies and whilst it cannot be answered here it does highlight the problem of deconstructing the genocidal process. This is exactly the point raised within Levene's analysis of Lemkin as he highlights that Lemkin conflates the genocidal process – which may or may not – lead to genocide with genocide itself.<sup>78</sup> As Levene explains, what matters is “the distinction between the process of genocide which is actually all too common and a consequence which, while all too frequent, is much less so”.<sup>79</sup> Putting this into context Levene explains that this distinction “puts the 1999 events in Kosovo on one side of a divide and the Holocaust on the other, not because genocidal mechanisms were not at work in both cases or that those in Kosovo could not have led to genocide. But the point is that they did not”.<sup>80</sup> The statement offers a profound insight into understanding genocide as it highlights that whilst all genocides involve a genocidal process, not all genocidal processes lead to genocide. This leads Levene to conclude that, “the study of genocide is nine parts the genocidal process and only one part that of a particular outcome”.<sup>81</sup> The interesting aspect here is that Levene seemingly tries to disentangle the destruction process to be found within the genocidal process from an overtly broad focus on the genocidal process or an overtly narrow focus on the final act of destruction itself. Whilst boundaries are obviously blurred, it is important to consider the genocidal process as well as the destruction process to be found within it. This, in turn, helps us gain a more informed understanding of genocide than simply treating it as an act of mass murder, yet highlights the importance of mass murder within the genocidal process.

As previously discussed, the majority of contemporary scholars refer to genocide as the physical destruction of a group, yet this can present genocide as an act, rather than a process. Whilst all genocide scholars would acknowledge that genocide is a process rather than an act, it is questionable whether the specific focus on mass killing conveys this underlying process. Contemporary scholars such as Levene and Shaw have been keen on restating the multidimensional understanding of destruction embodied within genocide; yet as earlier discussed questions still remain as to whether genocide can be committed without mass

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<sup>78</sup> Levene, *Genocide in the Age of the Nation State*, vol. I: *The Meaning of Genocide*, pp. 46 – 47.

<sup>79</sup> *Ibid.* p. 47.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, p.104.

killing – as stated in the Genocide Convention. To clarify my own position on this issue, I would stipulate that killing does have to take place yet at the same time it is important to remember that the state (which is usually the perpetrator of genocide), has a toolkit of measures that can be used to “destroy” a group; whilst mass murder is indeed the deadliest of tools available, it is not the only tool. In an attempt, therefore, to convey an understanding of the genocidal process yet differentiate this from the act of destruction within it, the conclusion put forward at the end of this chapter suggests the phrase the *process of destruction* which it is hoped conveys the multidimensional meaning of the term “destroy”.

### 3.4 The debate over “in whole or in part”

The debate that revolves around the phrase “in whole or in part” refers to one’s understanding of the *scale* of the crime. Whilst the legal definition stipulates that genocide refers to the destruction of a group “in whole or in part”, many genocide scholars reject this aspect on the grounds that the destruction of a group “in part” may refer to an act of murder (just one person), or mass murder (an accumulation of ad hoc killings) rather than a systematic intent to destroy a group. For example, Schabas explains that within the drafting process a general fear arose as drafters questioned whether the phrase “in part” set the quantitative benchmark too low: if a group of hostages were executed would this constitute a group “in part?”<sup>82</sup> From this perspective, the debate revolves around the understanding of genocide that can be inferred from this ambiguous quantitative measure. At the same time, as Leo Kuper explains, any such quantitative approach faces a more qualitative humanist challenge in that death and suffering cannot be measured quantifiably even though lawyers often need to implement such a quantitative approach when attempting to prove genocide.<sup>83</sup> In an attempt to overcome such problems, genocide scholars have attempted to narrow the definitional parameters in order to try and convey an understanding of genocide as a group crime rather than an act of murder or ad hoc mass killing. This has seen scholars put forward the idea that genocide refers to the intent to destroy a group “in whole or in *substantial* part”, or at its most extreme, “*in whole*”. The implications of these perspectives are what is of interest in this section. It will be proposed that genocide should be defined as an intent to destroy a group “in whole or in *substantial* part” which differs from the present legal definition.

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<sup>82</sup> See Schabas *Genocide in International Law*, pp, 230-240.

<sup>83</sup> Kuper, *Genocide*, p.61.

The most controversial understanding of genocide is to be found within the definitions that define genocide as the intent to destroy “in whole”. The classic illustration of this position is found in the work of Stephen Katz who claims that genocide should only be applied to: “the actualisation of the intent, however successfully carried out, to murder in its totality any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means”.<sup>84</sup> From this understanding, any intentional destruction of a group “in part” or “in substantial part” does not constitute genocide. This actually leads Katz to conclude, after an extensive comparative study, that the Holocaust remains the only example of genocide in history.<sup>85</sup> The narrow parameters outlined by Katz has been criticised for upholding a ‘Holocaust-centric’ approach to genocide studies, in which the Holocaust is presented as the only example of genocide and in doing so sets the benchmark of genocide so high as to exclude all other examples.<sup>86</sup> This understanding is part of a broader debate over whether the Holocaust *is* unique?<sup>87</sup> Obviously, in claiming that the Holocaust is the only example of genocide, Katz upholds the view that the Holocaust is unique. However, as Levene explains, “this leaves us in the rather bizarre predicament where genocide exists minus the Holocaust, or alternatively, has to be squarely confronted as the only example of the phenomenon”.<sup>88</sup> Such understanding has led seminal Holocaust scholars such as Omer Bartov to dismiss debates over its uniqueness as unhelpful.<sup>89</sup> Quite simply, the view here is that one does not have to get bogged-down in debates over whether the Holocaust is unique in order to gauge the importance of the Holocaust.

The scale of the Holocaust casts an evident shadow over the debate as understandably scholars attempt to distinguish between small scale and large scale destructions. In an attempt to establish a middle-ground between the overtly broad understanding of “in whole or in part”

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<sup>84</sup> Stephen Katz, The Holocaust in Historical Context. vol. 1. The Holocaust and Mass Death before the Modern Age (New York: Oxford University Press, 1994), p.131.

<sup>85</sup> *Ibid*, pp. 129 – 137. One should note that his work was published in 1994 prior to Rwanda which one may argue would fit within Katz definition. This is raised within Levene’s discussion of Katz, Bauer and Friedlander as representative of the exclusivist camp of defining genocide, Genocide in the Age of the Nation State. vol. I: The Meaning of Genocide, pp. 39-41.

<sup>86</sup> See Shaw’s discussion of the Holocaust as the Maximal Standard, What is Genocide, pp. 37-45. Also Huttenbach’s analysis which brings into question Katz research objective, ‘Towards A Conceptual’,

<sup>87</sup> For a broad discussion upon this debate see Alan, S, Rosenbaum, Is the Holocaust Unique? (Oxford: Westview Press, 2001).

<sup>88</sup> Levene, Genocide in the Age of the Nation State. vol. I: The Meaning of Genocide, p.39. Levene upholds the view that not all intellectual roads should lead back and forth from the Holocaust, pp.3-4.

<sup>89</sup> Omer Bartov, Mirrors of Destruction. War, Genocide and Modern Identity (Oxford: Oxford University Press: 2000), p. 6.



and the overtly narrow understanding of “in whole”, some scholars have chosen to utilise the phrase: “in whole or in *substantial part*”. This is put into context within Leo Kuper’s analysis as he states that the destruction of a group has to equate to a “substantial” or “appreciable number” of victims.<sup>90</sup> Kuper goes on to introduce the term “genocidal massacre” to refer to smaller scale destructions, such as the destruction of a village which may still reflect an intent to destroy a group, hence “genocidal massacre”, but should not be placed within the same comparative framework as the systematic destruction of 6 million Jews.<sup>91</sup> For example, the extermination of an estimated 7,000 Bosnian Muslims at Srebrenica was legally classified as genocide, yet one cannot help but think that this should be considered as a “genocidal massacre” when compared to the extermination of 800,000 Tutsi and moderate Hutu that took place in Rwanda the previous year. Of course, the question that naturally arises here is where does one draw the line? To use Kuper’s rhetoric: what constitutes “appreciable numbers”? This ambiguity is raised within Jones’ use of the phrase “in whole or in substantial part”,

I prefer to leave “substantial” imprecise; I hope its parameters will expand over time, together with our capacity for empathy. It seems clear, though, that a threshold is passed when victims mount to the tens or hundreds of thousands – although relative group size must always be factored in.<sup>92</sup>

There are two key points here, the first being the “imprecise” nature of Jones’ use of substantial and the second being that of “relative group size” which will be discussed below. The former point clearly illustrates the difficulty of attempting to negotiate the ambiguity of “in substantial part”. It is once again underpinned by the rationale that the scale of the destruction holds implications for whether the crime should be defined as genocide, yet ultimately Jones leaves the phrase open for interpretation.

The question therefore remains: is it possible to establish a clear boundary that distinguishes between a group “in whole and in part”. This is addressed in Benjamin Valentino’s comparative study, as the author puts forward his definitional understanding as: “at least fifty thousand deaths over the course of five or fewer years”.<sup>93</sup> For Valentino, this benchmark does not only allow one to confidently state that mass killing did indeed occur, but also, that it

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<sup>90</sup> Kuper, *Genocide*, p.32.

<sup>91</sup> *Ibid.*

<sup>92</sup> Jones, *Genocide. A Comprehensive Introduction*, pp. 22-23.

<sup>93</sup> Valentino, *Final Solutions*, pp. 11-12.

occurred intentionally.<sup>94</sup> Accordingly, Valentino attempts to draw a clear line in the sand which overcomes the ambiguity to be found within the phrase “in whole or in substantial part”, which in turn allows Valentino to address an extensive number of case studies within the definitional parameters he sets out. However, the problem with this definition is, as Valentino himself explains, “such a definition does not adequately capture the threat to human diversity posed by attacks against smaller groups”.<sup>95</sup> For example if a group of exactly 49,999 people were killed within five years, or alternatively a group of 50,000 people were killed in five and a half years, then according to Valentino’s definition, neither would constitute genocide. The arbitrary nature therefore of Valentino’s quantitative approach is problematic as it does not capture the qualitative implications of smaller groups being destroyed over shorter periods of time or larger groups being destroyed over longer periods of time. It is important, therefore, to return to the ambiguity within Jones’ definition of “in whole or in substantial part” and the idea of “relative group size”.

Relative group size raises an extremely problematic area of consideration. On the one hand, Valentino’s quantitative approach dictates that if a group smaller than the number proposed (whether that be 50,000 or any other number) is destroyed in its *entirety* then this cannot be classed as genocide. This is despite the fact that genocide refers to the destruction of a group rather than the mass killing of a certain number of people. On the other hand, Jones’ “imprecise” definition leaves the scholar somewhat uneasy due to its dependency on interpretation. For example, can the destruction of a group of 50,000 people or less be compared with the destruction of six million group members? If we were to take this logic even further, if a smaller group, of say 2,000 people, were destroyed “in substantial part”, then does this constitute genocide? The answer proposed here is yes, for the simple reason that genocide refers to the destruction of a group – no matter how large or small that group is. To consider this further let us turn to Schabas’ analysis in which he states that Raphael Lemkin wrote to the Senate Committee in 1950: “claiming that the destruction in part must be of a substantial nature so as to affect its entirety”.<sup>96</sup> The statement underlines the fact that genocide is not dependent upon a specific number of people being killed but on a group in its entirety being affected by the destruction of a number of members within it (whatever that

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<sup>94</sup> Ibid, p.12. .

<sup>95</sup> Ibid, p.13.

<sup>96</sup> Quoted in Schabas, Genocide in International Law, p. 238.

number may be). If then, a group consists of 40,000 people and 20,000 of them are killed, it is difficult to see why this would not constitute genocide, as the extermination of fifty per cent of the group would undoubtedly affect its entirety.

Essentially, this is what I am trying to convey when I utilise the term “in whole or in substantial part” in the definition put forward at the end of this chapter. In fact, I would argue that the ambiguity to be found within the phrase “in whole or in substantial part” offers flexibility which should be seen as a positive rather than a negative when attempting to make a judgement on a case by case basis. The view here is that relative group size is extremely important and if a group of two thousand is destroyed “in whole or in substantial part”, then this does in fact constitute genocide. This is obviously problematic and controversial. Primarily, it is problematic in the sense that one can challenge this qualitative approach from a quantitative perspective to claim that if a government kills a family of 6, does this constitute genocide? Whilst there are no quantitative parameters within the phrase “in whole or in substantial part” to prove that this is not genocide, one hopes that a) the context of destruction has to be taken into account and the destruction of a family (no matter how tragic) should not be considered as genocide, b) further research will increase our understanding of what constitutes a substantial part and c) the concept “genocidal massacre” can be developed further and utilised more often when referring to small-scale destructions. Secondly, it is controversial in the sense that scholars may reject the idea that the destruction of 2,000 can be placed within the same comparative framework as the Holocaust. The position taken here is that the study of genocide should not be dependent upon the scale of the Holocaust. Surely the primary focus of genocide scholars should be upon the relative threat posed to a group’s very existence. Mass murder is about the quantifiable measure of deaths, whereas, genocide is about the destruction of a group. With this in mind this chapter shifts its attention to the final definitional theme of group identity: which groups should be protected?

### **3.5 The debate over “national, ethnical, racial and religious” groups**

The UNGC definition defines genocide as the intentional destruction of “national, ethnical, racial and religious” groups. Controversially, this dictates that if any “other” group is destroyed in “whole or in part” then this cannot legally be classified as genocide. Thus, if a political, economic or gendered group is destroyed *in whole*, then this would not constitute genocide. With regard to group identity, therefore, the legal definition established extremely

narrow definitional parameters. This has in turn caused many genocide scholars to redefine genocide to include “other” groups such as political groups within their definition. In some cases, genocide scholars have gone as far as to suggest that the destruction of *any* group should constitute genocide. In sharp contrast, some genocide scholars have chosen to adopt alternative definitional parameters when studying the destruction of “other groups”. This has given rise to conceptual proliferation as terms such as “gendercide”, “politicide”, and “classicide” have increasingly become the norm. Whilst such conceptual proliferation is controversial from a social science perspective, somewhat worryingly, this has not been challenged from a legal perspective, as the destruction of “other” groups in international law, are classified as a “crime against humanity”.<sup>97</sup> From a legal perspective therefore, the perpetrators of such crimes are still being prosecuted. However, if one is part of a group that is destroyed “in whole or in substantial part”, then one may feel aggrieved if the act constitutes genocide yet this cannot be classified as genocide in international law. The position therefore that one adopts within the debate reflects one’s understanding of whether the four groups identified by the UNGC should be prioritised over other groups in international relations. This section will provide an overview of the debates involved prior to concluding that we should try and see how the perpetrators of genocide define the targeted groups as opposed to trying to uphold some sort of ‘objective’ understanding of group identity.

To understand why “national, ethnic, racial and religious” groups were prioritised in the first place it is important to go back to the drafting process that preceded the final definition. At the time, as Kuper’s work highlights, the Ad Hoc Committee’s draft debated extensively whether to include “political groups” in the final definition.<sup>98</sup> Kuper explains that the Russian representative led a “vigorous attack” as he claimed that “the inclusion of political groups was not in conformity ‘with the scientific definition of genocide’”.<sup>99</sup> The statement reflects the fact that many of the draftees at the time believed that the identity of a group could be established scientifically. Whilst the inclusion of religious groups within this ‘scientific’ approach is troublesome, this was justified from a Russian perspective on the grounds that, “in all known cases of genocide perpetrated on the grounds of religion, it had always been

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<sup>97</sup> For an analysis on the relationship between genocide and crimes against humanity see Schabas, Genocide in International Law, chapter three.

<sup>98</sup> Kuper, Genocide, pp. 24-25.

<sup>99</sup> *Ibid.*

evident that nationality or race were concomitant reasons”.<sup>100</sup> Whilst the extermination of political groups within Russia raises questions over the motives expressed by the Russian representative, the Iranian representative at the time, raised a related moral argument that needs to be considered further:

If a distinction were recognized, “between those groups, membership of which was inevitable, such as racial, religious or national groups, whose distinctive features were permanent, and those, membership of which was voluntary, such as political groups, whose distinctive features were not permanent, it must be admitted that the destruction of the first type appeared most heinous in the light of the conscience of humanity, since it was directed against human beings whom chance alone had grouped together.”<sup>101</sup>

The Iranian perspective is extremely interesting in that it draws a divide between permanent and voluntary membership of a group. The critical difference is that individuals in voluntary groups can change their identity, yet individuals in permanent groups cannot. The question posed at the time therefore, was whether voluntary groups should be included in the same definitional bracket as permanent groups. Whilst the argument can be made that religious groups are not permanent, the final definition seemingly reflects the intention to cover permanent groups as opposed to voluntary groups. This will be returned to below.

The prioritisation of “national, ethnic, racial and religious” groups in the legal definition has seen the destruction of “other” groups studied within alternative definitional frameworks. For example, in Harff and Gurr’s seminal empirical study upon State oppression since WWII, the authors coined the term ‘politicide’ to specifically address the political destruction of groups.<sup>102</sup> It was the exclusion of political groups, therefore, within the Genocide Convention that caused the authors to construct an alternative term; whilst the destruction of “other” groups can be classified as a “crime against humanity” in international law, it would seem that for many social scientists this does not provide a suitable conceptual framework for the destruction of “other” groups. As Martin Shaw’s analysis explains, this has seen “conceptual proliferation” arise as the other “-cides” of genocide have been studied as alternative concepts: “ethnocide, “gendercide”, “politicide”, “classicide”, “urbicide” and “autogenocide”.<sup>103</sup> The narrow definition of group identity in the legal definition, therefore,

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<sup>100</sup> Ibid, pp.25-26.

<sup>101</sup> Ibid, p.26.

<sup>102</sup> Barbara Harff and Ted R. Gurr, ‘Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases since 1945’, *International Studies Quarterly* (vo. 32, no. 3, 1988, pp. 359 – 371). The author’s study identified forty four examples of genocide and “politicide” between 1946 and 1987. The authors’ operational criteria explains that some episodes started prior to 1946.

<sup>103</sup> Shaw, *What is Genocide*, chapter five.

has caused many group destructions to be studied from alternative conceptual perspectives, even though the case could be made that such groups deserve to be protected within the legal definition. Shaw highlights the absurdity of the situation when he explains that the term “auto-genocide” arose because the Khmer Rouge within the context of the Cambodian genocide, destroyed people *within* their own ethnic group which is not covered within the UNGC definition as it was drafted on the assumption that groups would not destroy themselves.<sup>104</sup> Rejecting the conceptual proliferation that has arisen (including the term ethnic cleansing), Shaw claims: “*it is better to use genocide as the master-concept, accepting that its meaning has expanded from the narrower meaning of genos as a nation or ethnic group, to cover the destruction of any type of people or any group*”.<sup>105</sup> The statement underlines the stark reality that genocide refers to the destruction of a group. It seems logical therefore to infer from this central meaning that the destruction of a group – no matter what that group is – should be classified and subsequently studied as a form of genocide. The problem is that in studying the destruction of “other” groups within alternative frameworks, scholars have helped legitimise the UNGC definition as they have failed to challenge the moral and scientific rationale that underpins it.

Since 1948, our understanding of how group identities are constructed has come a long way, which helps provide us with a more informed understanding of how groups should be defined in any definition of genocide. It is here that the work of anthropologists in the discipline of genocide studies is important as they highlight that the scientific rationale that underpinned group identity in 1948 is anything but scientific. As Alexander Hinton explains:

From an anthropological perspective, the UN definition is highly problematic because it privileges certain social categories – race, ethnicity, religion and nationality – over others. While the making of social difference is a human universal, the categories into which we parse the world are culturally constructed.<sup>106</sup>

The statement challenges the ‘scientific’ rationale embodied within the Genocide Convention as Hinton utilises the idea that identity is culturally constructed, thus the idea that there is an ‘objective’ understanding of identity embodied within the legal definition is flawed. Since identities are culturally constructed, to suggest that racial, ethnicity, religious or national identities are permanent and fixed is inaccurate. Whilst Lemkin envisaged an objective

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<sup>104</sup> Ibid, p.76.

<sup>105</sup> Ibid, p. 78. Emphasis in the original.

<sup>106</sup> Alexander Hinton, (ed.), *Genocide, an Anthropological Reader* (Oxford: Blackwell Publishing, 2002), p.5.

element in his hybrid term, as Shaw stated above, our understanding of group identity has developed since the 1940s. It seems obvious that a contemporary definition of genocide should reflect our contemporary understanding of group identity. This was put into explicit context as the International Criminal Tribunal for Rwanda (ICTR) found it difficult to establish whether the Tutsi and Hutu could fit within the definitional parameters of the UNGC.<sup>107</sup> As Schabas explains, in the end the ICTR concluded that the Tutsi were an ethnic group simply because they had government issued identity cards stating as much.<sup>108</sup> The legal ruling reveals that lawyers could not appeal to any 'objective' benchmark in assessing the identity of the Hutu and Tutsi. This reinforces the idea that the 'scientific' understanding set out in 1948 is now out of date and the definition of genocide should be altered accordingly.

This naturally leads us onto the question of which groups should be included in a redefined definition of genocide. It is here that a highly seminal understanding of group identity is set out by Chalk and Jonassohn as they claim that scholars should focus on the identity of the group as defined by the perpetrator.<sup>109</sup> Such understanding has gained considerable currency as seminal scholars within the field have upheld such an approach. For example, to return to the definition of Katz who narrowed the parameters of "in whole or in part" down to a focus on "in whole", Katz notably broadens the parameters of group identity to include "any national, ethnical, racial religious, political, social, gender or economic group, as these are defined by the perpetrator".<sup>110</sup> This in turn reinforces the idea that the perception of the perpetrator is vital to our understanding of group identity. Mark Levene explains this point well when he states: "The targeted group is the product of the perpetrators assemblage of social reality".<sup>111</sup> The statement underlines the central role of perception within the perpetrators construction of an enemy group. This again supports the idea that genocide scholars should focus on the identity of the group as defined by the perpetrator. This is not to say that this approach does not have its critics. Such a radical alternative to the present legal approach has led some to claim that this broadens the parameters of group identity too much. For example, Schabas states that whilst he finds such an approach appealing, it ultimately acts

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<sup>107</sup> See Schabas's discussion, *Genocide in International Law*, p.109.

<sup>108</sup> *Ibid*, p.110.

<sup>109</sup> Chalk and Jonassohn, *The History and Sociology of Genocide*, p.23.

<sup>110</sup> Katz, *The Holocaust in Historical Context*, p. 131

<sup>111</sup> Levene, *Genocide in the Age of the Nation State, vol. I: The Meaning of Genocide*, p.88.

to protect groups that have no “real objective existence”.<sup>112</sup> Whilst one may question Schabas’s appeal to ‘objectivity’ one understands his concern that the meaning of genocide may be debased if its definitional parameters are expanded exponentially. However, to return to the idea that genocide refers to the destruction on a group (which I would argue lies at the very heart of the concept), then is it not the responsibility of international society to protect that “other” group, no matter what that “other” group may be?

When we elevate the importance of any group, over that of any other group, and then attempt to justify it, do we not appeal to the very same logic that is often manipulated by the perpetrators of the genocide within the genocidal process? To consider this let us turn to Chalk and Jonassohn’s extensive comparative study on genocide which encompasses historical examples of genocide dating from Carthage right up until East Timor.<sup>113</sup> Significantly, the in-depth case study analysis leads the authors to conclude: “We have no evidence that a genocide was ever performed on a group of equals. The victims must not only not be equals, but also clearly defined as something less than fully human”.<sup>114</sup> The statement highlights the central role of *dehumanisation* within the genocidal process, for as stated, in all the cases studied: *equals were never the victim*. The point to consider here is that a defining feature of genocide is the elevation of one group over another. To utilise the central ideas put forward by the anthropologist Alexander Hinton: “Manufacturing Difference” acts as a precursor for “Annihilating Difference”.<sup>115</sup> Without this it is difficult to see how genocide would take place. The critical problem, therefore, is that in prioritising “national, ethnic, racial and religious” groups in the legal definition, the Genocide Convention actually embodies the very same logic that perpetrators appeal to as it elevates the importance of four groups over all other groups in international society.

To consider this further let us take the idea of race which, as discussed, was included in the legal definition of genocide on the grounds that race can be identified scientifically. Such understanding has been challenged vehemently since, and is perhaps best summarised in J. K. Roth’s analysis on the “Logic of Racism” as he states:

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<sup>112</sup> Schabas, *Genocide in International Law*, p. 110.

<sup>113</sup> Chalk and Jonassohn, *The History and Sociology of Genocide*, part II.

<sup>114</sup> *Ibid*, p.28.

<sup>115</sup> I am drawing upon two works by Hinton as I make this point. For a discussion upon the Manufacture of Difference see Hinton’s, introduction in *Genocide. an Anthropological Reader*, esp. pp. 9-12. For a discussion upon Annihilating Difference see Alexander, L. Hinton, (ed.), *Annihilating Difference. The Anthropology of Genocide* (London: University of California Press, 2002).



Racial differentiation, usually traceable ultimately to physical differences such as skin color, has typically entailed distinction between superiority and inferiority. Attempts to justify such distinctions have often appealed to “nature” or to allegedly corroborations, but deeper inquiry into their origins indicates that such appeals have been rationalizations and legitimations for conceptual frameworks that have been constructed to ensure hegemonies of one kind or another. Far from being neutral, far from being grounded in objective and scientific analysis, racial differentiation has promoted division and advanced the interests of those who want to retain prerogatives and privileges that otherwise might not be theirs.<sup>116</sup>

The statement highlights that whilst the logic of race is often constructed upon an appeal to notions of science and objectivity, when one deconstructs this logic, one does not find a scientific basis. The statement challenges the assumptions to be found within group identity in the same way that Hinton’s aforementioned anthropological work does. Yet critically, Roth goes one step further in that he claims that when one deconstructs the logic of race one finds that the idea of race has been constructed upon appeals to a superior “we” which takes priority over an inferior “other”. This is important when we consider the Russian representative’s appeal to science and objectivity as one has to bear in mind that not only is such understanding flawed, but that in failing to challenge such understanding we fail to challenge the racial undertones embodied within the legal definition. Far from being objective, the legal definition attempts to legitimise the superiority of four groups over all other groups in international society and it is for this reason that the moral deficiency of the legal definition can be challenged on the issue of group identity.

The legal understanding of group identity is rejected on the grounds that no group should be prioritised over another. Whilst the question of permanent and voluntary membership raises intriguing questions, if one upholds such logic then one walks a dangerous path as it is the very same logic that is manipulated by perpetrators of the crime when implementing the process of destruction. It is proposed that, *just as every individual is equal, every group is equal*. Group identities are not fixed and static but flexible and the construction of the “other” within the genocidal process is dependent upon the perpetrators perception of reality. Individuals within the context of genocide are attacked because of their perceived group identity; quite simply, their individual worth becomes dependent upon their perceived group worth. It is imperative therefore, that any definitional loopholes, such as the one present within the UNGC regarding group identification, are closed.

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<sup>116</sup> John, K. Roth, ‘Genocide and the “Logic” of Racism’, in J. K. Roth, (ed.), Genocide and Human Rights, a Philosophical Guide (New York: Palgrave, Macmillan, 2005), p. 255.

### 3.6 Conclusion

Having reviewed the central definitional themes to be found within the relevant literature, I now draw upon the key points raised to put forward my own definition of genocide:

When a collective source of power (usually a State), utilises its power base to implement a process of destruction aimed at destroying a group (as defined by the perpetrator), in whole or in substantial part, dependent upon relative group size.

To offer an overview, by using the phrase a *collective source of power*, the definition aims to capture the role of the state which tends to hold a monopoly of power in the majority of countries. In doing so, it aligns itself with scholars such as Levene and Horowitz, who highlight that the UNGC definition is flawed in its omission of the state. However, it differs slightly in that it does not exclusively focus upon the state and instead accommodates the potential threat posed by an alternative power base, for example in a failed state. Within the context of the definitional debate outlined above, the focus upon a *collective source of power* and its *utilisation of its power base to implement a process of destruction*, aims to infer “intent” within a broader understanding of “destroy”. Whilst further discourse is essential, through focusing upon the *process of destruction* it is hoped that scholars can begin to consider how the destruction process arises within the broader context of a genocidal process which may, or may not, culminate in mass killing. Quite simply, states utilise a variety of measures when destroying a group and whilst I claim that mass murder has to take place for it to be considered genocide, our understanding of genocide should reflect this destruction process as argued by Lemkin, Shaw, and Levene. The final themes of the definition, regard the debate over the *scale* of the crime, which is addressed as “in whole or in substantial part, dependent upon relative group size” and *group identity*, which is approached from the viewpoint of the perpetrator. In doing so the definition upholds Lemkin’s belief that the destruction should be substantial and Chalk and Jonassohn’s seminal claim that the group should be identified from the perpetrator’s viewpoint.

Whilst no definition can provide an ‘objective’ understanding, it is unacceptable, for the reasons discussed above, to accept the definition of genocide as set out in Article II of the 1948 Genocide Convention. At the same time, the intention here was to provide an overview of the definitional debate rather than present my own definition. Indeed, this author’s initial feeling was: “there must be one definition ‘out there’ that reflects my understanding of the crime”. Yet it seems there is not. Perhaps this reflects the need for more interdisciplinary

analysis. As an IR scholar, it seems unthinkable to omit the central role of the state. This, in turn, dictates that every definition that does not rectify this UNGC omission cannot be accepted either. At the same time, those that do include the role of the state do not seem to have catered for the potential of genocide in failed and/or weak states, which in turn dictates that these cannot be accepted. Since this thesis does not engage with case study analysis it may seem odd to include a definition of genocide, yet it is clear that in bringing genocide into an IR framework one has to be aware of the debates that have been raised. The definition, therefore, is more of a by-product. Having reviewed the literature it seems that there is a lacuna with regard to presenting the understanding embodied within the definition above, which is obviously heavily indebted to the discourse itself. However, it has to be stressed that in rejecting Article II, this author does not reject the 1948 Genocide Convention itself for the Convention embodies other critical aspects such as the legal obligation to prevent genocide. Whilst one's obligation to prevent a crime is obviously dependent upon how one defines the crime, this thesis will discuss how the 1948 Genocide Convention represents a collective understanding of genocide prevention as *rightful conduct* in international relations (see Chapters Four and Five). It is Chapter Four then that takes the idea of bringing genocide into an IR framework one step further as it addresses the relationship between genocide and international legitimacy in international relations.

## 4 Genocide and International Legitimacy

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Having established an understanding of genocide, the reader may still be left thinking, so what? If I am not a member of the group being targeted, then why should I care about their destruction? It is here that the next two chapters focus on understanding the impact that genocide has upon the ordering structure of international society. Essentially, it will be claimed that when states fail to confront the crime of genocide, states actually increase the likelihood of international *instability*. The focus, therefore, is on the moral value of order rather than the value of humanity. It is hoped that this approach highlights that there is more to genocide prevention than ‘just’ saving strangers. This novel approach utilises the English School’s focus on how order and justice is facilitated through the process and practice of international legitimacy. Accordingly, this chapter will put forward an understanding of what is meant by international legitimacy prior to exploring the relationship between international legitimacy and genocide. It will be argued that genocide holds a special relationship with international legitimacy because it is internationally regarded as the “crime of crimes” from both a legal and moral perspective. This is important because it begins to highlight that genocide has an important impact on the institutional structure of international society as well as the groups being targeted. This point will be explored further in the next chapter as the impact of genocide upon the secondary institution of the UN will be addressed. This chapter, therefore, focuses on the relationship between genocide and international legitimacy from a theoretical perspective which will lay the foundations for Chapter Five.

### 4.1 International legitimacy: essential yet under-theorised

Prior to tackling the complexities involved in defining the term international legitimacy, it is important to touch upon the point that despite the term’s importance, the concept of international legitimacy remains under-theorised in IR.<sup>1</sup> As Ian Clark explains, “Legitimacy is much the most favoured word in the practitioner’s lexicon, but one that remains widely ignored in the academic discipline of international relations”.<sup>2</sup> This is important because it feeds into the complexities surrounding the term’s meaning. If the concept had been studied more, one would expect that there would be a broader agreement over what the term means. This is not to detract from the fact that many scholars acknowledge international legitimacy

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<sup>1</sup> For a recent overview of the literature produced on the topic, see Hilary Charlesworth and Jean-Marc Coicaud, (ed.), *Fault Lines of International Legitimacy* (Cambridge: Cambridge University Press, 2010), introduction.

<sup>2</sup> Ian Clark, *Legitimacy in International Society* (Cambridge: Cambridge University Press, 2005). p. 2.

as an ‘essentially contested concept’, but to highlight that the lack of scholarly research into this area has undoubtedly hindered clarity on the subject matter.<sup>3</sup> A large part of the problem stems from the fact that legitimacy has predominantly been analysed in the context of the domestic sphere rather than the international sphere. As a result, the concept of *international* legitimacy has remained under-theorised.

This, of course, is not to say that the concept of international legitimacy has been completely ignored. As a number of scholars have highlighted, there has been an increasing amount of academic interest in the concept of international legitimacy since the end of the Cold War.<sup>4</sup> Intriguingly, in Hurrelmann, Schneider, and Steffek’s study of legitimacy, the scholars note that academic interest in the study of legitimacy tends to occur in phases of intense political conflict or massive change.<sup>5</sup> From this perspective, it would seem that events such as the end of the Cold War and 9/11 help explain why academic interest in international legitimacy has become more popular. This was perfectly illustrated in the aftermath of 9/11 and the US-led response to it. Primarily, the US-led invasion of Iraq in 2003 brought questions regarding legitimate authority and legitimate conduct to the centre of international relations. A surge of academic interest began to emerge as IR scholars discussed both an American crisis of legitimacy,<sup>6</sup> as well as a broader *legitimacy crisis* in international relations.<sup>7</sup> Scholars highlighted that many of the post-9/11 questions being raised, regarding legitimate conduct and legitimate authority, were evident in the debates surrounding the Kosovo crisis in 1999. As is well documented, the Independent International Commission on Kosovo report (published in 2000), concluded that the NATO airstrikes were “illegal but legitimate”.<sup>8</sup> This apparent clash between legality and legitimacy implied that international law was somehow

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<sup>3</sup> For a discussion upon legitimacy as essentially contested concept see Achim Hurrelmann, Steffen Schneider and Jens Steffek, (eds.), *Legitimacy in an Age of Global Politics* (New York: Palgrave Macmillan, 2007), pp. 229 – 232.

<sup>4</sup> For such analysis see Jean-Marc Coicaud, ‘Deconstructing International Legitimacy’, in Charlesworth and Coicaud, (ed.), *Fault Lines of International Legitimacy*, chapter two.

<sup>5</sup> Hurrelmann, Schneider and Steffek, (eds.), *Legitimacy in an Age of Global Politics*, p. 229.

<sup>6</sup> For a sharp overview see the debate that occurred in *Foreign Affairs*, Robert Kagan, ‘America’s Crisis of Legitimacy’, *Foreign Affairs* (vol. 83, no. 2, 2004, pp. 65-87). Robert W. Tucker and David, C. Hendrickson, ‘The Sources of American Legitimacy’, *Foreign Affairs* (vol. 83, no. 6, 2004, pp. 18-32). See also, their responses, Robert Kagan, ‘A Matter of Record. Security’, *Foreign Affairs* (vol. 84, no. 2, 2005, pp. 170- 174). Robert W. Tucker and David, C. Hendrickson, ‘The Flip Side of The Record’, *Foreign Affairs* (vol. 84, no. 2, 2005), pp. 139-141.

<sup>7</sup> For overview see the, Review of International Studies, ‘Force and Legitimacy in World Politics’, *Review of International Studies*, special edition (vol. 31. supplement S1. 2005).

<sup>8</sup> Independent International Commission on Kosovo, *Kosovo Report* (Oxford: Oxford University Press, 2000), p.4.

deficient. The obvious question being: if international law is broken, what broke it, and how can it be fixed?

Significantly, the debate surrounding international legitimacy was not some abstract philosophical debate: wars were being fought and people were dying whilst the world debated the legitimacy of the actions being taken. With this in mind, it was clear that a more informed understanding of international legitimacy, and the legitimacy crisis, was urgently needed. It is here that a critical problem arose as whilst the question of what is international legitimacy took centre stage, the question of how international legitimacy should be studied seemed to become somewhat overlooked. This is understandable as the tragic events of 9/11 and the subsequent 'War on Terror' created an air of intellectual urgency. Scholars felt that they had a responsibility to help provide answers to the profound questions being raised.<sup>9</sup> However, this reality seemingly created an environment in which the question of what is international legitimacy, took priority over the more mundane methodological question of how international legitimacy should be studied.

This was put into context in Corneliu Bjola's related analysis in which the author provides a literature overview of the approaches to be found on the study of international legitimacy.<sup>10</sup> The author highlights that seminal scholars such as Martha Finnemore, Ian Clark, Richard Falk, and Andrew Hurrell have all put forward alternative approaches to the study of international legitimacy, which, it is claimed, reflect their epistemological position.<sup>11</sup> Attempting to provide some much needed clarity, the author suggests that this stems from scholars adopting a Weberian (descriptive), or Kantian (prescriptive), type of reasoning and that this has to be addressed in order to overcome the analytical-normative divide identified by Bjola.<sup>12</sup> Whilst this Weberian Kantian divide, would, in itself, provide enough food for thought, in Ian Clark's more recent publication, Clark goes beyond the two-fold framework provided by Bjola. Addressing the reluctance amongst IR scholars toward the study of international legitimacy, Clark states:

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<sup>9</sup> Such sentiment is to be found in David Armstrong and Theo Farrell, 'Force and Legitimacy in World Politics', *Review of International Studies*, special edition (vol. 31, supplement S1, 2005, pp. 3 - 13).

<sup>10</sup> See Corneliu Bjola, 'Legitimacy and the Use of Force: Bridging the Analytical-Normative Divide', *Review of International Studies* (vol. 34, no. 4, 2008, pp. 627-644).

<sup>11</sup> *Ibid.*, p. 629.

<sup>12</sup> *Ibid.*

This reluctance was no doubt reinforced by the bewildering variety of competing categories for conceptualizing legitimacy: empirical/normative; descriptive/prescriptive; a form of compliance, distinct from coercion, or self interest; input/output; substantive/procedural; representational/deliberative; legitimacy/legitimation/legitimization, and so on. When this entire spectrum of approaches is considered, we soon realize that legitimacy is less a single concept, and more a whole family of concepts, each pulling in potentially different directions.<sup>13</sup>

The statement underlines the two-fold problem in that the complexity involved *in* framing the study of legitimacy has in turn hindered scholarly research into the concept *of* international legitimacy. Those that have sought to engage with the concept have been faced with the challenge outlined here by Clark as it is clear that there are a number of different starting points for analysis. Noticeably, these competing approaches pull in different directions and one has to bear this in mind when engaging in a study of the concept. Despite the fact that such ontological, epistemological, and methodological debates go beyond the parameters of this chapter, they do help illustrate David Beetham and Christopher Lord's claim that the starting point in understanding international legitimacy should be to acknowledge the complexities involved.<sup>14</sup>

The challenge here is made even more problematic as this thesis aims to explore the relationship between two 'essentially contested concepts' (genocide and international legitimacy). Having set out an understanding of genocide, I now utilise the understanding of international legitimacy put forward by Ian Clark in his work *Legitimacy in International Society*.<sup>15</sup> The work is of relevance because it approaches the study of international legitimacy from an English School perspective which notably aids this project's attempt to incorporate the study genocide into IR, via the English School. Moreover, the author provides a conceptually rich theoretical analysis that incorporates an in-depth empirical study on the evolution of international society from Westphalia right up until the post-9/11 legitimacy crisis. To return to the array of conceptualisations presented above, Clark's study predominantly focuses on the 'substantive' and 'procedural' approaches to understanding international legitimacy. This distinction is outlined as Clark draws upon the understanding put forward by Beetham and Lord to explain that "rules may be deemed appropriate either because they emanate from a 'rightful source of authority' (procedural), or because they

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<sup>13</sup> Ian Clark, *International Legitimacy and World Society* (New York: Oxford University Press, 2007), p. 17.

<sup>14</sup> David Beetham and Christopher Lord, *Legitimacy and the EU* (New York: Longman, 1998), p.5.

<sup>15</sup> Ian Clark, *Legitimacy in International Society* (Oxford: Oxford, 2005).

embody 'proper ends as standards' (substantive)".<sup>16</sup> Whereas the former judges the legitimacy of a claim by assessing the procedure that underpins the outcome forged, the latter judges the legitimacy of a claim by assessing the claim's inherent worth. For example, in the context of debates over morality, a substantive approach would more commonly be associated with an appeal to natural law and the value of the claim made being judged on its perceived moral worth. However, a procedural approach would tend to focus more on how the claim made was procedurally constructed, for example, which actors were involved and what sort of consensus was forged on the claim being advanced.

The intention here therefore, is not to engage in a more in-depth analysis of such debates as the focus of this thesis is not on international legitimacy as such, but on using international legitimacy as a conceptual tool for understanding the impact of genocide on international society. Unlike Chapter Three's focus on the concept of genocide this conceptual analysis does not attempt to deconstruct the concept of international legitimacy thereby engaging in a critical analysis of the "bewildering variety of competing concepts" listed by Clark. This is not to say that one can ignore the conceptual implications that arise from where one positions themselves in the relevant debate. For example, one cannot simply bracket one approach off from the others listed above in the hope of placing one's approach within a conceptual vacuum. As Clark explained above, all the approaches listed seem to have something in common, yet pull in different directions. Accordingly, one is seemingly left with a multi-dimensional approach to a multi-faceted concept.<sup>17</sup> Within this complexity the relevant question still stands: what is international legitimacy?

## 4.2 What is international legitimacy?

According to Clark, international legitimacy should be understood as a process rather than as a property.<sup>18</sup> It draws its value from a collective understanding being forged (which reveals the role of consensus), amongst the relevant actors involved (which reveals the role of power), over the role of legality, morality, and constitutionality in international society.<sup>19</sup>

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<sup>16</sup> Ibid, p. 18.

<sup>17</sup> The idea of international legitimacy being a multi-faceted concept is taken from Andrew Hurrell, 'Legitimacy and the Use of Force; can the Circle be Squared?' Review of International Studies, special edition (vol. 31, supplement S1, 2005, pp. 15-32) p.18.

<sup>18</sup> The brief overview here draws extensively on Clark; certain issues will then be addressed in more detail below.

<sup>19</sup> The norm of constitutionality refers to political expectations & mutual understandings in a more informal sense. This will be discussed below.



Significantly, Clark does not see international legitimacy as synonymous with either norm and instead claims that international legitimacy sits in a hierarchical position above the three norms.<sup>20</sup> As one would expect, morality, legality, and constitutionality are not fixed principles as the understandings that underpin these norms change over time. It is here that the role of *power* and *consensus* are of direct relevance. Since the anarchical realm is dogged by competing legal, moral, and constitutional claims, power and consensus play a pivotal role in that they help establish a collective understanding of these norms at the international level. With no world government, the reality of international relations is that those states with more power have more sway in shaping the international agenda. This does not mean that power, in itself, is enough as states still have to appeal to the legal, moral, and constitutional understandings that have been forged in order to gain a reasonable level of support for their actions. These collective understandings are therefore dependent not only on power, but on a “tolerable consensus” (to use Clark’s phrase) being forged amongst the relevant actors involved (whoever they may be). A sufficient level of consensual support reflects a sufficient level of recognition between the actors involved, that the understanding being forged constitutes what Clark refers to as “rightful conduct” and “rightful membership”.<sup>21</sup> The fulfilment of these two principles signifies that the relevant actors involved have been recognised as legitimate rights holders (rightful membership), and that a collective understanding of what constitutes legitimate practice has been forged (rightful conduct).

Whilst this brief overview will be fleshed out in more detail below, it provides a framework for understanding international legitimacy and the idea of a *legitimacy crisis*. For example, if the relevant actors involved fail to forge a consensus over what role the three norms of morality, legality, and constitutionality, should play, international society is left with no collective understanding of what constitutes rightful conduct. As a result, states may voice opposing understandings of rightful conduct which, as one would expect, may see instability and conflict arise in international society. The problem, therefore, is not so much a tension arising between the three norms (this is to be expected), but the failure of the actors involved, to resolve the tension that arises. If states fail to resolve such tension then there remains no collective understanding to guide the conduct of states in the anarchical realm. The implications of which, can see conflict arise between states as they perceive each other’s

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<sup>20</sup> Clark, *Legitimacy in International Society*, esp. chapter eleven.

<sup>21</sup> *Ibid*, pp, 26-29.

conduct to be unjustifiable. Whilst this will be discussed in more detail throughout this thesis, it is clear that understanding and resolving any legitimacy crisis that emerges is therefore critical if international society is to increase the likelihood of long-term international stability. To return to the English School focus on the moral value of order in international relations, international stability is in the national interest of all states.

#### 4.2.1 The three norms

Perhaps the most attractive quality to be found in Clark's understanding of international legitimacy is his idea that international legitimacy sits in a hierarchical position above the three norms of morality, legality, and constitutionality. International legitimacy draws its value from these three norms, yet should not be seen as synonymous with either one. At present, the discourse on international legitimacy continually refers to tensions arising between international legitimacy and morality and/or international legitimacy and legality. According to Clark, such understandings are misguided as international legitimacy does not have any independent value in its own right and therefore cannot 'clash', as it were, with morality, legality or constitutionality. The approach here upholds the idea that international legitimacy should not be seen as synonymous with either norm. With this in mind, let us first consider the relationship between international legitimacy and the three norms of morality, legality, and constitutionality prior to analysing how power and consensus play a role in accommodating the understanding of these norms into international relations.

The most common misuse of the term international legitimacy sees its meaning become synonymous with legality to the point that legal positivists marginalise the role of morality. However, scholars such as H. L. A. Hart have countered this legal positivist logic by highlighting the 'internal aspects' of law, thereby referring to the normative motivations that underpin the construction of law which in turn help create its perceived moral value within society.<sup>22</sup> From this perspective laws endure precisely because they have a compliance pull in that people value the perceived standard of behaviour that the law promotes.<sup>23</sup> This is not to suggest that laws have causal power as it is evident that states, just like individuals, will break the law at times. The point is that actors usually abide by the rule of law because they

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<sup>22</sup> H. L. A. Hart *The Concept of Law* (Oxford: Oxford University Press, 1997).

<sup>23</sup> *Ibid*, p.56. For a relevant analysis of Hart's position within the broader context of international legitimacy see, Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990), chapter eleven.

perceive that these rules embody a legal *and* moral value. As Armstrong and Farrell explain, “individuals do not obey law simply because they are compelled to do so but because they are persuaded of its necessity, utility or moral value”.<sup>24</sup> Such logic highlights the interrelated nature of legality and morality and helps explain why laws are constructed, changed, and abolished. To take this latter point, it is clear that laws are often abolished, not because they are illegal, but because they are perceived to be immoral. Such understanding helps explain why international legitimacy should not be viewed as synonymous with international law and instead should be viewed as a collective understanding that draws its value from more than just international law. As Clark explains, “legitimacy is one vehicle for redefining legality, by appeal to *other* norms”.<sup>25</sup> It is here that we have to consider the *other* norms of morality and constitutionality in the construction of international legitimacy.

