RESPONSIBILITIES TO PROTECT

Accountability and responsiveness in protecting populations from atrocity crimes

by

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submitted to

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DECLARATION

I hereby declare that no parts of this dissertation have been accepted for any other degree in any other institution. It contains no materials previously written and/or published by any other person, except where appropriate acknowledgement is made in the form of bibliographical reference.

Erna Burai

Budapest, 15 February 2020

ABSTRACT

Protecting civilians in armed conflict is a central and controversial question of international politics. The practice of protection remains inconsistent even if, in terms of the Responsibility to Protect (RtoP), protecting populations from war crimes, crimes against humanity, genocide and ethnic cleansing has become an international "responsibility." Some argue that the inconsistent implementation of RtoP is the outcome of power politics. Others say that the inconsistency follows from judging every conflict situation on its own terms. Both approaches fail to take into account, however, that the inconsistency of implementing RtoP is, in fact, consistent. There are two coherent narratives about who is responsible for protecting what and on what basis. The first narrative privileges state-based structures as the guarantee of protection, and therefore can be called *indirect* protection. The second privileges protecting human beings directly from harm, and can therefore be called *direct* protection. While both are legitimate, in practice they suggest incommensurable templates for protective action which ends up oscillating between the two.

This dissertation asks, first, why there are two narratives, and second, why they are so persistent. It offers in response a historical and a conceptual argument. Historically, it traces both indirect and direct protection back to their original context. Indirect protection stems from African post-Cold War security debates, and the dilemma of reconciling African sovereignty and intervention through the concept of "sovereignty as responsibility." Direct protection is rooted in the ethics of medical humanitarianism with its distinctive notion of rescue, which would become the right to assistance and eventually, the right to intervene. Conceptually, the dissertation shows that not only do these models respond to context-specific normative dilemmas; they also

constitute them as a particular kind of responsibility. Indirect protection rests on responsibility as accountability between states for the consequences of good or bad governance. Direct protection harnesses responsibility as responsiveness to human suffering, a universal responsibility that implicates everyone to avert harm. Given their constitutive nature in creating different objects of protection as well as different relationships of responsibility, the two models resist a synthesis and account for RtoP's consistent inconsistency.

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TABLE OF CONTENTS

ABBREVIATIONS

AU	African Union
ECOWAS	Economic Community of West African States
EU	European Union
GA	United Nations General Assembly
HRW	Human Rights Watch
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDP	Internally Displaced People
LAS	League of Arab States
NATO	North Atlantic Treaty Organization
RtoP	Responsibility to Protect
SG	Secretary General of the United Nations
SRSG	Special Rapporteur to the Secretary General on the Internally Displaced
SV, Supplemental Volume	The Responsibility to Protect: Research, Bibliography, Background
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
US	The United States of America

INTRODUCTION: RESPONSIBILITIES TO PROTECT?

When, in February 2011, Muammar Gadhafi's response to the Libyan uprising turned violent, members of the international community, states, regional organizations and non-governmental actors shared an understanding that the situation was one that warranted "protection." By "protection", most of these actors meant that the Libyan population should be protected from generalized violence, in which war crimes, crimes against humanity, genocide and ethnic cleansing are an immediate threat. The goal of "protection" was nearly universally shared. However, members of the international community proposed two incompatible ways of achieving it. Some, such as the African Union (AU), alongside many African states, argued that protection must be achieved by safeguarding state structures. In practice, this meant advocating a peaceful power transfer, a negotiated, compromise political solution between the Gadhafi regime and the National Transitional Council that came to represent the opposition. The AU furthermore claimed a leading role as the relevant regional organization to facilitate such a solution, on the basis that its member states would endure the consequences of whatever was to happen in Libya. Members of the North Atlantic Treaty Organization (NATO), on the other hand, advocated for international intervention in the shape of a preventive military move to block Gadhafi from inflicting violence on the Libyan people. Supporters of this latter argument placed the emphasis on addressing individual suffering resulting from Gadhafi's attempt to restore his power. These actors argued that, by using force against the civilian population, Gadhafi had lost the legitimacy to rule. Any international action would be legitimate that prevented him from realizing his threats, they argued.

The arguments on how to "protect" the Libyan population show two different models of protection. The first prioritizes strong state structures as the guarantee of social order and thus of physical safety, and may therefore be called *indirect* protection. The primary object of protection in this narrative is, therefore, such structures. The value of any action in this model is assessed in terms of its potential or real consequences. Here, the "responsibility to protect" is accountability-based: the value of every action is judged from its possible and empirical consequences, and the best control over consequences is achieved by liability within established relations of accountability. The second model might be called *direct* protection, because it focuses on the imperative created by potential and factual human suffering, i.e. the experience of violence on the individual level. Here, protective action is one that responds to the future or present fact of suffering by doing everything possible to avert the risk of such suffering. Responsibility in this model therefore corresponds with responsiveness rather than with accountability. The two protection models not only envisage different objects of protection (state structure vs. individuals), but also mobilize different notions of responsibility (accountability vs. responsiveness).

The appeal of the two models fluctuates over time. Before taking any action, the costs of inaction weigh in heavily, potentially tilting the balance towards direct protection and responsibility as responsiveness. As actors learn more about the consequences of their actions, indirect protection and accountability-based responsibility gain in legitimacy. From the perspective of direct protection, the prudence of indirect protection appears as playing into the hands of perpetrators. From the perspective of indirect protection, however, the priority of immediate action over consequences often appears catastrophic. The main argument of this

thesis is that any debate on "protection" is trapped in the logic of these two, equally legitimate but incompatible models of protection and responsibility. It asks why we have two models in place, and how this particular pattern impairs the collective effort to protect populations from war crimes, crimes against humanity, genocide and ethnic cleansing, the four crimes defined under the Responsibility to Protect (RtoP) framework.

Libya is an illustrative case not only for the prevalence of RtoP language in the debate, but also because the respective stances of the AU and NATO were clear embodiments of the two models. The two protection models, however, are also identifiable in other conflict situations. In the early years of the Syrian conflict, it became clear that keeping Syrian President Bashar al-Assad in power as a guarantee of stability, or removing him from his position as the main threat to the Syrian population were two possible but conflicting responses to the civil war. Irrespective of the strategic interests at play, the Russian argument in favor of the first response reflected deep-seated normative understandings about the dangerous consequences of collapsing state structures. Others, including the United States, took the position that the Syrian army's use of chemical weapons against civilians in Ghouta made the president's resignation from power necessary.

Earlier debates of intervention also reflect the conflicting logic of the two protection models. In the 2009 civil war between the Sri Lankan government and the Tamil Tigers (LLTE), the government responded to accusations of human rights violations by arguing that, by fighting a terrorist group on its own territory, it was exercising its responsibility to protect. The Sri Lankan representative argued at the UN Security Council that the use of armed force should be recognized as a legitimate part of the state's protective repertoire, so much the more as

international rules apply unequally to state and non-state actors, giving the latter undue advantage (S/PV.6216 (Resumption 1) 2009, 37). This argument reflects the model of indirect protection, as it identifies the state as the main agent of protection and calls for safeguarding its capacity to act as such vis-à-vis other actors.

The debate on whether the international community should forcibly distribute humanitarian aid to the victims of Cyclone Nargis in Myanmar (2008) showed a similar pattern. Reacting to the Burmese government's resistance to allowing international aid into the country, French Minister of Foreign Affairs Bernard Kouchner argued that state sovereignty cannot be superior to the imperative of coming to rescue. "We speak of distress, they respond procedures,"[1] he wrote in the pages of the major French daily Le Monde, thus presenting a clear-cut argument in favor of direct protection that sovereignty cannot justify the denial of lifesaving assistance (Kouchner 2008). The politics of the Association of East Asian Nations (ASEAN) displayed the logic of indirect protection. Instead of lobbying for concerted international action called for by Kouchner, ASEAN representatives praised the efforts of the Burmese government and worked with it closely to obtain its consent for experts and humanitarians to enter the country. ASEAN regarded its cooperation with the Burmese government as an opportunity to prove ASEAN's relevance in coordinating humanitarian aid and to strengthen the role of regional structures (ASEAN 2010).

Even Russia, a consistent opponent of the RtoP framework, relied on the legitimizing power of indirect and direct protection to justify its war on Georgia in August 2008. Russia at first drew on the normative appeal of direct protection, saying that the gravity of the situation,

[1] "Nous parlons détresse, on nous répond procédure" in the French original.

amounting to genocide, crimes against humanity and ethnic cleansing (Medvedev 2008) necessitated a military response. As these arguments proved increasingly untenable, especially in light of evidence (Independent International Fact-Finding Mission 2009) , Russia started to argue that it was its responsibility as a state to protect its own citizens (Lavrov 2008). Russia undoubtedly conflated the elements of RtoP (Evans 2008a) that was destined to protect the population within a state's territory rather than its own citizens abroad. Nevertheless, to provide an acceptable justification for the use of force, Russia was bound to mobilize the normative power of indirect and direct protection ingrained in our collective thinking of protection.