If legality and morality cannot be divorced from one another, then just as with legality, one cannot attempt to prioritise morality to the point that it becomes synonymous with international legitimacy. To explain this I raise the recent revival of the just war tradition. Whilst the theory can be used in many ways,<sup>26</sup> Michael Walzer’s analysis of the recent Iraq War is of specific relevance:

So, is this a just war? The question is of a very specific kind. It doesn’t ask whether the war is legitimate under international law or whether it is politically or militarily prudent to fight it now (or ever). It asks only if it is morally defensible: just or unjust? I leave law and strategy to other people.<sup>27</sup>

The marginalisation of legality in Walzer’s analysis seemingly implies international legitimacy can be constructed on legal grounds as well as moral grounds, or alternatively, morality should be prioritised to the point that it becomes synonymous with international legitimacy. The limitation of this approach is that in Walzer’s construction of justice, the author fails to acknowledge the morality embedded in existing laws. In marginalising the role of law, Walzer’s understanding of justice is constructed upon a false narrative.<sup>28</sup> One has to factor in, not just legality, but also constitutionality in order to gain a more informed

<sup>24</sup> David Armstrong and Theo Farrell, ‘Force and Legitimacy in World Politics’, Review of International Studies, special edition (vol. 31, supplement S1, 2005, pp. 3 - 13), p. 5

<sup>25</sup> Clark, Legitimacy in International Society, p.211. Emphasis in original.

<sup>26</sup> See an excellent discussion of Paul Ramsey’s, Michael Walzer’s and the United States Catholic Bishop’s alternative use of the theory in James, T. Johnson, Morality and Contemporary Warfare (London: Yale University Press, 2001) pp.76-96.

<sup>27</sup> Michael Walzer, Arguing about War (London: Yale University Press, 2004), p.160.

<sup>28</sup> Clark makes a similar point here as he questions the mainstream view that tends to treat just war and legitimate war as synonymous with each other, see Clark, Legitimacy in International Society, p. 209.

understanding of the international context in which morality operates. This latter point is raised by Corneliu Bjola: “the just war theory faces a serious problem – its standards of evaluation of the legitimacy of military interventions are conspicuously disconnected from the political context in which decisions about the use of force are taken”.<sup>29</sup> By drawing on the political context of the anarchical realm, Bjola rightly claims that the political sphere can have an impact upon the norm of morality within the legitimacy process. It seems clear that morality cannot be simply bracketed off from legal and political considerations. In raising how the political context helps shape standards of international legitimacy, Bjola brings us aptly on to the norm of constitutionality raised by Clark.

The norm of constitutionality refers to the political context in which international society operates at any given time. Again, constitutionality should not be seen as independent from the norms of legality and morality but intertwined within the legitimacy process. The term itself is somewhat ambiguous and needs clarification. As Clark explains:

This third norm to be considered is the most overtly political, that of constitutionality. This is the realm neither of legal norms, nor of moral prescriptions. Instead, it is the political realm of conventions, informal understandings, and mutual expectations.<sup>30</sup>

Clark’s use of the term constitutionality is less formal than conventional understandings of constitutionality. Within an ever changing security environment, what is deemed to be politically acceptable at the international level is not just a product of morality or legality but also of circumstance. Essentially, Clark utilises the norm of constitutionality to capture how morality and legality do not fully account for how states construct a shared understanding of international legitimacy. Attempting to illustrate this point, Clark states: “Russia found itself accepting things in the 1990s-such as a unified Germany within NATO-that would have been inconceivable a few years earlier”.<sup>31</sup> The norm of constitutionality, therefore, draws on the implications that can arise out of the day-to-day developments in international relations. One is reminded here of Robert Jackson’s analysis of norms in international relations: “foreign policy must always operate within what Edmund Burke termed ‘the empire of

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<sup>29</sup> Corneliu Bjola, ‘Legitimizing the Use of Force in International Politics: A Communicative Action Perspective,’ *European Journal of International Relations* (vol. 11, no. 2, 2005, pp. 266-303), p.270. For an overview on the current state of just war theory see Alex J. Bellamy, *Just Wars. From Cicero to Iraq* (Cambridge: Polity, 2008), esp. pp .117 – 135.

<sup>30</sup> Clark, *Legitimacy in International Society*, p.220.

<sup>31</sup> *Ibid*, p.221.

circumstances”<sup>32</sup> The norm of constitutionality seemingly to captures this sentiment as it draws on the formal and informal realities of the anarchical realm which play an integral role (along with morality and legality) in shaping the construction of international legitimacy. This is not to say that the three norms in themselves are enough and it is here that the roles of power and consensus have to be factored in.

#### 4.2.2 Power and consensus

In their simplest form, power and consensus can be thought of as factors which help the transition from the *process* to the *practice* of legitimacy. Clark provides a succinct overview of the legitimacy framework outlined above and to be discussed below when he states:

Normatively, legitimacy can be most helpfully thought of as that political space marked out by the boundaries of legality, morality, and constitutionality. At any point in time, it is constrained by the prevailing conceptions drawn from these three areas. However, since these often ‘pull’ normatively in incompatible directions, there needs to be an accommodation struck amongst them. The practice of legitimacy describes this process, as the actors reach for a tolerable consensus on how these various norms are to be reconciled and applied in any particular case.<sup>33</sup>

The statement reiterates much of the understanding already discussed whilst going one step further to highlight the role that power and consensus play in reconciling the differences that arise between the three norms. Since the collective understandings that underpin the three norms change over time, power and consensus play a pivotal role in accommodating the different legal, moral, and constitutional perspectives into an internationally agreed code of conduct. This is evident as the two principles of rightful conduct and rightful membership are fulfilled. Prior to analysing these, let us consider the role of power in the construction of international legitimacy.

With regard to the role of power it is important to address the state-centric approach embodied within English School theory. Accordingly, when international legitimacy is discussed in this context, states are identified as the most relevant actors in the construction of international legitimacy. Conversely, those that approach IR from a more revolutionary perspective may claim that it is illegitimate to consider states as the relevant actors in international relations. For example, Richard Falk claims that such state-centric approaches do not take into account the rise of non-state actors both as participants of, and challengers to,

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<sup>32</sup> This citation is taken from Robert Jackson, The Global Covenant. Human Conduct in a World of States. (Oxford: Oxford University Press, 2000), p. 20.

<sup>33</sup> Clark, ‘Legitimacy in International Society’, pp. 19-20.

the current world order.<sup>34</sup> The point made by Falk is valid in that non-state actors certainly have relevance in international relations. The question remains however, how much relevance do they have to the formulation of international legitimacy? To use Falk's claim regarding the participation of non-state actors, it seems that whilst non-state actors such as the World Economic Forum and the World Social Forum may help shape international society's understanding of rightful conduct, they do so by going *through* states. States may listen to such non-state actors which highlights that they do not act exclusively of other actors, but ultimately they take the hands on role in constructing international legitimacy. Essentially, despite the challenges made by non-state actors, states remain in the driving seat and whilst they may take on board the opinion of passengers, they determine the direction that international relations are steered in. Of course, this may change in the future (notably Falk rightly points out the role of non-state actors in challenging the current world order), yet, it seems clear that states remain the more powerful actors in international relations and therefore remain the most relevant actors in the construction of international legitimacy.<sup>35</sup> The focus here is on the 'top down' construction of international legitimacy by states in *international society* rather than the 'bottom-up' construction of international legitimacy by non-state actors in *world society*.<sup>36</sup>

At the same time it is important to note that the focus on power within the legitimacy process does not lead this analysis to marginalise the role of morality, legality, and constitutionality. Classically, the focus upon power in realism and neo-realism has seen the role of norms given little causal significance; in this sense, international legitimacy can often be seen as a product of power politics.<sup>37</sup> The problem with such understanding is not that power is not important, but that power in itself is not enough. For instance, in Vassilis Fouskas's and Bulent Gokay's critique of US imperialism, the authors state, "asserting a claim to power in itself has no

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<sup>34</sup> Richard Falk, *Achieving Human Rights* (London: Routledge, 2009), p. 17. For further such analysis see, John S. Dryzek, *Deliberative Democracy And Beyond. Liberals, Critics, Contestations* (New York: Oxford, University Press, 2000), esp. chapter four.

<sup>35</sup> For example, Jean-Marc claims that states are the primary right holders whilst acknowledging that there are other actors with a voice which dictates that one should not see the primacy of the state as a given, see Jean-Marc Coicaud, 'Deconstructing International Legitimacy', in Charlesworth and Coicaud, (ed.), *Fault Lines of International Legitimacy*, p. 53.

<sup>36</sup> Ian Clark has produced an entire volume dedicated to this latter aspect and in doing so highlights that international society does not necessarily exercise full control over its own legitimacy agenda, see Clark *International Legitimacy and World Society* (Oxford: Oxford University Press, 2007).

<sup>37</sup> For an analytical overview upon the role of norms within the study of international relations see Thomas Ward, *The Ethics of Destruction. Norms and Force in International Relations* (London: Cornell University Press, 2001), chapter one.

power if circumstances make it plain that such power does not exist”.<sup>38</sup> Essentially, the authors underline the role of constitutionality as they highlight that even the most powerful state has to accept that its power operates within the aforementioned “empire of circumstance” (to us Burke’s phrase). Intriguingly, Barak Obama put this into the context when he claimed that without legitimacy, America would lack the power it needed to renew American leadership.<sup>39</sup> From this perspective, legitimacy is not borne out of power alone because for authority to be recognised as legitimate, other factors such as morality, help shape how that power is perceived.<sup>40</sup> This feeds back into the understanding set out in Chapter Two in that English School scholars place the centrality of power within a normative framework to highlight that power can be both enabled and constrained by norms such as morality and legality. As Nicholas J. Wheeler’s boldly asserted: “*state actions will be constrained if they cannot be justified in terms of plausible legitimate action*”.<sup>41</sup> The term *plausible* is pivotal here as implies that states have to appeal to the norms of morality, legality, and constitutionality in order to justify their actions. If, for whatever reason, states fail to justify their actions, then their actions will be constrained as they will fail to win over enough support at the international level.

This aptly brings us onto the final aspect of *consensus*, which is perhaps the most complex and problematic dimension. As Clark questions, does legitimacy spawn consensus or is the other way round?<sup>42</sup> Whilst these polarities stand in sharp contrast to each other, they are nonetheless both plausible. Within this complexity, Clark identifies three approaches. Primarily, the more substantive position advocates the idea that legitimacy spawns consensus. Appealing to ideas such as natural law or *jus cogens*, the premise here is that the legitimacy of the claim made is dependent upon its intrinsic value. Any agreement forged merely reflects the ‘truth’ that existed prior to the agreement being struck: “From this point of view,

<sup>38</sup> Vassilis K. Fouskas and Bulent Gokay, The New American Imperialism: Bush’s War on Terror and Blood for Oil (London: Praeger Security International, 2005), p.13.

<sup>39</sup> Barack Obama, Audacity of Hope: Thoughts on Reclaiming the American Dream (Edinburgh: Cannongate Books, 2007), p. 371. This would obviously tie in with Joseph Nye’s seminal focus on “soft power”, see Nye, Soft Power. The Means For Success in World Politics (New York: Public Affairs, 2004).

<sup>40</sup> For such analysis see, Habermas discussion of in Juergen Habermas, Legitimation Crisis translated by Thomas McCarthy, (London: Heinemann, 1976). pp. 95-102. Chris Brown and Kirsten Ainley, ‘Power and Security’, in Brown with Ainley, Understanding International Relations, third edition (New York: Palgrave, 2005), chapter five. Andrew Hurrell, ‘Legitimacy and the use of Force’, p. 22.

<sup>41</sup> Nicholas J. Wheeler, Saving Strangers Humanitarian Intervention in International Society (Oxford: Oxford University press, 2000), p. 4.

<sup>42</sup> Clark, Legitimacy in International, p. 3.

the international political process is tantamount to a seminar in which truth will eventually out, and become the foundation of international policy".<sup>43</sup> This sees international legitimacy as something that is "teased out" rather than something that is "worked in".<sup>44</sup> The idea that legitimacy has to be "worked in" to the legitimacy process brings us onto the second perspective as it suggests that legitimacy is forged not by appealing to some external 'truth' but the procedural reality that an agreement has been struck amongst the relevant actors involved. Finally, Clark offers a third perspective, which is that of the political and overtly more pragmatic stance in that advocates believe that consensus should be privileged because of the procedural benefit it offers international society.<sup>45</sup>

To put this into context, let us consider the fable of the man who was laughed at because he believed the world was round. The story suggests that at some point in history, one man claimed that the world was round rather than flat and in doing so he challenged the mainstream consensus. Let us take it for granted that this person was the only person in the world that believed the world to be round: was his claim legitimate? From a substantive perspective, one may claim that the value of the claim depended not on the level of support gained, but on the value of the claim itself. In sharp contrast, from a procedural perspective, one may argue that unless this claim is supported by some procedural process then this cannot be considered as legitimate. Finally, the more pragmatic stance would tend to claim that since the vast majority considered the claim to be illegitimate, then the claim should be understood as illegitimate because of the pragmatic benefit that consensus offers international order. The interesting point to this fable is that the claim made was a matter of empirical fact (although not known at the time). As a result, one would expect that the man could have scientifically proven his claim which would validate the substantive approach as well as increase the likelihood of a consensus emerging which would have supported the claim made from a pragmatic stance. The more pressing problem, therefore, arises when international society is faced, not with scientific claims, but with moral ones. If one person claimed that their position was the moral position, would this claim have any legitimacy?

Now quite obviously, the fable does not answer the question of whether legitimacy spawns consensus or consensus legitimacy. Yet it does begin to highlight complexities involved, for

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<sup>43</sup> Ibid, p.192.

<sup>44</sup> Ibid, pp.191 -192.

<sup>45</sup> Ibid, p.194.



example, Clark notes that “consensus touches upon legitimacy in both the substantive and procedural senses”.<sup>46</sup> It would seem that the relationship between international legitimacy and consensus cannot be addressed from purely a substantive, procedural, or pragmatic perspective. With regard to the former, one is reminded of the realist fear that moral claims in themselves cannot be the guiding force of international relations. With no world government to make a judgement on competing moral claims then it seems evident that one cannot rule out the role of consensus. However, it also seems clear that consensus in itself is not enough. For instance, it is quite plausible that the permanent five members of the UN Security Council (P5) could use their power to manipulate a political consensus that other states believe to be immoral. In such a context, the states that oppose the political consensus forged may appeal to the three norms within the legitimacy process in order to try and gain further support at the international level. Again, an array of complexities arise in such circumstances. One could perhaps make the point that the debate over *intent* within the concept of genocide and the debate over *consensus* within the concept of international legitimacy highlight just why these two concepts are regarded as essentially contested concepts for it is difficult to perceive how such debates can ever be resolved. The overarching point is that whilst the debate regarding consensus and legitimacy will continue, one has to acknowledge the interplay between consensus, power, morality, legality, and constitutionality in the construction of international legitimacy.

#### **4.2.3 Rightful conduct and rightful membership**

When the norms of morality, legality, and constitutionality are entrenched at the international level, this signifies that Clark’s two principles of “rightful conduct” and “rightful membership” have been fulfilled. The fulfilment of these two principles signifies that a collective understanding has been forged amongst the relevant actors involved. For example, the Geneva Conventions act as the procedural face that embodies the legal, moral, and constitutional understanding of what constitutes rightful conduct in the context of war. Whilst the fulfilment of such principles should not be considered as some sort of final stage (international legitimacy is an on-going process), they indicate that “global standards of legitimacy” (to use Linklater’s phrase) have been established. The fulfilment of these

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<sup>46</sup> Ibid, p.191.

principles is therefore extremely important as it is through establishing such collective understandings that the likelihood of international stability is increased.

The principle of rightful conduct is relatively straightforward in its meaning. As raised in Chapter Two, international society constructs collective understandings of what constitutes rightful conduct which are expressed via norms, values, principles, and institutions in international relations. Going back to the idea put forward by Linklater, states establish global standards of legitimate behaviour through communicative dialogue. States appeal to such understandings when attempting to justify their behaviour, which in turn, underpins the English School belief that such collective understandings work to enable and/or constrain the behaviour of states within the anarchical realm, thereby creating a high level of international order. It is from this perspective that we see how international legitimacy increases the likelihood of international stability as such collective understandings help shape (rather than cause) state behaviour.<sup>47</sup> As will be discussed in Chapter Five, the UN Charter plays a central role in international relations as the understandings embodied within it, play an integral role in shaping international society's contemporary understandings of rightful conduct.

To put this principle into practice let us consider the legitimacy of the 19<sup>th</sup> century slave trade. At least from a procedural perspective, the slave trade was at some point deemed to be legitimate in that it was recognised as lawful, constitutional, and morally acceptable. Whilst those being traded may not have shared this view, they had no power to question the consensus forged amongst the powerful actors involved. Yet it is clear that at some point in time, the legitimacy of the slave trade came under intense scrutiny.<sup>48</sup> Essentially, a tension arose within the legitimacy process between the norms of morality and legality as the actors involved questioned the moral value of a law that permitted the trade of human beings. As the norms of legality and morality clashed it was imperative that a new consensus was forged that could establish whether the law could be altered accordingly. The subsequent abolition of the slave trade signified that what had previously been thought of as *rightful conduct* was now deemed to be *wrongful conduct*. A tolerable consensus had been forged amongst the relevant actors involved. This consensus embodied a new legal, moral, and constitutional perspective. The example therefore illustrates the transition between the process and practice

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<sup>47</sup> As discussed in Chapter Two, the English School does not focus on the causal power of norms.

<sup>48</sup> For an analysis which highlights the relationship between international and world society see, Clark, *International Legitimacy and World Society*, chapter two.

of international legitimacy. A consensus had to be struck amongst the relevant actors concerned in order to fulfil the principle of rightful conduct which in turn permitted an alternative international practice to be deemed legitimate. Consequently, such understanding highlights how international legitimacy could touch upon both substantive and procedural elements. With regard to the latter one could highlight how the slave trade was deemed to be legitimate and then illegitimate because the relevant actors involved deemed it to be so. However, one could also question why the actors involved altered their views in the first place in an attempt to highlight the inherent moral value of abolishing the slave trade.

This brings us onto the second principle of rightful membership which essentially acts to reveal who is, and who is not, accepted as a rightful member of international society. Within Clark's historical study, it is clear that polities, states, and empires have had to pass certain tests to gain membership status.<sup>49</sup> This underlines the relationship between rightful conduct and rightful membership as states are accepted into the 'family of nations' when their conduct is considered to be *rightful*. Since the Second World War, for example, the number of UN members has increased from 51 in 1945, to 159 by the end of the Cold War and 192 by the time of writing. Amidst this expansion of international society, states have increasingly 'signed up' to the codes of conduct set out by states, for example, in the UN Charter. The willingness of states to adhere to such codes of conduct reiterates the idea that states are willing to be bound by certain rules of co-existence, which for Clark, reflects the fact that an international society *does* exist.

However, the use of the term rightful membership in this thesis is notably different. Primarily, Clark's use of the term stems from his attempt to study the historical evolution of international society as it has undergone noticeable changes in the post-Westphalian era. Whilst this study does not dispute this focus, it is clear that the focus of this thesis is noticeably different as the objective here is to solely study the impact of genocide on the current world order. What is of specific interest here then is the two circles of rightful membership that were established within the construction of the UN. As will be discussed in more detail in the next chapter, international society is indeed made up of states; however, five of these members have been granted a privileged status in international relations. Of course, here I am referring to the five permanent members of the UN Security Council

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<sup>49</sup> Clark, *Legitimacy in International Society*, p. 27

(UNSC). Essentially, the establishment of these five elite members has seen a hierarchy established within the principle of rightful membership as whilst there are now 192 states recognised as rightful members of international society, only five are rightful members of the UN Security Council in the permanent sense. These five rightful members notably stand as the rightful authority with regard the use of force in international relations. It is the tension therefore that can arise between these two membership circles within the present construction of international society that is of specific interest to this thesis.

Notably, there is scope for taking Clark's understanding as it is with its focus on the membership of international society as a whole unit and the tests that states pass in order to achieve rightful membership status. For example, a study could be done on whether perpetrator states and/or bystander states should be marginalised from international society. To use the idea of a test, then a 'genocide test' could be used to discredit a state's right to have rightful membership status. Essentially, such rationale underpins the present debate over the potential establishment of a league of democracies as it is claimed that membership of international society should be restricted to those states that pass the 'democratic test'. From a legitimacy perspective, the problem with such an approach is that it tends to place too much focus on morality, which remains a highly subjective concept. Within this democracy debate, it seems clear that China and Russia cannot be simply left out of the decision making process when the reality is that the relationship between the US and China will be one of the determining features of 21<sup>st</sup> century international relations. Again, with genocide, there is no consensus regarding the attempt to implement a 'genocide test' whereby perpetrator states would be excluded from international society. Complexities would naturally arise regarding the question of bystander states. Whilst such an approach has potential, this is not the focus of this thesis. To be clear then, when the term rightful membership is used, its use here refers to the two membership circles that were established within the construction of the UN. The point of interest for the study of genocide is the tension that can arise between these two membership groups with regard to who acts as the *rightful authority* overseeing the legitimate use of force in international relations.

These two principles will be discussed in more detail in the next chapter as the chapter will start with a focus on the role of the UN in relation to the principles of rightful conduct and rightful membership. In essence, it will be claimed that genocide exposes the tension to be

found in international society's understanding of rightful membership and rightful conduct. In failing to confront the crime of genocide, international society fails to resolve the tension that arises and in doing so undermines the authority of the UN and the UNSC which destabilises the ordering structure of international society. Whilst a more in-depth study of the UN will be addressed in the next chapter, at this point the reader may be rightly asking the question: why is genocide so important? Quite clearly, the UN fails to fulfil many of its duties, responsibilities, and obligations in international relations. To gauge this it is important to address the relationship between genocide and the three norms that help make up international legitimacy.

### **4.3 Genocide and international legitimacy**

Having set out an understanding of international legitimacy let us now re-engage with the claim that genocide holds a special relationship with international legitimacy. To gauge this, it is important to address the relationship between genocide and the three norms of morality, legality, and constitutionality. As stated, international legitimacy draws its value from these three norms, which can change over time and even clash with each other on certain occasions. The intention here therefore is to make the case that genocide is internationally regarded as the "crime of crimes" from a legal and moral perspective, yet critically remains a low priority in policymaking which highlights the problematic relationship between genocide and constitutionality. In turn, political expectations do not meet the legal and moral expectations of international society, the impact of which will then be discussed in the next chapter.

#### **4.3.1 Genocide and morality**

On first consideration, the idea that genocide is immoral seems obvious. Indeed, it seems frustrating to even contemplate that one has to justify just why genocide is bad, yet it is clear that one has to. As Jonathan Glover explains, the 20<sup>th</sup> century has seen a crisis emerge over the authority of morality and the idea of moral progress.<sup>50</sup> With the legacy of Nietzsche, and his foretold 'death of God' looming large, it seems that the Hobsbawm "age of extremes", has been accompanied by an age of increasing amoralism and moral relativism.<sup>51</sup> The crime

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<sup>50</sup> Jonathan Glover, *Humanity. A Moral History of the Twentieth Century*, (London: Pimlico, 2001).

<sup>51</sup> The title was famously used to refer to the crises that emerged within the modern state system between 1914-1991. Eric Hobsbawm, *The Age of Extremes. The Short Twentieth Century, 1914 – 1991* (London: Michael Joseph, 1994).

of genocide has not escaped such challenges as critics question how we can validate any moral judgements made - even toward events such as the Holocaust.<sup>52</sup> In his attempt to answer Nietzsche, Glover accepts that the prospect of reviving the belief in moral law is dim as he questions the external validation of moral claims.<sup>53</sup> Without external validation, the author proposes that we can either abandon morality or re-create it.<sup>54</sup> Adopting the latter position Glover intriguingly uses case studies of genocide and mass violence to support his argument. It would seem that there is *something* about genocide that fundamentally challenges moral relativism. Perhaps this is best illustrated as Glover recalls that he was part of a group of British philosophers that once travelled to Auschwitz on a bus. He claims that on the way there a philosophical discussion arose regarding issues such as the rationality of such acts. Intriguingly, Glover goes on to state that on the journey back from Auschwitz: “we were silent”.<sup>55</sup> Summarising the state of mind that many must have felt when confronting the reality of genocide the author concludes: “No ethical reflections, no thoughts, seem adequate”.<sup>56</sup>

One gets the impression here that Glover struggles to comprehend the scale of horror embodied in Auschwitz. In essence, there is no easy way to convey the *something* about genocide that disturbs us so much. This is a common problem as both scholars and survivors have struggled to represent the horror to be found within genocide. This point is raised in Martin Gilbert’s analysis of the Holocaust entitled ‘The Most Horrible of All Horrors’, as the author explains that neither words, nor statistics, nor examples, can adequately convey the suffering involved in the Holocaust.<sup>57</sup> Within just months of leaving Auschwitz, Primo Levi was all too familiar with this problem as he struggled to bear witness to the events that he himself had witnessed:

Then for the first time we became aware that our language lacks words to express this offence, the demolition of man. In a moment, with almost prophetic intuition, the reality was revealed to us: we had reached the bottom. It is not possible to sink lower than this; no human condition is more miserable than this nor could it be conceivably so.<sup>58</sup>

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<sup>52</sup> Glover recalls the work of Jean Améry to highlight that those who personally witnessed the Nazi “festival of cruelty” often felt that they had a responsibility to answer Nietzsche directly, *Humanity*, p. 40.

<sup>53</sup> *Ibid.* p. 41.

<sup>54</sup> Obviously the idea of re-creating an understanding of morality is nothing new. For such analysis, see John. L. Mackie, *Ethics: Inventing Right and Wrong* (London: Penguin, 1977).

<sup>55</sup> Glover, *Humanity*, p. 398.

<sup>56</sup> *Ibid.*

<sup>57</sup> See Martin Gilbert, *The Holocaust. The Jewish Tragedy* (Glasgow: William Collins, 1987), p. 419.

<sup>58</sup> Primo Levi, *If This is A Man* (London: Abacus, 2009), pp. 32-33.

Primarily the statement touches upon the limitations of language which remains a common feature within the discourse on genocide.<sup>59</sup> Yet the idea put forward by Levi, regarding “the bottom”, offers a highly interesting take on genocide from a moral perspective. Whilst one can find an abundance of terms and phrases utilised within the discourse to describe genocide, the description of genocide as “the bottom” seems to provide an apt portrayal. From a moral perspective, can we, as human beings, sink any lower?

The problem with such rationale is that it is built upon the premise that there *is* ‘a bottom’. For moral relativists, Glover’s aforementioned acceptance that the revival of moral law is doubtful highlights that even the act of genocide cannot escape the debate surrounding moral relativism. As John W. Cook explains, the principal advocates of the moral relativist doctrine have tended to be anthropologists who claim that “their studies of various cultures have enabled them to show that morality is relative to culture, which implies, amongst other things, that we cannot rightly pass moral judgements on members of other cultures except by our own cultural standards, which may differ from ours”.<sup>60</sup> Moral relativists claim that the foundations of morality stem from one’s cultural experiences rather than any universal moral law. As a result, the question, *who are we to judge?*, naturally arises. Any attempt *to* judge, leads the moral relativist to claim that those seeking to judge are behaving in an ethnocentric manner. By this it is meant that those who judge, use their cultural understanding of morality, as the benchmark by which to assess the moral behaviour of others.<sup>61</sup> It is here that it is worth noting that the moral relativist doctrine reflects the ontological and epistemological perspectives that knowledge claims regarding morality cannot be constructed in the same manner as knowledge claims regarding science.<sup>62</sup> Moral relativists claim that it is impossible to discover objective moral facts. The foundations, therefore, that underpin universal moral claims are seen to be highly subjective rather than universal. From this perspective, moral relativists come to the somewhat stark conclusion that pain, distress,

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<sup>59</sup> The validity of knowledge claims within this field is a highly interesting yet controversial topic. Mark Roseman notably presented an excellent paper on aspects related to the validity of survivor knowledge claims and the narrative produced by such knowledge claims. Mark Roseman, “Can Victims Make Sense of their Perpetrators? Narratives from the Holocaust”, at The Centre for the Study of Genocide and Mass Violence, The University of Sheffield, (11/04/2010). For an insightful analysis see Alan Rosen Sounds of Defiance: The Holocaust, Multilingualism, and the Problem of English (Lincoln: University of Nebraska Press, 2005 ).

<sup>60</sup> John, W. Cook, Morality and Cultural Differences (Oxford: Oxford University Press, 1999), p.3.

<sup>61</sup> For a discussion of relativism and ethnocentrism, see *Ibid*, chapter eight.

<sup>62</sup> Cook draws upon the seminal work of Melville Herskovits to claim that the empirical knowledge claims made by cultural relativists underpins the ‘Fully Developed Argument’ of moral relativism, see p.11.

misery, agony, and other forms of such suffering, are acceptable when they are part of an established way of life.

Within this discourse, Cook emphasises that the debate regarding moral relativism is not just some abstract philosophical argument, but that people have to make practical moral choices and therefore judge each moral claim on a case by case basis.<sup>63</sup> An important point here is that Cook differentiates between cases of practice that *involve willing participants* as opposed cases of practices *against unwilling participants*.<sup>64</sup> With regard to the former, the author uses the well known example of Eskimos leaving their elders outside to freeze to death. Although this, at first, seems strikingly immoral, when one learns that the elders are willing participants in this practice, it becomes harder to judge this as an immoral practice.<sup>65</sup> Now obviously one could invoke ideas such as positive and negative freedom to discuss the issue of willing participation within such contexts further. However, the more pressing point here regards those that practice acts against unwilling participants as it is clear that genocide stands as a benchmark example, in the extreme, of such action, as states impose their collective will upon unwilling participants. The term participant in this latter context seems somewhat misplaced as unwilling participants in the context of genocide surely qualify as victims. Drawing upon much of the sentiment to be found in just war theory, Cook goes onto pose the point that if we have the capacity to intervene (militarily or otherwise) and reduce the amount of suffering involved then do we not have a moral duty to do so?

This line of thinking is familiar in the debate over humanitarian intervention as scholars debate whether there is a moral threshold at which the legality of sovereignty can be overridden in international society. As Michael Walzer succinctly stated: “How much human suffering are we prepared to watch before we intervene?”<sup>66</sup> Notably, Walzer first posed this question in 1977, the subsequent Rwandan genocide that took place in 1994 demonstrated that international society is quite prepared to watch a genocidal level of suffering unfold.

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<sup>63</sup> It would seem here that Cook is adopting what Steven Lukes would describe as an internal approach. Lukes stipulates that there are two ways of thinking about morality, internal and external. The internal approach is to view morality in the first-person perspective; one judges what is moral in the practical sense by claiming what would constitute an immoral act against oneself. The external position, which is more commonly associated with anthropology, is to try and view morality from a third person perspective. See Steven Lukes, Moral Relativism (London: Profile Books, 2008), pp17 – 19.

<sup>64</sup> Ibid, p.165-166.

<sup>65</sup> Ibid.

<sup>66</sup> Michael Walzer, Just and Unjust Wars, a moral argument with historical illustrations, third edition (New York: Basic Books, 2000), p.xii.



From this perspective, Walzer's line of inquiry should be reformulated: How much suffering should we not be prepared to watch before we intervene? Michael Walzer famously set the benchmark as those crimes which "shock the conscience of humankind", as he advocated intervention that prevented or put a stop to any "supreme humanitarian emergency".<sup>67</sup> In doing so, Walzer upheld a *minimalist approach* as he reduced the debate over absolute morality and universal human rights down to a discussion of absolute immorality and universal human wrongs.<sup>68</sup> In Walzer's analysis of a supreme humanitarian emergency, it is clear that genocide represented a benchmark example as the author claimed that even the violation of innocent lives was justified within the context of stopping Nazism.<sup>69</sup> It would seem, therefore, that there is something about a state destroying a group, not because of anything they have done, but because of whom they are, that represents a quintessential violation of a *universal moral minimalism*.<sup>70</sup>

Of interest here is the fact that even moral relativists have struggled to apply their doctrine to the behaviour of genocidal regimes.<sup>71</sup> This is put into stark context in Robert Redfield's analysis, which was notably published in 1953:

I am persuaded that cultural relativism is in for some difficult times. Anthropologists are likely to find the doctrine a hard one to maintain....It was easy to look with equal benevolence upon all sorts of value systems so long as the values of unimportant little people remote from our own concerns. But the equal benevolence is harder to maintain when one is asked to anthropologize the Nazis.<sup>72</sup>

The statement seemingly turns moral relativism in on itself as it highlights how a moral relativist position may actually embody an ethnocentric ethic. The statement implies that the

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<sup>67</sup> Such understanding has been reiterated since, see Wheeler, *Saving Strangers*, p. 50.

<sup>68</sup> The idea of human wrongs is put forward by Ken Booth, 'Human Wrongs and International Relations', *International Affairs* (vol. 71, no. 1, 1995, pp. 103 - 126). Human rights minimalists claim that the debate over universal human rights has suffered from 'rights inflation' in that people think "if rights are good more rights must be even better". See, Mary Ann Glendon, *Rights Talk, the impoverishment of Political Discourse* (New York: The Free Press, 1991), p16.

<sup>69</sup> Walzer, *Just and Unjust Wars*, chapter sixteen, esp. p. 253.

<sup>70</sup> The idea of moral minimalism is taken from Michael Walzer., *Thick and Thin, Moral Argument at Home and Abroad* (Notra Dame: University of Notra Dame Press, 1994). Berel Lang states that the one of the two facets of evil embodied in genocide stems from the intent to destroy a group not because of anything they have done but simply because of who they are, see Berel Lang, 'The Evil in Genocide', in John K. Roth, (ed.), *Genocide and Human Rights*, chapter one.

<sup>71</sup> In an analysis of Melville Herskovits, James Fernandez explains that whilst the Nazi atrocities towards the Jews, didn't cause Herskovits (who was a Jew) to abandon his intent to 'psychologically distance' himself from judging other civilisations, Herskovits never condoned Nazism and denounced it on many occasions. See James W. Fernandez, 'Tolerance in a Repugnant World and Other Dilemmas in the Cultural Relativism of Melville J. Herskovitz', *Ethos* (vol. 18, no. 2, 1990, pp. 140 - 164), p. 148.

<sup>72</sup> Cook, *Morality and Cultural Differences*, p. 184, footnote 2.

author viewed the suffering of Europeans as something qualitatively different from the suffering felt by “unimportant little people”. Such a perspective poses a direct challenge to the moral relativist as it implies that when moral relativists study what they perceive to be ‘alien’ cultures, they are more willing to accept ‘alien’ behaviour, yet when these ‘alien’ actions arise in a culture that they perceive to be less ‘alien’ to them, the moral relativist struggles to come to terms with their own doctrine. Although the cultural relativist may claim that Redfield falls into the trap of making a habitual response that stems from cultural conditioning, the statement captures the reality that the author was shaken, as millions across the world were, by the horrors embodied within the Holocaust.<sup>73</sup> To use the moral relativist idea of each culture establishing its own unique understanding of ‘the good life’, it is brutally evident that groups such as the Jews were experiencing ‘the good life’ in Germany until the Nazis came along. The horror of genocide seemingly holds qualitative significance for the debate surrounding moral relativism as it turns the question of *who are we to judge?*, on its head - within such grave circumstances: *who are we not to judge?*

It is with such understanding in mind that Stephen T. Davies claims “genocide is the *reductio ad absurdum* of moral relativism”.<sup>74</sup> In essence, the author is making the assertion that there is *something* about genocide that is so inherently immoral that genocide proves moral relativism to be wrong. As the author goes on to explain, the strongest position that the moral relativist can take against genocide is to claim: “*I hold genocide is morally wrong. Or perhaps, I hold, and my community holds, that genocide is wrong.* But the problem is that such a position allows the perpetrator of genocide (a Nazi, perhaps) to reply: *Sorry, but my community holds that genocide is morally right*”.<sup>75</sup> Significantly, Davies points out that if one takes moral relativism to its logical end, then the perpetrator of the genocide could utilise moral relativism to justify their policy of destruction. A point of interest worth noting here, is that genocidal perpetrators never actually utilise a morally relativist position to justify their actions. For example, the Nazis went to great lengths to cover up their destruction policy, which implies that they knew that their actions were morally indefensible within the broader

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<sup>73</sup> For an insightful analysis into how people responded at the time to the Nazi horrors, see Joanne Reilly, *Belsen: The Liberation of a Concentration Camp* (London: Routledge, 1998).

<sup>74</sup> Stephen T. Davies, ‘Genocide, Despair and Religious Hope’, in John K. Roth, (ed.), *Genocide and Human*, p. 41.

<sup>75</sup> *Ibid.* Emphasis in original.

context of international relations.<sup>76</sup> Such a reality only goes to strengthen the conclusion drawn by Davies, that anyone upholding the doctrine of moral relativism within the context of genocide is “badly confused, malicious, or insane”.<sup>77</sup> The conclusion drawn by Davies brings us back to the idea of *consensus* as it is clear that those who uphold moral relativism within the context of genocide stand on the margins of world opinion. The role of consensus brings us back to the point that morality in itself is not enough to underpin international legitimacy. The relationship therefore between morality and consensus has to be considered.

To consider this let us turn to Jack Donnelly’s seminal study on *Universal Human Rights*, in which the author analyses the “anti-genocide norm” within the context of the debate surrounding humanitarian intervention.<sup>78</sup> Re-iterating much of the sentiment raised above, the author claims, “Whatever one’s moral theory-or at least across most of today’s leading theories and principles- *this* kind of suffering cannot be morally tolerated”.<sup>79</sup> Again, in accepting that “most leading theories” denounce genocide (rather than *all* leading theories), the author leaves the door open for counter moral arguments to be raised. However, what is interesting about this analysis is that the author goes one step further as he raises the relationship between morality and consensus within the context of the debate over genocide and humanitarian intervention. In a striking passage, Donnelly explains:

The interdependence of all human rights, and the underlying idea that human rights are about a life of dignity and not mere life, makes acting *only* against genocide highly problematic. We place ourselves in a morally paradoxical position of failing to respond to comparable or even greater suffering so long as it remains geographically or temporally diffuse. As uncomfortable as this may be, though, it seems to me the least indefensible option when we take into account the full range of moral, legal, and political claims in contemporary international society. In absence of a clear overlapping consensus-which I think exists today only for genocide-the moral hurdle of respect for the autonomy of political communities is very hard to scale.<sup>80</sup>

The statement places genocide firmly within the understanding of international legitimacy presented above. Essentially, the author believes that there may be times when an amount of suffering, equal or greater to that of genocide occurs. This is his personal view, yet critically

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<sup>76</sup> See Raul Hilberg, *The Destruction of the European Jews* (Chicago: Quadrangle Books, 1961), pp. 621 – 624. This attempt to conceal was most explicit with the Nazi implementation of Operation 1005 from mid-1942 onwards, in which, for example, special units were set up to destroy mass graves so that the evidence of extermination was also destroyed. See, Shmuel Spector, ‘Aktion 1005- Effacing the Murder of Millions’, *Holocaust and Genocide Studies* (vol. 5, no. 2, 1990, pp. 157 – 173).

<sup>77</sup> Davies, ‘Genocide, Despair and Religious Hope’, p. 41.

<sup>78</sup> Jack Donnelly, *Universal Human Rights. In Theory and Practice* (London: Cornell University Press, 2003), p. 251.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, p. 252.

(albeit reluctantly), he acknowledges the role that consensus plays in the construction of rightful conduct in international relations. It is here that genocide is of specific relevance as Donnelly claims that in a world dogged by competing moral, legal, and political claims, there exists an overlapping consensus *only* for genocide prohibition.

The role of consensus raised by Donnelly brings us back to the idea of international legitimacy as it is clear that we can appeal to more than morality alone to dismiss the claims made by moral relativists. Whilst it may not be possible to disprove moral relativism in a scientific manner, it is possible to re-engage with the understanding of international legitimacy presented above to prove that moral relativism, at least within the context of genocide, is illegitimate and outside of common moral belief. The relationship between morality and consensus reflects the fact that genocide is internationally regarded as the benchmark of what constitutes a universal human wrong. It was the universal moral abhorrence felt toward the Nazi atrocities that led to international society accepting the term genocide and subsequently codifying this new moral and constitutional expectation into international law. The 1948 Genocide Convention embodies a clear legal, moral, and constitutional consensus that genocide constitutes wrongful conduct. However, genocide should not, and is not, viewed as just another example of wrongful conduct. The reason being that genocide is recognised as the quintessential violation of a universal moral minimalism. This brings us onto the idea that genocide is internationally recognised as the “crime of crimes” from both a moral and legal perspective.

### 4.3.2 Genocide and legality

Just as moral philosophers have constructed an understanding of a universal moral minimalism, international lawyers have constructed an understanding of a universal legal minimalism. The point of relevance here is that genocide is internationally accepted as the quintessential violation of both.

To gauge international society’s perception of genocide from a legal perspective, it is necessary to go back to the drafting of the 1948 Genocide Convention.<sup>81</sup> Intriguingly, the aforementioned relationship between morality and law was put into stark context within the drafting procedure. For instance, in 1946 the UN General Assembly Resolution on the Crime

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<sup>81</sup> For a general overview see Jeffrey S. Morton and Neil V. Singh, ‘The International Legal Regime on Genocide’, *Journal of Genocide Research* (vol. 5, no. 1, 2003, pp. 47 - 69).

of Genocide stated that genocide: “shocks the conscious of mankind” and went on to claim “The General Assembly, therefore affirms that genocide is a crime under international law which the civilized world condemns”.<sup>82</sup> The statement underlines the fact that it was the moral revulsion felt toward the Nazi genocide which lies at the heart of the international legal movement. The universal moral revulsion expressed in the 1946 General Assembly Resolution was reiterated throughout the subsequent drafting process as state representatives regularly spoke with a universal moral tongue when condemning the crime. For example, the Dominican Republic representative stated: “the moral tribunal of the world demanded the denunciation of genocide”.<sup>83</sup> From a legitimacy perspective, therefore, it is clear that it was the moral revulsion felt toward the Nazi genocide that acted as the catalyst needed to alter international society’s legal, moral, and constitutional expectations. Accordingly, the 1948 Genocide Convention represents the procedural face of rightful conduct and in doing so highlights that genocide constitutes wrongful conduct. However, it is also clear that international legal perspectives toward genocide have gone much further than simply recognising genocide as wrongful conduct as they have sought to establish genocide as the “crime of crimes” in international law.

To judge this it is important to go back to November 1950, when the UN General Assembly first approached the International Court of Justice (ICJ) amidst concerns over the ratification of the 1948 Genocide Convention. As Caroline Fournet explains, the ICJ ruled, “the principles underlying the Convention are *principles which are recognized by civilized nations* as binding on States, even without any conventional obligation”.<sup>84</sup> In doing so, the ICJ sought to give the crime of genocide a *higher status* than other crimes in international law as its ruling implied that genocide violates international peremptory norms (*jus cogens*). As Fournet explains, this has been reiterated in a series of judicial rulings including those made by the ICTY, ICTR and ICJ.<sup>85</sup> The theory of *jus cogens* stipulates that there are peremptory norms in international relations, these exist whether states recognise them or not, and in turn

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<sup>82</sup> United Nations General Assembly Resolution 96 (I). ‘The Crime of Genocide’. (12/11/1946) <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf?OpenElement> (Accessed 15/08/08).

<sup>83</sup> For such primary analysis see Matthew Lippman, ‘A Road Map to the 1948 Genocide Convention’, *Journal of Genocide Research*, (vol. 4, no. 2, 2002, pp. 177 – 195), esp. pp.178-179.

<sup>84</sup> Caroline Fournet, ‘The Universality of the Prohibition of Genocide, 1948-2008’, *International Criminal Justice Review* (vol. 19, no. 2, 2009, pp. 132-149), p139, emphasis by Fournet.

<sup>85</sup> *Ibid*, pp. 137 – 141.

states cannot derogate from them.<sup>86</sup> For that reason, the idea of *jus cogens* does not sit comfortably with the idea that international law is constructed by states as it implies that states cannot evade the international legal arm of *jus cogens*, even if they were to try to through constructing specific treaties and/or conventions. As Fournet explains, despite the fact that the idea of *jus cogens* was recognised in Article 38 (1) of the ICJ Statute and Article 53 of the 1969 Vienna Convention on the Law of Treaties, there remains little clarity regarding the sources and identity of these “supernorms”.<sup>87</sup> This lack of clarity causes concern, especially for legal positivists, as it seemingly leaves the door open for *jus cogens* to be grounded on such notions as natural law, divine law or laws of humanity.

The point here is not to engage in this unresolved legal debate, but to simply highlight the fact that the recognition of *jus cogens* in international law, whether right or wrong, reflects the fact that international law has been constructed in a manner to suggest that there exists a hierarchy of norms in international law.<sup>88</sup> Writing in 1996, M. Cherif Bassiouni (who has served the UN in a number of legal capacities), stated that there is sufficient legal basis to conclude that “aggression, genocide, crimes against humanity, war crimes, piracy, slavery and slave related practices and torture” are part of *jus cogens*.<sup>89</sup> Whether right or wrong, the recognition of such crimes as holding greater legal resonance than others, underlines the point that international law has sought to establish a hierarchy of international crimes. Within this hierarchy, the increasing acceptance of pre-emptory norms reflects an attempt to construct a *universal legal minimalism*, from which no state can derogate (*jus cogens*). Such acknowledgement underlines the point that just as moral philosophers have constructed an understanding of a universal moral minimalism; international lawyers have constructed an understanding of a universal legal minimalism. Significantly, genocide is internationally accepted as the quintessential violation of both.

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<sup>86</sup> For a relevant overview see, Christian Tomuschat and Jean Marc Thouvenin. (eds.), The Fundamental Rules of the International Legal Order: *Jus Cogens* and obligations *Erga Omnes* (Leiden: Boston: Martinus Nijhoff, 2006). Alexander Orekhelashvili, Peremptory Norms in International Law (Oxford: Oxford University press, 2006).

<sup>87</sup> Fournet, ‘The Universality of the Prohibition of Genocide’, p. 134.

<sup>88</sup> Dinah Shelton, Normative Hierarchy in International Law, American Journal of International Law (vol. 100, no. 2, 2006, pp. 291-323). See also, Lee M. Caplan, ‘State Immunity, Human Rights, and Jus Cogens: A critique of the Normative Hierarchy Theory’, The American Journal of International Law (vol. 97, no. 4, 2003, pp. 741-781).

<sup>89</sup> M. Cherif, Bassiouni, ‘International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*’, Law and Contemporary Problems, (vol. 59, no. 4, 1996, pp. 63 – 75), p. 68.