"The permanence of inconsistency"

What explains such a discrepancy between the two logics of direct and indirect protection within RtoP? RtoP is, in principle, a policy and normative framework articulated in 2001 to allow the international community to respond to large-scale atrocities. It was eventually endorsed by the members of the United Nations in the form of the World Summit Outcome Document (WSOD) in 2005. Under the terms of the WSOD, states accepted that they bear responsibility to protect their populations from war crimes, crimes against humanity, genocide and ethnic cleansing, and to assist each other in fulfilling this responsibility. The international community as a whole also accepted to act upon its responsibility to protect, in accordance with the UN Charter and through the existing institutional mechanisms, should a state prove unable or unwilling to fulfill its responsibility (WSOD 2005).

RtoP elicited much attention as a less politically controversial concept than its forerunner, the "right to intervene" (Bellamy 2009a; Evans 2008b; Badescu 2011; Serrano 2011). Its relatively rapid institutionalization further fueled hopes that the international community was moving

towards a framework for intervention. In 2004, the Secretary General appointed a Special Adviser on the Prevention of Genocide and in 2008, a Special Adviser on the Responsibility to Protect to monitor conflict-prone situations and brief the UNSC. On the national level, states all over the world started to appoint national RtoP focal points, to integrate RtoP into national legislation and facilitate the exchange of best practices in preventing the four RtoP crimes defined by the WSOD. RtoP was further mainstreamed in various activities of the UN, including peacekeeping (Hunt et Bellamy 2011; Bellamy 2013) as a result of which mass atrocity prevention has become a field of its own (Bellamy 2014, 99).

In addition to rapid institutionalization, the academic literature on norm evolution also fed the expectation that RtoP will provide universally accepted standards for intervention. Classical accounts of norm development stipulate that norm institutionalization is followed by the consolidation of the norm in practice (Finnemore et Sikkink 1998; Risse 2000). Convergence follows from the pressures of socialization (Checkel 2005; Johnston 2001), rhetorical entrapment of the opponents of the norm (Keck et Sikkink 1998), and mainstreaming in discourse and practice so that it becomes part of the "collective expectations for the proper behavior of actors with a given identity" (Katzenstein 1996, 5). Practice was expected to further clarify the scope and standards of operationalizing RtoP. Even "misapplications" such as the Russian RtoP argument in the 2008 Russian-Georgian war or the debates on Cyclone Nargis were expected to have such a clarifying effect, because they produced a consensus that neither natural catastrophes nor protecting the state's own citizens outside its borders fall within RtoP's scope (Badescu and Weiss 2010; Bellamy 2010).

From this perspective, the "permanence of inconsistency" (Hehir 2013) initially appeared as a puzzle to which different explanations gradually emerged. Realist approaches attributed the inconsistent application of RtoP to power politics. The international responsibility to protect is not an obligation, realists argued, but a discretion that ultimately remains dependent on the interest of the politicians in power at a given moment (Rao 2013). The decision to apply RtoP is, in turn, defined by the imperative of preserving power domestically, rather than out of concern for the suffering of distant populations (Krasner 1999). These arguments did not accord much force to the RtoP norm in the calculations of decision-makers, and therefore remained insensitive to assess whether RtoP were any different from alternative formulations such as the right to intervene.

To account for inconsistency more specifically, realists pointed to the composition and voting procedures of the UNSC as factors that distort RtoP's application and introduce double standards (Chomsky 2011; Hehir 2010; 2013). The permanent members of the UNSC (the P5) may block intervention in conflicts within their spheres of interest, as Russia and China have done in relation to Chechnya and Myanmar respectively. The United States could vote to indict the former President of Sudan Omar al-Bashir at the International Criminal Court (ICC), without joining the Court's Statute and stating that US nationals would remain immune to such investigations (S/PV.5158 2005, 2‑4). Recurring attempts to design a "code of conduct" for the Security Council, whereby the P5 refrains from using their veto in RtoP cases have remained unsuccessful (ICISS 2001; France et Mexico 2015).

Furthermore, despite its incorporation into the WSOD and its mainstreaming within the UN discourse, RtoP has not become a legally binding norm or part of customary law, which

explains inconsistent intervention behavior (Reinold 2010). In the absence of the above, RtoP simply continued to have "too many ambiguities to be a working doctrine" (Focarelli 2008, 191). Reference to RtoP language in itself neither indicates nor drives normative change. On the contrary, Hehir has argued in a recent study that the fact that states regularly talk in terms of RtoP, without improving the situation of their populations, signals that RtoP has become a "hollow norm" (Hehir 2018).

For norm researchers, inconsistency was initially less problematic. Starting from the assumption that there is always a gap between an abstract norm and its application in a concrete context (Klabbers 2006; Venzke 2012), and that norms guide behavior without determining it (Kratochwil 1984; 2000), inconsistent application was, so to say, the norm. RtoP is, in addition, conditioned on a set of prudential principles, according to which specific circumstances should define the exact course of action (Brown 2003; Evans 2008a; 2008b; Ralph 2018). Others added that, rather than prescribing a particular conduct, RtoP prescribes a "duty of conduct," the obligation to consider the best course of action which might also be non-action (Welsh 2013; Pattison 2015).

Over time, however, most theories of norm development forecasted convergence on the norm's prescriptions and sat increasingly uneasily with RtoP's trajectory. As consolidation looked permanently delayed, norm researchers started to question their own initial expectations towards RtoP. RtoP thus transitioned from "model norm" to "model contested norm". Thanks to critical constructivist contributions, two of the starting assumptions of norm research were corrected: that of norms as unitary constructs, and that of linear norm development towards consolidation. From this perspective, contestation was not a phenomenon that would gradually

falter. Instead, well beyond the phase of institutionalization, norms are repeatedly "enacted," or actualized in practice in a certain form (Wiener 2009; Wiener et Puetter 2009; Milliken 1999).

Researchers have identified different dimensions of contestation and showed that some of these are consistent with the norm's "robustness," i.e. actors' acceptance of the norm in discourse and practice (Deitelhoff et Zimmermann 2019). One such distinction is between contesting the "validity" of a norm as opposed to its "application" in concrete cases. Whereas the former targets the conceptual coherence and ethical integrity of the norm, the second accepts the norm in general but challenges its applicability or application in a concrete case (Deitelhoff et Zimmermann 2018). With regard to RtoP, Welsh takes the view that contestation over RtoP brought about greater consensus over its core elements and thus strengthened its validity, whereas applicatory contestation tuned down its cosmopolitan aspirations and strengthened its statist elements (Welsh 2019). As some of its prescriptions may be strengthened at the expense of others, assessing RtoP's inner complexity also attracted more attention. There was more recognition of RtoP's non-Western and non-liberal origins, and more attention paid to the conditions under which non-Western and non-liberal actors would follow its prescriptions (Acharya 2013; Virk 2013; Rotmann et al. 2014; Verhoeven et al. 2014; Dunne and Teitt 2015).

Both realist and constructivist approaches offer convincing arguments for the dynamics of RtoP, but they remain limited in their own ways to capture the specific pattern of RtoP discourse identified above. For realists, positions between pro and contra interventions are entirely dependent on state interest, so they are bound to ignore any pattern in intervention arguments, as well as to consider the "normative saturation of strategic action" (Kurowska 2014, 497). They remain bound to testing the influence of "norms" and "strategic interests" vis-à-vis each other as

competing explanations for a particular outcome, failing to consider that interests are defined by collective understandings of social phenomena and accepted standards of behavior that derive from these understandings (Finnemore 2004, 5).

Realists' arguments explain why there are conflicting interpretations in any conflict, each corresponding with the interest of the parties in conflict resolution. They perform less well, however, in explaining that argumentation in protection is not completely random, but follows a particular normative logic. Furthermore, the two models display internal coherence within and across cases. They are conflicted vis-à-vis each other, but each of them provides stable standards of appropriate behavior over time. It might well be the case that Russian arguments about collapsing state structures in Syria derived from their intention of shaping Middle-Eastern politics, or preserving their access to the Mediterranean by keeping Assad in power (Blank et Saivetz 2012). The reason why such arguments were so appealing to a wider audience, however, is the deeply ingrained understanding that stable national, regional and international structures are the key to protecting populations from atrocities. Similarly, the keenness of NATO to intervene in Libya might be attributed to France's geopolitical aspirations, among other factors. Nevertheless, many in the Security Council felt compelled to act in the face of an imminent threat to the civilian population of Benghazi, a city traditionally rebelling against Gadhafi's rule and surrounded by his forces by 18 March 2011 (author's correspondence with the former Brazilian Permanent Representative at the UNSC, 2015).

The distinction of norm researchers between validity and applicatory contestation confirms that protection as a moral and policy goal is shared across the protection models (validity), and that the debate revolves around the best way of accomplishing it (application). This

useful distinction, however, falls short of explaining the concrete form "applicatory narratives" take, or falls back to explaining it by diverging interests. However, arriving at a global framework is also an "interest", demonstrated, for instance, by the yearly UN General Assembly debates dedicated to RtoP. The question of why certain interests take precedence over others persists.

Furthermore, for norm research the question remains why applicatory contestation cannot progressively produce agreements on the scope of RtoP. To be more precise, why does applicatory contestation bring consensus on certain aspects of RtoP but not on others? The Myanmar debate seemed to have settled the question whether the mismanagement of natural catastrophes raises the national authorities' responsibility to protect or not. There has been no definitive answer, however, to the debate on whether life-saving assistance can be forcibly distributed. Despite the international uproar about NATO's Libya intervention, the arguments about a regime losing its legitimacy to rule appeared in the same format in the early years of the Syrian conflict.

One possible argument is that differences over the meaning and scope of RtoP map onto more fundamental divides such as that of the Global North and the Global South, or the "West" versus the "Rest". Newly independent countries with an experience of colonial rule, or developing countries that face the challenge of consolidating their state structures, might be more sympathetic to indirect protection. Consolidated liberal democracies might align more with direct protection, insofar as their domestic political systems value the rights of the individual. The positions on indirect or direct protection in intervention debates, however, are not consistent with such political divisions or geographical regions. In the case of Libya, UN-authorized intervention was possible because many Africans, including the regional powers of South Africa

and Nigeria, as well as many sceptics of the use of force such as Brazil and India, supported the intervention. A nation from a region - Southeast Asia – that is considered to uphold traditional notions of sovereignty, Singapore was one of the drafters of the Small 5 (S5) Initiative on reforming UNSC working methods, including refraining from the veto in cases of "genocide, crimes against humanity and grave breaches of international humanitarian law" (Center for UN Reform Education 2011). Many countries from the same region support a similar initiative, even if this has the potential of allowing for more military interventions (ICRtoP 2017). The appeal of either of the protection models is thus not immediately dependent on any traditional North-South, Western-non-Western, or liberal-non-liberal divide.

A few questions on protection

If the existing literature does not provide satisfactory answers to the contradictions of RtoP's internal dynamics and the pattern of indirect and direct protection in particular, we need to put protection as a "legitimate social purpose" (Ruggie 1982, 382) under scrutiny. If protection means shielding populations from atrocities, why does it entail preserving established state structures in one case, but impeding an army from attacking civilians in the other? How has protection come to mean these two specific courses of action? Why is it that not only the protected objects differ, but also our notions of who is entitled or obliged to protect in the two models?

The history of protection, at first, raises more questions than it answers. Protection before the 1990s did not mean protecting people physically, especially not by military force. The mandate to protect was reserved for two specific organizations. In order to implement protection, the International Committee of the Red Cross (ICRC) relied on extending legal protection, by way

of internationally ratified treaties, to categories of communities affected by war. The United Nations High Commissioner for Refugees (UNHCR) focused on another specific group of people, that of refugees. Having left their country of nationality for fear of persecution, refugees lose their country's legal protection. UNHCR was set up in 1950 to provide substitute legal protection and ultimately to restore the protective, i.e. legal link between the individual and a sovereign state in the form of a new nationality in the country of arrival. In contrast to these two activities that were officially called "protection," the provision of humanitarian aid for most of the twentieth century was consistently described as "assistance" and distinguished from the activity of protection.

Most importantly, all these activities were crucially dependent on cooperation with the states. Both protection regimes respected state sovereignty and state consent. Their primary mechanism of achieving protection was the principle of *pacta sunt servanda*, i.e. that states would comply with the obligations undertaken in international treaties. In both cases, states were the agents of protection by providing and guaranteeing legal rights to individuals. The task of the two organizations was "merely" to stir them towards compliance with their own accepted standards: those of international humanitarian law in the first case and of the right to asylum in the second. As both activities of protection required working with states to comply with the legal obligations they had committed to, in none of the cases was protection compatible with international military action. Both rested on an implicit notion of protection whereby state protection is provided for all individuals that reside on a given state's territory and that are its citizens. As we shall see later, this notion would become increasingly untenable in the early 1990s, triggering key normative changes.

Second, protection was incompatible with military intervention because of the norm of non-interference that reigned at the time. In terms of the UN Charter, the use of force was only legitimate in self-defense against aggression, or if authorized by the Security Council. Throughout the Cold War, protection in international politics was rather equated with protecting order, often by protecting newly independent states that emerged from colonial domination by upholding their right to sovereign equality (Orford 2011b, 412). The priority given to protecting international order rather than individuals subjected to atrocities is also evident in justifying interventions with self-defense throughout the Cold War, even if the a conflict had a strong humanitarian aspect (Wheeler 2000).

In the early 1990s however, a fundamental change took place. Policy debates and academic discussions suddenly started revolving around the permissibility of humanitarian intervention, the conditions under which it is legitimate, the incompatibility of sovereignty and human rights, and the ways in which these two norms might be reconciled. In 1991, as the Gulf war unfolded, the Security Council approved the creation of safe havens, internationally secured protected territories for Iraqi Kurdish people. The following year saw the publication of the UN Secretary General's Agenda for Peace (Boutros-Ghali 1992), and the deployment of UN peacekeepers in Somalia to assist with the distribution of humanitarian aid under conditions of conflict. The Yugoslav wars of dissolution witnessed the UN establishing UNPROFOR, a peacekeeping force tasked with providing security to the Bosnian population against Bosnian Serb attacks in three demilitarized zones. It also witnessed NATO's bombing of the Yugoslav army in Kosovo, to protect the Kosovar Albanian population from ethnic cleansing. Despite the fact that intervention, as the practice of shaping the domestic authority structure of a state by military

means (Rosenau 1968) became "humanitarian," how has the meaning of protection transformed into one of securing populations from generalized violence, by military force, if necessary?

Constructing protection

Some slow-paced transformations were undoubtedly inevitable in making this possible. Such structural enabling factors are the gradual disappearance of the idea that non-White, non-European populations should be judged by different standards, a shift in which the abolition of slavery (Finnemore 1996), decolonization (Crawford 2002) the creation and expansion of a human rights regime (Moyn 2012) and that of civil rights all played a role. These factors, aided by the increased mediatization of "distant suffering" (Boltanski 1999; Rieff 2003), played a role in extending compassion and solidarity to these populations (Finnemore 1996; on the socially constructed nature of compassion, see Nussbaum 2013).

These changes were propelled further by the sudden collapse of the bipolar international order, giving way to new forms of institutional cooperation within, for instance, the UN Security Council. With a more inward-looking Russia and China, the three Western permanent members of the Council could give international security politics a strong liberal orientation. The end of the Cold War created an incentive and also the opportunity for organizations such as the United Nations or NATO to redefine their purpose and spheres of operation (Williams 2006). The UN gradually changed its perspective from state security towards human security, and increasingly addressed ongoing internal conflicts as threats to international peace. In the apparent absence of the common enemy, NATO oriented towards deployment in conflict theaters in Europe. Many of these processes made it possible for fundamental changes in the notion of protection to happen.

However, we need to go beyond asking how such ideas about protection and intervention were enabled, towards asking how they were generated at the end of the Cold War.

We should seek a constitutive explanation to the question of what factors transformed the understanding of protection in such a way that it became about protecting people physically, using military force if need be. Constitutive explanations differ from causal ones in that they seek to understand why social phenomena have the properties they do by looking at how they have acquired their attributes (Wendt 1998). As their purpose is not to establish causes and effects, but rather to see how ideational and material factors contributed to social facts taking a certain form, they aim at identifying how ideational and material factors relate to each other "by virtue of their role in some human project" (Ruggie 1995, 98). This involves selecting and describing events, and configuring them by virtue of their place in a coherent logical structure, i.e. as part of a meaningful human project that addresses a particular social problem. This research implies a "dialectic process that takes place between the events themselves and a theme which discloses their significance and allows them to be grasped together as parts of one story," argues Polkinghorne, defining this process as "emplotment" (Polkinghorne 1988, 19). The construction of such a narrative explanatory protocol (Ruggie 1995) is one of the principal modes of thinking with qualitative data (Freeman 2016).

Given the research question at hand, i.e. what explains the existence of two coherent – yet at the same time seemingly incompatible – protection models in the logic of RtoP, this prompts an inquiry into human projects related to protection, in particular those that addressed the limitations of the concept of protection or limitations in its existing practice. These are projects that deliberately sought to reconstitute protection as protecting people from physical

harm, or projects that have indirectly such an effect, as a result of which protection became compatible with intervention and temporary violation of sovereignty. To consistently select relevant events and "emplotting" them as parts of a relevant protection-related project, I draw on research on norm evolution and propose the conceptual framework of "embedded norm entrepreneurship."