The legal acknowledgement of genocide as standing atop of the legal hierarchy was most forcibly recognised by the International Criminal Tribunal for Rwanda. In 1998, in the case of the Prosecutor v. Jean Kambanda, the trial chamber of the International Criminal Tribunal for Rwanda ruled that genocide is the “crime of crimes”.<sup>90</sup> Essentially, the gravitas of this heinous crime drove the trial chamber to declare that in their opinion, genocide represents the gravest crime in international law. Whilst such a ruling does not represent international society as a whole, it has set a precedent that has since been upheld by seminal scholars in the field, as William Schabas explains:

Human rights law knows many terrible offences: torture, disappearances, slavery, child labour, apartheid and enforced prostitution to name a few. For victims, it may seem appalling to be told that while these crimes are serious there are more serious crimes. But in any hierarchy, something must sit at the top. The crime of genocide belongs at the apex of the pyramid. It is, as the International Criminal Tribunal for Rwanda has stated so appropriately in its first judgements, the ‘crime of crimes’.<sup>91</sup>

The statement highlights the somewhat tragic reality, that even within the context of human suffering, a hierarchy exists. Whilst the intention here is not to overlook the horror embodied in these other crimes; when one juxtaposes the legal understanding put forward here, and the moral understanding outlined above, it is clear that genocide is internationally regarded as the “crime of crimes” from both a legal and moral perspective.

It is worth pausing here to consider the four crimes identified by the 2005 Responsibility to Protect as the R2P stipulates that states have a responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. Such crimes are omitted within the hierarchy presented by Schabas above, yet it is clear that these crimes have to be taken into consideration. Notably, all these crimes (apart from ethnic cleansing, which is not identified in international law) represent state crimes that are legally recognised as a violation of *jus cogens*. Essentially, they all signify a violation of a universal legal minimalism and many perpetrators have been charged on grounds of committing genocide, war crimes, and crimes against humanity. The point of interest here is that even within this

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<sup>90</sup> UN Doc, ‘Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994’, (A/54/315 S/1999/943, 07/09/1999), Available at <http://www.ictr.org/ENGLISH/annualreports/a54/9925571e.htm> Accessed 23/08/2009.

<sup>91</sup> William, A. Schabas, Genocide and International Law (Cambridge: Cambridge University Press, 2000), p.9.

grave context, it seems clear that genocide is still internationally regarded as the “crime of crimes” in that it sits in a hierarchical position above these other crimes.

To put this into context, let us consider the conclusion put forward by the International Commission of Inquiry in to the events of Darfur. In January 2005, the Commission famously concluded that genocide had *not* been committed in Darfur but that crimes against humanity had.<sup>92</sup> As William Schabas explains, the conclusion drawn (that the Government of Sudan had *not* pursued a policy of genocide), led to suggestions that the report was some kind of “whitewash or betrayal”.<sup>93</sup> The suggestions of a whitewash or betrayal are quite fascinating as the Commission had ruled that crimes against humanity were occurring in Darfur. It would seem that the international outcry that followed the Commission’s conclusion arose because it was generally felt that the recognition of crimes against humanity was not enough. Indeed, the Commission felt it necessary to qualify its ruling as it stated: “Depending upon the circumstances, such international offences as crimes against humanity or large scale war crimes may be no less seriousness and heinous than genocide”.<sup>94</sup> Whilst the Darfur Commission had been set up to make a judgement on genocide, it is clear that the Commission, and the international response toward it, upheld the idea that genocide acts as the benchmark of human wrongs by which other human rights violations are measured by. This reaffirms the idea that genocide is internationally regarded as the “crime of crimes” from both a legal and moral perspective. It also reaffirms the relationship between morality and law as it is clear that it is the universal moral abhorrence felt toward genocide that drives the legal need to place genocide at the apex of the aforementioned legal pyramid.

At this point the reader may be rightly asking the question, if genocide is internationally regarded as the “crime of crimes”, then why do states fail to confront the crime of genocide? This line of questioning naturally brings us back to the sentiment raised in Chapter One as it is clear that genocide is not internationally regarded as the “crime of crimes” from a political perspective. This point is neatly raised in Thomas W. Simon’s normative inquiry into international law. Intriguingly, Simon acknowledges that since the events of 9/11,

<sup>92</sup> UN Doc, SC/8191, ‘Security Council declares Intention to Consider Sanctions to Obtain Sudan’s Full Compliance with Security, Disarmament Obligations on Darfur’, (18/09/2004). Available at <http://www.un.org/News/Press/docs/2004/sc8191.doc.htm> Accessed 21/11/2009.

<sup>93</sup> William A. Schabas, ‘Has Genocide Been Committed in Darfur? The State Plan or Policy Element in the Crime of Genocide’, in Ralph Henham and Paul Behrens, (ed.), The Criminal Law of Genocide. International Comparative and Contextual Aspects (Surrey: Ashgate, 2007), p. 39.

<sup>94</sup> Ibid.



international terrorism (which according to Simon's fits within the context of war crimes and crimes against humanity) has been prioritised over genocide.<sup>95</sup> According to Simon, the prioritisation of other crimes such as international terrorism over genocide represents a "backward step on the road of humanitarian progress" which has to be remedied for genocide represents the gravest crime international society.<sup>96</sup> Such logic seems perfectly understandable as it is clear that whilst international terrorism poses a serious problem in international relations, unless terrorists acquire nuclear arms, then they cannot bring about the level of destruction that states can, and indeed do, toward unarmed innocent groups. Quite simply, states continue to hold more power than terrorists do. It is with such rationale in mind, therefore, that Simon's places genocide prohibition at the fore of constructing international law upon universal normative standards: "If we cannot find a widespread global agreement on an ethic that prohibits genocide, then the prospects for the world seem indeed dismal".<sup>97</sup> The bleak statement captures the seriousness of the issue as the author questions how international society can have a body of international law that incorporates ethics if this law cannot confront the crime of genocide. It seems policymakers overlook such arguments and it is here that the relationship between genocide and the norm of constitutionality comes to the fore.

### 4.3.3 Genocide and constitutionality

It is important to note that Clark identified this as the most overtly political norm of the three. In turn, the political nature of constitutionality dictates that the collective understanding underpinning this norm has a tendency to change more rapidly than the norms of morality and legality. The relationship therefore between genocide and the norm of constitutionality is perhaps the most complex as international society's understanding of constitutionality has a tendency to alter more frequently than that of law or morality. The reason being, that political expectations are often dependent upon circumstance which can change rapidly in international relations. For example, international political expectations on September 10<sup>th</sup> 2001 were radically different from those that emerged in the aftermath of 9/11. To put this into the context of this thesis, it is clear that in 1948 there was in international constitutional

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<sup>95</sup> Ibid, p. 3, the author states terrorist attacks fit within the remit of crimes against humanity and terrorist strikes within the remit of war crimes.

<sup>96</sup> Ibid, p. 3.

<sup>97</sup> Thomas W. Simon, The Laws of Genocide. Prescriptions for a Just World (Westport: Praeger Security International, 2007), p.32.

expectation that genocide should be prevented. Significantly, this expectation radically diminished within the extreme political context of the Cold War yet re-emerged in the post-Cold war era. This will be discussed in more detail in the next chapter. However, it is important here to touch upon one critical point. Whilst there is an international expectation that genocide *should* be prevented, to go back to the understanding put forward by Andrew Hurrell in Chapter One, it is also clear that there is an international acceptance that genocide *will not* be prevented.

To explain this, it is necessary to differentiate between the *national* and *international* political expectation toward genocide prevention. This analysis utilises the political rhetoric of “*never again*” to illustrate this difference as this phrase has become synonymous with the expectation that genocide should be prevented. The phrase “never again” litters the discourse on genocide studies and refers to international society’s vow (made in the aftermath of the Second World War), that genocide would “never again” be allowed to occur in international relations. As Samantha Power explains, the Genocide Convention “embodied the moral and popular consensus in the United States and the rest of the world that genocide should “never again” be perpetrated while outsiders stand idly by”.<sup>98</sup> The statement highlights that the Genocide Convention does not just represent a legal and moral expectation, but also a constitutional expectation that genocide should “never again” be allowed to take place. Essentially, the rhetoric of “never again” was built upon the understanding that international society had failed in its responsibilities to protect those targeted by the Nazis and that the 1948 Genocide Convention provided a solution to this failing. Accordingly, there was a clear *international* expectation that genocide should be prevented in international relations, for, as stated in the preamble of the Genocide Convention, genocide is: “contrary to the spirit and aims of the United Nations and condemned by the civilized world”.<sup>99</sup> Obviously, one does not have to be a genocide scholar to figure out that this expectation was flawed. Whilst international society does not *permit* genocide, it does *allow* it to occur. It is here that this *international* expectation that genocide should not occur tragically collapses into the *national*

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<sup>98</sup> Samantha Power, ‘Never Again: The World’s Most Unfulfilled Promise’, Frontline Magazine, on-line (no date of publication given). Available at <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/genocide/neveragain.html> Accessed, 01/04/10.

<sup>99</sup> See the preamble, UN Convention on the Prevention and Punishment of the Crime of Genocide (A, RES/260 (III), 09/12/1948).

expectation that states should not get involved in such “complex and dangerous” foreign policy agendas (to use Hurrell’s phrase).

This is perfectly illustrated by looking at the US. Perhaps more than any other country, the US has routinely invoked the vow to “never again” let genocide occur. As Samantha Power notes, Presidents Jimmy Carter, Ronald Reagan, George Bush and Bill Clinton have all expressed the “never again” rhetoric when addressing the need to prevent genocide.<sup>100</sup> For instance, in 1979, President Carter boldly claimed: “never again will the world fail to act in time to prevent this terrible crime of genocide”.<sup>101</sup> Drawing upon the exact same sentiment expressed in the aftermath of the Nazi genocide, President Carter utilised the political rhetoric of “never again” to suggest that the genocide that had just taken place (Cambodia), was a tragedy that the world would never allow to happen again. Of course, it did. President Carter simply paid ‘lip service’ to the international expectation that genocide should be prevented. It is here that the reality of such ‘lip service’ lies, for the truth is: the US did not once acknowledge genocide in the 20<sup>th</sup> century - whilst genocide was actually occurring.<sup>102</sup> The vows therefore made by the Presidents listed above, were made in the aftermath of genocide, whether that be “Cambodia (Carter), northern Iraq (Reagan, Bush), Bosnia (Bush, Clinton) and Rwanda (Clinton)”.<sup>103</sup> None of these Presidents were strangers to war and/or intervention, yet none wanted to intervene to prevent genocide, hence they stayed silent until it was over.

Responding to the silence of the US administration over the genocide in Rwanda, President George W. Bush famously vowed that he would never allow genocide to occur under “his watch”.<sup>104</sup> This campaign pledge was then reiterated once Bush took office.<sup>105</sup> To his credit, the Bush administration became the first US administration to acknowledge genocide *as it*

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<sup>100</sup> Samantha Power, ‘Never Again: The World’s Most Unfulfilled Promise’.

<sup>101</sup> Jimmy Carter, cited in, Niall Ferguson, Colossus: The Rise and Fall of the American Empire (London: Penguin, 2005), p.142.

<sup>102</sup> The seminal work on this topic remains Samantha Power’s, A Problem From Hell. See also, Eyal Mayroz, ‘Ever again? The United States, Genocide suppression, and the crisis in Darfur’, The Journal of Genocide Research (vol. 10, no. 3, 2008, pp. 359 – 388). Mayroz utilises Power’s work to highlight that the term was wrongly used over Kosovo to try and stir domestic support within the US.

<sup>103</sup> This is taken from Power, ‘Never Again: The World’s Unfulfilled Promise’.

<sup>104</sup> For a brilliant analysis of the US involvement in Darfur, in which the author’s utilise the report put together by the US government in 2004, see John Hagan and Wenona Rymond-Richmond, Darfur and the Crime of Genocide (Cambridge: Cambridge University Press, 2009).

<sup>105</sup> American National Committee of America, ‘Bush Reaffirms Genocide Pledge’, (27/03/2001), Available at [http://www.anca.org/press\\_releases/press\\_releases.php?prid=60](http://www.anca.org/press_releases/press_releases.php?prid=60) Accessed 12/04/2010.

occurred (Darfur).<sup>106</sup> Yet, as is well documented, this promise did not see President Bush lead any sort of US attempt to prevent the genocide in Darfur, despite the fact that it occurred on “his watch”. Whilst one can raise the valid point that the US was heavily engaged in two wars at the time (Afghanistan and Iraq), the track record of the US in relation to genocide does not fill one with hope that the administration would have attempted to catalyse an international effort. To bring this up to date, in January 2008, Barak Obama stated that genocide threatens our “common security and our common humanity”.<sup>107</sup> Since taking office, President Obama responded to the sixteenth anniversary of the Rwandan genocide by stating, “It is not enough to say “never again.” We must renew our commitment and redouble our efforts to prevent mass atrocities and genocide”.<sup>108</sup> Whilst it is perhaps too early to judge the present US Administration, its role in Darfur and President Obama’s refusal to acknowledge the Armenian genocide since taking office (even though he had promised to do so<sup>109</sup>), suggests there is little “change” to be found in Obama’s approach toward genocide. In an attempt to gain some clarity on this point, I asked a Press Officer from the Embassy of the United States of America if they could explain the current US Administration’s position on the Responsibility to Protect, to which I was informed, “I am not sure of President Obama’s views on this policy, but I do know that Secretary of State, Hilary Clinton, does care about children in Africa”.<sup>110</sup> The answer speaks volumes in that it illustrates that the Press Officer, whose job is to keep up to date with US Foreign Policy thinking and who had just spoken on human rights, humanitarianism and America’s relationship with the world, simply did not know what the Responsibility to Protect means.

These examples illustrate the vast chasm between reality and rhetoric. Perhaps this is summarised best in the conclusion drawn by Samantha Power:

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<sup>106</sup> Ibid, see the Prologue, which is aptly entitled, ‘On Our Watch’.

<sup>107</sup> Organizing for America, ‘Barack Obama on the Importance of US-Armenia Relations’ (19/01/2008). [http://www.barackobama.com/2008/01/19/barack\\_obama\\_on\\_the\\_importance.php](http://www.barackobama.com/2008/01/19/barack_obama_on_the_importance.php) Accessed 22/05/2010.

<sup>108</sup> The White House, office of the press secretary, ‘Statement made by President Obama on the 16<sup>th</sup> Anniversary of the Genocide in Rwanda’, (07/04/2010), <http://www.whitehouse.gov/the-press-office/statement-president-16th-anniversary-genocide-rwanda> This sentiment was reiterated by President Obama four days later on the Holocaust Remembrance Day, see The White House, office of the press secretary, ‘Statement by the President on Holocaust Remembrance Day’, (11/04/2010) <http://www.whitehouse.gov/the-press-office/statement-president-holocaust-remembrance-day> Both Accessed 23/05/2010

<sup>109</sup> Obama stated, “As a senator, I strongly support passage of the Armenian Genocide Resolution (H.Res.106 and S.Res.106), and as President I will recognize the Armenian Genocide”, Organizing for America, ‘Barack Obama on the Importance of US-Armenia Relations’ (19/01/2008).

<sup>110</sup> BISA US Foreign Policy Working Group, ‘Understanding America and Understanding its Relationship with the World’, De Mont-fort University, Leicester, (June 11<sup>th</sup>, 2010).

Before I began exploring America's relationship with genocide, I used to refer to U.S. policy as a "failure". I have changed my mind. It is daunting to acknowledge, but this country's consistent policy of non-intervention in the face of genocide offers sad testimony not to a broken American political system but to one that is ruthlessly effective. No U.S. president has ever made genocide prevention a priority, and no U.S. president has ever suffered politically for his indifference to its occurrence. It is thus no coincidence that genocide rages on.<sup>111</sup>

The statement goes right to the heart of the matter regarding the relationship between genocide and constitutionality. Quite simply, the US, as every other state does, pays 'lip service' to the international expectation that international society should prevent genocide. But then upholds a realist foreign policy ethic that genocide prevention is not within the national interest of states. As Power highlights, the reality is that *states do not fail to prevent genocide; because essentially, they are not trying to prevent it*. At the same time, this national policy should not detract us from the point that there remains an international expectation that genocide cannot be tolerated in international society. As Kofi Annan stated in 2004: "There can be no more important issue, and no more binding obligation, than the prevention of genocide".<sup>112</sup> The complexity therefore lies in the fact that whilst there is an international expectation that states should prevent genocide, there remains a clear national expectation that states should not engage in such "complex and dangerous" foreign policy agendas because states have little to gain (to use Andrew Hurrell's phrase). Whilst saving the lives of millions may feed one's conscience, it doesn't fuel one's cars.

This brings us back to the understanding put forward in Chapter One. There is *no* long-term collective security strategy being forged amongst states regarding genocide prevention because states do not see the prevention of genocide within the national interests of states. This is the real problem. If genocide is to be prevented, there has to be a long-term collective effort forged as no state can oversee the prevention of genocide alone. At present, the lack of any international collective effort represents the fact that the impact of genocide is not felt amongst policymakers world-wide. They understand that the genocide is morally abhorrent but view genocide as just one of many insoluble problems. As Power highlighted, the truth is that policymakers do not see a political problem arising from adopting such a position. It is

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<sup>111</sup> Power, *Problem from Hell*, p. xxi.

<sup>112</sup> UN Secretary-General, Kofi Annan. Keynote speech to The Stockholm International Forum. (26/01/ 2004). Available at <http://www.preventgenocide.org/prevent/UNdocs/KofiAnnanStockholmGenocideProposals26Jan2004.htm> Accessed 02/06/08.

here that the next chapter challenges such mainstream understanding as it addresses the impact that genocide has upon the ordering structure of international society.

#### 4.4 Conclusion

The understanding of international legitimacy set out above is bound to raise controversy as it is clear, that just as with the concept of genocide, no understanding will ever please everyone. Significantly, the rejection of natural law, at least in theory, opens the door for genocide to be considered as legitimate practice. If, (and yes this is a big if), all the relevant actors (whoever they may be), in international relations deemed genocide to be morally, legally, and constitutionally acceptable then this would constitute rightful conduct and in turn genocide would be deemed a legitimate practice. Although one may be horrified at the potential implications of such an understanding, and in turn uphold an appeal to ideas such as natural law, it is important to consider two things. First of all, the primary fact of international relations is that there is no world government. With no world government to make a ruling on which moral claim international society should adhere to, it is imperative that competing moralities are not allowed to dictate international relations for this may create a state of international chaos. It is here that the moral value of international order re-emerges as it is clear that a constant state of chaos could potentially lead to unprecedented levels of violence and suffering. The importance therefore of international legitimacy cannot be overstated as it acts to increase the likelihood of international stability within the anarchical realm. Secondly, one has to consider that such an outcome would mean that international society's legal, moral, and constitutional understanding would have to alter to the point that we would accept genocide as rightful conduct. Despite that there is a theoretical possibility, in practice, such an outcome would suggest constructing a world so alien to the present that it is almost impossible to comprehend.

As discussed, genocide holds a special relationship with international legitimacy as it is internationally regarded as the "crime of crimes" from both a legal and moral perspective (even if it is not considered in the same light from a political perspective). To return to the understanding of "the bottom" presented by Primo Levi, it would seem that international society *has* constructed an understanding that there is a bottom - a universal legal and moral minimalism - and that genocide stands as the paradigmatic violation of both. As J.K. Roth succinctly explains: "Genocide is a primary instance of *horror* or nothing could be. An *abyss*

*of horror*, then, would be a reality so grim, so devastating, so full of useless pain, suffering, death and despair that it fractures the world – perhaps forever. Genocide is an *abyss of horror* or, again, nothing could be”.<sup>113</sup> This is important because it begins to highlight that genocide *should not* be considered as just another insoluble problem (as stated in Chapter One). This needs to be considered carefully, for at present, it is clear that states do not even try to forge a collective security strategy aimed at preventing genocide. This raises questions regarding what this says about international society and what impact that the occurrence of genocide has upon international society as it fails to confront the “crime of crimes”. It is this latter point that this thesis now shifts its attention toward as Chapter Five address the impact of genocide on international order.

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<sup>113</sup> John K. Roth, ‘Genocide and the Logic of Racism’, in John K. Roth, (ed). Genocide and Human Rights, p. 262.

## 5 Genocide as a Threat to International Stability

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"If the collective conscience of humanity cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice." Kofi Annan.<sup>1</sup>

As discussed in Chapter Four, genocide is internationally regarded as the "crime of crimes" from both a legal and moral perspective yet it remains a low priority issue in foreign policy making. Despite the fact that there have been many persuasive moral arguments put forward with regard to saving strangers, the will of the politically unwilling has remained unaltered. As discussed in Chapter One, policymakers do not think that genocide poses a threat to their national interest in the same way that crimes such as nuclear proliferation, piracy, and drug trafficking do. It is here that this chapter challenges such mainstream thinking as it claims that in failing to prevent genocide states increase the likelihood of international instability in international relations.

To validate this central claim this chapter will focus on how genocide impacts upon the secondary institution of the UN. Despite the idea that international legitimacy is not a property and therefore no institution can claim to own it or produce it, international society's contemporary understanding of international legitimacy is indebted to the legal, moral, and constitutional agreements that were institutionalised into the architecture of the UN in the post-Second World War era.<sup>2</sup> This explains why the origins of the post-Cold War *legitimacy crisis* have been traced back to the construction of the UN system. It is here that crime of genocide, and its relationship with international legitimacy, is of relevance as it will be argued that genocide erodes both the legitimate authority of the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the

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<sup>1</sup> Cited in the International Commission on Intervention and State Sovereignty, Responsibility to Protect (Ottawa: International Development Research Centre, 2001), paragraph 1.6, available at <http://www.iciss.ca/report2-en.asp#dilemma> Accessed 09/05/09.

<sup>2</sup> Whilst there is an extensive amount of literature available of the UN, for a relevant overview see Adam Roberts and Benedict Kingsbury, (ed.), United Nations. Divided World. The UN's Roles in International Relations (New York: Oxford University Press, 2007). Donald J. Puchala, Katie Verlin Laatikainen and Roger A. Coate, United Nations Politics. International Organization in a Divide World (New Jersey: Pearson, 2007). Paul Kennedy, The Parliament of Man: The Past, Present and Future of the United Nations (London: Random House, 2006). Juergen Habermas, The Divided West (Cambridge: Polity Press, 2006). Michael Barnett and Martha Finnemore, Rules for the World. International Organizations in Global Politics (London: Cornell University Press, 2004). Adam Roberts, 'Order/Justice Issues at the United Nations', in Rosemary Foot, John Lewis Gaddis and Andrew Hurrell, Order and Justice in international relations (Oxford: Oxford University Press, 2003). Jean-Marc Coicaud and Veijo Heiskanen (ed.), The Legitimacy of International Organizations (New York: United Nations University Press, 2001). Ins L. Claude Jr., Swords into Plowshares: The Problems and Progress of International Organization (New York: Random House, 1971).



stabilising function in international relations) more than any other crime.<sup>3</sup> This point was aptly illustrated by the post-Cold War *legitimacy crisis* that unfolded in the aftermath of the Rwandan genocide (see section IV). To draw on the sentiment expressed by Kofi Annan above, if the UN cannot oversee international society's most profound moral commitments, then there is a grave danger that states will look elsewhere for justice. Whilst the UN does not own international legitimacy, international society's collective understandings of order and justice have been institutionalised within this organisation. In failing to prevent genocide, therefore, the UN and the UNSC run the risk that states will look elsewhere to address this justice deficit within the current ordering structure of the UN. The real problem being, not that unilateral action may lead to genocide prevention, but that the UN and the UNSC's authority may become eroded to the point that international *instability* arises as states fail to forge clear understandings of what constitutes rightful conduct and rightful authority (with regard to the use of force).

This chapter will therefore be structured as follows. Section one will place the idea of genocide prevention into international society's understanding of rightful conduct. In doing so, it will address the tensions to be found in the UN Charter and also explain how the 1948 Genocide Convention impacts upon the legal, moral, and constitutional understanding to be found within the post-Second World War construction of rightful conduct. Section two will look at the impact that genocide has upon the UN from a theoretical perspective. It will be argued that genocide poses a threat to international order because it erodes the authority of the UN and the UNSC more than any other crime. This theoretical perspective helps us understand why the post-Cold War legitimacy crisis arose in the aftermath of the Rwandan genocide. Section three offers an analysis of why genocide *did not* have a profound impact on international society in the Cold War era as states regressed upon their solidarist commitments to international justice. Section four brings us onto the post-Cold War era to highlight the empirical reality of how the Rwandan genocide eroded the authority of the UN

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<sup>3</sup> The idea that the UN Security Council acts as the stabilising function in international relations is taken from The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000), p. 174. The idea that the UN is the cornerstone of international legitimacy is not taken from anything specifically yet one can find such understanding evident within the discourse itself, for example, Ramesh Thakur, *International Peacekeeping in Lebanon: United Nations Authority and Multinational Force* (Colorado: Westview Press, 1987), p. 259. It should be noted however that Thakur implies that the UN dispenses legitimacy yet to use the English School approach I would claim that it is better to understand it as an institution in the second-order sense that contributes more than any other institution to the process and practice of international legitimacy.

and the UNSC and in doing so played an integral role in creating the subsequent legitimacy crisis within international relations. If, to go back to the understanding of international legitimacy set out in Chapter Four, one accepts that international legitimacy increases the likelihood of international stability and one accepts that genocide played an integral role in the legitimacy crisis then one must accept that genocide poses a threat to international order. This is important because it helps explain that there is more to genocide prevention than just simply saving strangers.

### 5.1 Rightful conduct

In discussing the language of human rights, Ken Booth stated: “We inherit scripts, but we have the scope – more or less depending upon, who, when and where we are – to revise them”.<sup>4</sup> It is proposed that such rationale was embodied in the international consensus forged in the aftermath of the Second World War as state representatives attempted to rewrite the three hundred year old Westphalian script they had inherited. The UN Charter, therefore, acts as the procedural face of what was to constitute rightful conduct in the post-Second World War era of international relations, for it embodied international society’s legal, moral, and constitutional expectations.

As is well documented, the UN Charter embodies a problematic commitment to both human rights and state sovereignty which has caused an endless debate over the legitimacy of humanitarian intervention.<sup>5</sup> James Mayall places this debate within an English School framework when he states that the UN Charter’s appeal to both human rights and state sovereignty left international society constructed upon a commitment to both English School pluralism and English School solidarism.<sup>6</sup> In essence, there is, and remains, a fundamental

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<sup>4</sup> Ken Booth, ‘Three Tyrannies’, in Tim Dunne and Nicholas, J. Wheeler, (ed.), Human Rights in Global Politics (Cambridge: Cambridge University Press, 1999), p.33.

<sup>5</sup> For an overview of the relevant debates, see Thomas, G. Weiss, Humanitarian Intervention (Cambridge: Polity Press, 2007). Jennifer M. Welsh, (ed.), Humanitarian Intervention in International Relations (Oxford: Oxford University Press, 2006). D, K, Chatterjee and D, E, Scheid. (eds.), Ethics and foreign intervention in International Society (Cambridge: Cambridge University Press, 2003). J, L, Holzgrefe and Robert, O, Keohane, Humanitarian Intervention: Ethical, Legal and Political Dilemmas (Cambridge: Cambridge University Press, 2003). Richard B. Lillich, (ed.), Humanitarian Intervention and the United Nations (Charlottesville: University Press of Virginia, 1973). For a more genocide specific focus on the idea of humanitarian intervention see Dieter Janssen, ‘Humanitarian Intervention and the Prevention of Genocide’, Journal of Genocide Research (vol.10, no. 2, 2008, pp. 289-306). Samuel Totten and Paul R. Bartrop, ‘The Complexities of the Prevention and Intervention of Genocide’, in Totten and Bartrop, The Genocide Studies Reader (New York: Routledge, 2009), part IV. Neal Riemer, Protection Against Genocide. Mission Impossible? (London: Praeger, 2000).

<sup>6</sup> James Mayall, (ed.), The New Interventionism 1991-1994 (Cambridge: Cambridge University Press, 1994). Obviously this point has been raised by more than just English School scholars, for instance Thierry Tardy

tension within the UN Charter as through Articles 2, 2 (4), and 2 (7), the UN Charter espouses a pluralist commitment to the minimal rules of co-existence (state sovereignty, non-use of force and non-intervention).<sup>7</sup> However, the UN charter also sets out a broader solidarist agenda in its commitment to human rights within its pre-amble as well as Article 55 and 56.<sup>8</sup> This latter aspect was expanded further via the 1948 Universal Declaration of Human Rights and its two related covenants.<sup>9</sup> A tension therefore arises between order and justice as the script that was written in the post-Second World War era seemingly tied the UN to two contradictory commitments. Whilst it should be noted that the architects of the UN Charter never intended to provide a rigid set of guidelines that would be interpreted literally in a word by word fashion,<sup>10</sup> the potential benefits of any flexibility are hindered by this problematic understanding of rightful conduct. As Ian Clark explains “many of the contradictions in the post-1945 discussion of international legitimacy are thus thought to derive from this basic inconsistency”.<sup>11</sup>

In committing itself to both human rights and state sovereignty, the UN Charter’s understanding of rightful conduct seemingly embodies a *dual commitment*. This dual commitment has critical implications at the international level as states can, at least attempt to, construct a legitimate case for action, or inaction, based on a commitment to either state sovereignty or universal human rights. This dual commitment has been explicit in the debate over *humanitarian intervention* as advocates and critics have been divided over whether the UN Charter permits the right of humanitarian intervention in international relations. Problematically, the dual commitment embodied within the UN Charter dictates that states can interpret the UN Charter in a way that favours their particular view of what constitutes

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writes a sharp analysis upon the liberalism and realism to be found within the dual nature of the UN, see Thierry Tardy, ‘The UN and the Use of Force: A Marriage Against Nature’, *Security Dialogue* (vol. 38, no. 1, 2007, pp. 49-70).

<sup>7</sup> UN Doc, Charter of the United Nations and Statute of the International Court of Justice, <http://www.un.org/en/documents/charter/index.shtml> Accessed 09/05/09 Simon Chesterman aptly demonstrates that the preamble alone highlights all the basic inconsistencies of the present debate, see Just War or Just Peace? Humanitarian Intervention and International Law (Oxford: Oxford University Press, 2003), chapter two.

<sup>8</sup> For a relevant analysis see Hedley Bull, The Anarchical Society. A Study of World Order Politics, third edition, (London: Palgrave, 2002), pp.83-90.

<sup>9</sup> The 1966 The International Covenant on Civil and Political Rights and The International Covenant on Economic and Social Rights

<sup>10</sup> For a brilliant analysis see, Edward C. Luck., ‘A Council For All Seasons: The Creation of the Security Council and its Relevance Today’, and Christine Gray, ‘Charter Limitations on the Use of Force’ in Vaughan Lowe, Adam Roberts, Jenifer Welsh and Dominik Zaum, The United Nations Security Council and War. The Evolution of Thought and Practice Since 1945 (Oxford: Oxford University Press, 2008), chapters two and three.

<sup>11</sup> Ian Clark, Legitimacy in International Society (Oxford: Oxford University Press, 2005).p. 138.

rightful conduct.<sup>12</sup> This idea of a *dual commitment* was put into context in Kofi Annan's famous analysis on "The Two Concepts of Sovereignty".<sup>13</sup> Writing within the context of the crisis in Kosovo and East Timor, Annan notably put forward the idea that there existed two types of sovereignty in international relations, that of the *state* as well as that of the *individual*. Explaining his position on the latter, Annan explained that by individual sovereignty he meant, "the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights".<sup>14</sup> In doing so, Annan seemingly placed the understanding of state sovereignty and individual sovereignty on a level playing field thereby implying that the UN Charter embodied a *dual commitment* to both types of sovereignty. As Gareth Evans notes, whilst Annan's intention was to help resolve the debate regarding humanitarian intervention, he did nothing more than simply restate it.<sup>15</sup> This led Annan to later concede (in a private conversation with Evans) that he wished he had phrased this argument in a less antagonistic manner.<sup>16</sup> It is important therefore to understand that although the UN Charter embodies a dual commitment to both state sovereignty and human rights, in attempting to extend the UN Charter's commitment toward human rights into a commitment toward humanitarian intervention, Kofi Annan put forward a contemporary interpretation of the UN Charter that differed substantially than that set out in 1945.

To understand this let us consider a piece of primary research found within the UN archive. In 1946, John P. Humphrey (the Director of Division of Human Rights Division in the UN Secretariat), addressed the issue of UN responsibility regarding human rights violations *within states*.<sup>17</sup> In an interoffice memorandum to M. Henri Laugier (Assistant Secretary-General in charge of Social Affairs), Humphrey raises the point: "As you undoubtedly know, a number of communications from individuals and non-governmental organisations have been addressed to the Commission on Human Rights and to the Secretary-General which

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<sup>12</sup> One has to qualify this point in that one would expect at least some consistency in interpretation. States cannot oppose humanitarian intervention one day and favour it the next.

<sup>13</sup> Kofi Annan, 'Two Concepts of Sovereignty', *The Economist* (18/09/1999) Available at, [http://www.un.org/News/press/docs/1999/19990901\\_kaecon.html](http://www.un.org/News/press/docs/1999/19990901_kaecon.html) Accessed 12/06/08.

<sup>14</sup> *Ibid.*

<sup>15</sup> Gareth Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All* (Washington: Brookings Institution Press, 2008), p. 38.

<sup>16</sup> *Ibid.*

<sup>17</sup> United Nations Archive, S - 0544 - 0004 - 12. Human Rights Commissions Defence. 28<sup>th</sup> August 1946 - 28<sup>th</sup> October 1947. Interoffice Memorandum from John P. Humphrey, Director of Division of Human Rights to M. Henri Laugier, Assistant Secretary-General in charge of Social Affairs. 30<sup>th</sup> August 1946.

relate to human rights and fundamental freedoms. Some of these allege violations of human rights within specific member states".<sup>18</sup> The communication explicitly raised the question of what the UN should do when the human rights violations occur *within* states. To which John Humphrey replied:

But these communications which allege violations of human rights within specific Member States give rise to *difficulties of the first magnitude*. For while the Secretariat must hand them on to the Commission, the latter does not appear to have any right under the Charter to make recommendation to the States in question in regard to them. The facts and circumstances described in the communications are "matters which are essentially within the domestic jurisdiction" of the Member States, with the result that, under Article 2 (7) of the Charter, all intervention (and even a *recommendation might and probably would be considered intervention by the Member State envisaged*) by the United Nations is excluded. As I understand the situation, no recommendation can be made with regard to a matter "essentially within the domestic jurisdiction of any State" unless the recommendation is made by the Security Council under Chapter VII of the Charter, i.e. when the situation constitutes a threat to peace.<sup>19</sup>

Now whilst one cannot extrapolate an understanding of the 'UN perspective' at the time, from just one source, Humphrey's was the Director of the Human Rights Division and a subsequent drafter on both the 1948 Genocide Convention and Universal Declaration of Human Rights. Hence it seems fair to say that the statement provides us with an insight into the 'UN perspective' on humanitarian intervention at the time. Significantly, the statement clearly implies that there was a real fear that simply making a recommendation to the relevant member state, regarding human rights violations within their state, may be considered as intervention, thereby violating the UN Charter.

From a legitimacy perspective, at least according to such understanding, it is clear that the idea of military intervention was certainly not considered to constitute rightful conduct (from a legal and constitutional perspective). Although times have changed, and as discussed, international legitimacy is a process not a property and therefore actors can put forward contemporary interpretations of how they think the UN Charter should be understood, I would go as far as stating that in 1946, sovereignty was understood as absolute. The understanding therefore set out by Humphrey, supports the conclusion drawn by the Independent International Commission on Kosovo: "human rights were given a subordinate and marginalised role in the UN system in 1945".<sup>20</sup> To go back to the understanding of a

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid, emphasis added.

<sup>20</sup> See, The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000), p.168.

*dual commitment* set out above, one has to recognise that this reflects a contemporary understanding of the UN Charter as it has been re-interpreted and re-evaluated through sixty years of human rights discourse. From a legitimacy perspective, actors such as Kofi Annan try and forge the tolerable consensus needed to alter collective understandings of what constitutes rightful conduct. Yet at the same time, it is evident, at least from the understanding set out by Humphrey above, that the UN system as constructed in 1945 did not legitimise the idea of humanitarian intervention as we know it today. Whilst its commitment to human rights embodied a solidarist ethic of international justice, this stopped short of legitimating humanitarian intervention.

The interesting aspect therefore, with regard to genocide, is that international society felt it necessary to take its commitment to human rights one step further. It would seem that states did not feel that the UN Charter, or the Nuremberg principles, did enough to provide the necessary legal framework needed to prevent the crime of genocide. To go back to the legitimacy process, the moral abhorrence felt toward the Holocaust altered international society's moral, constitutional and legal expectations to the point that state's established the 1948 Genocide Convention which acts as the procedural face for the legal, moral, and constitutional norms embedded within it. Thus, it is important to gauge how the 1948 Genocide Convention fits within the post Second World War understanding of rightful conduct.

### **5.1.1 The UN Convention on the Prevention and Punishment of the Crime of Genocide**

The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide was unanimously endorsed by the UN General Assembly on the 9<sup>th</sup> December 1948. This led the then President of the General Assembly, Mr. H. V. Evatt to boldly declare the: "supremacy of international law has been proclaimed and a significant advance had been made in the development of international law".<sup>21</sup> A key point to consider therefore is how this significant advance in international law altered international society's understanding of rightful conduct. As discussed, the solidarist aspirations that were embodied within the UN Charter were essentially grafted onto a pluralist framework in that the minimal rules of co-existence: sovereignty, non-use of force, and non-intervention, underpinned the foundation of the UN

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<sup>21</sup>This is cited in Matthew Lippman, 'A Road Map to the 1948 Genocide Convention', *Journal of Genocide Research* (vol. 4, no. 2, 2002, pp. 177–195), p.179.

Charter. Yet when one places the 1948 Genocide Convention within this pluralist-solidarist context, it is clear that the understanding of justice to be found in the Genocide Convention's understanding of rightful conduct, challenges the pluralist norms of absolute sovereignty and non-intervention.

Whilst Article 2. (7), of the UN Charter states that the UN cannot intervene in matters of a "domestic jurisdiction" it is clear that the drafters of the Genocide Convention never viewed genocide as a matter of "domestic jurisdiction". This can be traced back to the 1946 General Assembly Resolution as it stated: "The punishment of the crime of genocide is of international concern".<sup>22</sup> It went on to state: "The General Assembly, therefore affirms that genocide is a crime under international law which the civilized world condemns".<sup>23</sup> The universal tone embodied within this statement is important as it highlights that whilst genocide may be committed within a state's territorial boundary, it was perceived to be a matter of *international jurisdiction*. Notably, state representatives spoke with a universal moral tongue throughout the drafting process which highlights how the drafters viewed genocide as a matter of international jurisdiction. As Matthew Lipmann's analysis explains, Mr Villa Michael of Mexico proclaimed that genocide prevention was a matter of "the greatest importance" that poses a "direct and serious threat to the welfare of the human race".<sup>24</sup> At the same time, Mr Henriquez Urena of the Dominican Republic stated that even if the Convention was not ratified, its moral and legal weight was needed because "the moral tribunal of the world demanded the denunciation of genocide as a 'crime against humanity'".<sup>25</sup> Whilst Article 2 (7) of the UN Charter (regarding the rights of states to control their own domestic jurisdiction), was not discussed explicitly in the drafting process, it is evident that the drafters of the Genocide Convention did not foresee that Article 2 (7) of the UN Charter would pose a legal barrier to genocide prevention as genocide was not a matter of domestic jurisdiction.

This naturally brings us onto the controversy surrounding the sovereignty-intervention debate. With regard to the former, it seems evident that the 1948 Genocide Convention is

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<sup>22</sup> United Nations General Assembly Resolution 96 (I). 'The Crime of Genocide'. (A/RES/96(I), adopted at the 55<sup>th</sup> plenary meeting, Dec 11<sup>th</sup>, 1946). This can be found using the United Nations Bibliographic Information System, <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf?OpenElement> Accessed 09/06/2009.

<sup>23</sup> Ibid.

<sup>24</sup> This is cited in Lippman, 'A Road Map to the 1948 Genocide Convention', p.178.

<sup>25</sup> Ibid.

constructed upon a conditional understanding of sovereignty. This goes back to the Nuremburg trials themselves, just as *sovereign immunity* had not served those on trial at Nuremburg (who claimed that they were simply following orders); the right of sovereignty did not grant states the right to destroy a “national”, “ethnic”, “racial” or “religious” group in a post-1948 world.<sup>26</sup> As a result, the Genocide Convention places a clear constraint on the idea of sovereignty. As Gareth Evans has explained, for three hundred years, the Westphalian principles underpinning international relations acted to “institutionalize indifference” in international society.<sup>27</sup> Leaders were not only indifferent to the suffering of others, but also held the so-called right of sovereign immunity as they were not held accountable for their actions within their domestic sphere of control. Evans’s point being that this Westphalian commitment to indifference and immunity changed in the aftermath of the Holocaust. Sovereignty, at least in a post-1948 world, was not to be understood as absolute as it was conditional on the fact that genocide was not a legitimate practice. As Bruce Cronin explains: “The conclusion of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) created a legal framework for states to override the rights of sovereignty whenever genocide was committed”.<sup>28</sup> Whilst advocates of the 2005 R2P claim that this legal barrier to mass atrocity prevention has been overcome via the endorsement of *conditional sovereignty* embodied in the R2P, it is apparent that such understanding was established within international law in 1948.<sup>29</sup>

Of course, the idea of conditional sovereignty does not, in itself, justify the right of military intervention. This remains the most controversial aspect of any debate over humanitarian intervention. This reservation was raised by the UK representative (and former British prosecutor at Nuremburg), Sir Hartley Shawcross in the 1947 Sixth Committee, *Discussion*

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<sup>26</sup> This idea of sovereign immunity is taken from Henry T. King Jr., ‘Genocide and Nuremburg’, in Ralph Henham and Paul Behrens, *The Criminal Law of Genocide. International, Comparative and Contextual Aspects*, (Surrey: Ashgate, 2006), chapter three. See also, Bernard D. Meltzer, ‘The Nuremburg Trial: A Prosecutor’s Perspective’, *Journal of Genocide Research* (vol. 4, no. 4, 2002, pp. 561 -568).

<sup>27</sup> See Gareth Evans analysis, ‘From Westphalia to the Holocaust: Institutionalizing Indifference’, Evans *The Responsibility to Protect. Ending Mass Atrocity Crimes. Once and For All* (Washington: Brookings, 2008), pp. 15 – 19.

<sup>28</sup> See Bruce Cronin’s analysis, ‘The Tension between Sovereignty and Intervention in the Prevention of Genocide’, in Samuel Totten (ed.), *The Prevention and Intervention of Genocide. Genocide: A Critical Bibliographic Review, volume six* (London: Transaction Publishers, 2008), p. 147.

<sup>29</sup> For example, Louise Arbour claims that at the “legal core” of the R2P, lies the 1948 Genocide Convention. See, Arbour, ‘The Responsibility to Protect as a Duty of Care in International Law & Practice’, *Review of International Studies* (vol. 34, no. 3, 2008, pp. 445-458), p. 450. This will be discussed further in Chapter Six.



on the Draft Convention of the Crime of Genocide.<sup>30</sup> At the time, Shawcross was concerned by a number of things to be found within the Draft Convention (such as the idea of non-physical genocide which was discussed in Chapter Three). Of relevance here is his concern regarding *implementation and intervention*. This stemmed from the fact that “under article XII of the convention, the high contracting parties agree to call upon the competent organs of the United Nations to take measures for the suppression or prevention of the crime committed in any part of the world”.<sup>31</sup> The concern, therefore, was one of implementation as Shawcross perceived that the international court would act as the necessary organ, yet since genocide is committed by state officials, it is impractical to think that the same state officials would give themselves up to any international judicial process.<sup>32</sup> This makes perfect sense as one has to only look at the fact that Sudanese President Omar Al-Bashir refuses to give himself up to the International Criminal Court.<sup>33</sup> Such a reality underpinned Shawcross’s central reservation that “the only real sanction against genocide was war”.<sup>34</sup> Intriguingly, this led Shawcross to claim that the Convention was unrealistic in that the majority of states would not accept it, yet as history tells us, states unanimously endorsed the 1948 Genocide Convention, even if they then did not ratify it (as of 2010, there are a 140 state parties to the UNGC).

It took nearly forty years for the US to ratify the 1948 Genocide Convention and notably, it was the debate over military intervention that remained a central obstacle that hindered ratification. In a fascinating piece written in 1949, George A. Finch (the then Editor in Chief and Vice-President of *The American Journal of International Law*), reflects on the American Bar Association’s recommendation that the Genocide Convention (as submitted) should *not* be ratified by the US.<sup>35</sup> For Finch, the omission of the state in the drafting of the convention

<sup>30</sup> UN GAOR 42<sup>nd</sup> meeting, ‘Discussion on the Draft Convention on the Crime of Genocide’, UN Doc’s, A/362, A/401, A/401.Add.1, A/C.6/147, A/C.6/149, A/C.6/151, A/C.6/155, A/C.6/159 and A/C.6/160. (1947). This can be found using the United Nations Bibliographic Information System, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NLA/700/98/PDF/NLA70098.pdf?OpenElement> Accessed 09/06/2009.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> UN News Centre, ‘ICC Issues Arrest Warrant for Sudanese President for War Crimes in Darfur’, (04/03/2009). <http://www.un.org/apps/news/story.asp?NewsID=30081&Cr=darfur&Cr1=icc> Accessed 03/11/2009. It should be noted here that the ICC did not include the charge of genocide in its initial 2009 warrant; however, in February 2010 the ICC Appeals Chamber ruled that the Pre-Trial Chamber must revisit their decision not to include genocide on the arrest warrant. At the time of writing, this remains unresolved.

<sup>34</sup> UN GAOR 42<sup>nd</sup> meeting, ‘Discussion on the Draft Convention on the Crime of Genocide’.

<sup>35</sup> George, A, Finch, ‘The Genocide Convention’, *The American Journal of International Law* (vol. 43, no. 4, 1949, pp. 732 – 738). Finch recalls that the Genocide Convention came before the American Bar Association in “two channels”, the Association’s Special Committee on Peace and Law, through the United Nations, and the

has critical implications regarding implementation.<sup>36</sup> Reiterating the exact same sentiment expressed by Shawcross above, Finch states: “In the debate at St. Louis the question remained unanswered: How is an international tribunal or foreign national court to obtain custody in time of peace of an accused genocidist?”<sup>37</sup> Again, the conclusion drawn echoes the reservation raised by Shawcross as Finch claims: “To take the accused by force would mean an act of war”.<sup>38</sup> Essentially, this leads Finch to claim that the role of the state has to be placed at the heart of the Genocide Convention and that in such circumstances states should be held accountable in international law.<sup>39</sup> Controversially, it is claimed, that such an approach would not involve war.<sup>40</sup> Yet this latter point seems misconstrued as it fails to answer the previous unanswered question of how international society gets genocidal regimes to cooperate with any international judicial process in the first place? Although, as discussed in Chapter Three, the omission of the state within the drafting of the Convention is a mistake, it is difficult to see how its inclusion would make genocide prevention any easier. It is highly doubtful that this would have any profound impact on the political will of genocidal perpetrators or bystanders.