The research on norms in IR theory has gone to great lengths to identify the dynamics of normative change. Norms are defined as appropriate standards of behavior for an actor with a given role and identity. Norms are relevant to the study of protection as a legitimate social purpose, as the collectively held beliefs of what protection as an activity is and by what means it might be carried out constitute a subset of appropriate standards of behavior in a particular field. Norm entrepreneurship is a concept introduced by Martha Finnemore and Katherine Sikkink in their seminal article on international norm change (1998) and further elaborated on by Finnemore in her book on the purpose of intervention (2004). Norm entrepreneurs are rational social agents that engage in "strategic social construction," i.e. influencing social action in accordance with their normative visions. The concept of strategic social construction captures that these individuals, vested they might be in normative projects, are rational actors and social agents; they have awareness of their own embeddedness in institutional, political and social structures, including the collectively held meanings they seek to change. They are strategic about their reliance on these structures and the resources such structures provide.

This already forecasts the need to conceptualize the interaction between norm entrepreneurs and their social, political and institutional environment. To query the attributes of successful individual agency, norm literature mainstreamed the concept of norm

entrepreneurship to analyze the conditions of successfully articulating normative proposals, or on the contrary, their deflection by manipulating the institutional position playing the role of a "norm antipreneur" (Bloomfield 2016). While there are still no definitive answers as to why particular normative frames are selected over others (Payne 2001), we know that their success is often predicated on being "grafted" onto existing rules and norms (Finnemore 1996; Price 1998), or being developed in consideration of their external normative environment, i.e. the meaning of surrounding norms (Krook and True 2012). At the same time, normative proposals have to offer a solution to existing dilemmas. The attribute of a successful frame is that it reconciles existing contradictions by recasting "the relationship between the cultural foundations, the costs and benefits of particular policies and the circumstances at hand" (Barnett 1999, 15).

The proposed framework of embedded norm entrepreneurship builds on both the role of individual agents and the structure they are embedded in solving a particular "normative dissonance" related to protection. The focus on resolving normative incoherence derives from the assumption that the stability of norms and that of identities is predicated upon coherence. Norms rely on particular descriptions of the world, which descriptions are unstable social constructs (Milliken 1999). Their endurance relies on social agents that keep acting as if these constructs and social scripts were an objective reality. For the perception of objective reality to hold, the social norms that sustain it need to be devoid of too many internal contradictions. Coherent social scripts enhance the mechanism of socialization. They increase the costs of divergent behavior and the benefits of compliance. Incoherence, on the other hand, reveals arbitrariness and can potentially lead to such social constructs unraveling. This vulnerability to incoherence therefore puts a burden on social actors, especially those that enjoy a privileged

position within these social constructs, to strive towards normative coherence that sustain their position.

Based on this logic of embedded norm entrepreneurship, we can turn to selecting the relevant episodes in the recent history of protection, based on a particular normative conflict regarding the concept or practice of protection. The selection has to include the episodes that produced a meaning of protection as providing physical security and the possibility of forcible intervention as a legitimate policy option. The literature on RtoP has its pantheon of canonical figures, accredited for their role in paving the way to RtoP in 2001. These include facilitators, such as Kofi Annan, former Canadian Minister of Foreign Affairs Lloyd Axworthy, and other UN and national officials that lobbied for RtoP to be included in the 2005 World Summit Outcome Document (Bellamy 2009b) on the one hand, and norm entrepreneurs that generated conceptual content around protection on the other. Among the latter, Francis Deng is credited for articulating "sovereignty as responsibility", a formulation which the International Commission on Intervention and State Sovereignty (ICISS), introducing the concept of RtoP in its 2001 report of the same title, acknowledged as a conceptual forerunner to the responsibility to protect.

Our focus is slightly different as it is not on RtoP per se, but on the trajectory of significant normative ideas that changed the meaning of protection and that account for its particular structure. Therefore, we depart in this dissertation from this linear narrative and instead identify three relevant episodes in the trajectory of protection. The first is the articulation of protection as a state responsibility. Here, we ask what the specific formulation of protection as a *responsibility* implied in the original context, and what it meant that the scope of this

responsibility was defined as providing physical protection to the entire population rather than as complying with international agreements under humanitarian or refugee law.

Then we move on to two further normative episodes that addressed the question of who is to bear the responsibility of protection, once it is defined as a responsibility. The first normative episode is centered on the concept of "sovereignty as responsibility" and the original context of its formulation. This concept assigned the responsibility of protection to states based on a modified social contract between states and its population that included protection. It proposed to enforce this responsibility based on mutual accountability of states within state-based regional and international structures. The second normative episode focuses on the "responsibility to protect," which departs from sovereignty as responsibility in that it conceptualizes the responsibility of protection not as a state responsibility, but as a corollary of every individual's "right to be protected," and as a response to every situation that necessitates enforcing this right.

The original contexts in which protection was conceptualized as the responsibility for guaranteeing the physical integrity of individual members of a population reveal two different relationships of responsibility, constituted between different objects of protection and bearers of responsibility. Whereas sovereignty as responsibility addressed the question of how to strengthen African states after the Cold War so that they successfully manage their own internal conflicts, it springs from a keen interest in the role of state-based structures in achieving protection. Sovereignty as responsibility privileges the state as the primary agent of protection, and strengthens its ability to protect its population by embedding it in a system of mutual accountability with similar states.

Far from being an extrapolation of this state-based protection to the international level, the responsibility to protect grew out of a different normative project, that of enforcing the imperative of coming to rescue vis-à-vis states. The responsibility to protect, at its origins, was the right to breach sovereign boundaries to meet individual needs of physical protection. The ethical structure of the responsibility to protect goes back to the practice of medical humanitarianism, which became a normative project of overwriting state sovereignty under the moral imperative of alleviating suffering, i.e. the individual's right to receive assistance, and the right of the rescuer to provide it.

The argument: responsibilities to protect

Following from the analysis of these three episodes, the overall substantive argument of the thesis is that, given its constructed nature and origins, there are *two* models of protection within the framework of RtoP, each powered by a different notion of responsibility and prioritizing a different object of protection. Since both are a product of embedded norm entrepreneurship, i.e. they respond to a particular normative conflict within a protection-related normative human project, these models are constitutive in function. They not only place different emphases on the role of the state or of non-state actors in protection, but they constitute different actors as objects and bearers of responsibility, and connects them in different relationships of responsibility.

Indirect protection is the product of post-Cold War African security debates through the concept of sovereignty as responsibility. It is a response to the question of how to enhance the capacity of the state to manage societal conflicts to avoid violence. In order to strengthen the state subject and to envelop it in a system of external control at the same time, indirect protection

harnesses the notion of responsibility as *accountability.* In this case, the role of the state in conflict management, and accountability structures on the regional and international level are the guarantees of protection, and therefore become its primary object. Accountability-based responsibility is based on the transcendentally free, willful subject that is the sovereign author of its actions and can be held accountable for them. Sovereignty as responsibility constitutes the community it is predicated upon: the community of mutually accountable states as the ultimate agents of protection. For this kind of responsibility to function, the autonomy of the subject, i.e. the sovereignty of the state must be guaranteed, as this is the source of legitimate action and that of social control among similarly constituted subjects.

Direct protection, on the other hand, is the offspring of the debate on the right to be protected, the right to assistance and that of intervention. It stipulates that responding to distress is normatively superior to political norms such as state sovereignty. Therefore, it relies on responsibility as *responsiveness*, and valorizes action that alleviates suffering on the individual level. It is built on the moral imperative of any individual to do everything in their capacity to alleviate the suffering of other individuals. This intimate ethics of responsiveness became a normative project in the form of medical humanitarianism. This kind of responsibility prioritizes "timely and decisive" action to alleviate suffering in a direct, immediate and physical manner. This imperative of responsiveness makes any action that addresses suffering, no matter which actors it comes from, legitimate.

Both models are internally coherent. In practice, however, they appear to be incompatible. Action either targets supporting state sovereignty, or it allows other actors to intervene irrespective of sovereign consent. When it comes to protection beyond the state, it is

realized either strictly within existing structures, or, emphasizing the urgent need for assistance, it empowers any actor to address suffering. Indirect and direct protection therefore lead to conflicting roadmaps; they project opposite vectors for protection. Their relationship is either/ or and, therefore, their co-existence presents another "structural problem" in the use of force for protection, in the sense Roland Paris used the term (Paris 2014): an inevitable logical contradiction that hinders preventive action.

The historical argument for this phenomenon is the original normative context in which protection as physical security and a responsibility were conceptualized. The conceptual argument is the constitutive function of embedded norm entrepreneurship in providing two idiosyncratic ways of defining the objects of protection and their relationship to responsibility-bearers. As a result, the two responsibilities to protect resist a synthesis despite iterative debates and practice.