The stark reality is that the draftees of the 1948 Genocide Convention at the time explicitly discussed the issue of sovereignty-intervention and proceeded to put forward a legal obligation to prevent and punish the crime at the international level. Despite the fact that it took the US nearly forty years to ratify this obligation, the reality is that they did accept it and are therefore obligated under international law. Yet as William Schabas explains, whilst the UNGC places an *obligation* on states to prevent genocide, the question of whether this dictates that states have a *duty* to intervene remains unanswered.<sup>41</sup> Intriguingly, Schabas reflects upon Professor Hersh Lauterpacht’s analysis of the 1948 Genocide Convention (written in the 1950’s) which set out the understanding that states have an *obligation* to prevent genocide and the *right* to intervene to fulfil this obligation.<sup>42</sup> Although the complexities of war dictate that states should not necessarily be obligated to intervene

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Association’s Section on International and Comparative Law, both of which were discussed by the Association at its 72<sup>nd</sup> Annual Meeting, September 5-9, 1949, at St. Louis.

<sup>36</sup> Ibid, p. 733.

<sup>37</sup> Ibid, p.734.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, p.737.

<sup>40</sup> Ibid.

<sup>41</sup> William A. Schabas, *Genocide In International Law* (Cambridge, Cambridge University Press, 2000). , pp.491-502,

<sup>42</sup> Ibid p.498.

militarily, it would seem, as the United States Ambassador for War Crimes, David Scheffer stated: “No government should be intimidated into doing nothing by the requirements of Article II [sic]; rather, every government should view it as an opportunity to react responsibly if and as genocide occurs”.<sup>43</sup> The statement in many ways underlines the central paradox to be found within the 1948 Genocide Convention as on the one hand international society has a clear *obligation* to prevent genocide, yet on the other hand, there remains a serious lack of any *implementation* strategy. Essentially, this is a problem that has never been resolved, for as will be discussed in Chapter Six, the R2P also fails to address this critical issue.

To go back to the very first stage of the drafting process, the 1946 General Assembly Resolution made the recommendation “that international co-operation be organised between States with a view to facilitating the speedy prevention and punishment of the crime of genocide”.<sup>44</sup> The statement aptly summarises the ambiguity surrounding *implementation*. Whilst upholding the view that the General Assembly wanted *speedy* prevention and punishment of genocide, the drafters seemingly left the question of how this speedy prevention would be implemented, unanswered. One can only assume that they put their faith in the hope that ad hoc willing coalitions would take on this responsibility. By the time the 1948 Genocide Convention had been finalised, a little more clarity had been provided, but not much. Article VIII states: “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of genocide or any other acts enumerated in Article III”.<sup>45</sup> The competent organ is generally understood to be that of the UN Security Council, which dictates that the prevention of genocide is placed under the responsibility of the UNSC.<sup>46</sup> This did little to aid the idea of genocide prevention as there is no preventative strategy embodied within the UNGC itself, despite the Convention being built upon a commitment to prevent.

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<sup>43</sup> Ibid, p.496.

<sup>44</sup> UN General Assembly, ‘The Crime of Genocide’, (A/RES/96(I), adopted at the 55<sup>th</sup> plenary meeting, Dec 11<sup>th</sup>, 1946). This can be found using the United Nations Bibliographic Information System, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf?OpenElement> Accessed 09/06/2009.

<sup>45</sup> UN General Assembly, ‘UN Convention on the Prevention and Punishment of the Crime of Genocide’, (A, RES/260 (III), 09/12/1948).

<sup>46</sup> For such analysis see, John Quigly, *The Genocide Convention. An International Law Analysis* (Hampshire: Ashgate, 2006), p. 86. It should also be remembered, as Pau Kennedy explains, that the term *may*, was used throughout the drafting of the UN Charter instead of the word *shall*, as this is less obligatory in nature, see *The Parliament of Man*, p. 34.

It is important here to explain that the ambiguity surrounding implementation should not lead one to think that the Genocide Convention does not address the issue of obligation. For example, in Henry Shue's analysis on *Limiting Sovereignty*, the author utilises the crime of genocide (rather than the Convention) to highlight that certain rights are universal and therefore place limitations on the right of sovereignty.<sup>47</sup> Such understanding aligns itself with Chapter Four's view, that genocide violates a universal moral minimalism. This in itself is not problematic. However, when the author shifts his attention to the Genocide Convention, he dismissively states: "it is strictly permissive concerning implementation, merely inviting any state that should take a notion to do something in order to prevent genocide to approach the International Criminal Court of Justice, but binding no one to nothing".<sup>48</sup> The statement touches upon an important point as despite the ambiguity surrounding implementation, the fact is that the Genocide Convention embodies a legal obligation. Shue's claim, therefore, that the Convention *binds no one to nothing* is inaccurate. Article I of Genocide Convention states: "The Contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish".<sup>49</sup> The statement reflects two important points. The first is that the Genocide Convention recognised that genocide can be committed in times of peace as well as war and in doing so went beyond the Nuremburg principles (which only recognised genocide in times of war). The second is that it clearly sets out the premise that in endorsing the Convention states did in fact bind themselves to this cause. Although the reality may be that there is little anyone can do if states do not fulfil this obligation, this does not detract from the fact that this legal obligation exists.

The *obligation* to prevent genocide juxtaposed with the lack of an *implementation* strategy brings us back to the understanding first set out in Chapter One: state leaders' fear that genocide prevention may lead states into "complex and dangerous" foreign policy agendas and therefore do not fulfil their obligation (to use Andrew Hurrell's phrase). Yet the critical point is that state representatives at the time were aware that the 1948 Convention infringed upon sovereignty and would involve intervention; indeed they discussed it, yet they proceeded to put forward a legal obligation to prevent and punish the crime at the

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<sup>47</sup> Henry Shue., 'Limiting Sovereignty', in Jennifer M. Welsh, (ed.), Humanitarian Intervention in International Relations (Oxford: Oxford University Press, 2006), chapter two.

<sup>48</sup> *Ibid*, p.19.

<sup>49</sup> UN General Assembly, 'UN Convention on the Prevention and Punishment of the Crime of Genocide',

international level. From a legitimacy perspective, not only was the practice of genocide judged to constitute wrongful conduct, but the obligation to *prevent and punish* the crime of genocide was deemed to be rightful conduct. Now that this legal obligation has been created, states can, as they have done, ignore it. However, the critical point here is whether right or wrong, the 1948 Genocide Convention dictated that the authority of the UN and the UNSC was to become intrinsically linked with genocide prevention. It is this aspect that this chapter now turns its attention toward as this helps us understand the broader impact of genocide on international relations.

## 5.2 The impact of genocide on the UN

At least in theory, the UN draws its authority from the premise that it is an intergovernmental organisation that works in the *collective interest* of all member states. With its rule of one vote one state, the UN stands as the *cornerstone of international legitimacy* as it acts as the main arena for international public reason formation. States will be more willing to accept a decision, or indeed the failure to make a decision, if the deliberation has occurred within the UN because as UN member states, they perceive themselves to be part of the process. Whilst the UN cannot hold states to account in the same way that a world government potentially could, it aids international stability by overseeing the codes of conduct embodied in international agreements such as the UN Charter. The establishment of treaties and conventions therefore signify the procedural face of international legitimacy as they represent international society's understanding of what constitutes rightful conduct. States utilise such collective agreements to hold each other's actions to account, which in turn helps constrain the practice of wrongful conduct thereby aiding the likelihood of international stability. Essentially, this is the power of the UN. Whilst this leads critics to claim that the UN has no power at all, they fail to gauge the role that the UN plays in facilitating the practice of international legitimacy which aids the likelihood of international stability.

It is important to qualify the point that the UN stands as the cornerstone of international legitimacy for it is clear, in a classic Orwellian sense, that within the UN: all states are equal (Article 2. 4), but some states are more equal than others (P5).<sup>50</sup> This latter point is explicit in the context that there are two circles of rightful membership within the UN itself: the UN

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<sup>50</sup> This draws upon the classical statement made by George Orwell in his analysis of communism amongst the animals of Manor Farm: "All animals are equal but some animals are more equal than others", see Orwell, *Animal Farm* (London: Penguin, 1987), p. 90.

General Assembly and the permanent five members within the UN Security Council. Against the backdrop of the failed League of Nations, the Allied Powers became the self appointed overseers of collective security in international relations. To all intents and purposes they granted themselves a privileged status within the UN Security Council on the grounds that this would enable rather than constrain the UN from fulfilling its collective security function.<sup>51</sup> The 'P5 club', if you will, became the international equivalent of a V.I.P., club whose members were to hold privileges that non-members would not. Of course, non-members were not overtly happy with this hierarchical element. As Plano and Riggs explain, Australia and other middle powers challenged the great power position in an effort to limit the absolute veto, reject the idea of permanent membership and enlarge the Security Council, yet they were ultimately defeated.<sup>52</sup> This defeat however, did not prevent these middle powers from joining the UN, which would imply that they ultimately accepted, or at least acquiesced, into the fact that the Allied powers would hold a privileged status in international relations. This, it would seem, has been the case ever since for as whilst UN membership expanded rapidly since its conception, states remain willing to uphold the 'geopolitical order' that is to be found within the UN.<sup>53</sup> (See section 5.3).

To gauge why this is the case it is important to bear in mind two things, the first being the fact that the Great Powers of the P5 are 'great' in the sense that they have great military might, the second and related point being the role that the Security Council plays in international relations. With regard to the first point, the reality of the situation is not that states then, or indeed now, believe the P5 to be noble but instead they accept that the P5 remain the most dangerous actors in international relations. As Ian Clark explains, states were willing to accept the "institutionalized inequality" embodied in the UN, because, as one Norwegian delegate at Dumbarton Oaks explained, they could not "risk *not* to do it".<sup>54</sup> The

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<sup>51</sup> For as near a definitive account as one can get on this subject matter see, Vaughan Lowe, Adam Roberts, Jenifer Welsh and Dominik Zaum, The United Nations Security Council and War. The Evolution of Thought and Practice Since 1945 (Oxford: Oxford University Press, 2008). See also, Clark, Legitimacy in International Society, chapter seven. Andrew Hurrell, On Global Order. Power, Values and the Constitution of International Society (Oxford: Oxford University Press, 2007), chapter seven.

<sup>52</sup> Jack C. Plano and Robert E. Riggs, Forging World Order. The Politics of International Organisation (New York: The Macmillan Company, 1967), p. 46.

<sup>53</sup> For an excellent analysis see Gerry Simpson, Great Powers and Outlaw States. Unequal Sovereigns in the International Legal Order (Cambridge: Cambridge University Press, 2004).

<sup>54</sup> Clark, Legitimacy in International Society p. 148. Equally, Paul Kennedy notes that when a Mexican representative questioned the inequality the UN, they were told that they could have an unequal UN or no UN at all, see Kennedy, The Parliament of Man, p. 27.

consensus, therefore, that emerged at the time implied that states perceived that this institutionalised inequality was a price worth paying if it managed to institutionalise the power of the P5. As John G. Inkenberry demonstrates, even the US, at the height of its hegemonic power in the post-Second World War era, was willing to institutionalise its power.<sup>55</sup> In essence a trade-off occurred as small powers, middle powers, and Great Powers attempted to *institutionalise order* within the post-Second World War era. The perception was that it was better to have all states around the ‘UN table’, than to have no table at all. Even if this meant that in practice there would be two tables, one for the members of the General Assembly and one for the Permanent and rotating Non-Permanent members of the UN Security Council (the non-permanent membership quota has changed over time).<sup>56</sup>

The idea of institutionalised order brings us onto the second point regarding the role of the UN Security Council as it took on the mantle of overseeing the maintenance of order in international relations. As a result, the UNSC formed a great power club that was, and still is, seen to provide a *stabilising function* in international relations (this was the conclusion drawn by The Independent International Commission on Kosovo in 2001<sup>57</sup>). To gauge why this is the case one has to only go back to the logic put forward by Hedley Bull, in that the hope was that the Great Powers of the P5 would help maintain international order by managing their relations with each other via the UNSC, whilst also steering international relations in a common direction.<sup>58</sup> This would help facilitate the likelihood of international stability as the P5 utilise their power to help steer international relations in a common direction, toward order and stability and thus away from anarchy and chaos. Yet as Hedley Bull rightly explains, whilst Great Powers can and sometimes do fulfil such responsibilities, they often do not. In sharp contrast they “frequently behave in a way as to promote disorder rather than order; they seek to upset the general balance, rather than to preserve it”.<sup>59</sup>

As a result, the understanding of rightful membership is constructed upon an inherently problematic relationship between the membership of the UN at large and the membership of

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<sup>55</sup> John G. Inkenberry After Victory, Institutions, Strategic Restrain, and the Rebuilding of Order and Major Wars (Princeton: Princeton University Press, 2001).

<sup>56</sup> For a relevant analysis that touches upon the historical evolution as well as the question of reform, see Thomas G. Weiss, ‘The Illusion of UN Security Council Reform’, The Washington Quarterly (vol. 26, no. 4, 2003, pp. 147-161).

<sup>57</sup> The Independent International Commission on Kosovo, The Kosovo Report, p. 174.

<sup>58</sup> Bull, The Anarchical Society, p.200.

<sup>59</sup> *Ibid*, pp. 200 – 201. This obviously reflects a Cold War perspective.

the P5 as an elite group within the UN. Whilst all states are members of the UN and can have their voice heard around the 'UN table', the words spoken by members of the P5 simply carry more weight. Whilst non-permanent members may get to sit at the 'UNSC-table', they have to wait their rotational turn and even then they do not have the same privileges that the P5 have. If, for whatever reason, the P5 perceive that the UN's pursuit of the collective interest clashes with their national interest then they may use their veto power to prevent the UN from acting. At times therefore, the UN's pursuit of the collective interest can be overridden by the P5's pursuit of the national interest.<sup>60</sup> This can cause a crisis within the principle of rightful membership as the interests of the elite group (P5) clashes with the collective group of the UNGA. To return to the norm of constitutionality, it seems clear that on the one hand no one expects P5 members to support a UN action that undermines their own vital national interests, however, it is also clear that within certain circumstances the P5's pursuit of their national interest can actually undermine the authority of the UN itself and more specifically the authority of the UNSC. In essence, *the stabilizing function of the UNSC can be destabilized by the actions of the P5.*

The important point to consider therefore is the impact that the P5's actions can have upon the authority of the UNSC and the UN itself. To put this into context let us consider D. D. Caron's analysis, *The Legitimacy of the Collective Authority of the Security Council*.<sup>61</sup> Caron raises the point that the spirit and the integrity of the UN is integral to its perceived legitimacy: "yet sometimes – and I would assert this is the case with the veto-the potential to betray the promise is built directly and tragically into the organisation."<sup>62</sup> By raising the integrity of the UN, Caron implies that the perceived authority of the UN is dependent upon its ability to fulfil its obligations, act in a consistent manner, uphold its values and generally meet the expectations of international society. This makes sense from a legitimacy perspective as one would expect that the UN would need to act in a consistent manner in order to hold onto its moral, legal, and constitutional authority. In practice then, as Caron explains, the P5 can prevent the UN from functioning as it should, which can, at times, erode the perceived authority of the UN itself. Although no one expects that the interests of the P5

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<sup>60</sup> For a thorough analysis on this theme see Ramesh Thakur, *The United Nations. Peace and Security. from Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006).

<sup>61</sup> David. D. Caron, 'The Legitimacy of the Collective Authority of the Security Council', *The American Journal of International Law* (vol. 87, no 4. 1993, pp. 552-588).

<sup>62</sup> *Ibid*, p.560.



and the UN will coincide on all issues, it is clear that on *certain issues* (I would put genocide prevention as the primary example of this) international society expects and demands that the P5 do their best to address the issues at hand. When they do not, they do not just undermine the perceived authority of the UN, but their own authority as the overseer of the use of force in international relations. It is within *such specific circumstances that the actions of the P5 destabilize the stabilizing function of the UNSC*. Significantly, this can cause a crisis within the principle of rightful membership as states question the authority of the UNSC as the ‘rightful’ overseer of force in international relations (this will be discussed below within the context of the Rwandan genocide).

It is here that the crime of genocide and the 1948 Genocide Convention is of relevance. In recognising genocide as a crime, and placing the responsibility of its prevention upon the shoulders of the UN and the UNSC, international society entrenched a legal understanding that cannot simply be ignored if the UN and the UNSC is to hold onto its perceived legal, moral, constitutional authority. Despite the fact that the UN has many duties and obligations, the 1948 Genocide Convention differs in that it represents the “crime of crimes” in international relations (Chapter Four). Genocide therefore, more than any other crime, erodes the legitimate authority of both the UN (which acts as the cornerstone of international legitimacy) and the UN Security Council (which acts as the stabilising function in international relations). It is hoped that such rationale helps provide a more informed understanding of the post-Cold War legitimacy crisis in international relations. Yet obviously, if such understanding is accurate, then one has to answer the question: why did the occurrence of genocide in the Cold War *not* have such an impact on international society?

### 5.3 The Cold War

It is quite striking how genocide prevention was so prominent in the international conscience of 1948, yet was immediately marginalised in the context of the Cold War. As William Schabas explains: “Some may have legitimately questioned, in the 1970’s and 1980’s, whether the Genocide Convention was no more than an historical curiosity”.<sup>63</sup> The unwillingness of states to acknowledge the Convention went hand in hand with the lack of

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<sup>63</sup> Ibid, p. 8.

state ratification and accession.<sup>64</sup> Whilst as discussed in Chapter Four, the ICJ ruling of 1951 stated that genocide was a matter of *jus cogens* and therefore binding on states as part of customary international law, the fact that only twenty-five states ratified the Genocide Convention when it came into force on the 11<sup>th</sup> January 1951 highlights the point that with the outbreak of the Cold War, the prevention of genocide took a back seat. In this section then, it is important to consider why the solidarist ethic embodied in the 1948 Genocide Convention faded within the context of the Cold War period.

To explain why the solidarist commitment to prevent genocide became so marginalised within the context of the Cold War, one has to understand that the extremity of the security environment that emerged radically altered international society's understanding of rightful conduct. With regard to the concept of international legitimacy, international society's understanding of the three norms altered to the point that humanitarian intervention; even within the context of genocide prevention, was deemed to be illegitimate. This is put into context within Donnelly's analysis upon humanitarian intervention in the Cold War:

Despite the strong moral case, the political and legal environments were so uncompromising that giving priority to the danger of partisan abuse seemed the best course. There was a clear international normative consensus, across the First, Second, and Third Worlds, that humanitarian intervention was legally prohibited.<sup>65</sup>

The statement goes right to the heart of the matter as it highlights the relationship between the three norms of constitutionality, morality, and legality in the Cold War period. When one looks at the Cold War period, one sees a striking paradox in that the Cold War represented a time of increasing human rights violations, yet at the same time an international normative consensus emerged upon the prohibition of humanitarian intervention. Yet as Donnelly states, one has to put this within the context of the time. To gauge this it is important to consider the impact of a paralysed UNSC, the threat of a nuclear holocaust, and the emergence of newly forged sovereign states upon the sovereignty-intervention debate by considering their impact upon the three norms in the legitimacy process.

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<sup>64</sup> Notably the US Senate did not consent to ratification until 1988, which actually resulted from Senator Proxmire making a personal plea on the floor of the Senate every day for nineteen years! For an overview of ratification see *Ibid*, pp 505- 508.

<sup>65</sup> Jack Donnelly, *Universal Human Rights. In Theory and Practice* (London: Cornell University Press, 2003).p. 248.

The extremity of the Cold War security environment was captured in Lester Pearson's dictum that a "balance of terror" had replaced the "balance of power" in international relations.<sup>66</sup> The terror that Pearson referred to, was the potential human catastrophe that could arise if the US and Russia engaged in nuclear war. As Peter J. Kuznick's analysis explains, within just twelve days of President Truman's first full day in office, two of his leading scientific advisors on nuclear weapons warned that "modern civilisation might be completely destroyed".<sup>67</sup> The sentiment expressed underpinned their concern that the atomic bomb should not be viewed merely as a weapon but as "a revolutionary change in the relations of man to the universe".<sup>68</sup> Such fear became the mainstream position. In 1949, Carlos Romulo the President of the UN General Assembly bluntly declared: "The choice before us is the survival or extinction of the human race and human civilisation. The stake is not merely high; it is total and final and, if we lose it, irretrievable. Fear can never be banished from the earth so long as the split atom threatens the very existence of mankind".<sup>69</sup> The statement was made less than twelve months after the President of the General Assembly, Mr. H. V. Evatt, stated that the Genocide Convention signified a significant advance in international law. The problem being that, twelve months on, the threat of a nuclear war dictated that the fear gripping international society was not that *a group* could be destroyed, but that *the group* of humankind could be destroyed. As the scientific advisors at the time warned, such technology could be used as a "weapon of genocide".<sup>70</sup> The threat, therefore, of *omnicide*, by which I mean the destruction of humankind itself, saw the threat of genocide subordinated. From a legitimacy perspective, the morality embodied within genocide prevention is difficult to justify if one considers that any such military intervention could trigger a nuclear war. It was not until the end of the Cold War therefore, when the threat of omnicide lifted, that international society began to reengage with the threat posed by genocide.

A second point to consider is how the Cold War impacted on constitutional views at the time. Quite simply, the US and the Soviet Union divided international relations up into their relative spheres of influence which dictated that the UN itself had very little influence at all.

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<sup>66</sup> Cited in Martin Wight, International Theory, The Three Traditions edited by Gabriele Wight and Brian Porter (New York: Holmes ad Meir, 1992), pp. 164 – 165. Pearson made this statement on 24<sup>th</sup> June, 1955.

<sup>67</sup> Peter J. Kuznick, 'Prophets of Doom or Voices of Sanity? The Evolving Discourse of Annihilation in the First Decade and a Half of the Nuclear Age', Journal of Genocide Research (vol. 9, no. 3, 2007, pp. 411- 441), p. 414.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid, p.420.

As explained by Knight, the clash of political, ideological, and strategic interests between the superpowers of the US and the Soviet Union dictated that the UN Security Council was paralysed within a heightened “climate of mistrust”.<sup>71</sup> The paralysis of the UNSC dictated that the UN could not fulfil its collective security role in international relations, thus dictating that the UN could not fulfil its legal obligation to prevent genocide. To return to the norm of constitutionality, it seems self-evident that the extremity of the Cold War security environment had a profound impact on shaping formal and informal expectations. With regard to genocide prevention, the stark reality is that no-one expected the UN to oversee genocide prevention within this period. The truth being that the UN did not have enough power to prevent, what Donnelly refers to as: “a pattern of superpower *anti*humanitarian intervention in places such as Guatemala, Hungary, Czechoslovakia, and Nicaragua”.<sup>72</sup> The two so-called superpowers knowingly supported oppressive, violent and genocidal regimes within this period.<sup>73</sup> However, many states seemingly accepted the actions of the US and the Soviet Union as they provided somewhat of a security umbrella for those within their relative sphere of influence.<sup>74</sup> As a result, the UN’s failure to prevent genocide in the Cold War period did not have a profound impact on the UN because states accepted that the UN did not have the power to prevent genocide without the collective support of the P5.

A final point to consider from a legitimacy perspective, is how legal views toward sovereignty altered during the context of the Cold War. Significantly, the decolonisation process radically altered the membership of the UN and international society as a whole. Events, such as, ‘The Declaration on the Granting of Independence to Colonial Countries and Peoples’ significantly increased the number of UN member states to 150, which grew further

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<sup>71</sup> See Andy, W. Knight, ‘The Future of the UN Security Council: Questions of Legitimacy and Representation in Multilateral Governance’, in Andrew F. Cooper, John English and Ramesh Thakur, (eds.), Enhancing Global Governance: Towards a New Diplomacy? (Tokyo: United Nations University Press, 2002, chapter two), p.20.

<sup>72</sup> Donnelly, Universal Human Rights, p. 248. Emphasis in the original. As Gellately and Kiernan right point out, much more research needs to be done into the role of great power support for genocidal regimes in the Cold War era. See Gellately and Kiernan, ‘Investigating Genocide,’ in Gellately and Kiernan (ed.), The Spectre of Genocide. Mass Murder in a Historical Perspective (Cambridge: Cambridge University Press, 2003), chapter eighteen.

<sup>73</sup> As Gellately and Kiernan right point out, much more research needs to be done into the role of great power support for genocidal regimes in the Cold War era. See Gellately and Kiernan, ‘Investigating Genocide,’ in Gellately and Kiernan (ed.), The Spectre of Genocide. Mass Murder in a Historical Perspective (Cambridge: Cambridge University Press, 2003), chapter eighteen.

<sup>74</sup> For an authoritative analysis of UN Security Council interventions in the Cold War and post-Cold War era see Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum, The United Nations Security Council and War. The Evolution of Thought and Practice since 1945 (New York: Oxford, 2008), pp. 265 – 515.

to 175 by 1990.<sup>75</sup> This rapid expansion had significant implications for the debate surrounding humanitarian intervention as these newly formed states upheld the view that state sovereignty should be understood as absolute. This is understandable as they sought to protect the very sovereignty that they fought so long and hard to establish.<sup>76</sup> Capturing the mood of the time, the 1965 UN General Assembly Declaration on the “Inadmissibility of Intervention” stated: “No state has the right to intervene, directly, or indirectly, for any reason, whatsoever, in the internal or external affairs of any other state”.<sup>77</sup> The sentiment encapsulates the explicit resentment felt toward the idea of humanitarian intervention within this period.<sup>78</sup> When one juxtaposes this ‘north south’ development, with the ‘bi-polar’ context of the Cold War, one sees how international society’s legal, moral, and constitutional views toward genocide prevention altered during the Cold War period. This was perhaps most tragically illustrated in the context of the humanitarian intervention in Cambodia.

Whilst not defended in humanitarian terms, the Vietnamese intervention in Cambodia brought about an end to the Khmer Rouge - one of the worst genocidal regimes of the 20 century.<sup>79</sup> Yet, as Wheeler explains, this was met with moral revulsion from the US and its allies, the Association of South East Asian Nations (ASEAN), as well as neutral and non-aligned states.<sup>80</sup> This revulsion reflected the broad international consensus forged over the

<sup>75</sup> The Declaration can be read at [http://www.unhcr.ch/html/menu3/b/c\\_coloni.htm](http://www.unhcr.ch/html/menu3/b/c_coloni.htm) Accessed 26/07/08. For an analysis on UN membership see, United Nations, ‘Growth in United Nations membership: 1945 to present’, <http://www.un.org/en/members/growth.shtml#2000> Accessed 26/03/2010.

<sup>76</sup> For example, in the Organisation for African Unity’s Charter, the overwhelming sentiment to be found in the Charter’s principles is the inalienable right of sovereignty. See [http://www.africa-union.org/root/au/Documents/Treaties/text/OAU\\_Charter\\_1963.pdf](http://www.africa-union.org/root/au/Documents/Treaties/text/OAU_Charter_1963.pdf) Accessed 04/06/08.

<sup>77</sup> UN General Assembly Declaration on the ‘Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty’, (A/RES/20/2131, 21/12/1965), <http://www.un-documents.net/a20r2131.htm> Accessed 21/11/2008.

<sup>78</sup> Obviously, one could also add the point that many of the political elites within these countries were responsible for grave human rights violations such as genocide and therefore opposed any measure that would make them accountable for their actions.

<sup>79</sup> In R J. Rummel’s quantitative comparative analysis, the author argues that, “In proportion to its population. Cambodia underwent a human catastrophe unparalleled in this century”. Rummel goes on to detail that an estimated 2,035,000 were murdered out of a population of around 7,100,000. *Death By Government, sixth edition* (London: Transaction Publishers, 2008), chapter nine. Whilst debates continue over whether the term genocide can be applied to the entire destruction, Ben Kiernan’s seminal study underscores the point that within this broad destruction, certain groups such as the Cham were destroyed with specific intent see Ben Kiernan, *The Pol Pot Regime, Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975 -79* (London: Yale University Press, 1995), esp. pp. 460 – 465. For a case study analysis of Cambodia which highlights the aforementioned definitional need to utilise the perpetrator viewpoint, see Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide. Analyses and Case Studies* (London: Yale University Press, 1990). pp. 398-407.

<sup>80</sup> Nicholas J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University press, 2000), pp.78-110, esp. pp. 89-100.

norm of non-intervention in the Cold War period. Not only was the conduct of the Vietnamese denounced but the UN General Assembly continued to recognise Khmer Rouge government when it had been ousted. As Kuper explains: "In September 1979, a majority of 71 (against 35, with 34 abstentions) voted to continue the assignment of the Cambodian seat to the ousted government...One can only ask – is genocide a credential for membership in the General Assembly of the United Nations?"<sup>81</sup> The question posed by Kuper is interesting in that it ties back in with Clark's understanding of rightful membership as obvious questions can be raised over the morality of such procedural decision making. This morally bleak reality leads Kuper into a vehement attack upon the UN in which it is claimed that the UN provided no more than a "deaf ear" to the genocides in Burundi, Uganda, Bangladesh and Cambodia not to mention the massacres of the Ibo in Northern Nigeria, the Arabs in Zanzibar, war crimes in Vietnam, mass violence in East Timor as well as Equatorial New Guinea.<sup>82</sup> The "deaf ear" therefore shown toward the genocide in Cambodia is representative of a broader UN paralysis with regard to confronting the crime of genocide in the Cold War era. However, despite Kuper's scathing assessment of the UN, he concludes: "the United Nations is the most appropriate body for the protection against, and punishment of, genocide".<sup>83</sup> The statement brings us back full circle as despite the fundamental problems embodied within the UN, it remains the cornerstone of international legitimacy and the best chance, at least at present, for preventing genocide in international relations.

In summary, the Cold War saw the legal obligation to prevent genocide banished on conception. The ideas of conditional sovereignty and genocide prevention did not sit well within the Cold War context. Perhaps this helps explain why the post-Cold War debate over humanitarian intervention focused on the UN Charter to the point the 1948 Genocide Convention was grossly overlooked. The UN Charter had stayed with international society throughout the Cold War, by which I mean it had stayed in the active conscience of state leaders and policymakers. This was simply not the case with the 1948 Genocide Convention. If it were any other legal convention, may be it would have been simply forgotten, however, as discussed, the Genocide Convention signifies more than just a legal obligation in that genocide is internationally regarded as the "crime of crimes" from a legal and moral

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<sup>81</sup> Leo Kuper, Genocide and its Political Use in the Twentieth Century (New Haven: Yale University Press, 1982), p. 173.

<sup>82</sup> *Ibid*, chapter nine.

<sup>83</sup> *Ibid*, p. 183..

perspective. It was the moral abhorrence felt toward the Rwandan genocide therefore that brought the crime of genocide back in from the Cold.

#### 5.4 Genocide and the post-Cold War legitimacy crisis

The end of the Cold War brought an end to the balance of terror that had plagued international society. The subsequent radical shift in the distribution of power heralded a new era in which international society's legal, moral, and constitutional expectations changed, thereby altering its collective understanding of international legitimacy. This was put into context on the 27<sup>th</sup> September 1991, as the Foreign Ministers of the P5 issued a joint declaration committing to a revitalised role for the UN within the context of a 'new world order'.<sup>84</sup> Problematically, the ambiguity of the US-led 'new world order' left fundamental questions unanswered regarding what would constitute *rightful conduct* and *rightful membership* in the post-Cold War era?<sup>85</sup> This helps explain why, within less than a decade, a legitimacy crisis arose in international relations. Although much has been written on the legitimacy crisis that arose in relation to the interventions in Kosovo and Iraq, it is proposed here that the occurrence of genocide in the post-Cold War era had a profound impact on the legitimacy process and in doing so created a *sovereignty-intervention-authority dilemma*. It was international society's failure to resolve this dilemma that saw a legitimacy crisis unfold within the context of Kosovo and ultimately spill over into Iraq. From this perspective, the impact of genocide upon the legitimacy crisis has to be factored into our current understanding in order to help further international society's ability to resolve the legitimacy crisis (this will be discussed in Chapter Six). Yet prior to analysing the impact of genocide upon the legitimacy process, it is important to address the problems embodied in the post-Cold War 'new world order'.

To understand how tensions arose within the legitimacy process let us first of all consider the *sovereignty-intervention debate* within the context of *rightful conduct*. Primarily, a tension arose as international society became divided over the potential role for *humanitarian*

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<sup>84</sup> For a discussion upon the revitalised role of the UN see Boutros, B. Ghali 'Peacemaking and Peacekeeping for the New Century' in Olara, A. Otunnu, and Michael Doyle, Peacemaking and Peacekeeping for the New Century (Oxford: Rowman and Littlefield, 1998), chapter one. There has been much written on the post-Cold War 'new world order', for a relevant overview of the debates involved see Michael Barnett's review essay, 'Bringing in the New World Order, Liberalism, Legitimacy and the United Nations', World Politics (vol. 49, no. 4, 1997, pp. 526 – 551).

<sup>85</sup> It is worth stressing here that Ian Clark provides a detailed analysis of international legitimacy in contemporary international society and in doing so addresses many aspects that go beyond the parameters of this analysis, see Clark, Legitimacy in International Society, pp. 155 – 256.

*intervention* in a post-Cold War era. To put this into context let us consider the historic consensus forged over the plight of the Kurds in northern Iraq. UN Resolution 688 seminally authorised Operation Provide Comfort in northern Iraq, which as Alex Bellamy explains: “marked a revolutionary moment in international society because it *implied* that human suffering could constitute a threat to international peace and security and hence warrant a collective armed intervention by the society of states”.<sup>86</sup> In essence, the flexibility of the post-Second World War script allowed the P5 to weave the thread of collective interest between the UN Charter’s commitment to international peace and security, with the issue of human rights violations *within* states. Yet as Bellamy states, the Resolution only *implied* that human suffering could constitute a threat to international peace and security. Resolution 688’s potential therefore for establishing the norm of humanitarian intervention in international relations remained unfounded, for as Wheeler explains, the threat of a Soviet veto upon the resolution signalled consensus through “acquiescence” rather than “tacit legitimisation”.<sup>87</sup>

The example illustrates how a deep-seated problem began to arise as the ‘new world order’ embodied a highly ambiguous understanding of rightful conduct. Resolution 688 masked an underlying tension as the P5 upheld alternative legal, moral, and constitutional views of what *should* constitute rightful conduct in the post-Cold War era. On the one hand, China and Russia adopted a more pluralistic commitment to absolute sovereignty and non-use of force in international relations.<sup>88</sup> The legal right of sovereignty was therefore seen to be absolute. On the other hand the US, the UK and France tended to espouse a more solidarist commitment to conditional sovereignty and the morality of humanitarian intervention.<sup>89</sup> Thus, there was a clash of norms within the legitimacy process as the legality of sovereignty clashed with the morality of intervention. At the same time, constitutional expectations altered as it was evident that something had to be done about the increasing number of

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<sup>86</sup> Alex Bellamy, ‘Humanitarian Responsibilities and Interventionist Claims in International Society’, Review of International Studies (vol. 29, no. 3, 2003, pp. 321-340) p. 325. Emphasis added.

<sup>87</sup> Wheeler, Saving Strangers, pp.154-155.

<sup>88</sup> For a highly relevant analysis of the Chinese and Russian perspectives on this matter see, S. Neil MacFarlane, ‘Russian Perspectives on Order and Justice’ and Rana Mitter, ‘An Uneasy Engagement: Chinese Ideas of Global Order and Justice in Historical Perspective’, both in Rosemary Foot et al., (ed.), Order and Justice in international relations (Oxford: Oxford University Press, 2003), chapters seven and eight respectively.

<sup>89</sup> For such analysis see, Kalypso Nicolaidis and Justine Lacroix, ‘Order and Justice Beyond The Nation-State: Europe’s Competing Paradigms’ and John Lewis Gaddis, ‘Order versus Justice: An American Foreign Policy’, both in Rosemary Foot et al., (ed.), Order and Justice in international relations, chapters five and six respectively.



conflicts *within* states. This was explicit within the context of Somalia as the UN authorised intervention signified an agreement amongst the P5 that certain internal matters warranted international intervention. Yet once again, the intervention masked an underlying tension regarding sovereignty-intervention, for as Wheeler highlights, the intervention in Somalia gained support precisely because the UNSC agreed that since Somalia was a failed state it did not qualify as a sovereign state.<sup>90</sup> Accordingly, the right of sovereignty was not seen as an applicable legal obstacle that could hinder the morality of intervention. The division amongst the P5 therefore reflected a deeper division international society regarding the compatibility of order and justice in the post-Cold War era. This ultimately hindered international society's ability to forge a common understanding of rightful conduct.

Furthermore, it is important to consider how the debate over *rightful conduct* began to impact upon the *authority* of the UN itself. Thomas G. Weiss puts this relationship into context when he claims that the expansion of the Chapter VII remit in the early 1990s had a detrimental impact upon the authority of the UN and the UNSC.<sup>91</sup> Primarily, Weiss criticises the ambiguity to be found within post-Cold War UN Resolutions as it is claimed that such uncertainty fuelled conflicting interpretations which ultimately undermined "the substantive provisions of the UN Charter's collective security system".<sup>92</sup> Thomas M. Franck puts such understanding into the context of international legitimacy when he claims that rules lose their determinacy, or in other words, their compliance pull, when they become unclear.<sup>93</sup> Problematically, states constructed a vague, ever-expanding, normative agenda that the UN simply did not have the capacity to fulfil. This had a detrimental impact upon the perceived authority of the UN itself.<sup>94</sup> With the wisdom of hindsight it seems clear that the 'new world order' needed to embody a clear understanding of what would constitute rightful conduct in a post-Cold War era, yet tragically, it did not. Perhaps the UNSC should have 'triggered' the 1948 Genocide Convention retrospectively to address the Kurdish crisis within Iraq, rather than attempt to make the link between human rights violations within states and international

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<sup>90</sup> Wheeler, *Saving Strangers*, 182 – 188.

<sup>91</sup> Thomas G. Weiss, *Military – Civilian Interactions* (Oxford: Rowman & Littlefield, 2005), p. 198.

<sup>92</sup> *Ibid.*

<sup>93</sup> Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990), p. 71.

<sup>94</sup> Weiss, *Military – Civilian Interactions*, pp. 198 – 199.

peace and security.<sup>95</sup> The point here is not to suggest that a case cannot be made for such interventions, but that the legal foundations of such interventions were largely unsubstantiated.<sup>96</sup> Such legal ambiguity did nothing to resolve the tension that was arising regarding the legality of sovereignty versus the morality of intervention which as Weiss noted above only acted to erode the authority of the UN system.

It is here that the Rwandan genocide is of relevance as it acted as a catalyst that brought the sovereignty-intervention-authority dilemma to the fore of international relations. To put this into the broader context of the post-Cold War era let us consider Michael Barnett and Martha Finnemore's analysis, *Genocide and the Peacekeeping Culture at the United Nations*.<sup>97</sup> The authors notably set the pretext for the UN [in]action in Rwanda as they explain that by mid-1993 many actors inside and outside the UN were aware that the UN was "trying to do too much, too fast" which ultimately undermined the moral authority of the UN.<sup>98</sup> This led the Security Council and the Secretariat to re-evaluate the role of the UN. As the authors explain, "the UN was already returning to the classic rules of peacekeeping when the U.S. Rangers died in Mogadishu on October 3, 1993".<sup>99</sup> The event seemingly reinforced the idea that the UN's rules of engagement should be constructed upon a commitment to *peacekeeping* rather than *peacemaking*. Since it was having difficulty doing the latter, it was running the risk of having its authority increasingly scrutinised. It is here that the paradox lies. Quite simply, UN's inaction over Rwanda represented a misunderstanding of the rules as there was a clear legal obligation to prevent genocide and in failing to fulfil this legal obligation, the UN and the UNSC's legitimate authority was eroded to the point that a justice deficit arose within the ordering structure of the UN.

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<sup>95</sup> Within the legal definition the Kurds would be considered an ethnic group and the intentional extermination of between 50,000 and 100,000 would surely qualify "as in whole or in part". Human Rights Watch, 'The Anfal Campaign against the Kurds', (New York: Human Rights Watch, 1993), <http://hrw.org/reports/1993/anfal/anfalint.htm> Accessed 28/05/08 This would also fit within Chapter Three's understanding of genocide as 50,000 would certainly fall within the remit of what constitutes a substantial part according to the understanding laid out in Chapter Three.

<sup>96</sup> This was put into explicit context as the link between democracy and international stability was put forward in an attempt to justify the UN authorised, US-led intervention in Haiti. For a comprehensive overview see, John R. Ballard., *Upholding Democracy: The United States Military Campaign in Haiti, 1994-1997* (Westport, Praeger, 1998).

<sup>97</sup> Michael Barnett and Martha Finnemore, *Rules For The World. International Organizations in Global Politics* (London: Cornell University Press, 2004), chapter five.

<sup>98</sup> *Ibid*, p. 131.

<sup>99</sup> *Ibid*, p. 133.

### 5.4.1 The impact of genocide

In 2006 Richard Falk addressed the issue of *International Law and the Future*, in which he stated, “The world precedent associated with using military force non-defensively in Kosovo, as well as, without a UN Security Council mandate, created a unilateralist momentum that culminated in the Iraq war of 2003”.<sup>100</sup> Although this is undoubtedly true, there are two points to consider. The first being that whilst the discourse is littered with unilateral rhetoric, what is actually meant here is a UN *unauthorised momentum* as it is clear that in the context of Kosovo (1999) and Iraq (2003), interventions were made by *unauthorised* coalitions rather than unilateral actors (albeit US-led and grounded upon an appeal to existing UN Resolutions). This underpinned the authority crisis to be discussed below. The second point to consider is the question: why did this unauthorised momentum emerge in the first place? The answer proposed here is the Rwandan genocide: as it is extremely difficult to imagine that any such unauthorised momentum (by which I mean UN unauthorised) could have occurred without the Rwandan genocide first of all eroding the perceived authority of the UN system. For example, the US quite clearly had the power and interest to intervene in Kosovo without UN authorisation, yet critically, it could not have gained the level of consensual support that it did, without the Rwandan genocide first of all eroding the perceived legitimacy of the UN and the UNSC.<sup>101</sup> This is not to suggest that NATO’s intervention gained universal support but that Rwandan genocide eroded the authority of the UN to the point that a tolerable consensus emerged in favour of unauthorised intervention.<sup>102</sup> This analysis, therefore, sets out an understanding of how the Rwandan genocide played an integral role in the legitimacy crisis that subsequently unfolded.

Reflecting upon the failure of the failure of the UN to prevent the Rwandan genocide, the Organisation of African Unity (OAU) report claimed: “The politics were simple enough: In October 1993, at the precise moment Rwanda appeared on the agenda of the Security Council, the US lost 18 soldiers in Somalia”.<sup>103</sup> The statement has to be read with caution as

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<sup>100</sup> Richard Falk, ‘International Law and the Future’, *Third World Quarterly* (vol. 27, no. 5. 2006, pp. 727 – 737), p. 731.

<sup>101</sup> For a critical take on the US motives for intervening in Kosovo, see Vassilis K. Fouskas, *Zones of Conflict, US Foreign Policy in the Balkans and the Greater Middle East* (London: Pluto Press, 2003).

<sup>102</sup> For a discussion on the level of consensual support over Kosovo see Wheeler, *Saving Strangers*, chapter eight and conclusion. Obviously the NATO members at the time appealed to existing Resolutions to try and authorise the intervention.

<sup>103</sup> Organisation of African Unity, ‘OAU Report Regarding Rwandan Genocide’, *The American Journal of International Law* (vol. 94. no. 4. 2000, pp. 692-695), p.693.

the OAU sought to distance itself from any significant level of accountability. However, in its analysis it does underline the UN's overdependence upon the US whose unwillingness to intervene was echoed by the rest of the P5 and the UN Secretariat, who as discussed, wanted to reduce the humanitarian remit of the UN. However, to go back to the understanding of genocide presented in Chapter Three, the Rwandan genocide did not represent an ad hoc accumulation of human rights violations but a process of destruction that was instigated, aided, and abetted by the Rwandan state.<sup>104</sup> In other words, the state became the very architect of the life it had classically been envisaged to prevent: "poor, nasty, brutish, and short".<sup>105</sup> As is well documented, around eight hundred thousand Tutsi and moderate Hutu were killed in less than one hundred days.<sup>106</sup> Whilst the focus here is on the impact of the genocide, rather than the genocide itself, it seems fair to suggest that if there was ever a cause for humanitarian intervention in the post-Cold War era, this was it. To return to the relationship between genocide and morality raised in Chapter Four, the Rwandan genocide acted as the 1990s paradigm example of an "abyss of horror" (to use J. K. Roth's phrase), or nothing did do.

If the Rwandan genocide was not bad enough in itself, one cannot overlook the genocide that took place in Srebrenica in 1995.<sup>107</sup> The timing could not have been worse as the UN was still recovering from the impact of the initial Rwandan extermination and still critically failing to deal with its consequences. The tragedies in Rwanda and Srebrenica illustrated perfectly the vast chasm between UN rhetoric and reality. This was explicit within the context of Srebrenica as UN Peacekeepers failed to prevent an estimated 7–8,000 Bosnian Muslims from being murdered within the "safe area" of Srebrenica between July 13<sup>th</sup> and July 19<sup>th</sup> 1995.<sup>108</sup> The UN's empty promise of safety was to have a profound impact upon

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<sup>104</sup> The Rwandan state is widely accepted to have orchestrated the genocide, in Michael Mann's seminal work, Mann identifies six levels of perpetrator, five of which made up the state which then utilised their position to mobilize the last level of perpetrator – the majority of Hutu. Michael Mann, *The Dark Side of Democracy, Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005), p.449.

<sup>105</sup> Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), p.84.

<sup>106</sup> Such statistics are obviously very difficult to calculate, for a discussion see Linda Melvern's analysis upon, 'the world's worst statistics', in Melvern, *Conspiracy to Murder: The Rwandan Genocide* (London: Verso, 2004), pp. 250 – 253.

<sup>107</sup> The events at Srebrenica have since and I would argue rightly so, been recognised as genocide. The Guardian Unlimited. 'Hague Rules Srebrenica was an act of Genocide'. (20/04/04) <http://www.guardian.co.uk/yugo/article/0,2763,1195525,00.html> Accessed 23/06/06.

<sup>108</sup> As part of Operation Joint Endeavour, Srebrenica was declared a "safe area" by the UN in 1993 in Resolution 819. United Nations Security Council Resolution 819, S/RES/819, (16/04/1993). <http://www.nato.int/ifor/un/u930416a.htm> This promise was then extended to towns of Tuzla, Zepa, Sarajevo,

the authority of the UN. This was put into context in the UN Secretary-General's subsequent report, *The Fall of Srebrenica*, in which it is claimed:

They were neither protected areas nor safe havens in the sense of international humanitarian law, nor safe areas in any militarily meaningful sense. Several representatives on the Council, as well as the Secretariat, noted this problem at the time, warning that, in failing to provide a credible military deterrent, the safe area policy would be gravely damaging to the Council's reputation and, indeed, to the United Nations as a whole.<sup>109</sup>

The statement supports Finnemore's and Barnett's aforementioned logic as it implies that the UN Secretariat warned that if the UNSC did not fulfil the promises it made then its credibility would be gravely damaged. Whilst such logic is understandable, it is also important to qualify such understanding. For example, *if* the UNSC had promised *not* protect the people of Srebrenica and then fulfilled this promise, this would not have somehow helped save the authority of the UN and the UNSC. Any such talk therefore of saving the credibility of the UN by promising to do less should be put into context. Although no one expects the UN to prevent all human rights violations, the UN has a legal obligation to prevent genocide. This legal obligation is not like other legal obligations because genocide is international regarded as the "crime of crimes" from both a legal and moral perspective. In essence, the promise to protect the victim groups in both Rwanda and Srebrenica was set out in the 1948 Genocide Convention and it was the failure of the UN therefore to fulfil this promise in the post-Cold War era that had a detrimental impact upon the authority of the UN and the legal rules that underpin it.

The impact of these genocides on the authority of the UN begins to illustrate why an *authority crisis* began to emerge in international relations. The UN's objective, of scaling back its humanitarian remit in order to help save its authority, quite simply, backfired. Within just weeks of the genocide in Srebrenica, David Reiff captured much the sentiment that has dominated the discourse ever since in his piece: 'Overhaul the U.N. or Retire It'.<sup>110</sup> Reflecting on the failure of the UN in Rwanda and Srebrenica, Reiff rightly states, "The

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Gorzade and Bihac in May 1993. See United Nations Security Council Resolution 824, S/RES/824, (06/05/1993). United Nations Security Council Resolution 819, S/RES/819, (06/05 1993). <http://www.nato.int/ifor/un/u930506a.htm> Both accessed 02/09/08.

<sup>109</sup> UN Doc., Report of the Secretary-General pursuant to General Assembly Resolution 53/55, 'The Fall of Srebrenica', UN Doc. A/54/549 (15/11/1999), p. 107.

<http://daccess-ods.un.org/TMP/7822729.34913635.html> Accessed 02/09/08.

<sup>110</sup> David Reiff, 'Overhaul the U.N. or Retire It', *Los Angeles Times* (22/087/1995), p. B9. See also, Adam Lebor, "Complicity with Evil". *The United Nations in the Age of Modern Genocide* (London: Yale University Press, 2006).

legitimacy of the United Nations does not derive from God, nor should the international security arrangements concluded in San Francisco 50 years ago be viewed as immutable. Perhaps the United Nations should be retained as is. Perhaps it can be improved. But perhaps it has outlived its usefulness".<sup>111</sup> The statement aptly captures the relationship between the second-order institution of the UN and the first-order institution of international legitimacy as it is important to remember that the UN is a product of international legitimacy rather than a producer of it. Whilst it is claimed here that the UN stands as the cornerstone of international legitimacy (for the reasons discussed above), international legitimacy is not a property and no institution can therefore claim to own it. To go back to Hedley Bull's understanding of institutions set out in Chapter Two, if the UN fails in its role of helping to facilitate the practice of international legitimacy then its legitimacy as a secondary institution will ultimately come into question.

At the same time, it is important to remember that the UN is only as powerful as the collective will of its member states. As Richard C. Holbrooke succinctly explained: "Blaming the U.N. for Rwanda is like blaming Madison Square Garden when the Knicks play badly".<sup>112</sup> Utilising such logic, General Romeo Dallaire (the Canadian head of UN forces in Rwanda) claimed: "All the member states of the UN have Rwandan blood on their hands".<sup>113</sup> Although this may be true, it is also clear that some states had more blood on their hands than others. As discussed, the power and privileged position of the P5 within the UNSC gives them a key role in steering international relations in a specific direction. Critically as the genocide unfolded in Rwanda, the P5 famously denied that genocide was even taking place in Rwanda, thus attempting to distance themselves from their legal obligation.<sup>114</sup> This had a detrimental impact on the authority of the UN, and more specifically the UNSC, as it was evident that the P5 utilised their position in 1994 to steer international relations in a specific direction: *away* from genocide prevention.

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<sup>111</sup> Reiff, 'Overhaul the U.N.'.

<sup>112</sup> Cited in Evans, Responsibility to Protect, p. 175.

<sup>113</sup> Cited in Elizabeth Neuffer, Key to My Neighbours House. Seeking Justice in Bosnia and Rwanda, (London: Bloomsbury, 2002), p.4. See also, Roméo Dallaire, Shake Hands With The Devil: The Failure of Humanity in Rwanda (New York: Carroll & Graf, 2004).

<sup>114</sup> For a range of views see, Karen E. Smith, Genocide and the Europeans (Cambridge: Cambridge University Press, 2010). Linda Melvern, A People Betrayed. The Role of the West in Rwanda's Genocide (London: Zed Books, 2009). Andrew Wallis, Silent Accomplice. The Untold Story of France's Role in Rwandan Genocide (London: I.B. Tauris, 2006). Samantha Power, A Problem From Hell. America and the Age of Genocide (London: Flamingo, 2003).

Such understanding helps explain why an *authority dilemma* arose within the context of Kosovo as the genocide in Rwanda and Srebrenica saw the authority of the UN eroded to the point that a tolerable consensus was forged regarding *unauthorised* NATO intervention. To explain this let us return to D. D. Caron's analysis in which he makes the point that the end of the Cold War saw the UNSC begin to function as many of its founding fathers had envisaged.<sup>115</sup> However, Caron goes on to explain that somewhat ironically, it was in this period that concerns arose regarding the power of the P5 and the unfairness of the veto.<sup>116</sup> The important point to consider is that this piece was published in 1993 and at the time these concerns were raised by peripheral actors in international society. The authority of the UNSC consequently remained a peripheral issue, for as Caron explained: "although there will potentially always be actors on the periphery alleging illegitimate governance, the allegation and resonance of significance depends upon the power of the actor to be influential".<sup>117</sup> The understanding set out by Caron helps us understand the legitimacy crisis that unfolded as it is evident that in the aftermath of the Rwandan genocide, concerns regarding the authority of the UN and the UNSC were no longer a peripheral issue. In sharp contrast, key actors in international relations began to question the morality of the legal system that underpinned the UN and the UNSC.

This could not have been any more explicit as the then UN Secretary-General, Kofi Annan, asked those who opposed NATO air strikes in Kosovo (on the grounds that they had no Security Council mandate), not to think of Kosovo but of Rwanda:

Imagine for one moment, in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi populations, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?<sup>118</sup>

The statement captures the unauthorised momentum that emerged in the aftermath of the Rwandan genocide as Anna questioned whether *rightful conduct* dictated *rightful authority*. By framing the problem within the context of Rwanda rather than Kosovo, Annan sought to underline the moral deficiency of a legal system that can act to prevent the [legal] prevention of genocide. From a legitimacy perspective, Annan put the clash of norms within the

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<sup>115</sup> Caron, 'The Legitimacy of the Collective Authority of the Security Council', p.566.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid. p.559.

<sup>118</sup> Kofi, Annan, 'Two Concepts of Sovereignty', *The Economist* (18/09/1999) <http://www.un.org/News/press/docs/1999/19990919990918.htm> Accessed 12/06/09.

legitimacy process into stark context as he appealed to the moral and constitutional expectation that the P5's right of veto should *not* act as a legal barrier to genocide prevention. Such sentiment was famously reiterated in Tony Blair's seminal speech on the "The Doctrine of the International Community".<sup>119</sup> Such examples highlight just how questions regarding the authority of the UN (with regard the use of force) took centre stage in international relations in the aftermath of the Rwandan genocide. Actors, such as the UK Prime minister and the UN Secretary-General, questioned the moral virtue of the legal rules that underpinned the UN, despite the fact that these legal rules served their personal interest. The Rwandan genocide, therefore, helps illustrate the theoretical point made in section 5.2: when states fail to fulfil their obligation to prevent genocide, the authority of the UN and the UN Security Council is eroded. That is unless, as within the context of the Cold War, international society's legal, moral, and constitutional expectations alter to the point that the UN is not even expected to prevent genocide.

Having outlined how an *authority crisis* arose in the aftermath of the Rwandan genocide, it is important to juxtapose this development with the *sovereignty-intervention crisis* that also arose following the Rwandan genocide. With regard to this latter point, quite simply, the Rwandan genocide highlighted the moral bankruptcy embodied within the idea of absolute sovereignty. In doing so, it raised both moral and constitutional questions regarding how international society should view the legal right of sovereignty in a post-Rwandan era. This was put into context in 2000 as Kofi Annan asked: "If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica-to gross and systematic violations of human rights that offend every precept of our common humanity?"<sup>120</sup> Perhaps somewhat tragically, Annan understated the issue at hand as he failed to acknowledge the legal obligation to prevent genocide embodied in the 1948 Genocide Convention. As a result, he failed to highlight that the drafters of the 1948 Genocide Convention never viewed genocide as a domestic issue. However, the statement does capture the tension that had arisen between the norms of legality, morality and constitutionality as it seemed both morally and politically indefensible to suggest that sovereignty could act as a barrier to genocide prevention. In many ways, it seems that the Rwandan genocide re-

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<sup>119</sup> Tony Blair, 'The Doctrine of the International Community', (24/09/1999), available at <http://www.number10.gov.uk/Page1297> Accessed 23/07/08.

<sup>120</sup> Cited in Gareth Evans, *The Responsibility to Protect*, p. 31.



sensitised international society to the horror of genocide. As discussed, the issue of genocide had been marginalised within the context of the Cold War as the pluralist rules of sovereignty and non-intervention were prioritised, this notably changed in the aftermath of Rwanda and Srebrenica.

To assess this change in international attitudes toward the idea of intervention let us consider the establishment of the African Union (AU) and the “right to intervene” embodied within its Constitutive Act of 2000.<sup>121</sup> This regional development is important from an international perspective because more than any other continent, Africa upheld an absolute understanding of sovereignty following the de-colonisation process, yet this radically altered in the aftermath of the Rwandan genocide. Significantly, the establishment of the AU, in 2000, signified a ‘u-turn’ in African attitudes toward humanitarian intervention as the AU rejected the ideas of absolute sovereignty and non-intervention that had been enshrined within the Organisation of African Unity’s Charter.<sup>122</sup> This was explicit as the African Union’s Constitutive Act set out an understanding of sovereign equality, yet went onto state: “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”.<sup>123</sup> Because of this, the AU’s Constitutive Act became the first international treaty to formally recognise the “right to intervene” in international law.<sup>124</sup> Obviously, the AU’s lack of capacity dictates that a functioning African collective security system remains a distant objective. However, the point to consider here is how this regional change in attitudes affected the sovereignty-intervention debate. As discussed in section three, newly formed sovereign states upheld a commitment to absolute sovereignty which dictated that humanitarian intervention, even within the context of genocide prevention, was denounced.

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<sup>121</sup> African Union, ‘African Union in a Nutshell’. Emphasis added. Available at [http://www.africaunion.org/root/au/AboutAU/au\\_in\\_a\\_nutshell\\_en.htm](http://www.africaunion.org/root/au/AboutAU/au_in_a_nutshell_en.htm) Accessed 26/06/06. For such analysis see Fantu Cheru, *African Renaissance. Roadmaps to the Challenge of Globalization* (London: Zed Books, 2002) pp. 203-204. See also, The Centre for Conflict Resolution, *Building an African Union for the 21<sup>st</sup> Century* (Policy Seminar Report, August 2005).

<sup>122</sup> For a relevant overview that places this development within the context of the R2P see Adele Brown, ‘Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?’ *House of Commons Research Paper* (17/06/2008). Available at <http://www.parliament.uk/commons/lib/research/rp2008/rp08-055.pdf> Accessed 10/12/09.

<sup>123</sup> African Union Constitutive Act, Article 4, principle (h), available at [http://www.africa-union.org/root/au/Aboutau/Constitutive\\_Act\\_en.htm](http://www.africa-union.org/root/au/Aboutau/Constitutive_Act_en.htm) Accessed 21/05/2010.

<sup>124</sup> For such analysis see Evarist Baimu and Kathryn Sturman. ‘Amendment to the African Union’s Right to Intervene’. *African Security Review* (vol. 12, no 2. 2003), available at <http://www.iss.co.za/pubs/ASR/12No2/AfWat.html> Accessed 14/06/06.

The Rwandan genocide therefore had a profound impact in that it altered the attitudes of many newly formed states in Africa and indeed around the world. When one recalls that international legitimacy is dependent upon a *tolerable consensus* being forged, the pro-interventionist stance of African leaders in the post-Rwandan era is significant. Moreover, it seems fair to suggest that this regional development reflects the broader pro-interventionist movement that arose following the Rwandan genocide which ultimately culminated in the 2005 UN endorsement of the Responsibility to Protect (see Chapter Six).

Of course, this is not to say that every state in international society favoured the idea of humanitarian intervention in the post-Rwandan period. As T. G. Weiss notes, within the context of Kosovo, China, Russia and much of the third world remained hostile not only to humanitarian intervention in Kosovo but also to Kofi Annan for raising the debate in the UN General Assembly.<sup>125</sup> The division therefore is central in our understanding of the *legitimacy crisis* as it highlights that by the time the events within Kosovo unfolded, international society had not managed to forge a collective understanding of rightful conduct. This was put into context as advocates of intervention in Kosovo argued that UN Resolution 688 had established the rule of intervention in international law,<sup>126</sup> yet this was refuted by Moscow.<sup>127</sup> Such understanding neatly brings us back to the relationship between rightful conduct and rightful authority.<sup>128</sup> It is important therefore to juxtapose the impact that the Rwandan genocide had upon the idea of absolute sovereignty (thereby creating a sovereignty-intervention dilemma) with the impact the genocide had upon the authority of the UN (thereby creating an authority dilemma). It is from this perspective that one can see how the Rwandan genocide laid the blueprint for the *legitimacy crisis* that unfolded as it created a *sovereignty-intervention-authority* dilemma in international relations that international society failed to resolve by the time the Kosovo crisis took centre stage in 1999. Critically,

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<sup>125</sup> Thomas. G. Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2007), p. 97. For a specific overview from a 'developing' perspective see, Ramesh Thakur, 'Developing Countries and the Intervention-Sovereignty Debate', in Richard M. Price, and Mark, W. Zacher, *The United Nations and Global Security* (New York: Palgrave, 2004), chapter twelve.

<sup>126</sup> See a discussion of Baroness Symons claim in Tim Dunne and Nicholas J. Wheeler, 'Blair's retain: a force for good in the world?' Karen E. Smith, and Margot Light, (ed.), *Ethics and Foreign Policy* (Cambridge: Cambridge University Press, 2001), p.176.

<sup>127</sup> Vassilis K. Fouskas and Bulent Gokay, *The New American Imperialism. Bush's War on Terror and Blood for Oil* (London: Praeger Security International, 2005), p.174.

<sup>128</sup> It is to be reminded here that when I speak of a crisis within the principle of rightful membership I mean that the legal rules underpinning the elite membership status of the P5 within the UN came under intense moral and constitutional scrutiny.

the Rwandan genocide exposed the failings of the UN system which, as discussed, led actors such as Annan to question whether rightful conduct ensured rightful authority. Famously, Annan left this question unanswered, the problem is, as will be discussed in the next chapter, it remains unanswered.<sup>129</sup>

A final point to consider is the conclusion drawn by *The Independent International Commission on Kosovo* (IICK) in 2001. As stated in Chapter Four, the IICK notably concluded that NATO's intervention was "illegal yet legitimate".<sup>130</sup> At face value, the conclusion drawn suggests that there is a tension between legality and legitimacy; however from the understanding of legitimacy presented in Chapter Four, since legitimacy cannot exist independently of law, it is more accurate to understand the report's findings as a clash between legality and morality. Within Clark's analysis of the Kosovo report, he explains: "the term legitimacy needs to be transcribed as a coded word for morality, thus capturing the tension between morality and legality".<sup>131</sup> The sentiment expressed by Clark is supported by the reports rationale, as it states: "The Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression".<sup>132</sup> The statement underpins the Commission's rationale, that because the military intervention was deemed to be a last resort that brought an end to a humanitarian catastrophe, it was seen as illegal, yet just. The Report upheld the sentiment found within the solidarist wing of the English School as it subscribes to the idea that within such extreme circumstances, the morality of intervening should trump the legality of sovereignty.<sup>133</sup>

From this perspective, one could argue that the report answers the question posed by Annan. In stating that within such grave circumstances, morality trumps legality, the report implies that rightful conduct does indeed dictate rightful authority. Yet to draw such a conclusion is misleading as the report goes onto explain:

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<sup>129</sup> This is a central concern discussed within, *Review of International Studies*, 'Force and Legitimacy in World Politics', *Review of International Studies*, special edition, (vol. 31, supplement S1. 2005).

<sup>130</sup> Independent International Commission for Kosovo, *Kosovo Report*, p. 4.

<sup>131</sup> Clark, *Legitimacy in International Society*, p. 212.

<sup>132</sup> Independent International Commission for Kosovo, *Kosovo Report*, p. 4.

<sup>133</sup> For such analysis see Wheeler, *Saving Strangers*, p. 41. Of course it is not just English School scholars who uphold such a view, see, James T. Johnson. *Morality and Contemporary Warfare* (London: Yale University Press, 1999), p.117.

If the Kosovo war is employed as a precedent for allowing states, whether singly or in a coalition, to ignore or contradict the UNSC based on their own interpretation of international morality, *the stabilizing function of the UNSC will be seriously imperilled*, as will the effort to circumscribe the conditions under which recourse to force by states is permissible.<sup>134</sup>

The statement explains that the unilateral intervention should *not* set a precedent in international relations because the stabilizing function of the UNSC remains the best way of ensuring international stability within an anarchical realm dogged by competing moral claims. Although this is true, the Commission failed to acknowledge that the UNSC is a product of international legitimacy, not a producer of it. Its value is therefore dependent upon its ability to fulfil its function. To return to the relationship between genocide and international legitimacy, it is evident that in the aftermath of the Rwandan genocide many actors felt that the UNSC was not fit for purpose. The Commission, which focused on Kosovo rather than Rwanda, therefore failed to address how genocide impacts on the secondary institution of the UN.

## 5.5 Conclusion

To paraphrase Winston Churchill: the United Nations is the worst form of international organisation apart from all those others that have been tried before.<sup>135</sup> The statement attempts to convey the message that whilst the UN has its problems it remains the cornerstone of international legitimacy for the simple fact that international society has failed to forge a more legitimate alternative. In the post-Second World War era, international society institutionalised its collective understandings of order and justice into the UN via a process of legitimacy. Despite its flaws, the UN stands as the cornerstone of international legitimacy and the UNSC acts as the stabilising function in international relations. Problematically, the success of the UN and the UNSC is largely dependent upon the actors involved, yet it is evident that at times the actors involved hinder the UN more than they help it. It is here that concerns arise regarding rightful conduct for it is evident that when states do not establish a clear understanding of rightful conduct, conflicting interpretations and tensions arise within the legitimacy process. As stated, the post-Second World War script embodies certain fundamental problems that were exposed by the post-Cold War debate over humanitarian intervention. International society's failure to answer these questions resulted

<sup>134</sup> Independent International Commission for Kosovo, *The Kosovo Report*, p. 174. Emphasis added.

<sup>135</sup> Winston Churchill is said to have stated, "Democracy is the worst form of government, except for all those other forms that have been tried from time to time." (From a House of Commons speech on 11/11/1947). This was taken from [http://wais.stanford.edu/Democracy/democracy\\_DemocracyAndChurchill\(090503\).html](http://wais.stanford.edu/Democracy/democracy_DemocracyAndChurchill(090503).html) Accessed 06/06/2009.

into a crisis emerging as states divided over what constituted rightful conduct in a post-Cold War era. This ultimately saw questions arise regarding the authority of the UN and the UNSC itself.

It is here that the crime of genocide is of specific relevance. As discussed in Chapter Four, genocide holds a special relationship with the institution of international legitimacy because it is internationally recognised as the “crime of crimes” from both a legal and moral perspective. Such understanding helps us see how genocide does in fact pose a *transnational threat* to international society for as discussed, genocide, more than any other crime, erodes the authority of the UN (which acts as the cornerstone of international legitimacy) and the UNSC (which acts as the stabilising function in international relations). Accordingly genocide poses a threat to international order as it erodes the legitimate authority of the ordering principles that underpin international relations. This is exactly what happened within the context of Rwanda as the international society’s failure to fulfil its legal obligation eroded the authority of the UN and UNSC to the point that NATO could challenge the authority of the UN (with regard to use of force) within the context of Kosovo. Whilst the actors involved did not explicitly reject the UN, the level of consensual support that arose in international society, did so, because the Rwandan genocide had first of all eroded the perceived authority of the UN and UNSC.

It is important therefore to consider that anything that undermines the authority of the UN to the point that other sources of power can, at least attempt, to challenge its authority, poses a threat to international stability. This takes us back to the understanding raised by Kofi Annan at the start of the chapter: “If the collective conscience of humanity cannot find in the United Nations its greatest tribunal, there is a grave danger that it will look elsewhere for peace and for justice”.<sup>136</sup> Although Annan’s appeal to the idea of humanity does not mean that humanity actually exists, it is clear that states see the UN as a vehicle in which international codes of legitimate practice can be established and adhered to. If, for whatever reason, states perceive that the UN is hindering rather than helping the practice of international legitimacy then there is a genuine risk that states will begin to look elsewhere. The worry here is not that unilateral intervention will lead to genocide prevention, but that a weakened UN increases the

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<sup>136</sup> Cited in the International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, (Ottawa: International Development Research Centre, 2001), available at <http://www.iciss.ca/report2-en.asp#dilemma> Accessed 09/05/09.

likelihood of ad hoc challenges to its authority, which may cause a more systemic breakdown of international order. It is from this perspective that we can see genocide as a threat to international stability, precisely because it undermines the legitimate authority of the UN more than any other crime.

To understand genocide as a transnational threat, is important to consider that in acknowledging that the UN only contributes to international legitimacy, the UN acts as somewhat of a red herring. It is the special relationship between genocide and international legitimacy that is of relevance. For example, let us contemplate the idea that international society decided to abandon the UN. Although this may seem highly unlikely, it is nevertheless feasible. However, what is less feasible is the thought that international society could then go on to forge an alternative understanding of order and justice in a post-UN world without having a commitment to genocide prevention embodied within it. As discussed in Chapter Four, whilst this is theoretically possible, in practice, such an outcome would mean international society constructing a legal, moral, and constitutional world so alien to the present that it is practically impossible to comprehend. In other words, it is extremely difficult to conceive that in a post-Holocaust era, international society could construct a collective understanding of order and justice that does not embody a commitment to genocide prevention. From this perspective, genocide prevention is about more than 'just' saving strangers; it is about saving the perceived value of international law, morality, and politics. This is something that policymakers need to consider carefully.

To put this into the broader context of international relations, the unauthorised momentum that arose in the aftermath of the Rwandan genocide ultimately spilled over into Kosovo and then Iraq. Therefore, we can see how the erosion of the UN's authority in the context of the Rwandan genocide had broader implications as this paved the way for states to challenge the authority of the UN in an ad hoc manner. Whilst France, Russia, and China opposed the 2003 US-led intervention in Iraq, and the US itself subsequently opposed the 2008 Russian intervention in Georgia, in attempting to justify their opposition, the P5 appealed to the same rules that they themselves continually fail to uphold. Although no-one expects the P5 to be able to prevent all human rights violations, it is clear that genocide cannot be seen as just another policy option that should only be opted for when there are national interests at stake. Because of the relationship that genocide holds with international law and international

morality, when genocide occurs in international society, the value of these ideas is eroded. Accordingly, genocide prevention is very much within a states national interest, that is, if states value international stability.

With this in mind, this thesis shifts its attention to the 2005 World Summit's endorsement of the Responsibility to Protect as it is evident that international society endorsed the R2P in an attempt to address many of the questions that were raised by the legitimacy crisis. The problem being that since genocide was not factored into its understanding of the legitimacy crisis, many fundamental questions remain unresolved which suggests that it may only be a matter of time before another legitimacy crisis emerges.

## 6 The Responsibility to Protect: Resolving the Legitimacy Crisis?

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“With the possible exception of the prevention of genocide after World War II, no idea has moved faster or farther in the international normative arena than the Responsibility to Protect.”, Thomas G. Weiss.<sup>1</sup>

The World Summit in 2005 marked the sixtieth anniversary of the United Nations. Set against the backdrop of the ‘UN Millennium Development Goals’, ‘9/11’ and the ‘War on Terror’, the Summit saw questions surrounding UN reform at the centre of international relations.<sup>2</sup> Although the Summit failed to address many critical aspects of UN reform, the UN General Assembly did forge a consensus regarding the need to endorse the Responsibility to Protect principle (R2P). The concept is of specific relevance to this analysis as it attempted to address the sovereignty-intervention-authority dilemma that underpinned the legitimacy crisis over Kosovo. Initially conceived in 2001 by the International Commission on Intervention and State Sovereignty, the R2P concept was subsequently endorsed by the UN General Assembly within just four years. As explained by Weiss above, the R2P shares a common ground with the 1948 Genocide Convention in that both ideas were endorsed within four years of their conception. In essence, both reflect international normative ‘knee-jerk’ reactions to the mass atrocity crimes of the Holocaust and the Rwandan genocide. However, unlike the 1948 Genocide Convention, the R2P was born into a more hospitable security environment than that of the Cold War period. As a result, the momentum that was forged in the years that preceded the endorsement of the R2P did not get marginalised in the same way that the anti-genocide norm did nearly sixty years earlier. Despite certain difficulties, the R2P has emerged as the ‘master concept’ (with regard to mass atrocity crimes) over the last five years.<sup>3</sup> As a result, the R2P has played a significant role in shaping international society’s understanding of rightful conduct and rightful authority, yet as one would expect, problems naturally arise as the R2P consensus was forged in such a hurried manner.

It is here that that the crime of genocide is of relevance. Problematically, international society failed to factor genocide into its understanding of the legitimacy crisis and therefore

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<sup>1</sup> Thomas G. Weiss ‘R2P, After 9/11 and the World Summit’, Wisconsin International Law Journal (vol. 24, no. 3, 2006, p. 742-760), p.742.

<sup>2</sup> Kofi Annan described the Summit as a San Francisco moment, see Kofi Annan, “In Larger Freedom”: Decision Time at the UN’, Foreign Affairs (vol. 84, no. 3, 2005, pp. 63–74).

<sup>3</sup> For and relevant overview see Alex J. Bellamy, ‘The Responsibility to Protect-Five Years One’, Ethics and International Affairs (vol. 24, no. 2, 2010, pp. 143-169).



failed to address certain fundamental issues which will undoubtedly cause tensions to arise in the legitimacy process in the future. In other words, not enough consideration was given to the relationship between the R2P, the 1948 Genocide Convention, the issue of genocide prevention, and the legitimacy crisis. For example, Jan E. Méndez (former UN Special Advisor on the Prevention of Genocide), stated: “I consider that the current debate on the concept of the so-called ‘responsibility to protect’ must not obscure the existing international legal obligation to prevent genocide”.<sup>4</sup> The statement reflects the fact that the R2P movement failed to specifically engage with the crime of genocide. This grave omission leaves us questioning: to what extent does the R2P aid and/or hinder the prevention of genocide?

This is important, not just from a genocide perspective, but also from a legitimacy perspective, for as discussed in Chapter Five, the occurrence of genocide in the post-Cold War era had a profound impact on the legitimacy crisis that developed. The problem therefore is that because the impact of genocide on the sovereignty-intervention-authority dilemma was not factored into understandings of the legitimacy crisis, the R2P failed to resolve the legitimacy crisis because it failed to address certain pivotal issues relating to genocide and how these expose tensions in the legitimacy process. It should be noted that the purpose of this chapter is not to offer a prescriptive remedy as such, but to highlight that a more informed understanding of the relationship between the R2P, the 1948 Genocide Convention, genocide prevention, and the legitimacy crisis is needed in order to help create long-term international stability. With this in mind, the chapter will be structured as follows. Primarily, the chapter sets out an understanding of what the R2P means and then shifts its focus onto analysing the R2P from a legitimacy perspective. This approach will assess the positive and negative impacts of the R2P on shaping international society’s understanding of rightful conduct (section 5. 7) and rightful authority (section 5. 8), prior to offering a final overview of the R2P in the chapter’s conclusion. With this in mind, let us turn to the most pressing question.

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<sup>4</sup> Juan. E. Mendez, ‘The United Nations and the Prevention of Genocide’, in Ralph Henham and Paul Behrens (ed.), The Criminal Law of Genocide. International, Comparative and Contextual Aspects (Surrey: Ashgate, 2007), p. 228.

## 6.1 What is the Responsibility to Protect?

In its initial conception, the International Commission on Intervention and State Sovereignty (ICISS) presented the R2P concept in a 90 page report entitled the *Responsibility to Protect* in December 2001.<sup>5</sup> In its subsequent transitional period the R2P concept was then reanalysed and reaffirmed within the 2004 UN Secretary-General's High Level Panel Report: *A More Secure World, Our Share Responsibility*, as well as the 2005 UN Secretary-General Report: *In Larger Freedom: Towards Development, Security and Human Rights for All*, prior to being endorsed by the UN General Assembly at the 2005 World Summit.<sup>6</sup> Critically, by the time it had been endorsed by the UN General Assembly, the R2P concept had been stripped down to just two paragraphs. Primarily, paragraph 138 sets out the first dimension of the R2P:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and act in accordance with it. The international community should as appropriate, encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning system.<sup>7</sup>

The statement underlines a two-fold *domestic responsibility*: states have to *protect* their populations (not just citizens), from genocide, war crimes, ethnic cleansing, and crimes against humanity and also *prevent* these crimes from arising (including their incitement). The R2P principle, therefore, clearly constrains the idea of absolute sovereignty as the right of sovereignty is bound with this twofold responsibility to prevent and protect populations from these specific four crimes. As a result, the principle embodies a solidarist ethic whereby sovereignty is seen to be conditional. As Weiss explains: "If a state is unwilling or unable to exercise its protective responsibilities for the rights of its own citizens, it temporarily forfeits its moral claim to be treated as legitimate".<sup>8</sup> In addition to this domestic responsibility, the paragraph also stipulates an *international responsibility*. Quite simply, it is feasible that some states may be unable (rather than unwilling) to prevent these crimes from occurring and

<sup>5</sup> Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001). <http://www.iciss.ca/report-en.asp> Accessed 23/09/09.

<sup>6</sup> See Report of the UN Secretary-General's High Level Panel on Threats, Challenges and Change, *A More Secure World. Our Shared Responsibility* (United Nations Foundation, 2004) <http://www.un.org/secureworld/> Report of the Secretary-General, *In Larger Freedom. Towards Security, Human Rights and Development* (United Nations, 2005), <http://www.un.org/largerfreedom/> Both Accessed, 23/09/09.

<sup>7</sup> UN General Assembly, '2005, World Summit Outcome Document' p.30.

<sup>8</sup> Thomas, G. Weiss, *Military – Civilian Interactions* (Oxford: Rowman & Littlefield, 2005), p. 214.

it is here that the “international community” has a responsibility to “encourage and help states exercise this responsibility”. Accordingly, the endorsement of the R2P holds significant implications for sovereignty-intervention dilemma and the debate over *rightful conduct*.

Yet, critically, this is only one side of the coin, as paragraph 139 extends the international dimension of the R2P further:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared, to take collective action, in a timely and decisive manner through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter under international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations for genocide war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.<sup>9</sup>

Whilst paragraph 138 stipulated the international responsibility to help states *protect* and *prevent*, paragraph 139 brings in the international responsibility to *react* and in doing so provides a framework for humanitarian intervention. As one would expect, paragraph 139 remains the most contested. States remain hostile to the idea of humanitarian intervention for fear that powerful states will speak with a moral tongue whilst pursuing ulterior motives.<sup>10</sup> As Gareth Evans explains, in 2008, such hostility saw a number of Latin American, Arab, and African delegates take to the floor at the UN to declare that the “World Summit rejected the R2P in 2005”.<sup>11</sup> The declaration was a straightforward denial of fact, yet this underlines the resentment that many states still feel toward the idea of humanitarian intervention. For example, as stated in Chapter Four, many African states boldly adopted the idea of humanitarian intervention in the African Union (AU) Constitutive Act of 2001. This development has since been identified as a major stepping stone toward forging the consensus needed to pass the R2P. However, it is also clear that this African pro-

<sup>9</sup> UN General Assembly, ‘2005, World Summit Outcome Document’, p.30.

<sup>10</sup> The leading text on the alternative IR positions within this debate remains, Nicholas, J. Wheeler, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

<sup>11</sup> Gareth Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All* (Washington: Brookings Institution Press, 2008). p. 52.

interventionist stance has waned over the last five years.<sup>12</sup> This reflects a broader R2P 'backlash' in international society as some states have tried to backtrack on their R2P commitments. Obviously, this suggests scope for tensions to arise within the legitimacy process in the future.

Louise Arbour provides us with insight into why such tension may have arisen as she explains that the international pressure to operationalise the R2P arose despite the concept not being fully understood.<sup>13</sup> To gauge this further it is important to consider how the R2P has 'snowballed' since its endorsement in 2005. To offer a brief chronological overview, the R2P was unanimously endorsed by the UN General Assembly in 2005, before being endorsed by the UN Security Council in 2006 and invoked regarding Darfur in Resolution 1706.<sup>14</sup> In 2006 after a co-ordinated effort led by many leading NGO's, 'The Responsibility to Protect-Engaging Civil Society' project (R2PCS) was established at the Institute for Global Policy in New York. In December 2007, the UN appointed Edward Luck as the first UN Special Advisor on the R2P who works alongside the UN Special Advisor on the Prevention of Genocide whose position was established in 2004 and reaffirmed as part of the R2P concept in 2005.<sup>15</sup> In 2008 the R2PCS then advanced the R2P concept worldwide with seven informative global consultative roundtables.<sup>16</sup> In 2009, the first academic journal on the R2P came into publication, *The Global Responsibility to Protect* (edited by Alex Bellamy) whilst the 'Global Centre for the Responsibility to Protect' at the Ralph Bunche Institute for International Studies in New York (which has seen further affiliations arise since) was also established.<sup>17</sup> The multitudes of actors listed here highlights the fact that R2P advocates do

<sup>12</sup> Kasaija Phillip Apuuli, 'The Ambivalence of the African Union Leaders to Punish Impunity', paper presented at the International Network of Genocide Scholars, Second Global Conference on Genocide at the University of Sussex, England, 28<sup>th</sup> June – 1<sup>st</sup> July 2010. The panel was chaired by Nigel Eltringham.

<sup>13</sup> This is taken from a panel set up by the Council on Foreign Relations, 'Preventing Mass Atrocities', (12/06/2007) in which Louise Arbour, the then UN Commissioner for Human Rights, answers questions from specialists such as Lee Feinstein and Roberta Cohen.  
[http://www.cfr.org/publication/13580/preventing\\_mass\\_atrocities\\_rush\\_transcript\\_federal\\_news\\_service.html?breadcrumb=%2Fmedia%2Ftranscripts](http://www.cfr.org/publication/13580/preventing_mass_atrocities_rush_transcript_federal_news_service.html?breadcrumb=%2Fmedia%2Ftranscripts) Accessed 10/01/09.

<sup>14</sup> The UNSC endorsed the principle first: UN Security Council Resolution 1674, 'Protection of civilians in armed conflict' (S/RES/1674, August 2006). The UNSC then raised the R2P in the context of a Resolution on the events in Darfur: UN Security Council Resolution 1706, 'Reports of the Secretary-General on the Sudan', (S/RES/1706, August 2006). Both can be accessed at [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm) Both accessed 09/02/09.

<sup>15</sup> UN General Assembly, '2005, World Summit Outcome Document', p.30.

<sup>16</sup> Responsibility to Protect Engaging Civil Society Interim Report, 'Global Consultative Roundtables on the Responsibility to Protect: Civil Society Perspectives and Recommendations For Action' (New York: World Federalist Movement-Institute for Global Policy, 2008), p. 2.

<sup>17</sup> The Centre can be found at <http://globalr2p.org/> See also, the Asia-Pacific Centre for the Responsibility to

not want the R2P to succumb to the same fate that the 1948 Genocide Convention. This is to be commended as the R2P as it has been linked to the crises in Zimbabwe, Burma, Georgia, the Dominican Republic of Congo, Sri Lanka, Kenya, Guinea, Niger, and most recently Kyrgyzstan.<sup>18</sup> However, as stated, concerns arise as the R2P has 'snowballed' to the point that it has become the 'master concept' (in relation to mass atrocity crimes), yet there seems to have been little consideration given to how the R2P impacts upon international society's [in]ability to prevent genocide. This holds implications for international society's [in] ability to resolve the legitimacy crisis.

It is here that the importance of international legitimacy comes back to the fore. At the heart of the R2P discourse lays the central question: what kind of responsibility does the R2P entail? As Louise Arbour explains, although the R2P may say a lot, "there are lots of things it doesn't say. First of all, it doesn't say what kind of responsibility it is, the responsibility to protect. Is it a moral responsibility? Is it a political responsibility? Or is it a legal one?"<sup>19</sup> This line of questioning is highly intriguing as it explicitly reflects the three norms set out by Ian Clark in his analysis of international legitimacy. Indeed, the R2P discourse itself seemingly reaffirms the theoretical strength of Clark's approach from an empirical perspective. To return to Clark's analytical framework and the norms of legality, morality, and constitutionality, one cannot help but feel that the real question at the heart of the R2P debate is whether the R2P is legitimate? Whilst actors have discussed the nature of the R2P and its impacts from a legal, moral, and political perspective, a more informed understanding can be achieved by bringing such perspectives together within a legitimacy framework. The focus here is on analysing the R2P from a legitimacy perspective which, it is hoped, will provide a richer conceptual analysis. Quite simply, the R2P embodied international society's attempt to resolve the sovereignty-intervention-authority dilemma that underpinned the legitimacy crisis. The question, therefore, is to what extent did the R2P resolve the tensions in the legitimacy process, thereby aiding the likelihood of international stability.

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Protect', [http://www.r2pasiapacific.org/index.php?option=com\\_content&task=view&id=1&Itemid=6](http://www.r2pasiapacific.org/index.php?option=com_content&task=view&id=1&Itemid=6) Both accessed 12/02/2009

<sup>18</sup> For such analysis see The International Coalition For The Responsibility to Protect, 'R2P Crises' <http://www.responsibilitytoprotect.org/index.php/crises> Accessed 23/06/2010.

<sup>19</sup> Louise Arbour, 'Preventing Mass Atrocities',

## 6.2 Rightful conduct

Despite the fact that the R2P failed to address certain fundamental issues regarding genocide prevention (to be discussed below), it did address some of the key problems to be found in the post-Cold War debate over humanitarian intervention. Addressing the positive aspects that can be drawn from the R2P endorsement, this section will highlight how the R2P eased the debate over sovereignty-intervention by appealing to ideas such as a universal moral minimalism, high threshold, non-military force, and conditional sovereignty. However, the chapter then shifts its focus to a more critical analysis of how the R2P failed to engage with issues surrounding implementation and legality whilst adding the potentially highly problematic R2P pre-requirement of a “manifest failure”. As a result, careful consideration needs to be given to how the R2P impacts, in both positive and negative ways, on international society’s understanding of rightful conduct.

Let us first of all consider the victim-based focus embodied in the R2P concept. Significantly, the R2P set out to emphasise the *rights of the victims* rather than the *rights of the interveners*. This approach became an integral part of the language used in the phraseology “the responsibility to protect”, as Gareth Evans explains:

This turned the “right to intervene” language on its head, focusing not on any rights of the great and powerful to throw their weight around but rather on the responsibility of all states to meet the needs of the utterly powerless. In the first instance, the responsibility to protect a country’s people from mass atrocity crimes lay with its own government; but if it proved unable or unwilling to do so, a wider responsibility lay with other members of the international community to assist preventatively and, if necessary, react effectively.<sup>20</sup>

The statement underpins the conceptual shift that lies at the heart of the R2P as its focus is *not* on the rights of the powerful (states) but on the rights of the powerless (victims). The language used was seen to be less divisive than the language used in the debate over humanitarian intervention. Just as the Brundtland Commission used the phrase “sustainable development” to navigate a middle-ground between environmentalists and developers, Evans hoped that the R2P terminology would provide the conceptual framework for allowing a common ground to emerge.<sup>21</sup> With regard to the construction of international legitimacy, it is evident that the R2P attempted to establish a clear moral foundation with its victim-based

<sup>20</sup> Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes*, p. 4.

<sup>21</sup> Gareth Evans, ‘The Responsibility to Protect: An Idea Whose Time Has Come.....and Gone?’ *International Relations* (vol. 22, no. 3, 2008, 283-298), p. 286.

approach. What is interesting here is that the 1948 Genocide Convention embodied the very same logic as it focused on the *rights of groups* rather than the *rights of interveners*. Thus, it would seem that the post-Cold War debate over humanitarian intervention seemingly lost its way in relation to this critical point. As we shall see, the R2P managed to overcome many of the problems found in the post-Cold War debate over humanitarian intervention by going back to the ideas embodied in the 1948 Genocide Convention.

This R2P's victim-based approach invoked a universal moral minimalist approach which had important implications for the debate surrounding *threshold*. Since the R2P focused on the rights of victims rather than interveners, it had to answer the difficult question: what do people have the right to be protected from? In stating that people have the right to be protected from genocide, war crimes, crimes against humanity, and ethnic cleansing, the R2P set the threshold of responsibility *high*. For some critics, the R2P has set the threshold of responsibility too high. For example, there remain those in international relations who feel, that where possible, democratic states should use force to spread democracy in international society.<sup>22</sup> Conversely, critics of this position claim that this approach would see the threshold for military intervention set too *low*. The critical point is that, either way, such debates problematically acted to prevent *any* threshold from being established in the post-Cold War debate over humanitarian intervention. Whether right or wrong, the R2P did at least set a threshold. The R2P stipulated that *if* international society is to use force, then this should only be used to bring about an end to the very worst crimes in international relations, which it identifies as genocide, war crimes, crimes against humanity, and ethnic cleansing. The R2P therefore distanced itself from the ambiguity to be found within the debate over humanitarian intervention, which as discussed in Chapter Five, had a detrimental impact on international relations in the post-Cold War era. Providing much needed clarity upon this issue, the R2P saw international society express its collective view, that states, both domestically and

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<sup>22</sup> For a legal discussion on the "Right of Pro-Democratic Intervention", see Christine Gray, International Law and the Use of Force (New York: Oxford University Press, 2008), pp. 55 – 59. Whilst it seems fair to say the pressure to change the nature of regimes has eased somewhat in the aftermath of the 2003 Iraq War, it is evident that such views persist, see Senator John McCain's untitled speech to the Johns Hopkins University Paul H. Nitze School of Advanced International Studies (09/11/2009) [http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord\\_id=D9E96B7C-A8D0-2425-C43D-046EC72CE0E2](http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord_id=D9E96B7C-A8D0-2425-C43D-046EC72CE0E2) Accessed 12/05/2010. The R2P concept has also been stretched to discussions on pre-emptive security strikes, see Lee Feinstein and Mary-Ann Slaughter, 'A Duty to Prevent', Foreign Affairs (vol. 83, no. 1, 2004, pp. 136 – 150).

internationally, should not deviate from their R2P as the crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing violate a universal moral minimalism.

It is important to stress that the R2P concept focuses on more than just military intervention alone. This was one of the biggest problems to be found in the post-Cold War debate over humanitarian intervention. UN Secretary-General Ban Ki-moon explained this point well as he stated: “Humanitarian intervention posed a false choice between two extremes: either standing by in the face of mounting civilian deaths or deploying coercive military force to protect the vulnerable and threatened populations”.<sup>23</sup> The statement highlights that the humanitarian intervention debate of the 1990s embodied an over simplistic dichotomy: war or nothing.<sup>24</sup> Distancing itself from this simplistic dichotomy, the R2P upheld a *broader operational scope*. Addressing this point, Gareth Evans explains that many R2P critics hold a misguided view that the R2P is just another word for humanitarian intervention. Instead, Evans claims that the R2P should be viewed as a multi-faceted concept which upholds a three-fold commitment to: *prevent, to react, and to rebuild*.<sup>25</sup> As discussed above, paragraph 138 embodies a clear *preventative* element whilst paragraph 139 sets out a more reactionary element. Accordingly, the R2P concept should not be stripped down to a debate over humanitarian intervention alone for this is only one aspect. This relates to a secondary point in that international society has more at its disposal than military power alone. As Evans rightly notes, a broad range of legal, political and economic measures that can be utilised to help fulfil the R2P.<sup>26</sup> Although this is undoubtedly true, it is also important to remember the fact that the 1948 Genocide Convention is actually called the 1948 Convention on the *Prevention and Punishment of the Crime of Genocide*. In many ways therefore, the R2P made positive steps, but actually achieved this normative progress by reiterating the ideas embodied in the Genocide Convention.

This is again evident as we consider the impact of R2P on international society’s understanding of sovereignty. As stated, the R2P established a threshold, which in turn holds

<sup>23</sup> Report of the Secretary-General Ban Ki-moon, ‘Implementing the Responsibility to Protect’ (A/63/677, 12<sup>th</sup> January 2009).

<sup>24</sup> Alex J. Bellamy claims that overcoming this dichotomy is one of the most important features of the R2P as world leaders should be faced with more of a choice than simply sending in the Marines or doing nothing, see Bellamy, *Responsibility to Protect* (Cambridge: Polity, 2009), p. 199.

<sup>25</sup> Evans, *The Responsibility to Protect, ending mass atrocity crimes*, pp. 56-59. Notably, the commitment to rebuild to be found within the original ICISS report has been tragically stripped out of the 2005 consensus.

<sup>26</sup> *Ibid.* p. 56.



implications for how international society views sovereignty. The consensus forged over the R2P implies that international society forged a collective understanding that the right of sovereignty should be viewed as *conditional*. It is conditional in the sense that sovereignty in a post-R2P world is bound by a responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. If states “manifestly fail” in this responsibility then international society has a responsibility to take collective action. As a result, it is difficult to see how states can make the case that sovereignty should be understood as absolute in a post-R2P world. This holds implications for humanitarian intervention, for as Alicia L. Bannon’s legal analysis explains: “If nations have no sovereign right to commit or passively permit atrocities against their own populations, then they cannot object on sovereignty grounds to coercive actions halting the commission of those atrocities. Sovereignty simply does not extend that far”.<sup>27</sup> Of course, this does not mean that the sovereignty-intervention debate is resolved but it does highlight that states cannot necessarily appeal to the right of sovereignty; if it has been proven that they have failed in their domestic responsibility to protect. This reiterates the point that the R2P embodies a solidarist ethic: “States that massively violate human rights should forfeit their right to be treated as legitimate sovereigns, thereby morally entitling other states to use force to stop oppression”.<sup>28</sup> Quite simply, in a post-R2P world, it is extremely difficult to see how a state can reject the idea of an ‘R2P-intervention’ by appealing to the right of sovereignty. Again such understanding was evident in the 1948 Genocide Convention, the significant development being that this has now been extended to cover the crime of war crimes, crimes against humanity, and ethnic cleansing.