The spectrum of responsibility-related arguments	Accountability "indirect protection"	Responsiveness "direct protection"
Who is the responsibility-bearer?	State is the primary agent performing protection **strengthens state sovereignty**	States and non-state actors have a "right to intervene" **overwrites state sovereignty**
What are the implications of the responsibility for protection?	States are held accountable within regional and international structures **strengthens state structures**	States must accept that any other actor is entitled to address suffering **overwrites state structures**

Table 1: The spectrum of responsibility-related arguments

Structure and contributions

The dissertation presents this argument in the following order. First, in three consecutive chapters I present the three cases of normative change that re-defined the notion of protection as physical security and reconciled this normative goal with the practice of intervention. I discuss the move towards protection as physical security in Chapter 1, placing sovereignty within external accountability structures through the concept of "sovereignty as responsibility" in Chapter 2, and establishing the "right to assistance" beyond the state in Chapter 3. I then proceed, in Chapter 4, to present the conceptual argument for the constitutive function of these historical contexts through embedded norm entrepreneurship. I describe the two different notions of responsibility on which the two models rest, and the templates of action they legitimize for intervening in conflict situations. Chapter 5 returns to the case of Libya and discusses it in detail, illustrating the incompatibility of the two models in this prominent RtoP case. In Chapter 6, I look at how states learn from the outcomes of this incompatibility through an overview of the General Assembly debates on RtoP ever since the Libya intervention. Whereas the Libya case is a snapshot of conflict resolution and the clash of the two models in solving a conflict at hand, the discussion in Chapter 6 takes a longitudinal perspective. It shows how the two models resurface in the annual debates, but also how participants assess the implications of the models in light of their implementation in practice. The Conclusion summarizes the findings and contributions of the project, and points to avenues for future research.

The contributions of this research are manifold. First, it problematizes the reigning notion of protection and the "interpretive truths" (Price 1995, 88) around it. The core conflict around humanitarian intervention was often presented as one between "sovereignty" and "human

rights," with the latter gaining more space due to the emergence of the concept of human security after the Cold War (Holzgrefe et Keohane 2003; Bellamy 2009a). Whereas the focus was mostly on whether, and if yes, how the two are reconcilable, less attention was paid to how protection came to mean what it does, and how intervention came to be seen as a legitimate tool to achieve it. Opening up the black box of protection at its conception, i.e. analyzing what it meant and in what practices it was embedded, allows for setting the analytical focus for identifying normative change. The first contribution of the thesis is thus to show the abrupt emergence of this new notion of "protection" and its identification with providing physical security in internal conflicts, which came to define the practice of intervention for the subsequent decades.

The second contribution of the thesis is the analytical framework of embedded norm entrepreneurship, applied to the analysis of how the notion of protection as physical security and the corresponding models of protection emerged. Embedded norm entrepreneurship is an analytical framework for analyzing normative change that identifies the role of norm entrepreneurs in 1) articulating a norm contradiction in the context of a particular project, and in 2) offering a new, progressive normative proposal to solve it as a novel mechanism of normative change. Normative incoherence is often theorized as part of normative change and is implicit in many theoretical accounts (Finnemore 1996; Price 1998; Krook et True 2012). Through embedded norm entrepreneurship, however, I theorize the construction of norm contradiction not as a structural condition that presents incentives to norm entrepreneurs, but as an intrinsic part of their political agency. The formulation of a normative contradiction, its transcendence in the form of a new progressive proposal, as well as explaining the receptiveness of a relevant audience

towards this proposal are all reconstructed through the narrative explanatory protocol of emplotment.

As a third contribution, I introduce in this thesis the distinction between indirect and direct protection as analytical categories, to capture two internally coherent but incompatible ways of realizing the goal of saving populations from atrocities. Identifying these two models provides a better understanding of the problems surrounding the implementation of RtoP, because it shows how RtoP straddles two possible ways of protecting that, however, present competing pulls for international action. This analytical frame cuts across the traditional normative vs. strategic divide that often grounds studies on RtoP. Instead of testing whether intervention behavior aligns with the normative prescriptions of RtoP or possible strategic motives, it rather shows what Kurowska called the normative saturation of strategic action (Kurowska 2014, 497), and Finnemore the phenomenon that normative beliefs are an intrinsic part of setting strategic aims (Finnemore 2004, 5). It identifies the origins, dynamics and implications of two sets of narratives with their respective normative thinking, and shows how they actually guide strategic action in any conflict resolution.

Charles T. Hunt and Alex J. Bellamy also use the concepts of indirect and direct protection in their article on mainstreaming RtoP in peacekeeping activities (Hunt et Bellamy 2011). Their concept of indirect protection refers to strengthening the civilian component of a peace operation that works to increase the resilience of local communities in multiple ways. These include, for example, preventing gender-related violence, promoting child protection or reforming the local police force. They define direct protection as the use of force by peacekeepers either to deter attacks on civilians or to position themselves between armed forces and civilians (Ibid, 9–15).

They thus use indirect and direct protection in a different sense, referring to sets of activities in peace operations that contribute to shielding populations from violence. Their conception of direct protection refers to activities that would be encouraged, in a conflict situation, by the normative and strategic model of protection that I here call direct protection. In this sense, the model presented in this thesis is more comprehensive than the concept proposed by Hunt and Bellamy. The compatibility of their notion of direct protection with the one presented in this thesis, however, further emphasizes the generalizability of my argument to other conflict-related fields, as well as the importance of distinguishing between activities that aspire to protect by strengthening "structures" within a society, and ones that call for military action to deter or halt armed attacks.

Finally, I present in this thesis how the two models of protection translate into protective action. Given the kind of responsibility they rely on, I show what descriptions of conflict and what courses of action emerge as legitimate for each protection model. Actors arguing based on indirect protection tend to describe the stakes of the conflict in terms political stability for the national community or for the wider region. For the sake of preserving state structures, these actors would refrain from explicitly blaming either side of the conflict to facilitate a negotiated solution. Efforts under indirect protection would be directed to preserve state structures that guarantee order and thus protection. On the other hand, actors that endorse responsiveness-based direct protection tend to frame the conflicts as one between perpetrators and victims, emphasizing the human suffering that results. Their narrative of the conflict is therefore often biased in favor of the "victim's" side, and more open than that of indirect protection to a wide range of actions that impede perpetrators. On the national level, international action is either

aimed at strengthening institutions or at temporarily overwriting them for the sake of averting harm. On the international level, conflict resolution is either strictly confined to state-based frameworks, or it is extended to different actors to maximize the potential for mitigating violence. On both levels, either they prescribe strengthening institutions or, on the contrary, they facilitate overwriting them on both levels. This is why, applied to the same conflict situation, they point to opposite directions. Should protection target keeping existing institutional structures in place, or should it take the form of a surgical operation to prevent perpetrators from inflicting violence?

The resulting spectrum of legitimate arguments is then applicable to the analysis of humanitarian interventions from the 1990s up to today. Although this research project is conceptual in orientation, and primarily focuses on identifying the structure of the two protection models and their irreconcilability, one of the policy implications of identifying these two responsibilities to protect is to contribute to streamlining international efforts in favor of one or the other.

CHAPTER 1: THE BIRTH OF PROTECTION AS RESPONSIBILITY

When in 2009 the member states of the UN General Assembly discussed the Responsibility to Protect framework, the Secretary General emphasized that the concept only facilitates acting upon existing obligations instead of creating new ones. RtoP stipulates that states have the primary responsibility to protect their populations from war crimes, crimes against humanity, genocide and ethnic cleansing, and that the international community bears residual responsibility to protect if a state is unable or unwilling to do so. With the exception of ethnic cleansing, all of these crimes were conceptualized right after the Second World War, with corresponding obligations enshrined in international agreements such as the Geneva Conventions (1949) and their Additional Protocols (1977).

Sharing the common goal of "protection" it should seem that pioneer protecting organizations such as the International Committee of the Red Cross (ICRC or Red Cross) should have welcomed the new framework. After all, it is the ICRC's mission to protect an ever-expanding circle of non-combatants by drafting internationally binding treaties and by monitoring warring parties' compliance with them. Yet, ICRC clearly distanced itself from RtoP, just as it did in the case of earlier notions that fed into its creation, such as the "right to intervene" (Sandoz 1992). Similarly, representatives of the Nobel Peace Prize Laureate humanitarian organization Médecins Sans Frontières (Doctors Without Borders, MSF) publicly took a stance against RtoP, saying that this kind of protection is "not in their name" (Weissman 2010). ICRC, MSF and the policy framework of RtoP seemingly share the same purpose of protecting populations wherever they might be, in qualified instances of systemic violence that are genocide, war crimes, crimes against humanity and ethnic cleansing. Among them ICRC and the RtoP framework acknowledge that

states are the primary actors in protection, and they both aim at binding states according to their "responsibility to protect." In addition to the alignment of purposes and shared Weltanschauung, RtoP was also supposed to make good on the commitments that were put in place as a result of ICRC's efforts. Why would then ICRC oppose RtoP so firmly?

The short answer is because they envision "protection" in fundamentally different terms. Instead of one notion of protection, there are actually many, and on some questions they differ irreconcilably. One of these questions is the use of force for the purpose of protection. RtoP allows – and in certain cases advocates – protecting populations by military force. ICRC is committed to mitigating the impact of armed conflict by generating rules of conduct to limit violence and to shield groups that do not participate in the hostilities. Protecting by force in the understanding of ICRC is armed conflict and as such, it is irreconcilable with ICRC's main commitment to mitigating its effects. Second, while for RtoP protection might mean forcibly changing the domestic authority structures of a state, ICRC aims at keeping even distance from all parties to the conflict. Neutrality and impartiality have always been a key asset to gaining access to the widest circle of affected populations.