This is a significant development as the R2P does not just cover genocide. This may seem an obvious and simple point, yet it remains very important. As Arbour explains: “outside the Genocide Convention, no firmly established doctrine has been formulated regarding the responsibility of third-party States in failing to prevent war crimes and crimes against humanity, let alone ethnic cleansing – which, it should be remembered, is not as such a legal

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<sup>27</sup> For such analysis see Alicia L. Bannon, ‘The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism’, *Yale Law Journal* (vol. 115, no. 5, 2006, pp. 1157-1165), p.1162.

<sup>28</sup> Wheeler, *Saving Strangers*, p. 12. Emphasis in original.

term of art”.<sup>29</sup> The R2P notably acts to broaden third-party responsibility beyond that of genocide. This is to be welcomed. As discussed in Chapter Three, the 1948 Genocide Convention only protects national, racial, ethnic and national groups. As a result, if political, economic or gendered groups are destroyed in *whole*, then this does not constitute genocide in the legal sense which dictates that the Genocide Convention cannot be invoked.<sup>30</sup> The R2P makes a progressive step in protecting these groups, even though, as discussed in Chapter Three, the case could equally be made that these groups should also be protected in the legal definition of genocide. However, a key problem remains in that the R2P never established a legal definition of ethnic cleansing, for as Arbour highlights, the term ethnic cleansing is not recognised in international law.<sup>31</sup> In an attempt to provide some clarity on this point, Secretary-General Ban Ki-moon stated: “Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes”.<sup>32</sup> Problematically, Ban Ki-moon provided a quantitative answer to a qualitative question. The idea that a quantitative accumulation of ethnic cleansing acts may constitute one of the other crimes does nothing to address the qualitative question of where the conceptual boundaries between these crimes should be established.

The statement made by Secretary-General Ban Ki-moon is symbolic of the central problem to be found in the R2P, as the push to operationalise the R2P left certain fundamental issues remain unresolved. It is here that I raise three specific areas of concern regarding implementation, legality and the R2P requirement of a “manifest failure”, all of which feed into the sovereignty-intervention debate and international society’s understanding of rightful conduct.

### 6.2.1 Implementation

With regard to the issue of implementation, the R2P reiterates the same problem to be found in the 1948 Genocide Convention: both lack an implementation strategy. As a result,

<sup>29</sup> Louise Arbour, ‘The Responsibility to Protect as a Duty of Care in International Law & Practice’, Review of International Studies (vol. 34, no. 3, 2008, pp. 445-458), p. 450.

<sup>30</sup> See Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide, <http://www.preventgenocide.org/law/convention/text.htm> Accessed 12/09/09.

<sup>31</sup> For a relevant analysis see, Walling, C. B., ‘The History and Politics of Ethnic Cleansing’, in Ken Booth (ed.) The Kosovo Tragedy: the Human Rights Dimensions (London: Frank Cass, 2001). Martin Shaw notably claims that the term only adds confusion to the subject matter of mass violence, see Shaw, What is Genocide? (Cambridge: Polity, 2007), chapter four.

<sup>32</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, p.5.

international society is left with two documents that embody bold aspirations yet offer little in the way of suggesting how these aspirations can be met in practice.<sup>33</sup>

As previously stated, paragraph 138 of the R2P 2005 Outcome Document sets out the R2P's *preventative* commitment. Its preventative element arises as it stipulates the national and international responsibility that states have to protect populations (not just citizens) from genocide, war crimes, crimes against humanity, and ethnic cleansing. Yet despite the fact that everyone wants *prevention* rather than *intervention*, paragraph 138 offers little in the way of grounding this objective as it merely states that the "international community" should support the UN in "establishing an early warning system".<sup>34</sup> Primarily, this is problematic because it is built upon the assumption that early warning systems work. Secondly, it also fails to distinguish between the fact that different preventative strategies may be needed to prevent the different crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing. Quite simply, the causes of these four crimes will undoubtedly differ and as a result the measures needed to prevent such crimes from arising will also undoubtedly differ. With regard to genocide prevention, the R2P offers nothing more concrete than the preventative aspiration set out in the 1948 Genocide Convention which it should be remembered is actually entitled, the Convention on the *Prevention* and Punishment of the Crime of Genocide. Whilst Article III of the Genocide Convention goes as far as stating that contracting parties should prevent and punish the *incitement* of genocide, this preventative measure is not supported with any implementation strategy. Without a collective preventative security strategy being properly formulated it is difficult to see how genocide can be prevented. Thus, international society remains faced with a profound question: how does international society prevent the state becoming the very architect of the life it has classically been envisaged to prevent: "poor, nasty, brutish, and short"?<sup>35</sup> Unfortunately, the R2P offers little in the way of answering this, thus nearly sixty years on from the Genocide Convention, international society failed to address this fundamental problem.<sup>36</sup>

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<sup>33</sup> This criticism could also be laid at the door of the aforementioned African Union Constitutive Act regarding the AU's "right to intervene".

<sup>34</sup> UN General Assembly, '2005, World Summit Outcome Document', p.30.

<sup>35</sup> Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), p.84.

<sup>36</sup> It should be noted that there is some excellent work being done on this issue, Stephen McLoughlin and Deborah Mayersen, 'Risk and Resilience to Mass Atrocity in Africa: A Comparison of Rwanda and Botswana', paper presented at the International Network of Genocide Scholars, Second Global Conference on Genocide at

The question therefore naturally arises: what happens if prevention fails? It is here that paragraph 139 of the R2P is of particular relevance as it states that the “international community” and the UN have a responsibility to *react* in accordance with Chapters VI, VII, and VIII of the UN Charter. In doing so, paragraph 139 seemingly places the option of humanitarian intervention on the table as it states: “we are prepared, to take collective action, in a timely and decisive manner through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis”.<sup>37</sup> The pro-active sentiment embodied within this statement implies that the UN Security Council will react in a *timely and decisive manner*. Although this is in itself not a bad thing, one has to remember that the 1948 Genocide Convention expresses the same bold mantra yet again offers little in the way of suggesting how such timely and decisive action can be implemented. This was illustrated perfectly in the 1946 General Assembly Resolution on ‘The Crime of Genocide’, as it made the recommendation “that international co-operation be organised between States with a view to facilitating the speedy prevention and punishment of the crime of genocide”.<sup>38</sup> The statement bears a striking resemblance to the R2P rhetoric regarding *timely* and *decisive* action as it recommends *speedy* prevention. The problem being that neither document explains how such bold aspirations can actually be implemented.

In January 2009, UN Secretary-General Ban Ki-moon attempted to address this problem as he set out his “Three Pillar” strategy for advancing the R2P agenda of implementation in international relations.<sup>39</sup> The thirty-one page document sets out his three pillar approach: i) the protection responsibilities of the state, ii) international assistance and capacity-building, iii) timely and decisive response. Essentially, the document fits within what has been described as a “R2P-Plus” approach, by which it is meant that R2P advocates set out to help operationalise the ideas embedded in the R2P.<sup>40</sup> For example, in discussing the idea of a timely and decisive response, Ban Ki-moon claims that the bilateral, regional, and global

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the University of Sussex, England, 28<sup>th</sup> June – 1<sup>st</sup> July 2010. See also, Sheri P. Rosenberg, ‘Responsibility to Protect: A Framework for Prevention’, *Global Responsibility to Protect* (vol. 1, no. 4, 2009, pp. 442 – 477).

<sup>37</sup> UN General Assembly, ‘2005, World Summit Outcome Document’, p. 30.

<sup>38</sup> UN General Assembly, ‘The Crime of Genocide’ (A/RES/96(I), adopted at the 55<sup>th</sup> plenary meeting, 11/12/1946). This can be found using the United Nations Bibliographic Information System, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf?OpenElement> Accessed 09/06/2009.

<sup>39</sup> UN Secretary-General Ban Ki-moon, ‘Implementing the Responsibility to Protect’ (A/63/67, 2009).

<sup>40</sup> The idea of a R2P-Plus approach is taken here from Mely Caballero-Anthony and Belinda Chng, ‘Cyclones and Humanitarian Crises: Pushing the Limits of R2P in Southeast Asia’, *Global Responsibility to Protect* (vol. 1, no. 2, 2009, pp. 135-155), pp. 145- 146.

efforts made to reduce the outbreak of violence in Kenya in early 2008 brought about a successful outcome and in doing so highlighted that there is a middle way between the use of force and simply doing nothing.<sup>41</sup> The example illustrates the aforementioned point that international society has more options available at its disposal than military force alone. Although there is nothing wrong, as such, with this “R2P-Plus” movement (further debate on this concept is essential), the simple fact is that UN member states have not agreed to any of these subsequent proposals. In 2009, nearly five years on from the endorsement of the R2P, the UN General Assembly merely proposed that it will “continue its consideration of the Responsibility to Protect”.<sup>42</sup> The tragic reality therefore being that the victims of genocide, war crimes, crimes against humanity, and ethnic cleansing remain dependent upon the will of the politically *unwilling* .

The lack of clarity regarding implementation brings in a related concern regarding the issue of military intervention. As odd as it may sound, the problem is that R2P advocates continually view the use of military force as a *last resort*.<sup>43</sup> Yet whilst everyone wants to see mass atrocity *prevention* become a reality, the concern here is that the military dimension of the R2P has been wrapped up in conceptual bubble-wrap in order to gain international support. Although the principle of last resort within just war theory was never intended to be interpreted as a ‘final option’, the idea that international society should exhaust all non-military measures is problematic.<sup>44</sup> As T. G. Weiss explains: “By the time that all the alternatives to military force have been explored, many of the people whom humanitarian intervention is intended to save are dead”.<sup>45</sup> Weiss underlines the point that when international society is reacting to mass atrocity crimes such as genocide: *time is of the essence*. Weiss goes on to note Stanley Hoffman’s warning that exhausting every other option first makes “a necessary military response politically less likely and practically more lethal.”<sup>46</sup> This is important as it highlights that the mainstream view toward military intervention may actually be counter-productive. To return to the understanding of genocide presented in Chapter Three, genocide is a process that culminates in mass killing. Of course,

<sup>41</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, p. 9.

<sup>42</sup> UN General Assembly, ‘The Responsibility to Protect’ (A/Res/63/308, October 2009), p.1.

<sup>43</sup> See Evans, The Responsibility to Protect, p. 4.

<sup>44</sup> For example, in Jean Elshtain’s use of just war theory, Elshtain expands the principle of last resort to the point that pre-emptive warfare could be considered as just, see Jean B. Elshtain, Just War Against Terror. The Burden of American Power in a Violent World (New York: Basic Books, 2003).

<sup>45</sup> Weiss, Military – Civilian Interactions, p.201.

<sup>46</sup> Ibid.

international society should do everything it can to prevent this process from flourishing, but once mass killing has started taking place then military intervention is needed to bring the genocide to an immediate halt. In order to achieve such a goal, greater consideration needs to be given into how any potential use of force can be accommodated into an implementation strategy. Without this, it is difficult to see how the UN can fulfil its paragraph 139 commitment to react in a “timely and decisive” manner.

Tragically, sixty years after the Genocide Convention, international society remains grossly underequipped to implement this legal obligation. It would seem that the R2P has also failed to advance international society’s ability to prevent genocide or indeed war crimes, crimes against humanity or ethnic cleansing in any significant manner. The lack of progress on this issue provides an apt context for considering the legal foundations of the R2P as it is evident that the R2P has also made very little progress in altering international law.

### 6.2.2 Legality

Despite both the UNGA and the UNSC endorsing the R2P, its legality remains contested. The importance of language is evident here as advocates and critics debate the *obligatory nature* of responsibility, in the R2P. This was actually put into context in 2005, as Hugh Bailey of the International Development Committee (IDC) questioned the then Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Lord Triesman upon the R2P’s obligatory nature: “The UN World Summit approved the Responsibility to Protect. Is that Responsibility obligatory on the UN Member States, or just advisory?”<sup>47</sup> To which Lord Triesman replied: “My understanding is that it has become a charter obligation and it should be binding upon all Member States”.<sup>48</sup> The answer provided by Lord Triesman reflects his personal view, and whilst he believes the R2P carries with it a legal obligation, it is evident that such understanding is not universal.<sup>49</sup> In what has now become a famous letter in the

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<sup>47</sup> House of Commons. ‘Darfur, Sudan: the Responsibility to Protect’. Minutes of Evidence taken before International Development Committee. (08/10/05). Question 47. (From now on IDC. *Minutes of Evidence*). <http://www.publications.parliament.uk/pa/cm/200506/cmselect/cm/intdev/uc657-i/uc65>

It should be noted that this is taken from an uncorrected transcript and permission is granted on the basis that and use makes clear that neither witnesses nor members have had an opportunity to correct the transcript. Accessed 01/12/05.

<sup>48</sup> Ibid.

<sup>49</sup> Triesman’s view does not even represent the UK’s view as it is evident that alternative UK perspectives have been raised. As Adele Brown notes in June 2007, the UK government stated that the R2P was a political commitment rather than a legal responsibility, yet in a 2008 *World Tonight* interview, the UK foreign secretary stated that the responsibility to take action in an R2P case is a “legal requirement”. See Adele Brown, ‘Reinventing Humanitarian Intervention, Two Cheers for the Responsibility to Protect?’ House of Commons

R2P debate (notably written just prior to the R2P Summit Outcome), U.S. Ambassador John Bolton made the US position very clear when he stated that the US would “not accept that either the United States as a whole, or the Security Council, or individual states have an obligation to intervene under international law”.<sup>50</sup> The two opposing understandings therefore help illustrate why the obligatory nature of the R2P remains so contested.

To understand the ambiguity surrounding the legal foundation of the R2P it is important to go back to the ICISS report of 2001. The ICISS stated that the R2P is “grounded in a miscellany of legal foundations (human rights treaty provisions, the Genocide Convention, Geneva Conventions, International Criminal Court statute and the like), growing state practice – and the Security Council’s own practice”.<sup>51</sup> The statement provides some insight into why questions regarding the legal foundations of the R2P have arisen since its 2005 endorsement. The miscellany of legalities embodied in the R2P foundation makes it difficult to pinpoint the exact legal nature of the R2P. One is reminded of the phrase, “throw enough mud at the wall and some of it will stick”, as it seems that R2P advocates sometimes simply raise a multitude of legalities in an attempt to justify the legality of the R2P. This complexity is accentuated as each of the R2P drafting stages actually framed its legal foundation in a slightly different light. This is raised in Carsten Stahn’s comparative legal analysis, in which Stahn specifically addresses the legality of each document and concludes that each report “embodies a slightly different vision of the responsibility to protect. This divergence explains part of its success. The notion became popular because it could be used by different bodies to promote different goals”.<sup>52</sup> Again Stahn’s analysis implies that the R2P has many legal faces. Although this may have helped the R2P gain its required level of international consensual support, it does not help clarify the R2P’s legal foundation. For example, in Ban Ki-moon’s analysis, the UN Secretary-General defended the legality of the R2P by stating that it is built upon existing

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Research Paper, (17/06/2008), p. 52. Available at <http://www.parliament.uk/documents/commons/lib/research/rp2008/rp08-055.pdf>  
Accessed 17/01/2009.

<sup>50</sup> The letter written by John R. Bolton can be read at [http://www.responsibilitytoprotect.org/files/US\\_Boltonletter\\_R2P\\_30Aug05%5B1%5D.pdf](http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05%5B1%5D.pdf)  
Accessed 10/01/2009.

<sup>51</sup> International Commission on Intervention and State Sovereignty, ‘Responsibility to Protect’, p. 50.

<sup>52</sup> Stahn, ‘Responsibility to Protect, Political Rhetoric or Emerging Legal Norm?’, p. 118.

international law, yet failed to explain whether the R2P contributes anything *new* to international law.<sup>53</sup>

Responding to such controversy, Louise Arbour has claimed that the “legal core” of the R2P “rests upon an undisputed obligation of international law: the prevention and punishment of genocide”.<sup>54</sup> Whilst the ICISS raises a miscellany of legal foundations, Arbour specifically focuses on the 1948 Genocide Convention to highlight the legal obligation that lies at the heart of the R2P. Essentially, Arbour explains that the R2P has not brought anything new to table regarding international law, yet implies that the R2P is a positive step in that it may help shape international law in a way that helps prevent mass atrocity crimes such as those identified by the R2P. It is from this perspective that Arbour then considers the question of *non-compliance* through an analysis of the 2007 International Court of Justice ruling on *Bosnian and Herzegovina v. Serbia and Montenegro*. Arbour, who views the ruling of the ICJ to be “earth shattering”, states that the Court ruled that Serbia was responsible for the prevention of genocide in Bosnia – Herzegovina, and therefore had a responsibility to prevent genocide *outside its own territory*.<sup>55</sup> Accordingly, Arbour raises a series of judgements to highlight that the Court invoked a notion of “due diligence” in that states have a positive obligation to “do their best” to prevent genocide.<sup>56</sup> To gauge this one has to understand the reasoning that underpinned the Court’s ruling. Notably, the Court raised three key aspects in analysing the capacity of a state to discharge its obligation to prevent genocide: *influence, proximity, and information*.<sup>57</sup> Within the Serbian case, Serbia was found to have breached its obligation because it had strong political, military, and financial links with the agents guilty

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<sup>53</sup> See Moon, ‘Implementing the Responsibility to Protect’, esp., paragraph 55. A similar sentiment is also found in Ekkehard Strauss, ‘A Bird in the Hand is Worth Two in the Bush—On the Assumed Legal Nature of the Responsibility to Protect’, *Global Responsibility To Protect* (vol. 1, no. 3, 2009, pp. 291-323).

<sup>54</sup> Arbour, ‘The Responsibility to Protect as a Duty of Care’, p. 450.

<sup>55</sup> *Ibid*, p. 452.

<sup>56</sup> *Ibid*, pp. 451 – 452, Arbour details a series of judgement rulings, for example, “If the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent, it is under duty to make use of these means as the circumstances permit”. Also, “The obligation of States is rather to employ all means reasonably available to them, so as to prevent genocide as far as possible”. Thus, responsibility is incurred “if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing genocide”. The Court ruled that “the duty to act arise[s] at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed”.

<sup>57</sup> *Ibid*, pp. 452 – 455.



of genocide (influence); it was a neighbouring state (proximity) and finally, knew of the high risk of genocide (information).<sup>58</sup>

Such understanding is important as it highlights that the ICJ's legal ruling regarding genocide may have unintended implications for the implementation of the R2P. Arbour claims that, in principle, the ICJ ruling could hold significant legal implications for international society, and especially the P5, who often have the strongest capacity to prevent genocide.<sup>59</sup> Indeed, Arbour cites Jose E. Alvarez's claim that the establishment of the R2P has opened up a legal conundrum regarding the responsibility of states and the UN.<sup>60</sup> In theory, if the P5 utilise their power of veto to counter the best efforts of the UN to prevent one of the four crimes, then they could be held legally accountable. Despite the fact that this is purely theoretical at present, one would not have to look far for practical comparisons. In Ban Ki-moon's analysis, the UN Secretary-General notes that the threat of legal accountability against Cote d'Ivoire in 2004 and Kenya in 2008 (on the grounds that they were inciting hatred), saw the states stop their actions abruptly.<sup>61</sup> When one juxtaposes this legal threat with the ICJ's legal ruling one could be forgiven for thinking that the P5 may think twice in the future before attempting to use their veto power to prevent the prevention of an R2P crisis. As everyone knows, none of the P5 will actually be 'put on trial'; however, such legal action would certainly not help their moral image on the international stage. States, therefore, may be wary of being seen in such an immoral light which feeds back into the English School belief that states operate within a normative framework which enables and constrains their actions.

So what can be drawn from such legal analysis? It would seem that the R2P has not altered international law in any significant way. It is more appropriate to think, as Arbour does, that the R2P may help shape the implications of existing international legal obligations. Rulings such as that of the ICJ upon mass atrocity crimes will undoubtedly be shaped by the R2P, yet will also shape the operationalisation of the R2P concept. Despite the fact that I uphold such thinking wholeheartedly, a cause of concern remains. If the debate over genocide prevention becomes subsumed by the broader debate over whether the R2P represents a new legal

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<sup>58</sup> Ibid, pp. 453 – 455.

<sup>59</sup> Ibid, p. 453.

<sup>60</sup> Ibid, p. 454, footnote.

<sup>61</sup> Moon, 'Implementing the Responsibility to Protect'.

development, this may see international society forget about its legal obligation to prevent genocide. Although the reader may claim that it is foolish to think that international society could forget about its legal obligation to prevent genocide, to go back to William Schabas's point in Chapter Five, it is evident that the Genocide Convention was completely marginalised in the context of the Cold War. It is therefore imperative that international society does not let the Genocide Convention once again become marginalised within the context of the R2P debate. At present, it does not seem that the R2P discourse has given enough consideration to this legal quandary and how it impacts upon international society's legal obligation to prevent genocide. It is also evident that international society has not given enough consideration to the final aspect of concern here: the R2P requirement of a "manifest failure".

### 6.2.3 "Manifest failure"?

Paragraph 139 stipulates that collective action can only be taken when a state "manifestly fails" in fulfilling its responsibility to protect. It is the phrase "manifest failure" therefore that is the cause of apprehension here as the R2P offers no guidance on what exactly constitutes a "manifest failure"?

The phrase "manifest failure" did not appear in any of the R2P precursory documents yet it boldly appears in paragraph 139 of the 2005 Outcome Document. In an attempt to gain some clarity on where the phrase came from, this author contacted the Global Centre for the Responsibility to Protect (based at the Ralph Bunche Institute for International Studies in New York) and was subsequently informed:

There will be no documents on this point. At the final days of negotiation, all was done very very informally with no official drafts but through discussions of a few of the key drafters. Manifest failure was a Canadian suggestion, trying to remove the subjectivity of "unable or unwilling" that had appeared in previous drafts, and insert what they believed to be a more evidence-based standard. It was accepted without difficulty.<sup>62</sup>

The statement clearly sets out the case that the phrase "manifest failure" was included to overcome the subjective problems that the drafters felt may arise over international society's ability to prove that a state is "unable or unwilling" to prevent genocide, war crimes, crimes against humanity or ethnic cleansing. The phrase "unable or unwilling" did feature throughout the precursory documents and it would seem that the term "manifest failure" was

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<sup>62</sup> Personal email correspondence with the Global Centre for the Responsibility to Protect based at the Ralph Bunche Institute for International Studies in New York. 25/05/2009.

seen as a more appropriate eleventh hour substitute. There are two problems here. The first problem is the fact that much of the R2P discourse still refers to original rhetoric regarding “unable or unwilling” which causes understandable confusion on the subject matter. For example, the 2010 US National Security Strategy discussion of the R2P utilises the rhetoric, “unable or unwilling”, whilst making no reference to the idea of a “manifest failure”.<sup>63</sup> Secondly, the “very very informal” nature of this debate, which took place in the final days, leaves one questioning whether the drafters realised that they were perhaps creating an unnecessary additional obstacle?

Quite simply, states are not going to admit that they have “manifestly failed” to fulfil their R2P. This dictates international society has to prove this to be the case. As Carsten Stahn’s legal analysis explains: “the requirement of a manifest failure may be used as an additional means to challenge the legality and timing of collective security action”.<sup>64</sup> The statement logically explains that the criterion of a “manifest failure” seemingly creates an unnecessary additional obstacle. From a R2P perspective, international society has to not only prove that one of the four crimes are being committed, but that a state has “manifestly failed” in its responsibility to prevent these crimes from occurring. Although all genocide scholars would surely accept that the practice of genocide constitutes a “manifest failure”, one can easily imagine that genocidal regimes will exploit the *ambiguity* to be found within the term. For example, if the R2P had existed in 1999 and had been invoked over the Kosovo crisis, it does not take a great leap of imagination to envisage that the Russian ties with Serbia at the time could have led the Russian representative on the Security Council to argue that whilst Slobodan Milosevic had committed crimes, he had not “manifestly failed” in his responsibility to protect. The disturbing aspect therefore is that one can easily imagine that geo-politics will lead to such an important ambiguity being exploited. Thus, as critics such as Stahn and former UN advisor Juan E. Mendez have highlighted, in certain fundamental ways the R2P may actually *hinder* the prevention of crimes such as genocide.

Moreover, it would seem that the inclusion of this term “manifest failure” actually undermines the *victim-based* approach that underpins the R2P. As stated above, the R2P

<sup>63</sup> United States, ‘National Security Strategy’ (May 2010), p. 48.

[http://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf) Accessed 24/06/2010.

<sup>64</sup> Carsten Stahn, ‘Responsibility to Protect, Political Rhetoric or Emerging Legal Norm?’ *American Journal of International Law* (vol.101. no.1 2007, pp 99-120), p. 117.

made progress through its focus on the *rights of victims* rather than the *rights of interveners*, thus, turning the humanitarian intervention debate on its head. However, in placing the “manifest failing” qualification into the R2P equation, its drafters seem to have, unintentionally, shifted the focus back onto the rights of states rather than the rights of victims. For example, the 1948 Genocide Convention focused on the rights of groups to be protected from the intention of the state to destroy them in whole or in part. Whilst this is problematic, the focus at least is on the *victim group* being destroyed. Thus, the Genocide Convention seemingly bypassed the rights of states and placed the focus on the rights of national, ethnic, racial and religious groups. Yet when one juxtaposes the Genocide Convention understanding with the R2P “manifest failing” qualification, it would seem that international society has to *not* only prove that genocide is taking place but also that a state has “manifestly failed” in its R2P. This seemingly grants states a licence to destroy a group up until the point that it has “manifestly failed”! A key R2P battle ground therefore may be the technicality embodied in the R2P’s phrase “manifest failure” as it undoubtedly leaves an important ambiguity embodied in the “case-by-case” decision to implement the R2P. Again, this may have critical implications for the R2P’s intention to react to these crimes in a “timely and decisive” manner (as stated in paragraph 139).

From this perspective, one can see how these three areas of concern begin to overlap. The lack of an implementation policy combined with the R2P’s ambiguity surrounding its “manifest failing” criteria, and legal foundation, dictates that the R2P may not have aided international society’s ability to prevent genocide in any substantial way. Furthermore, this raises questions regarding how the R2P has impacted on the principle of rightful conduct as one attempts to gauge the advantages and disadvantages of the R2P, from a legal, moral, and constitutional perspective. Prior to analysing the R2P’s impact on the question of rightful authority therefore, it is important to draw these points together and consider the R2P’s impact on the sovereignty-intervention debate and the principle of rightful conduct.

#### **6.2.4 Rightful conduct: summary**

To summarise, it is important to go back to the central question: to what extent did the R2P endorsement resolve the sovereignty-intervention dilemma that underpinned the crisis of *rightful conduct*? As discussed in Chapter Five, in the post-Cold War era a tension arose as international society failed to resolve the clash of norms relating to the morality of

intervention versus the legality of sovereignty. The unanimous endorsement of the R2P principle therefore, implied that this tension had been eased somewhat as the R2P managed to distance itself from the overly-simplistic dichotomy to be found within the humanitarian intervention debate regarding: war or nothing. To return to the norm of constitutionality, it is difficult to see how a state could appeal to the idea of absolute sovereignty in a post-R2P world as expectations surrounding the 'right of sovereignty' have been bound with the R2P. Whilst, as discussed, the R2P merely reiterates many of the ideas embedded within the 1948 Genocide Convention, the importance of re-establishing the post-Second World War consensus (1948), in a post-Cold War World (2005), cannot be overstated. With regard to rightful conduct, it is evident that international society recognises the practice of genocide, war crimes, crimes against humanity, and ethnic cleansing as wrongful conduct in that they are morally, legally and constitutionally unacceptable. Thus, the prevention of these crimes represents rightful conduct in a post-R2P world.

At the same time, it is evident that one has to tread cautiously. The consensus forged did not represent some utopian shift in foreign policymaking. Fundamental issues surrounding implementation, legal obligation and the R2P pre-requisite of a "manifest failure" remain unresolved. With this in mind, it is difficult to see how the R2P has advanced international society's ability to prevent genocide in any substantial way. Within the context of the Rwandan genocide it was not that states such as the P5 thought the Rwandan government had the sovereign right to do what they were doing but that they saw no national interest at stake. Accordingly, it was issues relating to political will and the implementation of the Genocide Convention, rather than the right of sovereignty, that was the central problem. In failing to address such issues, the R2P upheld the status quo despite the fact that the status quo facilitated a legitimacy crisis in the aftermath of the Rwandan genocide. It is here that the question of rightful authority is relevant as somewhat tragically, the World Summit upheld the status quo regarding the issue of who has the right to use force in international relations. This latter point is important therefore as we analyse the *authority dimension* to be found within the aforementioned sovereignty-intervention-authority crisis.

### **6.3 Rightful authority**

As discussed in Chapter Five, the post-Cold War debate over humanitarian intervention saw the question of rightful authority (regarding the use of force), become a significant point of

contestation.<sup>65</sup> Problematically, the 2005 Outcome Document side-stepped the question of rightful authority as it upheld the status-quo. As a result, the R2P failed to address the authority dilemma by which I mean: a potential political deadlock within the UNSC juxtaposed with an unfolding humanitarian catastrophe. Although international society is to be credited for at least attempting to resolve the sovereignty-intervention debate, it is quite clear that in the aftermath of the 2003 Iraq War, the question of legitimate authority with regard to the use of force was simply side-stepped.

Prior to coming onto an analysis of 2005 World Summit Outcome Document it is important to note that the initial ICISS report *did* specifically address this issue. Significantly, the ICISS stated that in its global consultations, the overwhelming consensus had been that the Security Council had to remain at the heart of any decision-making process regarding the use of force in international relations.<sup>66</sup> Therefore, whilst the ICISS acknowledged the “the many reasons” for being dissatisfied with the Security Council, it upheld the status quo.<sup>67</sup> As the report explains:

The authority of the UN is underpinned not by coercive power, but by its role as the applicator of legitimacy.....Those who challenge or evade the authority of the UN as the sole legitimate guardian of international peace and security in specific instances run the risk of eroding its authority in general and also undermining the principle of a world order based on international law and universal norms.<sup>68</sup>

The statement attempts to illuminate the relationship between the UN, international law and universal norms to argue that the unauthorised use of force in international relations has a detrimental impact upon all three. The rationale is built on the notion that the UN does not draw its power from its military strength but from its legitimate right to authorise and oversee the use of force in international relations. Although this is more of an overview of the UN rather than the UNSC in particular, the ICISS boldly supported the UNSC in their claim: “The task is not to find alternatives to the Security Council as a source of authority, but to

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<sup>65</sup> For a specialised overview see, James Pattison, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene? (New York: Oxford University Press, 2010).

<sup>66</sup> International Commission on Intervention and State Sovereignty, Responsibility to Protect, p. 50.

<sup>67</sup> See, International Commission on Intervention and State Sovereignty, The Responsibility to Protect, chapter six, ‘The Question of Authority’, notably, the ICISS raises the problem of broadening the permanent structure of the Security Council, yet whilst acknowledging that African, Latin American and Asian representation “would help build its credibility and authority” the ICISS states that the debate is beyond the purpose of the report.

<sup>68</sup> The International Commission on Intervention and State Sovereignty, Responsibility to Protect, p. 48.

make the Security Council work much better than it has”.<sup>69</sup> The rationale is quite straightforward in that whilst the UN and the UNSC have their limitations, they remain the best decision making body in international society.

This does not detract from the fact that the ICISS *did* address the moral deficiency embodied in the legal system that underpins the UNSC. This is fleshed out in the report’s sub-section entitled, “legitimacy and the veto” as the report states: “*As has been said, it is unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern*”.<sup>70</sup> The tone and context of the statement emphasises the gravitas of the authority problem in that the legal system permits the P5 to utilise the right of veto in circumstances that undermine “humanity” as a whole. Acknowledging this cause for concern, the ICISS recommends a P5 “code of conduct”, whereby the P5 agree to refrain from using their veto when significant humanitarian crises unfold.<sup>71</sup> Stating that it is unrealistic to expect a UN Charter amendment any time soon, the ICISS recommends that this P5 “code of conduct” be a voluntary mutually agreed understanding.<sup>72</sup> The analysis is troubling in that whilst the ICISS acknowledges that the legal system permits unconscionable vetoes to arise, it only advises that a *voluntary* agreement is established. In theory, this would signify a constitutional change, in that a mutual understanding would arise, that in the context of mass atrocity crimes the P5 refrains from using their veto. However, it is questionable whether any such informal agreement would be any more moral than the present legal system? When one considers that this would leave the millions of victims of genocide, war crimes, ethnic cleansing, and crimes against humanity dependent upon an informal P5 thumbs up or thumbs down, it seems profoundly immoral. Quite simply, states should not deviate away from their obligation to uphold the universal moral minimalism expressed in the 1948 Genocide Convention and the R2P.

This obviously leads us into the question of what would happen (even if such a voluntary code of conduct was established), if the UNSC found itself in a political deadlock. Intriguingly, the ICISS re-iterated the existing legislation regarding the Uniting for Peace

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<sup>69</sup> International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 49. This understanding was reiterated word for word in the UN Secretary-General’s 2004 report, see Report of the Secretary-General’s High Level Panel on Threat, Challenges and Change, A More Secure World, p. 61.

<sup>70</sup> International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 51. Emphasis added.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

Resolution established in 1950 (UN Resolution 377).<sup>73</sup> The point is that although the UNSC has “primary responsibility”, it does not have “exclusive responsibility” under the UN Charter for peace and security matters.<sup>74</sup> UN Resolution 377 stipulates that if the UNSC reaches a political deadlock over a certain issue then the issue can be referred to UNGA which can then make recommendations.<sup>75</sup> Whilst the ICISS acknowledges that any decision regarding the use of force ultimately lies with the UNSC, from a legitimacy perspective, the Uniting for Peace Resolution would seemingly allow for a *tolerable consensus* to be potentially forged in the UNGA without explicit UNSC consent. As the ICISS stated, “an intervention which took place with the backing of a two-thirds vote in the General Assembly would clearly have powerful moral and political support”.<sup>76</sup> The statement highlights that whilst the UNGA does not have legal authority, if there were enough moral and political support, then this would help overcome this legal deficit from a legitimacy perspective (as it did in Kosovo). This underlines the ICISS’s point that the P5 is not the *exclusive* source of authority in international relations. For example, Dominik Zaum’s analysis reveals that since 1950, eleven emergency sessions have been invoked as part of the Uniting for Peace procedure.<sup>77</sup> However, as Zaum explains, this has not seen the UNGA significantly improve the collective security capacity of the UN and has actually seen the UNSC become increasingly hostile to the Uniting for Peace Resolution as the UNGA has invoked the Resolution more often than the UNSC.<sup>78</sup>

The Uniting for Peace Resolution raises many interesting questions. However, the important point to consider is that by the time of 2005 World Summit agreement, all traces of the ICISS’s recommendations regarding the “Question of Authority” had been removed. Evidently, the 2003 invasion of Iraq looms large here as the unauthorised momentum that was forged over Kosovo and carried on into Iraq was, for many, a clear violation of

<sup>73</sup> See Dominik Zaum, ‘The Security Council, The General Assembly, And War: The Uniting For Peace Resolution’, in Vaughan Lowe, Adam Roberts, Jennifer Welsh and Dominik Zaum, The United Nations Security Council and War. The Evolution of Thought and Practice since 1945 (New York: Oxford, 2008), chapter six.

<sup>74</sup> International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 48.

<sup>75</sup> For an interesting legal analysis which captures the mood at the time, stating that the Resolution awoke the dormant powers of the General Assembly, see L. H. Woosley, ‘Uniting For Peace Resolution of the United Nations’, American Society of International Law (vol. 45, no. 1, 1951, pp.129-137).

<sup>76</sup> International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 48.

<sup>77</sup> Zaum, ‘The Security Council, The General Assembly, And War’, pp. 163– 168.

<sup>78</sup> Ibid. pp 173 – 174. For a brief general overview see Mike Billington, ‘UN ‘Uniting for Peace’ Resolution Could Demand an End to U.S. War in Iraq’, Executive Intelligence Review (11/04/2003), [http://www.larouchepub.com/other/2003/3014un\\_res\\_377.html](http://www.larouchepub.com/other/2003/3014un_res_377.html) Accessed 22/02/09.



international legitimacy.<sup>79</sup> Critics the world over saw the invasion of Iraq as a quintessential ‘Trojan Horse’ whereby human rights motives were put forward to disguise a war fought to further the US/UK national interest.<sup>80</sup> The impact on the question of rightful authority was evident when in 2005, Kofi Annan stated: “The task is not to find alternatives to the Security Council as a source of authority but to make it better”.<sup>81</sup> The sentiment embodied in the statement was in sharp contrast to the position adopted by Kofi Annan in 1999, for as discussed in Chapter Five, Annan had left the question of unauthorised intervention unanswered. In the aftermath of Iraq, it would seem that questions of serious UN structural reform regarding the use of force were deemed to be far too controversial. The much dreaded debate over *unauthorised* force was marginalised to the point that it was banished as Annan strove to gain the consensus needed to simply pass the R2P through the final drafting process.<sup>82</sup>

In an analysis of the 2005 Outcome Document, Alicia Bannon claims that one should not be surprised by the Outcome’s omission of this discussion: “The Summit’s failure to consider unilateralism is not surprising. The agreement articulates a clear responsibility for the United Nations to act. The need for unilateral or regional action would therefore become an issue only if the United Nations failed to fulfil its duties, something that the drafters may have preferred not to countenance”.<sup>83</sup> Whilst problematic, the analysis does embody certain logic. It is claimed that the UN does not address questions that specifically stem from the UN failing in its functional capability. When one juxtaposes this argument with the consensus forged amongst the P5 over *rightful conduct* then this logic carries even more weight. Since the P5 had struck a common understanding over what should constitute a rightful use of force in a post-R2P world, one may expect less tension to arise over when the use of force should

<sup>79</sup> See Robert Kagan, ‘America’s Crisis of Legitimacy’, *Foreign Affairs* (vol. 83, no. 2, 2004, pp. 65-87). Robert W. Tucker and David, C. Hendrickson, ‘The Sources of American Legitimacy’, *Foreign Affairs* (vol. 83, no. 6, 2004, pp. 18-32). Francis Fukuyama, ‘After Neoconservatism’, *New York Times* (19/02/2006). For overview see, *Review of International Studies*, ‘Force and Legitimacy in World Politics’, *Review of International Studies*, special edition, (vol. 31, supplement S1, 2005).

<sup>80</sup> The idea of a Trojan Horse is taken from Gareth Evans, *Responsibility to Protect, Ending Mass Atrocities*, p. 54. Obviously there are those that see the intervention in a more favourable light, see Fernando, R. Tesón, ‘Ending Tyranny in Iraq’, *Ethics and International Affairs* (vol. 19, no. 2, 2005, p. 1-20). Jean Bethke Elstain, *Just War Against Terror. The Burden of American Power in a Violence World* (New York: Basic Books, 2003), pp. 182 – 207).

<sup>81</sup> Report of the UN Secretary-General. *In Larger Freedom*, pp.xii. See also, Report of the UN Secretary-General, *A More Secure World*, p. 61.

<sup>82</sup> For such analysis see, Brown, ‘Reinventing Humanitarian Intervention’, p. 35.

<sup>83</sup> Alicia L. Bannon, ‘The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism’. *Yale Law Journal* (vol. 115, 2006, pp. 1157 - 1165 ), pp. 1159 - 1160.

be authorised. However, when one considers that the Uniting for Peace Resolution was formulated precisely because of the potential for political deadlock then it seems simplistic to suggest that UN member states do not formulate policies designed to reduce the potential failure of the UN. As Bannon goes on to acknowledge, the failure to make progress on this issue will undoubtedly see another authority dilemma almost certainly emerge as none of the structural issues have been resolved.<sup>84</sup> Quite simply, it is only a matter of time therefore before the issue of a deadlocked UN Security Council and a pending humanitarian catastrophe will arise once again.

It is here that the role of power is of relevance as we strive to understand why the status quo was upheld despite the fact that the status quo underpinned an authority crisis in the context of Kosovo. Offering a more realistic explanation than that to be found in Bannon's analysis, Chris Abott highlights that the idea of a *veto limitation* was actually discussed yet omitted from the 2005 Outcome Document:

Unfortunately, an important paragraph relating to the use of the veto in the Security Council did not make it into the final document. This paragraph asked the five permanent members of the Security Council to refrain from using their veto in cases of genocide, crimes against humanity, ethnic cleansing and war crimes. This proposal had received widespread support from the European Union and Latin America, however it was reportedly removed as a result of pressure from the USA, Russia and China (who all hold veto power). This means that despite the widespread acceptance of the general principle of a 'responsibility to protect', there will still be political hurdles to overcome in the Security Council in implementing this principle if and when military intervention is required.<sup>85</sup>

The statement underlines the reality of Great Power in that despite a general consensus emerging amongst small powers (Latin America) and middle powers (EU), the US, Russia and China held onto their right of 'absolute veto', by which I mean it can be used in any circumstance – even to prevent genocide prevention. As Abbott rightly points out, the implementation of the R2P remains dependent on “the domestic and global imperatives of the Permanent Five”.<sup>86</sup> It is this political obstacle - the political will of the P5 - that remains the decisive factor and it is difficult to see how the R2P has altered this in any way. This is also reflected in the fact that the P3 of Russia, China, and the US remain hostile toward the ICC. Accordingly, the R2P did not represent some utopian solidarist shift in international relations

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<sup>84</sup> Ibid, p. 1160.

<sup>85</sup> Chris Abott, 'Rights and Responsibilities, Resolving the Dilemma of Humanitarian Intervention'. From a speech given at the International Seminar on the Future of the UN (Oxford Research Group, 2005). Available at <http://www.oxfordresearchgroup.org.uk/publications/briefings/rightsandresponsibilities.htm> Accessed 26/04/06.

<sup>86</sup> Ibid, p.5.

as the prevention of mass atrocity crimes remains just another policy option – one that should only be opted for when there are national interests at stake.

This bleak reality seemingly gives weight to the realist claim that Great Power cannot be constrained in anyway. With no world government, there remains no ‘hard law’ that can push through any structural change or indeed punish the P5 when they utilise their veto-power in such grave circumstances. However, at the same time, the ICISS did raise an interesting point that relates to the role of norms in international relations:

Those states who insist on the right to retaining permanent membership of the UN Security Council and the resulting veto power, are in a difficult position when they claim to be entitled to act outside the UN framework as a result of the Council being paralyzed by a veto cast by another permanent member. That is, those who insist on keeping the existing rules of the game unchanged have a correspondingly less compelling claim to rejecting any specific outcome when the game is played by those very rules.<sup>87</sup>

At its most fundamental level the statement implies that the P5 cannot continue to alter the “rules of the game” in an ad hoc manner without bringing the “rules of the game” into question. For example, when Russia invoked the R2P principle in an attempt to justify its intervention in Georgia in 2007, the US appealed to the very same rules that it had violated in its invasion of Iraq in 2003.<sup>88</sup> From this perspective, the US’s overtly unilateral approach in 2003 did not help serve its long-term security strategy as it eroded the value of the rules that it then appealed to in order to try and constrain Russian aggression within the context of Georgia. At the same time, it is now extremely difficult to see how Russia could uphold its more traditional anti-interventionist stance within the context of a future R2P crisis when it has invoked the R2P itself. Although the P5 often act in such a way as to challenge the authority of the UN (this has been identified as a key component of the US action in Iraq<sup>89</sup>), such action does not only destabilise the stabilising organ of the UNSC but also undermines the rules that provide the P5 with their privileged position in international society. Thus, as the ICISS rightly points out, such action is counter-productive and does not serve the national interest of the P5 in the long-term.

The understanding set out by the ICISS gives weight to the English School view that even in the context of the anarchical realm, Great Power will be constrained. It is here that a further

<sup>87</sup> International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, p. 51.

<sup>88</sup> For such analysis see, The Global Centre for the Responsibility to Protect, ‘The Georgia Russia Crisis’, available at <http://globalr2p.org/pdf/related/GeorgiaRussia.pdf> Accessed 19/01/09.

<sup>89</sup> This point is taken from Robert Jervis, ‘Understanding the Bush Doctrine’, *Political Science Quarterly* (vol.118, no.3, 2003, pp. 365 – 386), p. 375.

consideration needs to be taken into account regarding the moral justification that the P5 may utilise if they chose to oppose humanitarian intervention in a post-R2P world. This was raised by Andrew Mitchell (the former Shadow Secretary of State for International Development),

Membership of the Security Council involves a set of obligations: there must be consequences for states that decline to take seriously their international responsibilities to promote peace and security. At the very least, Council members with a clear conflict of interest should agree to withhold their veto in situations of grave humanitarian need. Let them publically explain why their national interests put them on the side of genocidal regimes.<sup>90</sup>

The statement aptly captures the role of both morality and constitutionality as it highlights that in the present climate (unlike the Cold War era), the P5 would have great difficulty in explaining why they have chosen to block an 'R2P intervention'. As discussed, the legal defence of sovereignty does not extend to cases of genocide, war crimes, crimes against humanity, and ethnic cleansing. This leaves the P5 in a 'tight spot', as it is difficult to see how they can justify an anti-R2P stance on political grounds without it coming under intense international moral scrutiny. This may not make the P5 any more willing to actively fulfil their responsibility, but it does hinder their ability to deny their responsibility in the first place. For example, other than appealing to the ambiguity to be found in the phrase "manifest failure", on what grounds could a P5 member states oppose UN intervention? Whilst they may not provide the troops to enable the intervention, if the UN does manage to put together a willing coalition, it is difficult to see how a P5 member could oppose such intervention in a post-R2P world. Such *unintended* consequences may have positive implications for the prevention of mass atrocity crimes such as genocide, war crimes, crimes against humanity, and ethnic cleansing in a post-R2P world.

### 6.3.1 Rightful authority: summary

The problem remains that despite the gravitas of the *authority dilemma* outlined in the context of Kosovo, the 2005 R2P Outcome Document reads as though there is nothing wrong in upholding the existing UNSC system. Essentially, no attempt has been made to resolve what Tesón refers to as 'The Vexing Problem of Authority'.<sup>91</sup> Instead, the R2P report upheld the status quo and offers no guidance to states on the best course of action to be taken if the

<sup>90</sup> Adele Brown, 'Reinventing Humanitarian Intervention', p. 50.

<sup>91</sup> Fernando Tesón, 'The Vexing Problem of Authority', *Wisconsin International Law Journal* (vol. 24, no. 3, 2006, pp. 761 – 772). Notably, Tesón favours the idea of creating a newly formed body, "The Court of Human Security" with independent judge's ruling on issues such as intervention.

UNSC finds itself deadlocked.<sup>92</sup> One is reminded here of Woodrow Wilson's naivety when questioned whether the League of Nations would work, as he replied: "It if won't work, it must be made to work".<sup>93</sup> At no point did the R2P process make progress on this central issue. Actors such as Kofi Annan seemingly built their faith on the assumption that somehow the UNSC would start to function as it should, despite the fact that it has never functioned in a way that has supported the prevention of R2P crimes such as genocide. Addressing the issue of political deadlock, Nicholas J. Wheeler rightly points out: "it is not evident that the UN is any better places to cope with a future Kosovo where the Council is divided on the merits of preventative action".<sup>94</sup> This is true as at no point does the R2P attempt to address the moral deficiency of the legal system that underpins the privileged status of the P5. The status quo has been upheld despite the fact that the status quo was the source of an authority crisis.

However, it is clear that because of the relationship between rightful conduct and rightful authority certain implications have arisen somewhat *unintentionally*. Whilst this author accepts that the P5 tend to act in self-interested ways, it seems clear that the P5 are in an increasingly 'tight spot' in attempting to prevent the prevention of mass atrocity crimes. This is not to suggest that the UN has the capability to prevent such crimes without P5 support but that it is difficult to see how P5 members can oppose R2P prevention by appealing to morality, legality, or constitutionality. If, therefore, an unauthorised, willing coalition does emerge within the context of an R2P crisis, it is difficult to see how the P5 can oppose such intervention in a post-R2P world. Yet the problem remains that without a discussion over UN unauthorised action, international society is faced with no set of legal rules or guidelines to judge and/or guide such intervention.<sup>95</sup> The battle ground therefore may be the technicality embodied in the R2P's phrase "manifest failure" as undoubtedly this leaves a real ambiguity embodied in the "case-by-case" decision to prevent, react, and rebuild.

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<sup>92</sup> For such analysis see, Andrew Hurrell's 'Legitimacy and the use of Force; can the circle be squared?' *Review of International Studies*, special edition, (vol. 31, supplement S1, 2005, pp. 15-32), p. 30.

<sup>93</sup> Cited in Edward. H. Carr, *The Twenty Years Crisis, 1919 – 1939* (London: Macmillan, 2001). p. 8.

<sup>94</sup> Nicholas J. Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit', a paper presented to a conference on the 'The UN at Sixty: Celebration or Wake?' at the University of Toronto in October 2005, p. 12. Available at <http://cadair.aber.ac.uk/dspace/bitstream/2160/1971/1/a%20victory%20for%20common%20humanity.%20Wheeler.pdf> Accessed 19/01/09.

<sup>95</sup> For such analysis see Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, (Cambridge: Cambridge University Press, 2006), conclusion, esp. pp. 362-364.

## 6.4 Conclusion

Five years on from the endorsement of the R2P one is reminded of Martin Wight's claim that in the history of ideas there are not many new ideas, just old ideas presented with different accents.<sup>96</sup> In many ways the R2P seems to illustrate this point beautifully in that it is difficult to pinpoint exactly what new ideas the R2P brought to the table? As discussed, many of the legal, moral, and constitutional ideas embodied in the R2P were embodied in the 1948 Genocide Convention.<sup>97</sup> When one considers the sovereignty-intervention-authority debate that underpins the discourse it is difficult to see how many new ideas can be thought of? The R2P therefore demonstrates just how difficult it is to make any significant progress at the international level (a point that Wight himself was all too aware of). On the one hand, we can look at the R2P and celebrate the fact the R2P movement significantly helped re-establish a post-Second World War (1948) consensus in a post-Cold War world (2005). Quite simply, the world of 2005 was very different from that of the post-Second World War era in that in 1945 there were 51 UN member states whereas in 2005 there were 192 UN member states. This is an important point to consider from an international legitimacy perspective. On the other hand, we could pause and question: what sort of world do we live in when we need state leaders to acknowledge that they do not have the right to commit genocide, war crimes, crimes against humanity, and ethnic cleansing? The fact that we need the R2P in the first place does not say something wonderful about the state of international society.

To link this back into the broader discussion on the legitimacy crisis, it may strike the reader as somewhat odd, five years after the R2P was endorsed, and over ten years after the Kosovo crisis, to claim that the legitimacy crisis has not been resolved. To explain this I would like to turn to the work of Jean-Marc Coicaud whose analysis of international legitimacy in international relations speaks *not* of a *legitimacy crisis* but of legitimacy "fault lines" by which it is meant "areas of friction".<sup>98</sup> Essentially, Coicaud does not accept that international relations has experienced a legitimacy crisis, for as he states, there has been no "systemic

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<sup>96</sup> Martin Wight, International Theory. The Three Traditions edited by Gabriele Wight and Brian Porter (New York: Holmes ad Meir, 1992), p. 5. It should be noted that Wight draws upon A. P. d'Entrèves, "Men have kept on repeating the old slogans again and again. The novelty is very often only a question of accent".

<sup>97</sup> Ideas such as responsible sovereignty obviously pre-date the 1948 Genocide Convention.

<sup>98</sup> Hilary Charlesworth and Jean-Marc Coicaud, (ed.), Fault Lines of International Legitimacy (New York: Cambridge University Press, 2010). Whilst the title of the book reflects the view that more than just Jean-Marc Coicaud subscribe to this view, the understanding of "fault lines" is taken here from Jean-Marc Coicaud's, introductory chapter, see p. 4.

breakdown” of international order in which, for example, one or more great powers have left the United Nations (as was the case when the League of Nations failed).<sup>99</sup> Quite obviously, this reflects Coicaud’s personal view of what constitutes a legitimacy crisis, and here I would disagree with the author’s view as I, like many others, feel that the crisis that emerged over Kosovo and spilled over into Iraq did constitute a legitimacy crisis. However, I do feel that over a decade on from the Kosovo crisis it is understandable to see why Coicaud speaks of legitimacy “fault lines”, by which he means “areas of friction” rather than a legitimacy crisis and it is here that I feel the 2005 World Summit is important.

Essentially, the World Summit provided international society with an opportunity to reconcile its differences through deliberation which helped ease the legitimacy crisis. Even though it left certain fundamental questions unanswered, it acted to restate the purpose of the UN and the UNSC in the aftermath of events such as the unauthorised invasion of Iraq and the genocide in Darfur. With regard to this latter aspect, it is important to consider why the genocide in Darfur did not have the profound impact that the Rwandan genocide had upon the authority of the UN and the UNSC and to explain this I would like to raise four points. 1), the UN did not prove that genocide was occurring in Darfur. 2), the African Union took primary responsibility for resolving the crisis which helped eased the legal, moral, and constitutional expectations placed upon the UN itself. 3), despite the 2004 US acknowledgement of genocide in Darfur, NATO’s involvement in Afghanistan and Iraq constrained ‘the West’s’ ability to intervene. 4), it was hoped that the R2P initiative would see Darfur become an R2P ‘test-case’ as suggested by Lord Triesman above. From a legitimacy perspective, such developments help explain why a constitutional expectation arose, that the AU (with the support of the UN), would take on the responsibility for resolving the Darfur crisis. As a result, the genocide in Darfur did not erode the authority of the UN and the UNSC in the same way that the Rwandan genocide did. Yet at the same time, the fact that Darfur did not see an R2P initiative come into fruition illustrates the central point that the World Summit critically failed to address questions regarding implementation and political will.

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<sup>99</sup> Ibid.

It is here that international society's failure to address the question of *rightful authority* and the idea of legitimacy "fault lines" is interesting. Although the tension surrounding *rightful conduct* has been somewhat eased, when it comes to the question of *rightful authority*, by simply holding up the status quo international society seems to have created an unresolved legitimacy "fault line", by which it is meant that there remains unresolved "area of friction". To go back to Kofi Annan's line of questioning in 1999:

Imagine for one moment, in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi populations, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?<sup>100</sup>

Annan famously left the question unanswered; the problem is that it remains unanswered. This unresolved question illustrates the idea of a legitimacy "fault line" beautifully. In essence, the tension that can arise between the morality of intervention versus the legality of UN authorisation has not been resolved. Whilst this legitimacy "fault line" may lay dormant at present, it seems obvious that it is only a matter of time before this legitimacy "fault line" becomes more active. There are two points worth noting here. Primarily, one could imagine another genocide unfolding as that legal right of veto is utilised to prevent genocide prevention. Whilst this is in itself tragic, the second point to consider is how this "area of friction" could lead to a more "systemic breakdown" in international order (to use Coicaud's understanding). To go back to the understanding set out in Chapters Four and Five, if the P5 do not confront their legal obligation to prevent genocide then it is difficult to see how the UNSC, and perhaps even the UN, will continue to hold onto its perceived legitimate authority. If this occurs, states, including members of the P5 *may* (as opposed to will), walk away from the UN, thereby, creating more of a systemic breakdown.

Quite simply, genocide, more than any other crime exposes the legitimacy deficiency within the present ordering structure of the UN. Just as the Nazi atrocities highlighted the moral deficiency of the Westphalian ordering principles, the Rwandan genocide exposed the failings of the UN ordering principles. This brings us back to the central problem of *political will*. Over sixty years on from the Nazi genocide, and sixteen years on from the Rwandan genocide, it is highly unlikely that international society is any more willing, or able, to

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<sup>100</sup> Kofi, Annan, 'Two Concepts of Sovereignty', *The Economist* (18/09/1999) <http://www.un.org/News/press/docs/1999/199909199909181.htm> Accessed 12/06/09.



prevent genocide occurring in international relations. It is here that the next chapter re-engages in a more theoretical discussion of whether international society should *progress* or *regress* upon its commitment to genocide prevention. To do this, the chapter re-engages with the three traditions outlined in Chapter Two to address the legitimacy of such views toward genocide prevention in a post R2P world.

## 7 The Three Traditions Revisited

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There is nothing in international relations that dictates international society will naturally progress from one generation to the next. To understand such thinking, one has only to go back to the scepticism to be found within Martin Wight's view of progress in international relations. For Wight, the anarchical realm dictated that progress in the international sphere was inherently more problematic than in the domestic sphere.<sup>1</sup> As a result, the reality is that just because the R2P was unanimously endorsed in 2005, does not mean that the R2P is here to stay. Moreover, to return to Gareth Evans' understanding set out in Chapter One, the truth is that the R2P has not addressed the issue of political will and has in turn failed to frame the issue of mass atrocity crimes in a way that policymakers will now act as part of a "global reflex action" (to use Evans' phrase).<sup>2</sup> In sharp contrast, the divisive nature of the R2P, will see, and indeed has seen, a variety of actors challenge the legitimacy of the R2P over the last five years. Problematically, policymakers will not only be confronted with the real life challenge of mass atrocity crimes, such as genocide, but will also be challenged by a variety of voices offering alternative ways for framing the problem of genocide. As discussed in Chapter One, this may lead policymakers to treat genocide as just another insoluble problem. It is precisely because of this point that this penultimate chapter re-engages with the three traditions. To return to the idea of theoretical pluralism, the English School views IR as a three way conversation between the traditions of realism, rationalism and revolutionism.<sup>3</sup> As raised in Chapter Two, each tradition conceptualises the issue of genocide prevention in a different light. The aim of this chapter is to utilise the understanding that has been developed over previous chapters to re-engage with the realist, rationalist, and revolutionist perspectives regarding genocide prevention in a post R2P world.

### 7.1 The realist voice

Addressing the lessons to be learnt from the US engagement in Somalia, Senator John McCain aptly summarised the realist perspective when he stated: "the lesson of Somalia is

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<sup>1</sup> Martin Wight, International Theory. The Three Traditions Gabriele Wight and Brian Porter (ed.), (New York: Holmes and Meier, 1992), esp. pp – 5-6.

<sup>2</sup> Gareth Evans, 'Preventing Mass Atrocities: Making the Responsibility to Protect a Reality', Keynote address to the UN University and International Crisis Group Conference 10/10/2007. <http://www.crisisgroup.org/home/index.cfm?id=5116&l=1> Accessed 01/04/2008.

<sup>3</sup> The idea of a theoretical pluralism representing a conversation is taken from Tim Dunne, Inventing International Society. History of the English School (New York: Palgrave, Macmillan, 1995), p.xiii.

simple: it is clearly not in the interests of the US to subject US decision making on grave matters of state or the lives of American soldiers to the frequently vacillating, frequently contradictory, and frequently reckless collective impulses of the United Nations".<sup>4</sup> Although Senator McCain is regarded as more of a neo-con than a realist, the statement underlines the realist belief and/or fear that the pursuit of the collective interest can seriously undermine that of the national interest. There is an attempt therefore to draw a clear distinction between the national and collective interest, especially within the context of such "dangerous and complex" (to use Andrew Hurrell's phrase) foreign policy problems as Somalia. This naturally leads back into the realist claim that genocide prevention should be considered as just another policy option, one that should only be opted for when there are national interests at stake.

To put this into context let us consider Steven Groves' position in his piece entitled: '*The U.S. should reject the U.N. "Responsibility to Protect" Doctrine*'.<sup>5</sup> Although Groves acknowledges the noble goals of the R2P, he dismisses the R2P on the grounds that it serves the interests of the "international community" rather than the national interest of the US.<sup>6</sup> The sentiment expressed by Groves embodies a clear realist ethic. Groves' scepticism toward the R2P is part of a broader problem that Groves has with the idea of international law and international institutions. The fear being that such legal obligations will undermine the national interest of the US and more specifically its right to "maintain freedom of action".<sup>7</sup> For Groves, it is imperative that the US "maintains a monopoly on the decision to deploy diplomatic pressure, economic sanctions, political coercion, and especially its military forces".<sup>8</sup> As a result, the R2P should be rejected as it erodes the political independence won

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<sup>4</sup> Cited in Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity, 1996), p. 213.

<sup>5</sup> Steven Groves, The U.S. should reject the U.N. "Responsibility to Protect" Doctrine, (Heritage Foundation, no. 2130, 2008). <http://www.heritage.org/Research/InternationalOrganizations/bg2130.cfm> Accessed 01/04/09. As of March 2010, this was available at <http://www.heritage.org/Research/Reports/2008/05/The-US-Should-Reject-the-UN-Responsibility-to-Protect-Doctrine>

<sup>6</sup> In a subsequent co-authored piece in which Groves replies to President Obama's claim that the UN is "indispensable", Groves sets out a clear position that goes beyond merely reforming the UN as Groves urges President Obama to work with the UN in a new way, yet critically also develop ways in which the US can work outside the UN. See Brett D Schaefer and S Groves, 'Reforms needed for a more effective United Nations: A memo to President Elect Obama', (Heritage Foundation, Special Report 41, 19/01/2009), available at <http://www.heritage.org/Research/InternationalOrganizations/sr0041.cfm> Accessed 11/05/2010.

<sup>7</sup> This is taken from Martin Wight who identifies this to be the basic national interest according to realists, see Wight, International Theory, p. 112.

<sup>8</sup> Groves, 'The U.S. should reject the U.N. "Responsibility to Protect"'

by America's Founding Fathers and compromises the consent of the American people.<sup>9</sup> Such understanding reiterates much of the sentiment expressed by McCain above, for it is claimed that international institutions and international law tend to erode US sovereignty and power, thus undermining US interests.<sup>10</sup> The realist fear being that just like in Somalia, the US will find itself embroiled in an R2P crisis that has little to do with the interests of the US.

Accordingly, the R2P signifies an erosion of US control and it is from this perspective that Groves sets out his *five point prescriptive plan* of what the US *should do* following its endorsement of the R2P.

**Maintain** its current official position, as set forth in Ambassador Bolton's letter regarding the 2005 World Summit Outcome Document, that the R2P doctrine does not create a binding legal obligation on the United States to intervene in another nation for any purpose. **Affirm** that the United States need not seek authorization from the U.N. Security Council, the U.N. General Assembly, the international community, or any other international organization to use its military forces to prevent acts of genocide, ethnic cleansing, or other atrocities occurring in another country. **Base** its decisions to intervene in the affairs of other nations -- including punitive economic, diplomatic, political, and military measures -- on U.S. national interests, not on criteria set forth by the R2P doctrine or any other international "test." **Scrutinize** ongoing efforts by certain actors within the international community to operationalize and otherwise promote the R2P doctrine in the United States, the United Nations, the international NGO community, and other international forums. **Reject** the notion that the R2P doctrine is an established international norm.<sup>11</sup>

The statement provides a classical example of how realism embodies a normative argument (despite what realists may sometimes claim). One has to only juxtapose point one and point five in order to see how Groves attempts to persuade readers that the US *should* reject the R2P on both legal and moral grounds.<sup>12</sup> It is important therefore to deconstruct this normative argument as it is clear that whether right or wrong, such rationale has had a profound impact on foreign policy making.

<sup>9</sup> Ibid. With regard to this latter point, one could raise the point here that Groves reflects a common misconception that the US public do not favour military intervention for the prevention of genocide, see Herbert Hirsch, 'Genocide and Public Opinion: A Comparison of the Policy Making Elite and the General Public', in Hirsch, Anti-Genocide. Building an American Movement to Prevent Genocide (London: Praeger, 2002), esp. chapter two.

<sup>10</sup> Notably, Michael Byers offer a strong and stark counterargument to the US rejection of international law. He claims that institutions such as the UN embody principles that are more consistent with the founding principles of the US than the policy advocated by the Bush administration. See Michael Byers, 'Terror and the Future of International Law', in Ken Booth and Tim Dunne, (eds.), Worlds in Collision: Terror and the Future of Global Order (London: Palgrave, 2002), pp. 118-127.

<sup>11</sup> Groves, 'The U.S. should reject the U.N. "Responsibility to Protect'. Emphasis in original.

<sup>12</sup> Groves reiterates the aforementioned legal position put forward in 2005 by former US Ambassador John Bolton who stated that the US would 'not accept that either the United States as a whole, or the Security Council, or individual states have an obligation to intervene under international law'.

[http://www.responsibilitytoprotect.org/files/US\\_Boltonletter\\_R2P\\_30Aug05%5B1%5D.pdf](http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05%5B1%5D.pdf)  
Accessed 10/01/2009

Unfortunately for Groves, the reality is that the US did endorse the R2P and has since reaffirmed its commitment to the R2P principle.<sup>13</sup> This point is worth considering as it is clear that Groves attempts to create a false dichotomy. This is evident in point four of the plan as Groves claims that the US needs to reject the ‘norm creating behaviour’ espoused by actors such as the UN and NGO’s.<sup>14</sup> If one takes this point at face value, one is left with a distinction between R2P advocates that serve the needs of the ‘international community’ on one side of the divide and those that serve the national interest of the US on the other. Groves attempts to entrench this division further as he questions how the UN Secretary General can create the R2P ‘assistant secretary-general position’ when the Outcome Document contains ‘only three paragraphs’.<sup>15</sup> For Groves, such action further illustrates the ‘norm creating behaviour’ of those that serve the international rather than the national interest. Accordingly, readers are presented with a choice, one can either support those work in favour of the ‘international community’ or alternatively, support those that work in favour of the US national interest. Yet the problem with this dichotomy is that Groves fails to acknowledge that the through endorsing and reaffirming its commitment to the R2P, the US itself, is guilty of such ‘norm creating behaviour’. Therefore, to suggest that the US is on one side of the R2P divide and R2P advocates on the other is flawed. The relationship between the national and the international interest is not as black and white as Groves implies and critically, he lacks the consensual support that he evidently desires.

Prior to addressing the complexities surrounding the national interest, it is important to pause and consider why Groves holds such evident contempt for international law and international institutions. It is here that Groves puts forward a legitimate concern as he holds a genuine fear that the collective security regime of the UN cannot protect the US. Obviously, in a post-9/11 world, this is a valid point and is actually raised in Justin Morris and Nicholas J. Wheeler’s analysis of the UNSC’s legitimacy crisis. As the authors explain, whereas traditionally Great Powers were less vulnerable to attack, the paradox today is that: “the most powerful state in the world – and the symbol of the prevailing conception of global order –

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<sup>13</sup> As part of the UN Security Council, the US endorsed the following in 2006. UN Security Council Resolution 1674, ‘Protection of Civilians in Armed Conflict’ (S/RES/1674, August 2006). The UNSC then raised the R2P in the context of a Resolution on the events in Darfur: UN Security Council Resolution 1706, ‘Reports of the Secretary-General on the Sudan’, (S/RES/1706, August 2006). Both can be accessed at <http://www.un.org/Docs/sc/unscreolutions06.htm> Both accessed 09/02/2010

<sup>14</sup> Groves, ‘The U.S. should reject the U.N. “Responsibility to Protect’.

<sup>15</sup> Ibid.

perceives itself to be uniquely vulnerable".<sup>16</sup> Now whilst one can debate the accuracy of this US perception, one cannot escape the reality that the US has as much right as any other state to be protected by the collective security system of the UN. If, therefore, the US has more power than the UN, and it perceives that it is under threat from the emergence of 'new threats', then is it not justified in making the demand that it should be exempt from the constraint that is the UN in times when such threats emerge?<sup>17</sup> Although Morris and Wheeler accept this concern, they go on to claim that the US cannot bear the cost of acting outside the 'rules of the game' and therefore must work within the framework of international legitimacy. This brings us back to the understanding raised in Chapter Six, as the ICISS report highlighted that the P5 undermine their own privileged position in international society when they violate the rules of the game that serve them well.

From this perspective, the hard-line realist stance advocated by Groves does not only work against the interests of the "international community" but also the US itself.<sup>18</sup> For example, Morris and Wheeler juxtapose the unilateral stance taken by the US over Kosovo with that taken over Iraq to highlight that in the latter case, because the US forged such a limited coalition, the US had to carry much more of the political, economic, and military burden than it did over Kosovo.<sup>19</sup> Although one can equally argue that in the context of Somalia the US maybe carried too much of the international burden, the point is that in attempting to shed some of the burden, the US should not revert to simply dismissing international norms. This only accentuates the burden placed on the US in the long-run. For instance, to return to Groves' second point, he stipulates that the US should affirm that the US "need not seek authorization" from the U.N. or any other relevant body with regard to using its military

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<sup>16</sup> Justin Morris and Nicholas J. Wheeler, 'The Security Council's Crisis of Legitimacy and the Use of Force', *International Politics* (vol. 44, 2007, pp. 214 -231). Available at <http://www.palgravejournals.com/ip/journal/v44/n2/full/8800185a.html> Accessed 21/04/2009. The burden of US unilateralism was obviously heightened due to the willingness of the post 9/11 Bush administration to go it alone, for a sharp overview of this position see, Ralph G. Carter, 'Leadership at Risk: The Perils of Unilateralism', *Political Science and Politics* (vol. 36, no. 1, 2003, pp. 17-22).

<sup>17</sup> For such analysis see, Morris and Wheeler, 'The Security Council's Crisis of Legitimacy and the Use of Force'.

<sup>18</sup> This line of thinking is nothing new, for an overview see, Jean-Francois Drolet, 'Containing the Kantian Revolutions: A Theoretical Analysis of the Neo-Conservative Critique of Global Liberal Governance', *Review of International Studies* (vol. 36, no. 3, 2010, pp. 533 - 556). Shashi Tharoor, 'Why America Still Needs the United Nations', *Foreign Affairs* (vol. 80, no. 1, 2001, pp. 67 - 80). Peter J. Spiro, 'The New Sovereignists: American Exceptionalism and Its False Prophets', *Foreign Affairs* (vol. 29, no. 6, 200, pp. 9-15).

<sup>19</sup> Morris and Wheeler, 'The Security Council's Crisis of Legitimacy and the Use of Force'.

forces to prevent mass atrocity crimes in other countries.<sup>20</sup> Yet the reality is that the US does not have the power to become the mass atrocity police officer of the world. If the US is to stand against such crimes occurring, then why reject the R2P in the first place? Why not accept the R2P and try to forge a long-term collective security strategy that will aid this objective rather than placing any more of a unilateral burden on the US.

Such understanding is critically overlooked by realists who dismiss the UN. As stated in Chapter One, genocide prevention may lead states into “complex and dangerous” foreign policy agendas. Groves, therefore, makes a contradictory point as it is clear that the US would benefit by not going it alone in such “complex and dangerous” foreign policy matters. Since no state can carry the burden of genocide prevention unilaterally, it is imperative that this burden is carried forth on the shoulders of international society as a whole. Andrew Hurrell explains this point well when he states: “To a much greater extent than realists acknowledge, states need multilateral security institutions both to share the material and political burdens of security management and to gain the authority and legitimacy that the possession of crude power can never on its own secure”.<sup>21</sup> Primarily, the statement reiterates the point that states need institutions such as the UN to help share the burden of security in an anarchical realm. Secondly, the statement brings us back to the central idea of international legitimacy, as Hurrell claims that power in itself is not enough. Whilst the US may have the power to intervene unilaterally, it does not have the authority to intervene unilaterally. Without forging a tolerable level of consensual support, the perceived abuse of such crude power will only go to add to the unilateral burden of the US.<sup>22</sup> Within Groves analysis there seems to be the assumption that international legitimacy can be constructed upon power alone, yet as discussed in Chapter Four, this is simply not the case.

International legitimacy, it should be remembered, not only constrains power, but also enables power at the international level. This is the power of legitimacy.<sup>23</sup> Power therefore, in itself is not enough. Indeed, Hurrell raises Martin Wight’s point: “The fundamental problem of

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<sup>20</sup> Groves, ‘The U.S. should reject the U.N. “Responsibility to Protect”’.

<sup>21</sup> Andrew Hurrell, On Global Order. Power, Values and the Constitution of International Society (Oxford: Oxford University Press, 2007). p. 192. See also Christian Reus-Smit, ‘The Constructivist Challenge after September 11’, in Alex J. Bellamy, (ed.), International Society and its Critics (Oxford: Oxford University Press, 2005), esp. pp.88-90.

<sup>22</sup> Obviously such thinking can be traced back to Joseph Nye., The Paradox of American Power: Why the World’s Only Superpower Can’t Go it Alone (Oxford: Oxford University Press, 2003).

<sup>23</sup> See Nicholas J. Wheeler’s take on Inis Claude original statement, Saving Strangers Humanitarian Intervention in International Society (Oxford: Oxford University press, 2000). p.4.

power politics is the justification of power....Power is not self-justifying: it must be justified by reference to some source outside or beyond itself, and thus be transformed into “authority”.”<sup>24</sup> Wight captures the heart of the matter when he highlights the difference between power and authority. In order to transform power into authority one needs to achieve legitimate status.<sup>25</sup> To return to Clark, in order to gain authority at the international level one has to bring in the other central tenets of international legitimacy in order for that authority to be perceived as legitimate. This has been put into explicit practice as US President Barack Obama has attempted to reconstruct American leadership in a post-George W. Bush world by appealing to the need for more US power as well as more US legitimacy which it is claimed can only come through establishing a more multilateral approach.<sup>26</sup> Crucially, this represents a more informed understanding of the relationship between power and authority as the latter is dependent upon international legitimacy rather than power alone.<sup>27</sup> It is this stance, rather than the one put forward by realists, that will ultimately serve US interests.

To return to the premise of the ICISS report raised in Chapter Six, the permanent position that the US has within the UNSC is a privilege and it is not in the long-term interests of the US to violate the very rules that provide the US with its privileged status. For example, when Russia intervened in Georgia in 2008, Russia utilised a human rights rationale and raised the R2P in an attempt to legitimise its unilateral intervention. In sharp response the US condemned the intervention, with former vice President Dick Cheney stating that the intervention represented an “illegitimate unilateral attempt” to change Georgia’s borders.<sup>28</sup> Although the intervention clearly violated international law and failed to fulfil the prerequisite of an R2P intervention (namely that Russia didn’t gain UNSC approval) it is difficult to see how the US can justify its condemnation without turning to the very rules that it itself

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<sup>24</sup> Andrew Hurrell, *Global Order*, p.39.

<sup>25</sup> For such analysis, see Chris Brown with Kirsten Ainley, ‘Power and Security’, in *Understanding International Relations, third edition* (New York: Palgrave, 2005), chapter five.

<sup>26</sup> See Barack Obama, ‘Renewing American Leadership’, *Foreign Affairs* (July/August, 2007, pp. 1-16.). See also, M. J. Williams, ‘The Coming Revolution in Foreign Affairs: rethinking American National Security’, *International Affairs* (vol. 84, no. 6, 2008, pp. 1109 – 1130).

<sup>27</sup> The divisive positions adopted within the US have also been evident in the debates over the closure of Guantanamo Bay as critics such as former Vice President Dick Cheney imply that US power and moral beliefs are enough, yet this fails to take into account any understanding of international law and international consensus over the issue. See Tom Baldwin and Tom Reid, ‘Barak Obama and Dick Cheney Clash over Guantanamo Closure’, *Times On-line* available on-line

[http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6337947.ece](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6337947.ece) Accessed 22/05/09.

<sup>28</sup> David Pallister, ‘Dick Cheney warns Russia over regional bullying tactics’, *The Guardian* (04/09/2008) Available at <http://www.guardian.co.uk/global/2008/sep/04/georgia.russia> Accessed 21/05/09.



violated in the context of the invasion of Iraq in 2003. Such violations, unless supported by a tolerable consensus of UNGA support, ultimately undermine the authority of the rules and the UN itself. At the same time, the P5 set a precedent that those who have the power to act unilaterally can do so. Ultimately this does not serve the vested interest of any P5 member in the long-run.

### 7.1.1 Summary

Despite its limitations, the UN stands as the cornerstone of international legitimacy because it acts as an arena for international deliberation. This is not to say that the UN is perfect, but that its critics should reform it from the inside rather than the outside.<sup>29</sup> For example in Blair's famous speech on 'The Doctrine of the International Community', Blair stated "being pro EU does not mean we are content with the way it is. We believe it needs radical reform".<sup>30</sup> The sentiment can also be applied to the UN. To return to Groves' point that the UN may not provide US security in a post 9/11 world, it is clear that the US cannot carry the burden of fighting international terrorism on its own. Although pre-emptive strikes are not permitted in the UN Charter, if the US feels that that are justified then they have to make their moral case within the UN in an effort to forge the tolerable consensus needed to alter the existing legal framework. Whilst many in the US are critical of the UN, one is reminded of Richard Gardener's point made back in the 1960's: "Those who deplore the United Nations as a "debating society" appear to have little confidence in the capacity of the United States to present its case successfully in the council of nations"<sup>31</sup> Quite simply, the US needed to make its case at the UN in order to gain the level of consensual support needed from the relevant actors in order to legitimate such action. Any fundamental change in international policy with regard to the use of force has to come from inside rather than outside the UN as it stands as the sole arena of international deliberation. This is precisely the point made in Morris and Wheeler's prescription for a long-term solution to the legitimacy crisis as they argue that the ambiguity surrounding Article 39 of the UN Charter has to be addressed to re-

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<sup>29</sup> Obviously there is a large amount of literature on this issue. For a more pragmatic approach see T. G. Weiss, What's Wrong with the United Nations (and How to Fix it) (Cambridge: Polity, 2008). For a more cosmopolitan perspective see Daniele Archibugi, The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy (Princeton: Princeton University Press, 2008), esp. chapter six.

<sup>30</sup> Tony Blair, 'The Doctrine of the International Community', (24/09/1999), available at <http://www.number10.gov.uk/Page1297> Accessed 23/07/08.

<sup>31</sup> Richard N. Gardener, In Pursuit of World Order. U.S. Foreign Policy and International Organisations (London: Fredrick A. Praeger, 1966), p. 22.

empower the UNSC as the cornerstone of a revitalised collective security regime.<sup>32</sup> This reaffirms the understanding set out in Chapter Five that international society failed to forge a post-Cold War consensus over what would constitute rightful conduct, which ultimately brought the authority of the UN into question.

Realists have to consider the question, if states turn their back on international law and multilateral institutions whenever it suits them, what message does this send to other states? To return to the premise of Groves' position, the UN may constrain the power of the US with regard to its right to "maintain freedom of action", but critically, it also constrains the misuse of power in international relations as a whole. If the US supports international law and international institutions on an ad hoc basis, then how can it challenge (other than militarily, which would create a continuous state of tension) other states upholding the same disdain for international law and institutions? It is in the vital national interest of the US to have as much of a civilised, stable, and ordered international environment as possible and it is therefore imperative that policymakers acknowledge the power that international legitimacy plays in facilitating a more stable anarchical realm. With this in mind, states cannot overlook the importance of confronting genocide. If international law and international institutions, such as the UN, are to have any perceived legitimate value, states have to formulate a long-term collective security strategy in order to address their legal and moral obligation to prevent genocide.

## **7.2 The rationalist voice**

Unlike realists, English School pluralists have a more optimistic view regarding the potential for progress and cooperation at the international level. As a result, English School pluralists place more value in international institutions such as the UN and international law than is to be traditionally found in realism. However, as discussed in Chapter Two, English School pluralists unlike English School solidarists oppose the idea of humanitarian intervention in international relations as they claim international order is best served by the rules of sovereignty, non-intervention and non-use of force. The pursuit of international justice, therefore, embodied in the principle of humanitarian intervention is seen to represent a clear violation of the English School pluralist rules. Accordingly, the 1948 Genocide Convention and the 2005 R2P remain a solidarist step too far. From this perspective, English School

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<sup>32</sup> Morris and Wheeler, 'The Security Council's Crisis of Legitimacy and the Use of Force'.

pluralists would tend to put forward the idea that any responsibilities and/or obligations toward humanitarian intervention should be rejected as international society should be ordered on the fundamental rules of sovereignty and non-intervention.

The clearest endorsement of such a pluralistic doctrine can be found in Robert Jackson's publication *The Global Covenant, Human Conduct in a World of States*.<sup>33</sup> The work represents a groundbreaking piece of contemporary English School scholarship in that it utilises the interdisciplinary classical approach to address issues such as "peace and security, war and intervention, human rights, failed states, territories and boundaries, and democracy" in a post-1945 world.<sup>34</sup> Obviously the scope of this work cannot be addressed in full here. Instead, this analysis will focus on Jackson's rejection of humanitarian intervention as a legitimate practice in international relations. Although this work was published in 2000 (prior to the endorsement of the R2P), its theoretical defence of absolute sovereignty, non-intervention, and non-use of force provides an apt framework for this analysis as it is grounded upon a moral, political, and legal defence of English School pluralism. Notably this intellectually enriching text offers great insight into English School pluralism, however, when one places the crime of genocide within this pluralistic framework, the internal coherence of Jackson's thesis comes under intense scrutiny.

First of all, let us gauge the *moral* defence put forward as Jackson believes that the rules of sovereignty and non-intervention serve humanity. By this it is meant that sovereignty allows for "unity in diversity", in that alternative ways of living can be constructed *within* states yet at the same time this still allows for a normative dialogue to exist *between* states.<sup>35</sup> The premise is neatly summed up in Jackson's commitment to *normative pluralism* as a moral basis for sovereignty:

Normative pluralism is the morality of 'tending your own patch' and that means having a patch and being free to occupy it and cultivate it in your own way. A core human value of the global covenant is the opportunity it affords to people the world over to make of their local political independence whatever they can without having to be unduly concerned about unwarranted interference by neighbours or other outsiders. The global covenant provides a

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<sup>33</sup> Robert Jackson, *The Global Covenant, Human Conduct in a World of States* (Oxford: Oxford University Press, 2000).

<sup>34</sup> *Ibid*, p. vii.

<sup>35</sup> Jackson, *The Global Covenant*, chapter one: 'The Normative Dialogue of International Society'.

normative guarantee of political independence. However, it offers no guarantees, normative or otherwise, that international freedom will be used wisely or effectively.<sup>36</sup>

The statement embodies Jackson's unshakable moral commitment to normative pluralism as Jackson believes that it serves the imperfection, diversity, and commonality to be found in humanity. The highly interesting point is that whilst English School solidarists advocate humanitarian intervention to prevent crimes against humanity, the understanding put forward by Jackson implies that humanitarian intervention, could in itself, constitute a crime against humanity as it violates the very rules that serve humanity best. Whilst Jackson also shares the realist fear that humanitarian intervention may become a doctrine that is exploited by powerful states, here we see a more developed normative argument in that Jackson puts forward a normative link between sovereignty and humanity.

This commitment to normative pluralism, in the defence of humanity, also underpins Jackson's *political* defence of sovereignty and non-intervention. As Jackson boldly proclaims: "Sovereignty is not a political arrangement only for fair weather and good times. It is an arrangement for all political seasons and for all kinds of weather".<sup>37</sup> Such rationale aligns itself with the normative pluralism outlined above, for Jackson views the state as a "framework of independence".<sup>38</sup> Although this does not guarantee that state leaders will not abuse their political autonomy, this commitment to autonomy, offers the only framework in which independence can prosper. Without such political independence states cannot flourish in an independent way. Fearful of outside intervention states will be constantly 'watching over their shoulder' which will ultimately hinder their ability to evolve as they would without external influence. As a result, this will hinder humanity's ability to evolve in a diverse and imperfect manner. On reading Jackson's central thesis, one cannot help but be reminded of the expression 'short-term pain for long-term gain' as sovereignty is advocated in the absolute sense (despite its flaws), for it remains the only viable option for ensuring that states *and* humanity flourish.

This brings us onto the third and final dimension of *legality*. Jackson defends his position from a legal perspective by appealing to the understanding set out in Article 2 of the UN Charter. For example Jackson boldly claims: "The most important procedural norm-

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<sup>36</sup> Ibid, p. 410.

<sup>37</sup> Ibid, p. 308.

<sup>38</sup> Ibid. The idea that sovereignty acts as a "framework of independence" is taken from p.308.

*grandnorm* –of the global covenant is clearly expressed by Article 2 of the UN Charter. Article 2(4) lays down the most important principle of state sovereignty ‘All members shall refrain in their international relations from the threat or use of force against *territorial integrity of political independence*’.<sup>39</sup> This interpretation of the UN Charter is common amongst critics of humanitarian intervention. Article 2 is interpreted in an absolutist sense to infer that the UN Charter upholds the idea of absolute sovereignty. This paves the way for Article 2 (7) which as Jackson notes: “proclaims the principle of non-intervention: ‘Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’”<sup>40</sup> Accordingly, the “grandnorm” status that Jackson attributes to Article 2 of the UN Charter, seemingly overrides the legal status of alternative norms to be found in the UN Charter’s commitment to inalienable rights and other such pro-interventionist legal treaties, conventions, and declarations. Although one can understand the Jackson’s appeal to Article 2 to defend against the ever expanding post-Cold War debate over humanitarian intervention, when it comes to genocide (for the reasons discussed in Chapter Five), the 1948 Genocide Convention sets out a clear legal framework that provides states with the right to intervene. Whilst Jackson’s thesis provides a thoughtful and enriching analysis of international relations, when one places the crime of genocide within this pluralistic framework, the legitimacy and internal coherence of Jackson’s thesis becomes untenable.

For example, Jackson defends political autonomy on the grounds that this serves the diversity of humanity. Quite simply, this could not be further from the truth when one considers the implications of genocide. Jackson claims that political independence allows states to “tend their own patch” allowing for citizens to achieve the “good life”, yet this grossly misses the point that genocide occurs precisely because state leaders “tend their own patch”. For example, in Zygmunt Bauman’s seminal analysis he refers to the genocidal process as “the gardening vision of the state”.<sup>41</sup> By which it is meant that the state admires the flowers it wishes to keep and eradicates the weeds that it perceives pose a threat to the garden

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<sup>39</sup> Ibid, p.18.

<sup>40</sup> Ibid.

<sup>41</sup> See Zygmunt Bauman, *Modernity and the Holocaust* (Cambridge: Polity, 1989), esp. p. 18 and p. 122.

flourishing as state leaders think it should.<sup>42</sup> Hence groups such as the Jews or Tutsi were deemed to be weeds within their own societies and their destruction was the outcome of state leaders “tending their own patch”. It is within such circumstances that Jackson’s thesis suffers from a striking lack of internal coherence as it is clear that genocide grossly undermines the diversity of humanity, yet this is the very thing that Jackson sets out to protect. As discussed in Chapter Three, the process of destruction that is to be found within the genocidal process acts to destroy “the essential foundations of a group”. If one upholds a commitment to cultural diversity (as Jackson does), it is internally incoherent to suggest that bringing an end to such a destruction process (via humanitarian intervention) would somehow hinder the cultural diversity of humanity. Although Jackson hopes that non-military methods can be used to prevent human rights violations within states, in denying humanitarian intervention in all contexts, the author ultimately grants state leaders a licence to destroy groups and in doing so destroy the diversity of humanity which he himself sets out to uphold.<sup>43</sup>

It is also evident that the state-centric nature of Jackson’s political autonomy serves the interests of state-leaders *more* than it does the idea of humanity. For example, Jackson claims that “the global covenant enables state leaders to relate to each other, to co-exist with each other, and to cooperate with each other without sacrificing the political independence and the values and life ways upheld by it”.<sup>44</sup> Despite the fact that such rhetoric explicitly endorses the co-existence of state leaders, Jackson qualifies this position in relation to humanity by basing his argument on the assumption that “leaders represent humanity in its full heterogeneity”.<sup>45</sup> The problem with this rationale is that state leaders *do not* represent humanity: how can it be that the one hundred and ninety two state leaders represent the six billion plus of humanity in its full heterogeneity? The understanding, therefore, set out by Jackson seems to serve state elites rather than humanity. The state-centric assumption that is built into this claim only goes to undermine any notion of humanity which would undoubtedly be better served through a solidarist commitment to conditional sovereignty. As discussed, the legal, moral, and constitutional consensus forged over the idea of conditional sovereignty (embodied in the

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<sup>42</sup> I am drawing here upon the keynote lecture given by Zygmunt Bauman, ‘Done to Humans, Done by Humans’, presented at the 1<sup>st</sup> Global Conference on Genocide by the International Network of Genocide Scholars, at the Centre for the Study of Genocide and Mass Violence, The University of Sheffield, (09/01/2009).

<sup>43</sup> For Jackson’s discussion on this point see The Global Covenant, p.414.

<sup>44</sup> *Ibid*, p.23.

<sup>45</sup> *Ibid*, p.22.

1948 Genocide Convention and the R2P) represents an attempt by international society to constrain the idea of absolute power in international relations. This reflected international society's view that absolute sovereignty acted to serve the interests of leaders rather than citizens within such tyrannical contexts as genocide.

Whilst Jackson implies that English School pluralism serves the interests of states, and the individuals within states, this perspective is built upon an assumption regarding the relationship between the rulers and the ruled. It seems that Jackson has overlooked the role of power within his attempt to construct the notion of a global covenant on the grounds of international legitimacy. This defence of political autonomy is built on the notion that states will sort it out for themselves, yet as Jackson knows, the role of power within the state means that citizens do not have the power to sort it out if for themselves (when they find themselves the victim of state tyranny). When a state implements the genocidal process there is very little, or nothing, that the victims can do without outside help. They are victims not because of what they have done, but because of who they are. This is critical. Quite simply it leaves the victim group with no power to compromise. This is important when one considers Jackson's opposition toward humanitarian intervention as he claims that countries do not want to be unduly concerned about outside intervention. Whilst one could imagine this to be the case in times of "good weather" (to use Jackson's phrase), it is more difficult to imagine that people feel this way in times of tyranny and "bad weather". When a regime is committing genocide, then the groups being targeted are not worried about intervention, *they are worried about non-intervention*. The only people worried about intervention are the perpetrators of the crime. Despite the fact that Jackson is motivated by an obvious compassion for humanity, his thesis would undoubtedly find great favour with genocidal perpetrators. This raises a critical point in that such ardent pluralism may increase the frequency of genocide. If a state leader knows that he, or she, will not answer to outside interventions then what is to stop such tyranny from escalating?

Overall, the legitimate foundations of Jackson's anti-humanitarian intervention stance, at least within the context of genocide, are indefensible. For example, Jackson draws quite extensively on Tony Blair's seminal speech regarding 'The Doctrine of The International Community', before rejecting the idea that democratic states have the moral right to invoke

regime change on non-democratic states.<sup>46</sup> Jackson states that *if* this inference is correct, such a movement would see a transformation from a “*societas* of states into an international community (*universitas*) based on democracy and human rights”.<sup>47</sup> The problem is that this inference drawn from Blair’s speech is not correct, as Blair’s speech was *not* built upon the single idea of pro-democratic regime change. Instead, Blair raised a whole host of ideas relating to sovereignty and human rights which need to be considered further:

The most pressing foreign policy problem we face is to identify the circumstances in which we should get actively involved in other people’s conflicts. Non -interference has long been considered an important principle of international order. And it is not one we would want to jettison too readily. One state should not feel it has the right to change the political system of another or foment subversion or seize pieces of territory to which it feels it should have some claim. But the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter.<sup>48</sup>

On reading the statement, and in the light of what occurred in Iraq, one can understandably infer that Blair advocated pro-democratic regime change. From this perspective, the legitimacy of such regime change is rightly brought into question as it is clear that no overall moral or legal consensus exists, within today’s world, regarding pro-democratic regime change. However, the statement also raises the perfectly legitimate point regarding the fact that whilst sovereignty is extremely important, there are certain acts of state tyranny that cannot be considered as a domestic issue. This is not simply a debate over pro-democratic regime change, but a more profound question of where international society should draw the line between conditional and absolute sovereignty. Reaffirming the sentiment outlined in Chapter Five, Blair states that genocide can never be viewed as a purely internal matter. This latter aspect is gravely omitted in Jackson’s analysis as he rejects the legitimacy of the pro-democracy norm yet fails to gauge the legitimacy of the anti-genocide norm.<sup>49</sup>

### 7.2.1 Summary

As discussed, international legitimacy is a process rather than a property. The collective understandings that are constructed can be deconstructed. The English School pluralist commitment to absolute sovereignty, non-intervention, and non-use of force implies that on

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<sup>46</sup> Ibid, pp. 355-365.

<sup>47</sup> Ibid, p. 360.

<sup>48</sup> Tony Blair, ‘The Doctrine of the International Community’, (24/09/1999) <http://www.number10.gov.uk/Page1297> Accessed 23/07/08.