Although it goes beyond the older notions of "just war theory" or the "right to intervene" by foregrounding non-coercive means of responding to mass atrocities, RtoP allows for military means of protection. Furthermore, as we will see in the main argument of this thesis, RtoP oscillates between different models of protection, one of them being changing the domestic authority structures of a given state to avert the threat of further violence. Changing the domestic structure of any state forcibly, i.e. against the will of national authorities, in order to achieve a certain outcome is the definition of intervention in international relations (Rosenau 1968;

Holzgrefe et Keohane 2003; Welsh 2006; Reus-Smit 2013). The split between ICRC and MSF on the one hand and the RtoP framework on the other is thus the specter of military intervention in preventing populations from suffering systemic violence. Military intervention in the service of protection, however, was entirely absent from the protection regimes of the 20th century. The two organizations that traditionally held protection mandates were the ICRC and the UNHCR, the Office of the United Nations High Commissioner for Refugees. While the former focused on moderating the effect of armed conflict on an ever-expanding group of people, the UNHCR was mandated to protect "refugees," by providing surrogate legal protection to people who have crossed an internationally recognized border and who could not rely on the protection of their state of nationality.

Although very different in their focus, both organizations were reliant on states and interstate agreements to achieve protection. ICRC had to convince states to sign and ratify treaties of international humanitarian law and relied on state authorities for its fieldwork with prisoners of war and affected civilian groups. UNHCR was dependent on the goodwill of states both as donors and partners. Most refugees under its tutelage were hosted in camps on the territory of states other than the refugees' nationality. Moreover, in terms of the original UNHCR mandate, the highest form of refugee protection was to procure new nationality and hence full citizenship rights in another country. In both cases, reliance on international agreements and respect for state sovereignty were the pillars of protection. Yet, from the 1990s onward, state sovereignty was regularly overruled in order to achieve protection.

This leaves us with the main research question this chapter will address. What has changed and why, so that protection got reconciled with intervention, and it even became one of its main

reasons after the Cold War? How could the concern for protection overwrite the respect for domestic jurisdiction? This chapter set outs to answer this question by first providing an overview of what protection meant for most of the 20th century in the practice of ICRC and UNHCR. Then, it addresses a turning point in the late 1980s and early 1990s due to the appearance of internal displacement. The needs of internally displaced people (IDPs), whose number surged to millions by the early nineties, were a pressing policy problem. Yet these people were beyond the remit of existing protection regimes. The needs of 25 million people by the early nineties was a tangible problem; however, remaining on the territory of their home country, the state was the only legitimate actor that was supposed to protect them. Internal displacement thus questioned the assumption that protection is automatically associated with state sovereignty and forced organizations and states to think of protection anew. The two most vocal norm entrepreneurs engaged with the internally displaced, human rights advocate Roberta Cohen at the Washington-based Refugee Policy Group (RPG) and the first Special Adviser to the Secretary General to the Internally Displaced Francis Deng, first had to conceptualize the situation of IDPs, exposing the discrepancy between their legal status and their physical conditions. They described this discrepancy as the "vacuum of responsibility," i.e. a condition in which the state is supposed to perform its social functions, but it is either unable or unwilling to do so. As such, they have laid the groundwork of thinking of sovereignty as involving certain responsibilities, and demanded, primarily for non-governmental and intergovernmental agencies, the right to initiative, i.e. to act without state invitation or state consent.

Internal displacement could ensue as a result of natural causes (such as drought or shrinking arable land), but since the 1990s, Cohen and Deng were vocal that most IDPs are

uprooted by man-made reasons, conflict and violence. These groups, by mandate or by practice, were of concern to the two organizations engaged in protection, ICRC and the UNHCR. Both of their protection models were challenged, but they reacted to this challenge in different ways. It was UNHCR and its incoming High Commissioner Sadako Ogata that put forward normative proposals to advocate for a different model of protection than what her organization previously embraced and which engaged with populations previously sealed from international action. At the helm of an institution traditionally entrusted with protection, Ogata saw that their activities were increasingly blocked. Refugee protection was not sustainable if internal conflicts constantly produced vulnerable populations; resettlement also was not an option in a third country if that country was plagued with internal conflict. Ogata realized that the work of UNHCR needs to be extended to people still within their countries of origin, to populations still "at home." However, in these cases, the most imperative need was protection in terms of physical security. In order to respond to the challenges UNHCR faced, Ogata undertook no smaller task than advocate for protection in terms of security at home, in a person's country of nationality. With this move, she exposed the role of the state in providing livable conditions for its entire population.

Protection before the 1990s

In its institutionalized forms for most of the 20th century, protection did not entail the use of force and did not mean shielding people from physical harm or securing minimal needs for living. Humanitarians have consistently defined the latter, meaning the distribution of food items, medical goods or services, providing sanitation or drinking water as "assistance", and it has been a separate activity from what was understood as "protection." Before the nineties, protection

was a legal concept that stood for defining a particular legal status, and enforcing the rights defined by that status. It was saved for well-defined groups and practices and for two organizations in particular: the ICRC and the UNHCR. For the ICRC, protection was the legal activity of creating and disseminating international humanitarian law (IHL), and engaging in ad hoc diplomacy to ensure that it is respected (Forsythe 1977, 29). For the UNHCR, protection as a legal activity meant protecting the rights of the refugees, defined as non-refoulement and the enjoyment of certain citizenship rights in a host country. While assistance preserved its relatively clear meaning as humanitarian assistance, the meaning of protection, while consistently distinguished from assistance, went through considerable change.

The ICRC, one of the organizations with an explicit mandate of protection, was founded in 1863 out of a Swiss merchant's experience. Witnessing the human costs of war in the battle of Solferino between Italian and Austro-Hungarian troops, Henry Dunant created an organization to attend to the wounded on the battlefield, and to advocate for sparing the lives of those who no longer took part in the hostilities, such as prisoners of war. Ever since, protection for the ICRC has meant two key activities: to withdraw non-combatants from war on the one hand, and to design rules of lawful conduct for those that remained combatants on the other. Non-combatants were initially defined as the wounded and the captured in international armed conflict. After the Second World War, this protected status was extended to the civilian population (1949) and to non-international armed conflicts (1977).

ICRC accepted war as a reality of human existence. Its conception of protection was not to prevent or quench war but to confine it within universally respected boundaries. To achieve this aim, ICRC drafted conventions and presented them to states to create an internationally

accepted legal framework. International humanitarian law, in other words, was a law *of* war rather than a law against war. Second, ICRC worked to make sure that all combatants are familiar with these rules and comply with them. ICRC delegates visited prisons and ventured into conflict zones to reach out to combatants and persuade them to adhere to these regulations. UNHCR, the other organization mandated to protect in the twentieth century, was responsible for people who left their countries because of persecution or well-established fear thereof. The task of UNHCR was to provide substitute legal status and representation of the refugee in the country of arrival, as she could no longer rely on the "protection" of her country of origin.

Created in 1950, UNHCR was heir to the international regimes that dealt with the phenomenon of statelessness which arose immediately after the First World War. Although at that time the largest stateless groups were the Armenians fleeing Ottoman persecution and the White Russians exiled by the Soviet Union, many of the consolidating European nation states relied on denationalization to rid themselves of their undesirable population (Arendt 1975, 278-79). Political status was defined by nationality to such an extent that Stefan Zweig, a writer born in the Austro-Hungarian Monarchy, educated in Paris and Berlin, who travelled to India and the United States without ever showing an identification document, wrote that "formerly man had only a body and a soul. Now he needs a passport as well, for without it he will not be treated like a human being" (Zweig 1964, 410).

The solutions to the problem of undesirable populations were not motivated by the concern towards the people affected but by their destabilizing effect on the nation state system (Dugdale and Bewes 1926; Arendt 1975). The person who had left his country of origin and was no longer bound to that country was a human being that did not have a political status in the

world of nation states. From the perspective of the receiving state, there was no counterpart to vouch for her, and nowhere to deport her. Since the individual did not have a direct status in international law other than through her own nation state (Hathaway 1984), the international system was ill-prepared to accommodate stateless people and refugees. These origins are reflected in the way refugee protection as a regime was set up. The refugee was a person whose relationship to her country of origin was severed and who could therefore not rely on the protection of that country. Hence the core concept of protection in the refugee regime: substitute legal protection towards the authorities of the country of arrival.

ICRC and UNHCR were very different in their focus and their institutionalization of protection. ICRC relied on states to be able to operate on their territories, and to civilize war by international agreements. UNHCR worked with states to remedy the status of those that fell in-between national protections by facilitating movement (Bradley 2016) and reintegrating people in the system as new nationals. Both organizations relied on states to articulate rights for the individuals under their protection and then to enforce these rights. None of them had a "right to initiative," i.e. to launch operations without state consent or set their own terms vis-à-vis states. Therefore, their understandings of protection, different as they were, were both incompatible with international military intervention that would clash with state sovereignty to achieve protection.