<sup>49</sup> Such understanding creates the basis for Jack Donnelly’s analysis of the “anti-genocide norm” which was raised in Chapter Four. Donnelly goes onto to claim that the moral consensus over genocide far outweighs that over pro-democracy. See, Donnelly, *Universal Human Rights*, p. 252, footnote. 21.



the one hand, states should not forge any understandings that challenge these rules, and on the other hand, states should deconstruct any such understandings that have been forged in the past. At present, it is evident that the pluralist rules of absolute sovereignty, non-intervention, and non-use of force have been deemed to be outdated within the context of genocide. The conditional element embodied in the understanding of sovereignty espoused by the 1948 Genocide Convention and the 2005 R2P has ultimately been deemed as rightful conduct. State leaders have seen that such understanding is necessary for the health of international society as such mass atrocity crimes cannot be tolerated in a world that strives to become more civilised. It should be stressed here that the understanding of English School pluralism put forward by Jackson does not engage explicitly with the idea of genocide, which as discussed, places the context of such pluralism in a stark light. However, the silence on this subject matter does not deter from the fact that in upholding a commitment to such rules, Jackson's thesis comes under intense scrutiny within the context of genocide. Such silence is perhaps a common feature of such a pluralistic approach. As Richard Shapcott claims: "Because of their assumptions of limited interaction, pluralists are at best silent and at worst indifferent to the extent of transnational ethical problems that face modern communities".<sup>50</sup> This silence has not been helped as Jackson has produced work on sovereignty and humanitarian intervention since the endorsement of the R2P, yet failed to engage in an analysis of whether conditional sovereignty is legitimate.<sup>51</sup>

### 7.3 The revolutionist voice

The tradition of revolutionism remains the most under-theorised tradition in the English School approach. As discussed in Chapter Two, for Wight, revolutionism was a hybrid category which captured the "soft" revolutionaries from Kant to Nehru, as well as the "hard" revolutionaries of Jacobins and Marxists.<sup>52</sup> Obviously such a 'broad church' of thought cannot be fully addressed here. Because of this, this final section re-engages with Andrew

<sup>50</sup> Richard Shapcott, 'Anti-Cosmopolitanism, Pluralism and the Cosmopolitan Harm Principle', Review of International Studies (vol. 34, no. 2 2008, pp 185 – 205), p. 192.

<sup>51</sup> See Robert Jackson, Sovereignty (Cambridge: Polity, 2007), esp. chapter five. Also, Jackson, 'Human Rights Protection in a World of Sovereign States', in Tinnevelt, R., and Verschraegen, G., (ed.), Between Cosmopolitan Ideals and State Sovereignty. Studies in Global Justice (New York: Palgrave Macmillan, 2006, pp. 135 – 147). Again these analyses offer valuable insight into debates surrounding these key concepts yet fail to critically fail to engage in questions surrounding the legitimacy rules such as non-intervention in the context of genocide.

<sup>52</sup> Martin Wight, International Theory, p. 267.

Linklater's focus on the relationship between the English School and cosmopolitanism.<sup>53</sup> A range of work will be drawn upon here as Linklater has spent over thirty years addressing questions surrounding the problems of establishing an international community.<sup>54</sup> Notably, Linklater's focus on the *principle of harm* has relevance for the relationship between order, justice, and genocide and it provides insight into the potential for progress (within limits), in international relations.<sup>55</sup> The final section will focus on Linklater's central idea that the consensus to be found in international relations, regarding the principle of harm, provides not just a potential common ground for IR scholars, but also a basis for progress in international relations. This offers insight into how the R2P can be entrenched further as an international norm.

In an attempt to answer the question: what is harm, Linklater utilises the Oxford English Dictionary definition: "evil (physical or otherwise) as done to or suffered by some person or thing: hurt, injury or mischief".<sup>56</sup> Although this in itself seems quite straightforward, Linklater acknowledges that although the notion of harm is universal, the notion of what constitutes harm is not.<sup>57</sup> As one would expect, alternative schools of thought approach the subject matter of harm in a manner of different ways as harm could be measured on a physical, emotional, economic or even cultural level.<sup>58</sup> The English School focus therefore is on direct physical harm, or what Linklater refers to as "concrete harm", by which means the

<sup>53</sup> Although a critical theorist, Linklater's engagement with the English School has seen him go "from being the official dissident of the School to becoming the principle advocate of its Kantian wing", see Iver, B. Neumann, 'The English school and the Practices of World Society', *Review of International Relations* (vol. 27, no. 3. 2001, pp. 503-507), p. 503.

<sup>54</sup> A collection of Linklater's essays on these themes has now been published, Andrew Linklater, *Critical Theory and World Politics. Citizenship, Sovereignty and Humanity* (London: Routledge, 2007).

<sup>55</sup> The focus here on justice does not seek to engage in cosmopolitan debates regarding citizenship, humanity, identity and deliberative democracy. For an overview on such debates see, David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007). S. Rosenberg, *Can the People Govern: Deliberation and Democracy* (New York: Palgrave, 2007). Steven Vertovec and Robert Cohen (ed.), *Conceiving Cosmopolitanism. Theory, Context, and Practice* (Oxford: Oxford University press, 2002). Martha C. Nussbaum, *For Love of Country?* Joshua Cohen (ed.), (Boston: Beacon, 1996). David Held, *Democracy and Global Order* (Cambridge: Polity Press, 1995).

<sup>56</sup> Andrew Linklater, 'Cosmopolitan Harm Conventions', in Steven Vertovec and Robert Cohen (ed.), *Conceiving Cosmopolitanism. Theory, Context, and Practice* (Oxford: Oxford University Press, 2002), p. 255.

<sup>57</sup> Ibid.

<sup>58</sup> For example, the English School's focus on harm within the context of seeking justice differs substantially from the cosmopolitan debates over harm within the context of global distributive justice. For an overview see Simon Caney, 'Global Distributive Justice and the State', *Political Studies*, (vol. 56, no. 3, 2008, pp. 487 – 518). Thomas Pogge, (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (New York: Oxford University Press, 2007). For a critical engagement with cosmopolitanism on the issue see Brian J. Shaw, 'Rawls, Kant's Doctrine of Right, and Global Distributive Justice', *The Journal of Politic* (vol. 67, no. 1, 2005, pp. 220 -249).

intentionally infliction of harm.<sup>59</sup> It is the issue of “concrete harm” that is of relevance here. Placing the principle of harm within an English School framework, Linklater states:

A pluralist society of states is concerned with reducing inter-state harm and incorporates ‘*international harm conventions*’ within its institutional framework, whereas a solidarists society of states incorporates ‘*cosmopolitan harm conventions*’, designed to reduce harm done to individuals in separate political communities.<sup>60</sup>

The understanding put forward draws upon the pluralist solidarist divide. On the one hand, English School pluralists attempt to reduce the level of harm *between* states, yet on the other hand, English School solidarists attempt to reduce the level of harm both *between* and *within* states. As a result, Linklater claims that English School solidarists uphold *cosmopolitan harm principles*. From this perspective, both English School solidarists and cosmopolitans share a commitment to reducing the level of harm between and within states which reflects that there is a substantial common ground between these two schools of thought.

This analysis leads Linklater to claim that attaching the revolutionist label to Kant is misleading. Instead, it is proposed that Kant should be placed within the rationalist tradition of Hugo Grotius (albeit at the revolutionist wing). The reason being, that Kant attempted to build “cosmopolitan attachments into international society”, rather than offer any genuine revolutionary blueprint.<sup>61</sup> It is worth pausing here to gauge this ‘less revolutionary’ position a little further, as Linklater explains:

Kant’s vision of a world order which combines sovereignty with respect for human rights and cultural diversity is very different from the cosmopolitanism and cultural diversity which Wight described. Bull and Wight would have been closer to the mark if they regarded Kant as a dissenting voice within the Grotian tradition and one of the great exponents of a radicalized form of rationalism which envisaged the progressive application of the harm principle in international affairs- its extension, in short, from interaction between members of the same state to relations between all states, and in time, to relations involving all sections of humanity.<sup>62</sup>

The statement underpins Linklater’s portrayal of Kant as a radical rationalist, rather than a revolutionary.<sup>63</sup> As is well documented, Kant did not explicitly favour the idea of humanitarian intervention which would in fact align Kant with English School pluralism if it were not for his commitment to cosmopolitan law which attempts to regulate the behaviour

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<sup>59</sup> Linklater, ‘Cosmopolitan Harm Conventions’, p. 260.

<sup>60</sup> Andrew Linklater and Hidemi Suganami, The English School of International Relations. A Contemporary Reassessment (Cambridge: Cambridge University Press, 2006), p. 8. Emphasis added.

<sup>61</sup> *Ibid.* p.180.

<sup>62</sup> *Ibid.*, p. 163.

<sup>63</sup> *Ibid.*, See Linklater discussion of “Kant’s radicalized rationalism”, pp -160-169.

between and within states.<sup>64</sup> Such complexity underlines the problem of categorising Kant within the English School framework, yet the focus here is not on the accuracy of the term “revolutionary rationalism” but on Linklater’s claim that one should not dismiss Kant’s ideas as somewhat utopian (as often suggested by Wight and Bull).<sup>65</sup> In highlighting the respect that Kant held for both sovereignty and human rights, Linklater seemingly upholds the broader view that cosmopolitanism should be understood as: “universality plus difference”.<sup>66</sup>

Notably, Linklater is not alone in this approach as Richard Shapcott also focuses on the principle of harm to suggest that a consensus can be struck between cosmopolitans and anti-cosmopolitans. Both scholars aim to ease the fears of “communitarian realists” (such as Walzer), and “international pluralists” (such as Bull), as they claim that neither a “world state”, nor a “collective universal definition of the good”, is needed to establish a common ground over the principle of harm.<sup>67</sup> In acknowledging that harm can be regulated without the establishment of a world government or a universal conception of ‘the good’, both scholars aim to debunk the utopian myth that surrounds Kant and Kantianism. As Linklater explains, the English School’s defence of rationalism, has, at least at times, been bound up with a “crude and misleading interpretation of Kant and the larger Kantian tradition”.<sup>68</sup> This led Bull to portray Kant as a “revolutionary revolutionist” who advocated a world government, yet this was not necessarily true.<sup>69</sup> This utopian portrayal of Kant can also be found in Wight, for as Garrett W. Brown explains, Wight portrayed Kantianism as: “inordinately demanding of a common morality and therefore so fantastically universalistic

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<sup>64</sup> I feel it is also necessary to qualify this point as I personally struggle to comprehend that Kant would have opposed genocide intervention within the context of the Holocaust or Rwanda.

<sup>65</sup> With regard to the accuracy of the term “radicalised rationalism” an in-depth analysis of Kant and Kantianism as well as identifying exactly what Wight meant by revolutionism would be needed. This is beyond the scope of this analysis. Indeed, this latter point certainly needs to be addressed further as even within Linklater’s analysis it is unclear what exactly differentiates the “radicalized rationalism” from revolutionism. Whilst there is a discussion of what Kant is, in relation to rationalism, there is not enough of a discussion with regard to what Kant is not, in relation to revolutionism – other than to say he does not advocate a violent revolution.

<sup>66</sup> This is taken from Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: WW. Norton & Co., 2006), p. 151.

<sup>67</sup> Richard Shapcott. ‘Anti-Cosmopolitanism’, pp. 196. It is important to stress here that neither scholar attempts to reduce Kant’s entire moral philosophy down to just this principle, but that they utilise the principle of harm to demonstrate the potential common ground upon which progress can be made, see Linklater and Suganami, *The English School. A Contemporary Reassessment*, pp 170- 171.

<sup>68</sup> *Ibid*, p.159.

<sup>69</sup> *Ibid*, p.161. For a discussion on Kant’s position on this subject matter, see *Grounding Cosmopolitanism. From Kant to the Idea of a Cosmopolitan Constitution* (Edinburgh, Edinburgh University Press, 2009), chapter three.

that it is rendered both untenable and extremely dangerous to a plurality of global beliefs”.<sup>70</sup> Such misrepresentation ultimately fuelled the belief that Kant should be *regarded* as a revolutionary, whose legacy should, therefore, be *disregarded* as utopian. This has undoubtedly contributed to the general image amongst critics of cosmopolitanism that Kantianism represents an: “out-of-date package of ‘Enlightenment’ outlooks”.<sup>71</sup>

Of course, one should not get carried away here and it is clear that the focus on harm does not allow us to overlook the array of complexities, ambiguities, and confusion within the “always highly problematic category of Kantianism”.<sup>72</sup> If Wight and Bull have misrepresented Kant, then perhaps they can be offered some form of forgiveness as it is evident that even cosmopolitans have problems grounding Kant. This point is explicitly raised in Brown’s work on *Grounding Cosmopolitanism* as he illustrates that even Kantian’s appeal to alternative constructions of Kant when advocating their vision of how international relations should be ordered.<sup>73</sup> As a result, the picture painted presents Kantianism as somewhat of a ‘broad church’, in which legal, political, cultural, and civic cosmopolitan conceptions of Kant sing from a different Kantian hymn sheet.<sup>74</sup> This illustrates that critics should not dismiss Kantianism as idealistic on the grounds that certain elements to be found within certain conceptions of Kant may be considered to be idealistic. For example, the work of Martin Wight is not dismissed as idealistic because of his commitment to the idea of a ‘God-given’ morality. This is despite the fact that, as Paul Guyer explains: “In the practical sphere, few can any longer take seriously the idea that moral reasoning consists in the discovery of external norms”.<sup>75</sup> Essentially, Brown, Linklater, and Shapcott make the point that a more informed understanding of Kant provides a potential common ground for a three way conversation between IR scholars, and also an opportunity for progress to be made in international relations. This is important when we begin to consider the relationship between morality and consensus in the construction of international legitimacy.

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<sup>70</sup> Ibid, p. 66.

<sup>71</sup> This is taken from Ken Booth, Tim Dunne and Michael Cox, *How Might We Live? Global Ethics in a New Century* (Cambridge: Cambridge University Press, 2001), p. 7.

<sup>72</sup> Andrew Hurrell, ‘Keeping History, Law and Political Philosophy Firmly within the English School’, *Review of International Relations* (vol. 27, no. 3. 2001, pp. 489-494), p. 503.

<sup>73</sup> Garrett W. Brown, *Grounding Cosmopolitanism. From Kant to the Idea of a Cosmopolitan Constitution* (Edinburgh, Edinburgh University Press, 2009).

<sup>74</sup> Ibid, pp 12 – 14. Brown draws upon the work of Gerald Delanty here for these four distinctions.

<sup>75</sup> Paul Guyer, (ed.), *Kant and Modern Philosophy* (Cambridge: Cambridge University Press, 2006), p 3.

For example, Brown puts forward a ‘tamed’ version of Kantianism which advocates the establishment of a Kantian constitution committed to both morality and institutionalism. This two-fold commitment claims that international relations should be constructed on “a weak form of moral cosmopolitanism” which in turn acts to underpin “a strong form of cosmopolitan law”.<sup>76</sup> This constitution reflects Brown’s view that there should be a universal moral order, but that we also have to be wary of an ever increasing normative agenda. Such understanding reflects the more mainstream view, that in a world full of competing moral claims, we have to tread carefully when attempting to construct a universal moral order. Any attempt to construct this universal moral foundation will be undoubtedly hindered, by what I refer to here as *moral over-reach*. To go back to our understanding of international legitimacy, legitimacy is not a product of morality alone and it is therefore imperative, if international society is to construct global standards of legitimacy that embody a universal moral commitment, that our moral expectations are anchored upon what is achievable in moral, legal, and constitutional terms. What is interesting about Brown’s approach is that he grounds more than just Kant, Kantianism, and cosmopolitanism, as he seeks to ground international relations itself upon a “weak form of moral cosmopolitanism”. This is of direct relevance to this analysis as this understanding of a “weak form of moral cosmopolitanism” aligns itself with the aforementioned idea of a *universal moral minimalism*. The establishment and practice of a universal moral minimalism is imperative if international relations are to progress upon such commitments as the R2P. Whilst sceptics challenge the idea of progress within the anarchical realm, one has to question any attempt to uphold an international system that does not embody a commitment to universal moral minimalism.

This neatly brings us back to the crux of the matter regarding the principle of harm and the potential for progress in a post-R2P world. Essentially, both Linklater and Shapcott reduce the debate over a universal moral minimalism and a weak form of moral cosmopolitanism down to a specific focus on harm.<sup>77</sup> Acknowledging the ever problematic point (that forging a universal consensus on a universal moral order will be difficult); they claim that the consensus that already exists over the issue of harm provides an opportunity for progress in international relations. This ties in nicely with the sentiment so aptly expressed by R. J.

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<sup>76</sup> Brown, *Grounding Cosmopolitanism*, p. 14.

<sup>77</sup> For an analysis of Linklater’s reasoning for focusing on harm see, Linklater and Suganami, *The English School. A Contemporary Reassessment*, pp. 176-177.

Vincent who claims we should: “seek to put a floor under the societies of the world and not a ceiling over them”.<sup>78</sup> Such understanding highlights that states should not get bogged down in idealistic debates over whether international society can, or should, establish a world government but instead focus on establishing universal moral foundations. It is with this in mind that Linklater and Shapcott’s focus on harm demonstrates that progress, at least on this specific issue, does not require a utopian shift in policymaking for as Linklater explains a “global harm narrative” *has* emerged in international relations.<sup>79</sup> The reality being, that states *have* managed to forge a common understanding on a “range of matters which belong to a lower moral register than visions of some supposedly universal conception of the good”.<sup>80</sup> In other words, although there remains a debate regarding what constitutes a ‘universal good’; states have forged an understanding over what constitutes a ‘universal bad’. It is here that the crime of genocide is of relevance.

The idea that “we should seek to place a ceiling beneath the society of states” aptly underlines the premise of this thesis. Whilst Vincent focused on the issue of starvation, this thesis has focused on the issue of genocide in relation to establishing global standards of legitimacy that incorporate a universal legal, moral, and constitutional foundation. Genocide provides international society with both a fundamental problem *and* opportunity: to establish a universal legitimate order that embodies both a commitment to sovereignty (in the conditional sense), and human rights (in the universal sense), through utilising its existing aversion toward genocide. Quite simply, this thesis has taken the consensus regarding the principle of harm one step further as it utilises the fact that genocide acts as the quintessential example of harm in international relations. Despite the fact that all societies have their views on what constitutes harm, there is a universal consensus regarding the crime of genocide. As Shapcott explains:

It also follows that the more serious or fundamental the nature of the harm, the more likely it is to be identified as such by people in diverse situations. Starvation is a clearly harmful condition that is close to being both objectively identifiable (the point at which life can no longer continue) and commanding of a near universal consensus as to its harmful status. Likewise, having one’s identity, or community of belonging, removed or destroyed (harmed), is also something that might well command such a consensus. Genocide is perhaps one value

<sup>78</sup> R. J. Vincent, *Human Rights in International Relations* (London: Cambridge University Press, 1986), p. 126.

<sup>79</sup> The idea of a “global harm narrative” is taken from Andrew Linklater, ‘Human Interconnectedness’, *International Relations* (vol. 23, no. 3, 2009, pp. 481 – 497), p. 491.

<sup>80</sup> Linklater, p.177. For an overview of debates over existing cosmopolitanism, see Pheng Cheah, Bruce Robbins, (ed.), *Cosmopolitics: Thinking and Feeling Beyond the Nation* (Minnesota: Minnesota University Press, 1998), especially Part II: ‘Belonging to a World: Actually Existing Cosmopolitanism?’ pp. 117 – 229.

that states have agreed (in principle) overrides national sovereignty, thus recognising a universal crime (or harm) against communities as well as individuals.<sup>81</sup>

The statement reiterates much of the sentiment expressed throughout this thesis. Shapcott acknowledges that there are issues such as starvation that conceivably violate a cosmopolitan harm principle (or what has been referred to in this thesis as a universal moral minimalism). Both Shapcott and Linklater recognise genocide as a paradigm example of harm and claim that the 1948 Genocide Convention signifies a cosmopolitan harm convention.<sup>82</sup> From this perspective, the legal developments toward genocide (see 4.3.2), begin to highlight how difficult it would be for international society to regress upon its commitment to prevent genocide.

As Linklater and Shapcott highlight, the 1948 Genocide Convention embodies a cosmopolitan harm principle, which has then been entrenched further via legal and normative developments such as the establishment and practice of the ICC and the R2P (this goes back to the understanding set out in Chapter Four). With this in mind, it is inherently difficult to see how international society can regress upon its cosmopolitan commitment to prevent genocide which is embodied in the Genocide Convention, the Rome Statute, and the R2P. To illustrate this let us consider the Kantian idea of a 'categorical imperative'. According to Kant, the categorical imperative stipulates that individuals should act "only according to the maxim whereby you can at the same time will that it should become a universal law".<sup>83</sup> Although such cosmopolitan ideals can seem somewhat 'lofty', the point made by Linklater is that such cosmopolitan thinking is evident in the establishment of cosmopolitan harm conventions such as the Genocide Convention. Whilst the actors involved may not talk in cosmopolitan terms, they have willed such universal laws into existence. Therefore, it is difficult to see how international society could regress to the point that international society could collectively will the idea of harm (especially within the context of genocide) to become a universal law. This takes us back to the understanding of international legitimacy set out in Chapter Four, for as discussed, it is theoretically plausible that states could construct an understanding of genocide as rightful conduct, yet when one considers that this would mean that states would have to forge a consensus that genocide is legally, morally, and

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<sup>81</sup> Shapcott, 'Ant-Cosmopolitanism', pp. 198.

<sup>82</sup> For Linklater's position, see Linklater and Sukanami, *The English School. A Contemporary Reassessment*, p. 181. See also, chapter six, 'The Sociology of State-Systems'.

<sup>83</sup> Cited in Brown, *Grounding Cosmopolitanism*, p. 1.



constitutionally acceptable, it is practically impossible to imagine that such an outcome could be constructed.

It is here that the critical point emerges: if international society cannot regress upon its commitment to prevent genocide, it has to do its best to try our best to fulfil it! In other words, it is simply not enough to have treaties and conventions floating around in the air in some abstract sense. If societal relations are to be guided by any sense of international law and morality (and I would argue that it is within the interests of all states to do so), then states have to do their best to uphold the commitments they forge. Hence, international society should think carefully about what it commits itself to as any attempt at legal and moral overreach will ultimately hinder its ability to entrench a universal legitimate order. However, for the reasons discussed throughout this thesis, the Genocide Convention should not be seen as just another legal convention as it embodies a universal legal and moral obligation that needs to be fulfilled if ideas such as international law and morality, as well as the institution of the UN, are to hold onto their perceived value in international relations.

### 7.3.1 Summary

The idea of cosmopolitan harm principles embodied within existing cosmopolitan harm conventions reiterates the idea of a *universal moral minimalism*. A moral basis, if you will, for international society. As discussed in Chapter Four, genocide is internationally regarded as the “crime of crimes” from both a moral and legal perspective. This has seen the idea of a universal moral minimalism entrenched within an attempt to construct a universal legal minimalism (*jus cogens*) from which states should not deviate. However, as discussed, genocide remains much lower down the priority list within the political context. Whilst there remains an international expectation that genocide should be prevented, policymakers do not see its prevention to be within the national interest of states.

Quite simply, it gets to a point in international relations when policymakers are faced with a question: Kant or Won't?<sup>84</sup> As discussed, Linklater's questions whether international society's aversion toward human suffering provides an apt foundation for moral progress in international relations. In doing so, he reduces the debate over a universal moral order down to this one principle of harm, to highlight the fact that an international consensus *can* be

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<sup>84</sup> Phillip Allot, 'Kant or Won't: Theory and Moral Responsibility', *Review of International Studies* (vol. 23, no. 2, 1997, pp. 339 – 357).

forged. This is important from a legitimacy perspective for the reasons discussed in Chapter Four. Essentially, this thesis takes such an approach one step further as it reduces the debate over international order down to its barebones regarding what states can agree upon, in the universal sense, from a legal, moral, and constitutional perspective. In essence, this approach strips away the discourse over sovereignty and human rights to the point that a central core is revealed: states have an obligation *not* to commit genocide, and international society has an obligation to prevent genocide from occurring. Because of the relationship between genocide and international legitimacy, genocide prevention is about more than 'just' saving strangers. As discussed, genocide erodes the legitimate authority of the UN and the UNSC more than any other crime. Moreover, its relationship with international legitimacy highlights that in failing to prevent genocide, states erode the value of international law and international morality. When such ordering principles are devalued, the likelihood of international instability is increased.

#### **7.4 Conclusion**

To conclude, I return to the aforementioned sentiment expressed by John McCain over the US involvement in Somalia, for as discussed, the US Senator implied that the pursuit of the collective interest can seriously undermine that of the national interest. In many ways, this is understandable as the US carried too much of the economic, political, and military burden within the context of Somalia. This dictates that critics such as John McCain remain hostile toward the idea of a UN led collective security agenda built upon the military and economic power of the US. Despite the fact that the US remains the world's leading source of power in this respect, such power cannot disguise the fact that US 'sons and daughters' pay for this burden with their lives. However, in order to resolve the problem of the US carrying too much of the burden in international relations, the answer is not for the US to regress upon its international legal, moral, and constitutional obligations.

Whilst this analysis has centred on the US, the same is true for all states. The UN is an institution that embodies and oversees internationally agreed standards of legitimacy. These act to guide and shape international relations. As a result, the UN acts to constrain the power of states, such as, the US, but also helps constrain the much broader misuse of power between and within states. When states act in an ad hoc manner, they undermine the value of the very rules that they themselves depend on in order to try and keep the behaviour of other states in

check. It is within the national interest, therefore, of all states, to adhere to global standards of legitimacy, which they themselves help forge. Even if this means such understandings constrain their individual right to “maintain freedom of action” (to use Wight’s phrase), these understandings ultimately set out what constitutes *rightful conduct* which in turn helps constrain *wrongful conduct*. The overarching point then is quite simple: if international society forges global standards of legitimacy, then states have to do their best to uphold them, for if they do not, or offer ad hoc support, what message does this send to other states? Despite Groves’ claim that the R2P does not represent a legal obligation, it is evident that the 1948 Genocide Convention does carry with it a legal obligation and the value of international law, and the benefits that come with it, are undermined when states do not fulfil this obligation.

This leads us naturally back to the insight offered by the cosmopolitan thinkers above as it is clear that international society should not commit ‘moral over-reach’ when attempting to construct global standards of legitimacy. Whilst it may seem peculiar to suggest that there is scope of a common ground between realists and cosmopolitans, this is exactly what Linklater and Shapcott propose as they focus on the issue of harm. Since progress within the anarchical realm remains a fickle and fragile process, it is imperative that states do not try and run before they have learnt to walk. The idea of a universal legitimate minimalism (in the constitutional, moral, and political sense), seems to provide an apt basis upon which societal relations can develop. Despite the fact that forging agreements between states is difficult, we have to start somewhere and placing a legal, moral, and constitutional floor beneath states (to use R. J. Vincent’s idea) seems to provide an apt ‘starting point’. Linklater and Shapcott’s focus on the issue of harm aligns itself with this approach and I would support the idea that international society’s aversion toward human suffering provides a universal benchmark from which international relations can build upon. Essentially, this thesis takes this approach one step further as it specifically focuses on the crime of genocide to claim that genocide provides international society with a problem and an opportunity: to combine an understanding of state sovereignty and universal human rights within a coherent and obtainable legitimate order.

The cosmopolitan perspective also aligns itself with the English School solidarist position in that although both schools of thought remain wary of ‘*moral over-reach*’, they also reject the idea of ‘*moral under-reach*’. It is precisely this latter point that highlights the moral

deficiency of English School pluralism and the idea of normative pluralism put forward by Jackson above. Notably, none of the cosmopolitan perspectives raised above advocates the idea of a world government or intergovernmental institution acting as some sort of 'moral busybody'. Instead, they present a sobered and realistic view of international relations in that states should not be granted a *carte blanche* licence to do what they want in the knowledge that they will not face external intervention. Although there may be cultural differences that shape our understanding of morality, to go back to Chapter Four, there are universal understandings of human wrongs, from which we can infer universal understandings of human rights. Reaching an acknowledgment of a universal moral minimalism is the absolute minimal position that actors should advocate for anything less signifies 'moral under-reach'. If international society cannot establish a universal moral minimalism, then it is difficult to see how international society can have order in the anarchical realm. In order to maintain and increase levels of international order, it is imperative that states seek cooperation on matters which occupy this universal minimalist space. As discussed throughout this thesis, if there is a space (and I would argue international society has constructed the understanding that there is a space), then genocide certainly occupies this space. If international society cannot retreat upon this commitment, it has to do its best to fulfil it. It is clear that the legal obligation to prevent genocide cannot be seen as just some abstract obligation that states do not have to fulfil, for when they do not, they undermine the value of international law, international morality and the international institution of the UN, all of which help stabilise international relations.

I finish therefore by returning to Senator John McCain: "If we do not accept that the nature of regimes shapes their conduct, we misread international politics in a profound and detrimental way...A world where the human rights of more people in more places are respected is not only a more just world. It is a more stable, more secure world".<sup>85</sup> Despite the fact that such sentiment has been utilised by neo-cons to advocate pro-democratic regime change, I would argue that humanitarian intervention has to be grounded upon international legitimacy and it is crystal clear that whilst the moral and legal basis for such pro-democratic regime change is

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<sup>85</sup> Senator John McCain, These remarks were made as part of a speech on the need to incorporate human rights into US foreign policy. The speech was given to the Johns Hopkins University Paul H. Nitze School of Advanced International Studies, (09/11/2009), available at [http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord\\_id=D9E96B7C-A8D0-2425-C43D-046EC72CE0E2](http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord_id=D9E96B7C-A8D0-2425-C43D-046EC72CE0E2) Accessed 12/05/2010.

lacking, the legitimate basis for the anti-genocide norm already exists and needs to be fulfilled in order to achieve a more stable and secure world.

## **8 Conclusion: Answering the “East Tennessee Question”**

The idea of the “East Tennessee Question” is taken from Ken Booth’s analysis on human rights and the proposed need for inventing humanity.<sup>1</sup> Booth recalls that William F. Shulz (one-time director of Amnesty International), made a speech in Knoxville on human rights and human rights violations occurring around the world. The speech aroused the following question: “But what does this all have to do with the person in East Tennessee?”<sup>2</sup> The question underpins the premise of the “East Tennessee Question” proposed by Booth. Despite the fact that the question was raised in East Tennessee it could have easily been raised in any other part of the world: why should we *here*, care about those over *there*? As Booth explains: “One powerful response is to try and engage people’s sympathies by trying to make immediate the pain and oppression some suffer”.<sup>3</sup> This is perhaps the most common response. However, as Booth notes, Shulz himself: “was not convinced by the effectiveness of such an approach”.<sup>4</sup> Essentially, Shulz questioned the impact of this approach and instead attempted to answer the “East Tennessee Question” from a more *pragmatic* perspective. By which Schulz meant that legal and ethical issues had to be framed in the “language of *realpolitik*” if they were to hold people’s attention.<sup>5</sup>

The “East Tennessee Question”, therefore, provides an apt context for understanding this thesis as it takes us back to the logic embodied in the question set out at the start of Chapter One: genocide refers to the destruction of a group, however, if I am not a member of that group, why should I care about their destruction? Accordingly, the question sits well alongside the “East Tennessee Question” as it questions why I, or we, should care about victims of genocide. Furthermore, the two approaches identified above help illustrate the two alternative approaches that can be adopted when responding to such questioning: i) respond by trying to engage people’s sympathies, ii) respond by framing one’s response within a more pragmatic *realpolitik* framework. Accordingly, I would like to conclude this thesis by reflecting on these two approaches.

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<sup>1</sup> Ken Booth, *Theory of World Security* (Cambridge: Cambridge University Press, 2007), pp. 379 – 380.

<sup>2</sup> *Ibid*, p. 380.

<sup>3</sup> *Ibid*.

<sup>4</sup> *Ibid*.

<sup>5</sup> *Ibid*.

### 8.1 Engage people's sympathies

Although this approach was *not* utilised in this thesis, it is evident that this remains the most common approach and as a result, needs to be considered further. Quite simply, the majority of genocide scholars (and human rights scholars in general), try and stir people's consciousness to provoke the idea that people *should* care about human suffering in other parts of the world. When assessing the question of genocide prevention, this approach is completely understandable for one would expect that most people would be stirred by the personal accounts of genocide victims. The truth is that there have been many times throughout this research when I have simply had to 'close the book'. By this I mean that one has to stop reading (at least temporarily), because of how one is so disturbed by real-life events that have occurred within the context of genocide. For instance, a UN Report into practice of mass rape in the Rwanda genocide found: "A 45-year old Rwandan woman was raped by her 12-year-old son-with Interahamwe holding a hatchet to his throat-in front of her husband, while their five other young children were forced to hold open her thighs".<sup>6</sup> I suppose every genocide scholar must be able to recall a story that has silenced them; this is (one of) mine.

From this perspective one can understand why scholars answer the "East Tennessee Question" by appealing to the first approach raised by Booth above. Advocates of this approach attempt to engage people's sympathies by simply recalling real life events. It is hoped that the *nature of the crime* (as discussed in Chapter Three) is so morally abhorrent that this will stir the conscience of humankind thereby creating a response. This is put into context within Fergal Keane's analysis of the Rwandan genocide:

A year before the Rwandan genocide occurred I was sitting in the BBC radio studio in Johannesburg taking part in the annual correspondents' review of the year. The subject of central Africa came up and I spoke about the increasing danger of a catastrophe in the region...A London-based correspondent wondered aloud why we should care about disputes in obscure countries. I was taken aback by the question, believing that it reflected a narrow view of the world and issues and emotions that shape our collective history. I answered by saying – and I hold passionately to this view today – that we should care because we belong to the same brotherhood of man as the citizens of seemingly remote African countries. It is not a political reason and some may call it naive. That is their prerogative. For me, however, the conclusion is unavoidable: genocide killing in Africa diminishes us all.<sup>7</sup>

<sup>6</sup> Cited in Philip Zimbardo, *The Lucifer Effect. How Good People Turn Evil* (London: Ryder, 2007), p. 13.

<sup>7</sup> Fergal Keane, *Season of Blood. A Rwandan Journey*, (London: Penguin, 1995) p. 30.

The statement is of direct relevance as the London-based correspondent raised the exact same sentiment to be found within “The East Tennessee Question” when he questioned: why should we care about disputes in obscure countries? In his response, Keane upholds the first approach identified above as he appeals to the idea of a “brotherhood of man”, claiming that genocide does not only diminish the group being targeted, genocide “diminishes us all”. The problem with this approach is not that it is wrong, or naive, as such, but that Keane presents the idea of a “brotherhood of man” as a self-evident truth and does nothing to substantiate this claim.

This exact point is raised in William Bain’s analysis of normative theory within the English School. Of specific relevance here is Bain’s analysis of Nicholas J. Wheeler’s seminal text, *Saving Strangers: Humanitarian Intervention in International Society*, as Bain states: “It seems as though Wheeler merely invokes humanity as a self-evident moral truth – the authority of which requires no further explanation – which in the end cannot tell us the reasons why we should act to save strangers”.<sup>8</sup> The statement is significant in that it explains that in failing to justify the existence of humanity, scholars fail to explain *why* we should act to save strangers. It is important that anyone upholding this first approach considers this implication carefully. Whilst Keane claims that genocide “diminishes us all”, one is left questioning: how exactly does it diminish us all? Again, the point here is not to dismiss this approach, for as stated in Chapter Two, this thesis does not reject the idea of a common humanity, yet at the same time, it is not built upon the assumption that a common humanity exists. The point is that despite all the appeals made to ideas such as a common humanity, or even an international community, simply invoking such abstract ideas does not prove that they exist. As Bain rightly points, if one fails to substantiate such an approach, one fails to explain *why* we should save strangers. It would seem therefore that the political will of the politically *unwilling* remains unaltered because such approaches fail to explain why policymakers should prioritise genocide prevention? As Keane stated, his approach is *not* a political one, yet to return to Shulz’s second approach (structuring one’s response within a *realpolitik* framework), it may be that this is exactly what is needed.

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<sup>8</sup> William Bain, ‘One Order, Two Laws: Recovering the ‘Normative’ in English School theory’, *Review of International Studies* (vol. 33, no. 4, 2007, pp. 557-575), p. 561.



## 8.2 The political approach

The idea of *realpolitik* is a contentious one so it is important to establish some parameters in that Shulz simply raises the point that policymakers do not formulate policy on behalf of humanity but on behalf of the state. As a result, if legal and ethical issues are to hold resonance amongst policymakers then the case needs to be made that such issues are within the national interest of states. At this point, realists may claim that those that uphold this second approach, within the context of genocide prevention, are trying to *create a link* between genocide prevention and the national interest. To which the response seems obvious: yes, that is exactly what the second approach involves but this is not a bad thing. Throughout history, individuals have made the case that it is within the national interest of states to pursue things such as power, security, and survival - those that uphold the second approach are simply making the case that it is within the national interest of states to pursue other things as well, such as, the moral value of order within the anarchical realm.

Significantly, this second approach goes back to the central problem laid out in Chapter One regarding the relationship between genocide prevention and the national interest. Throughout this thesis an attempt has been made to respond to the logic embodied within the “East Tennessee Question”, from a more pragmatic political perspective. At the same time it is important to note that the two approaches are not necessarily mutually exclusive, for example, it was international society’s aversion toward the suffering that occurred within the context of the Nazi genocide that acted as the catalyst for establishing the 1948 Genocide Convention. It was a direct engagement, therefore, with the sympathies of those targeted that saw the anti-genocide norm established. Yet of course, such developments do not go to prove that human beings are inextricably linked or that genocide diminishes us all, which suggests that we should not build our response upon such assumptions. As stated in Chapter One, this thesis upheld the view that one should develop an understanding of genocide and genocide prevention by beginning with the facts of the problem rather than from any specific faith in any particular form of response. As a result, this thesis has distanced itself from more mainstream attempts to appeal to ideas such as a common humanity. Instead, this thesis has utilised a novel approach to tackle the more pragmatic political question: is there more to genocide prevention than ‘just’ saving strangers? Although it should again be stressed that there is nothing wrong with making the case that saving strangers is, in itself, enough, the

premise of this thesis is that a case can be made that in preventing genocide, international society saves *more* than 'just' strangers.

Now let us be clear on this: groups have been destroyed throughout history yet genocide prevention has never been deemed to be in the national interest of states, so why can this claim be made now? In response to this question I propose that although the *act of genocide may be ancient, international society is new*.<sup>9</sup> By this it is meant that international society is not a static reality, it develops in many different ways over time.<sup>10</sup> Therefore, our contemporary understanding of international society is indebted to the legitimacy framework that was constructed in the post-Second World War era. At the time, an attempt was made to steer international relations away from the scourge of Great War and toward an alternative international society. The collective understandings that underpinned the norms of morality, legality, and constitutionality were altered to the point that a new legitimacy framework was constructed, which as discussed, acts to increase the likelihood of international stability in international relations. At the heart of this legitimacy framework stands the institution of the United Nations. With the shadow of the Second World War, a failed League of Nations experiment, and the Holocaust looming large, a state-led collective understanding of *order* and *justice* was institutionalised into the fabric of the UN. Despite the fact that these collective understandings have changed over time, the durability of the order embodied within this organisation is quite remarkable. As discussed in Chapters Five and Six, states are aware that there exists 'two UN tables': the UNGA and the P5, yet they accept that it is better to sit around an unequal table than to have no table at all. States are more willing to accept a decision, or indeed the failure to make a decision, because they feel as though they are part of the legitimacy process. This reality helps illustrate the English School's belief that states perceive that it is within their national interest to uphold the moral value of order in international relations.

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<sup>9</sup> The idea plays on Leo Kuper's seminal claim that the "The word is new, the crime is ancient", see Leo Kuper, Genocide. Its Political Use in the Twentieth Century (London: Yale University Press, 1982), p. 11. Such understanding remains part of a contested debate as to whether genocide is a modern phenomenon.

<sup>10</sup> Such thinking is evident in seminal English School texts such as, Hedley Bull and Adam Watson, The Expansion of International Society (Oxford: Clarendon Press, 1984). Ian Clark, Legitimacy in International Society (Oxford: Oxford University Press, 2005). Adam Watson, The Evolution of International Society. A Comparative Historical Analysis (New York: Routledge, 2009).

Of course this does not mean that a more legitimate intergovernmental organisation cannot be developed. Although at present, the complexities of international legitimacy dictate that such a task has not been achieved. As discussed in Chapters Two, Four, and Five, international legitimacy should be thought of as a process rather than a property. Since international legitimacy is not a property, no institution can claim to own it, produce it, or safeguard it. However, to utilise Hedley Bull's logic on institutions raised in Chapter Two, it is clear that the UN contributes more than any other secondary institution to the workings of international legitimacy in international relations. At the same time, if the UN is to maintain its position as the cornerstone of international legitimacy and the UNSC is to maintain its position as the stabilising force in international relations, then it is difficult to see how they can survive if they are perceived to be *illegitimate*.

It is here that the crime of genocide is of relevance and it is here that one can begin to see why there is more to preventing genocide than 'just' saving strangers. Quite simply, there are many laws within this world, yet the law to prevent genocide is not the same as any other law because as Chapter Four demonstrated: genocide is international regarded as the "crime of crimes" from both a legal and moral perspective. As discussed, complexities arise as genocide is not viewed in the same light from a political perspective. It would seem that crimes such as drug trafficking have been prioritised over that of genocide prevention as genocide is not perceived to pose a transnational threat to states. The understanding, therefore, set out in Chapters Four and Five, challenged such mainstream understanding. Utilising the concept of international legitimacy, it was claimed that genocide should be understood as a transnational threat because it erodes the legitimate authority of the UN (which acts as the cornerstone of international legitimacy) and the UNSC (which acts as the stabilising function in international relations) more than any other crime, thereby aiding the likelihood of international *instability*. Whilst the bi-polar "balance of terror" paralysed the UN within the context of the Cold War and the threat of omnicide saw the threat of genocide marginalised, it is evident that in the aftermath of the Rwandan genocide, international society became re-sensitised to the horror of genocide which paved the way for the 2005 Responsibility to Protect.

To understand genocide as a transnational threat, is important to consider that in acknowledging that the UN only contributes to international legitimacy, the UN acts as

somewhat of a red herring. It is the special relationship between genocide and international legitimacy that is of relevance. For example, let us contemplate the idea that international society decided to abandon the UN. Although this may seem highly unlikely, it is nevertheless feasible. However, what is less feasible is the thought that international society could then go on to forge an alternative understanding of order and justice in a post-UN world without having a commitment to genocide prevention embodied within it. As discussed in Chapters Four and Seven, whilst this is theoretically possible, in practice, such an outcome would mean international society constructing a legal, moral, and constitutional world so alien to the present that it is practically impossible to comprehend. In other words, it is extremely difficult to conceive that in a post-Holocaust era, international society could construct a collective understanding of order and justice that does not embody a commitment to genocide prevention. In this sense, genocide prevention is about more than ‘just’ saving strangers; it is about saving the perceived value of international law, morality, and politics. This is something that policymakers need to consider carefully.

A final point worth considering here is that in appealing to policymakers, those that uphold the second approach identified above, help legitimise the current state of international society, which, itself, may be morally bankrupt. As touched upon in Chapter Six, R2P advocates may celebrate the fact that international society endorsed the R2P principle in 2005. However, it is important to pause and consider: what exactly, is being celebrated? In 2005 state leaders agreed that they have a responsibility not to commit genocide, war crimes, crimes against humanity, and ethnic cleansing. Whilst this seems progressive, it is important to question: what sort of world do we live in when we have to get state leaders to agree to the fact that they have a responsibility not to commit these four crimes? To go back to the work of Ken Booth and his self-entitled “emancipatory realist” position, Booth has basically come to the conclusion that the state system cannot sustain international relations in the 21<sup>st</sup> century. From this perspective human beings need to start thinking in terms of a world society, ordered on securing and protecting the needs of human society, both at the local and global level.<sup>11</sup> This is in sharp contrast to the more state-centric English School approach which accepts that although states may be a part of the problem they remain an unavoidable

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<sup>11</sup> Booth, *Theory of World Security*. Such a blunt overview cannot hope to do justice to the insight that is provided in Booth’s seminal work. For an analysis on how Booth distances himself from the English School approach of Bull, see pp. 4 -5. For an explanation of the term “emancipatory realism”, see pp. 87 – 91.

part of the solution.<sup>12</sup> As an English School scholar, I stand in the latter camp; however, it is extremely important to question how international relations will develop if political decision-making becomes increasingly detached from the pressing legal and moral issue of genocide prevention. If international society is to be constructed on an appeal to the value of international law and morality (I would argue that it is within every states' national interest to do so), then states have to engage with, rather than overlook, their obligation to prevent genocide. If they cannot, then I would have to question whether the society of states can be part of the solution. To go back to Martin Wight's three traditions, if one accepts that genocide cannot be prevented within the present society of states framework then it seems that one is left with the choice of adopting, i) a more Booth-like revolutionary approach, or ii) the realist view that genocide is just another insoluble problem. However, as discussed in Chapters Four and Seven, it is hard to see how this latter position could become a legitimate position to adopt.

It is here that further research needs to be done as the obvious question arises, if the prevention of genocide is in the interest of international society, then how do states go about preventing genocide? As discussed in Chapter One, this is the second strategy identified by Gareth Evans which naturally follows on from the issue of conceptualisation. At present, the discipline of genocide studies has produced a host of selective chapters and a small number of books dedicated to the question of genocide prevention strategies. However, once again, one cannot help but feel that these approaches are built upon the assumption that an 'international community' exists. It is here that the discipline of IR offers potential insight by highlighting the reality of the *security dilemma*. In an anarchical realm plagued by fear and mistrust how can international society strengthen its cooperative links to the point that a functioning collective security system is established?<sup>13</sup> It is here that the idea of genocide prevention within the context of the *security dilemma* needs to be explored. To go back to the relationship between genocide and a universal moral minimalism, surely the case can be made that if greater bonds of trust international society are to be established then it is imperative that international society establishes universal moral foundations. The consensus therefore felt toward genocide may act as the key that enables a functioning collective

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<sup>12</sup> Andrew Hurrell's work provides an accomplished defence of this English School position, see *On Global Order, Power, Values and the Constitution of International Society* (Oxford: Oxford University Press, 2007).

<sup>13</sup> See Ken Booth and Nicholas J. Wheeler, *The Security Dilemma, Fear, Cooperation and Trust in World Politics* (Hampshire: Palgrave, 2008).

security system to be developed, thereby, aiding genocide prevention. In other words, the universal consensus regarding the anti-genocide norm may provide the key for unlocking the door of political will.

To bring this thesis to an end, I would like to raise Hedley's Bull's analysis of apartheid in South Africa.<sup>14</sup> Writing in 1982, Bull claimed that a "world consensus" existed on this particular issue.<sup>15</sup> In other words, the consensus that existed against this particular human rights violation outstripped the consensus to be found over any other human right violation at the time. Crucially, Bull's point was not that other human rights violations should be ignored, but that the "world consensus" that existed regarding this issue, provided international society with an opportunity to unite against this specific human right violation. It is with such rationale in mind, that this author proposes that the "world consensus" that now exists over genocide prohibition provides international society with both a problem and an opportunity to do something: *prevent genocide*. In doing so international society will not 'just' save those being targeted, but also help fix the legitimacy deficiency within the present ordering structure stabilise international relations. By which I mean, genocide prevention helps save the perceived value of international law, morality and politics. This is critical and it is within the national interest of each and every state.

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<sup>14</sup> Hedley Bull, 'The West and South Africa', *Daedalus* (vol. 111, no. 2, 1982, pp. 255-270).

<sup>15</sup> *Ibid*, p. 266.

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