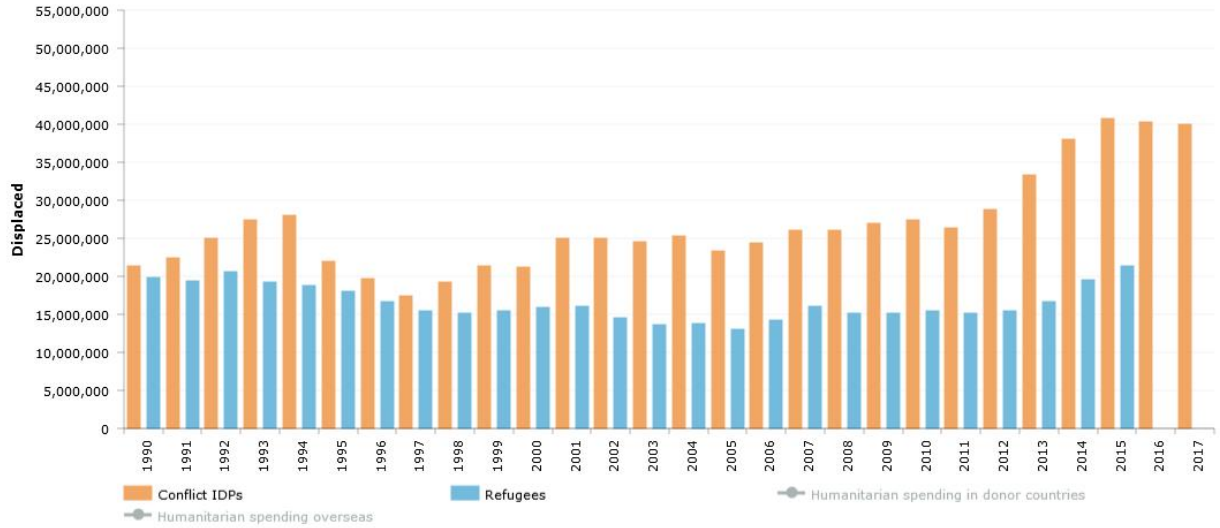
The 1990s brought a turning point. Whereas earlier protection and military intervention would have been mutually exclusive, throughout the 1990s and 2000s such interventions were increasingly seen as a permissible and even necessary tool to achieve protection. This idea was so salient that intervening states in the 1990s and 2000s justified their actions in terms of

protection even when their motivation clearly lay elsewhere, such as in the case of the American intervention in Iraq (2003) or the Russian one in Georgia (2008). Whereas previously state sovereignty was a pillar of protection regimes, from the early 1990s onwards it was often presented as an obstacle to effective protection, a norm antagonistic to human rights and sometimes even as "a license to kill" (Annan 1999a; Evans 2009). The question that thus arises is how and why the concept of protection has changed, not only to become compatible with intervention but also to become its legitimate purpose (Finnemore 2004).

The challenge of internal displacement

First, the reliance on states came under challenge due to the changing nature of conflicts after the Cold War. The dissolution of multinational political entities such as the Soviet Union or Yugoslavia renewed atrocities between ethnic groups to consolidate rule in the newly created states. The struggles for power often produced violent exclusionary politics also in Africa and Latin America. In these conflicts, displacing part of the population perceived as supporting rival factions became a weapon of war. As a consequence, millions all over the world got uprooted either because they were directly targeted or because their livelihoods were destroyed in the midst of conflict. Some became refugees, but many remained within their own country, although cut off of their lands, possessions, social networks and any support from their state. This latter group came to be called the internally displaced by the end of the 1980s. Internally displaced people (IDPs) were "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country" (E/CN.4/1993/35, 11). According to the earliest censuses in 1982, there were about 3 million

people in such "refugee-like situations," but this number surged to about 25 million by the early 1990s and steadily surpassed the number of refugees (Weiss and Korn 2006; "Internal Displacement Monitoring Centre").



Source: [Internal Displacement Monitoring Centre]

The problem was globally pervasive. While in absolute terms, most internally displaced people were in Africa, in relative terms Colombia, a Latin American country, had most of its population displaced. No human-populated continent was spared. The consolidation of nation-states rendered hundreds of thousands displaced in Europe, the Caucasus or Central Asia. The growing number of populations on the move and in dire need was reflected in regional instruments across the globe, such as the Cartagena Declaration in Latin America (1987). Furthermore, by 1992 it was clear that the problem is political rather than humanitarian. A 1986 UN-Commissioned study talked about displacement mostly as a result of famines, agricultural production, and part of states' effort to repopulate rural areas and enhance agricultural production (Aga Khan and Bin Talal 1986, 17). The UN Secretary General's first analytical report

in 1992, however, already says that most of the internally displaced are uprooted purposively, by massive human rights violations (Secretary General 1992, 5–11).

Not only was internal displacement a global political problem, it was also structural. It appeared impossible to solve within the existing remits of political order. The needs of the internally displaced followed directly from their "uprootedness," from being cut off of their livelihood and social ties and often being persecuted by other groups or by the national authorities. However, as far as the nation-state-based order was concerned, they were where they were supposed to be: on the territory of their country, and under the "protection" thereof. Their needs made them similar to refugees, in whose case international protection was justified and well-institutionalized. Not having crossed an internationally recognized border, however, put them beyond the reach of existing regimes of protection and assistance.

The normative conflict thus arose from the discrepancy between the needs of the internally displaced and their status. The status of being on the territory of their state of nationality precluded problematizing their need for assistance (provisions of food, health care, shelter) and physical security. These needs, on the other hand, created tangible policy problems for organizations engaged in assistance or protection. The UNHCR, for instance, often had to deal with mixed populations of refugees and internally displaced people. While their needs were often identical, UNHCR in principle could not extend its activities to IDPs. In practice, denying assistance to people in the same camp based on their status, whether a refugee or an IDP, led to conflicts and later on, ad hoc UNHCR involvement with IDPs (Cohen 1996).

This reveals that the plight of the internally displaced was not only a question of assistance. Given the reigning political order, assistance was either not justified or was simply

denied by the authorities that fostered or allowed internal displacement. In a 1991 conference on internal displacement, organizations involved in assistance discussed the need to extend their activities to IDPs as dictated by their evident need. All they could do, however, was to voice their frustration about lacking the "right to initiative," that is, to act without the consent of the state in question ("Human Rights Protection For Internally Displaced Persons" 1991). One of the first analytical reports on IDPs presented at the UN Economic and Social Council similarly asserted that already "an offer of assistance by the United Nations may be interpreted as interference in the internal affairs of the State or an implicit judgment on the way some nationals have been treated or not protected by their Government." Because of the respect for domestic jurisdiction, the report adds, "the Secretary-General has little room to act" (Cuénod 1991, 33).

IDPs not only lacked means of living. They were in need because they were persecuted systematically within their states. The state, however, the very agent responsible for their "protection," either neglected them or it was the source of persecution itself. Therefore, however huge was the need, there was no official basis for assisting IDPs. Internal displacement became a problem without a solution because IDPs were not "eligible" either to assistance or to "protection" without redefining what protection was in the nation state-based political order. This redefinition, in turn, came from the organizations that were pressed to address the problem but could not as long as they relied on their traditional concepts and mechanisms of protection.

Addressing internal displacement

The presence of the internally displaced constituted a challenge for many UN specialized organizations. The professional who was instrumental in conceptualizing the problem of internal

displacement and in diffusing knowledge in wider policy circles was Roberta Cohen. Cohen started her career in the early 1970s as the executive director of the first human rights organization based in the United States and later served in the State Department's first human rights bureau under the Carter administration (Cohen 2016). Throughout the coming decades, her work spanned both the non-governmental and the governmental sectors, uniquely placing her to translate between these realms. In the late 1980s, she headed the Refugee Policy Group, a Washington-based think tank that focused on the rights of refugees and populations forcibly on the move. Cohen also successfully lobbied the UN Human Rights Council to appoint a Special Advisor on the issue of IDPs. The first to fill this post in 1992, former Sudanese diplomat and scholar Francis M. Deng later wrote that he would not have been able to complete the work had it not been for Cohen. Working together successfully on IDPs in various institutional homes, Cohen and Deng demonstrated a wide range of the normative functions of the norm entrepreneur (Ratner 1999).

First, they framed the issue for a wide audience, including the policy world, academia and states themselves. Two of their main themes were that the internally displaced are essentially refugees who have not crossed an internationally recognized border. For these reasons, their needs are very similar to those of refugees and often even worse because of their invisibility. As such, they consistently linked internal displacement to an already regulated issue area and put in relief the discrepancy between two, equally numerous groups of people with similar needs, one of which was recognized by states and was receiving international assistance, the other remaining invisible on both levels. Second, they emphasized that the plight of IDPs, although it might arise from natural catastrophes, are mostly due to violence, political persecution and internal strife. They did not shy away from pointing to the role of the state authorities that were often

deliberately abandoning or attacking parts of their population.

Second, Deng launched a project of gathering and systematizing knowledge about internal displacement. He appointed a legal committee to examine the collectivity of legal instruments and human rights provisions that still apply to the internally displaced (E/CN.4/1993/35, 16). Since the beginning of his appointment, he undertook regular field visits to states with considerable IDP populations. His travels spanned from Tajikistan to Colombia and allowed him to gain a global overview of IDP's situation, the differences and similarities as well as best practices. He regularly submitted reports to the General Assembly and requested UN member states to supply him with nationally collected data on their internally displaced populations.

In these reports and on other fora, Cohen and Deng also worked to translate the existing knowledge into normative proposals, practical guidance for organizations involved with the IDP population. The RPG organized conferences both to gather and to disseminate knowledge among practitioners in the field. They have published numerous academic volumes to reach a wider audience. Fourth, it was essential to mobilize support among various stakeholders, which included states and UN specialized organizations alike. As we will see later in more detail, throughout their work they have consistently exposed the void around the internally displaced, the problem of insufficient or malevolent state conduct, and the necessity for others to compensate for its consequences.

The phenomenon presented a challenge to both existing institutional forms of protection. ICRC mitigated the impact of violence on non-combatants, and this activity was predicated upon non-combatants as well as ICRC enjoying a neutral status on the ground. In the context of the new conflicts, however, non-combatants were directly targeted, and ICRC in its effort to assist

them became a target itself. When one of the ICRC delegates was deliberately killed in Bosnia in 1992, the shock prompted the organization to rethink protection. The focus was, however, on securing its *own* workers in the midst of ongoing conflict, rather than securing people against combatants. The fact that no neutrality was respected had a deep impact on humanitarian thinking, and many organizations came to the conclusion that only combatants should face combatants in order to provide assistance (Chandler 2001; Fox 2001). ICRC, however, was fiercely opposed to embracing such "military humanitarianism." It withdrew from Bosnia and returned only a year later, by which time UNHCR had taken over most humanitarian assistance tasks in the field (Rieff 2003, 133), a remarkable decision that would have a defining impact on redefining protection as physical security.

The challenges led ICRC to reflect on how it can secure its own employees and continue its work in the midst of conflict. Towards the idea of protecting populations in need by military force, ICRC remained antagonistic. The organization equally treated as victims those affected by warring parties and those harmed by peacekeeping forces. Describing the position of ICRC towards multinational forces, the 1993 ICRC periodical reports that the organization's delegates started to visit detainees of peacekeeping forces in Liberia and in Cambodia (ICRC 1993, 306). Adding an overview of "how ICRC field activities serve victims of violence," ICRC's account reflects its traditional protection role and assistance tasks. Instead of endorsing cooperation with military forces now entering the field of "protection," the ICRC kept interpreting its protection role as ensuring compliance with IHL principles, engaging in ad hoc diplomacy, visiting political detainees and prisoners of war, and preparing confidential reports about their conditions for the relevant national authorities. Given ICRC's model, which divided the world into those inflicting violence

and those that suffer it, upon the entry of new actors in the field of conflict – or old actors in new roles, such as peacekeepers – ICRC strove to remain a neutral intermediary, tirelessly working on convincing parties to a conflict to uphold international humanitarian law.

Of the two conceptions of traditional protection, it was that of UNHCR that was particularly strained because this was a protection related to political status. It was also UNHCR's protection activities that the phenomenon of internal displacement pushed to adapt. During the 1960s and 1970s, most countries tolerated refugees on their territories because they believed refugees would repatriate after the wars of liberation and decolonization ended (Barnett 2001, 254; Betts 2009). By the 1980s, however, it was clear that most refugees would not repatriate to still volatile conditions or poverty. At the same time, Western donors displayed "compassion fatigue," and resources to provide for refugees without any hope of long-term settlement dried up (Betts et al. 2013, 48). UNHCR was not designed to fend for people permanently stuck in third counties, where national authorities were not willing to integrate them. As there was no way forward, UNHCR was forced to look backwards, that is, at the origins of displacement. If neither repatriating nor resettling refugees was possible, and caring for them was unsustainable in the long-term, UNHCR had to look into ways of preventing the refugees from leaving. If the question of the 20th century was "how to make the refugee deportable again" (Arendt 1975, 284), towards its end it was how to make sure she never leaves.

UNHCR was thus forced by the new circumstances to chart new territories to which it was not designed, either by its mandate, organizational structure or expertise. Its Executive Committee even saw these new activities endangering UNHCR's organizational rationale and was concerned that increasing involvement with the internally displaced would compromise its

original mandate. First, the focus on prevention might have given states a legitimate reason to refuse upholding their obligations under refugee law: if refugees can be stopped before they cross an international border, why should they provide asylum and refugee protection? Second, by addressing the "root causes" of conflict to prevent people from leaving, UNHCR was caught up in an activity directly oppositional to its funding principle. UNHCR traditionally protected by facilitating movement, not by preventing it (Bradley 2016). Its work on protection was predicated on the free will of the refugee to flee or repatriate. Facing extended refugee situations without hope of resolution, UNHCR not only worked to decrease the willingness to leave but also often constrained the choice. It also engaged in forced "voluntary" repatriations, which potentially compromised the option of fleeing (Barnett 2001, 266).

To achieve both aims, UNHCR expanded the range of its activities to create livable circumstances in countries of origin. Under the new labels of "in-country protection," "prevention" and "temporary protection," these activities included "preventive diplomacy, early-warning, peacemaking and peace-keeping" and described UNHCR's function in the country of origin in terms of "human rights monitoring and promotion, protection of internally displaced persons [and providing expertise on] the advisability of safety zones" (Note on International Protection 1992). It also launched cross-border operations "to provide assistance to those who might otherwise feel compelled to leave," an example of which was on the Northern Kenyan-Somalian border from 1992 onwards (Ogata 1994). For returnees, UNHCR launched "micro-projects for reintegration," such as the one in Mozambique (Ogata 1994).

Changing the circumstances that compelled people to leave, however, inevitably assumed political involvement. In this respect, UNHCR's position departed radically from that of ICRC. In

accordance with her belief that the problems she needed to handle were political rather than humanitarian in origin (Rieff 2003, 22), Ogata said that "UNHCR welcomes the greater interest of the political arms of the UN in humanitarian problems. For UNHCR, close cooperation with UN's political initiatives is essential in terms of solving the refugee problem or preventing it from arising" (Ogata 1994).

Improving conditions in countries that emitted refugees, however, often not only meant engaging politically but also engaging with populations caught up in open conflict. UNHCR was logistically unprepared to face open conflict and protect under these circumstances. When Security Council resolution 688 in the first Gulf War requested UNHCR to help provide safe havens for the Iraqi Kurds in 1991, it had to rely on the American military to provide, for the first time, a commodity in which it previously did not trade: security. For these reasons, UNHCR had a very different attitude to armed forces than the ICRC. Acutely aware of the hazards of being perceived as politically partial, Ogata nevertheless approved of relying on the military, because this was the only way UNHCR could "protect" in conflict situations.

UNHCR understood that in the context of ongoing conflict, protection emerges as a problem of physical safety rather than that of legal protection or assistance. In the 1990s, the only means for UNHCR to provide physical safety was often presence on the ground. On the practical level, it opened "Open Relief Centers" to provide "relatively safe environments" for aid beneficiaries and to monitor the "general security situation", whether it complies with international standards. In Iraq, UNHCR undertakes similar activities for the Iraqi Kurdish population in its "humanitarian centers" and requests the United Nations to provide guards and a larger contingent of coalition forces to assist in sustaining security. The 1990 Note on

International Protection mentioned physical security first among contemporary protection problems (NoIP 1990). By 1993, the UNHCR's World Report of Refugees firmly claimed that protection must include the physical security of refugees both in terms of preventing attacks against them and keeping them alive through humanitarian assistance. The report adds that "as more and more refugee crises erupt in the midst of armed conflict, the physical aspects of protection have assumed a compelling urgency" (UNHCR 1993, 10).

Despite all the conceptual and logistical difficulties, the only way Ogata, a political scientist with a career in studying foreign policy, saw as a way forward was to make UNHCR relevant in the new circumstances. The choice she saw for her organization was either to sink into oblivion or to change radically. She was convinced that "UNHCR would end if it remained a slow, static, conservative organization" (Ogata 2005, 344; Loescher 2001). Furthermore, the responsibilities were also "an opportunity to make the agency relevant to the international community's most powerful actors," the support of which UNHCR desperately needed in terms of financing and goodwill (Rieff 2003, 133).

Following the needs of people affected by conflict, most of them uprooted and all of them potential future refugees, this is how the meaning of protection started to shift from legal protection towards providing physical security and monitoring human rights violations. In the process, Ogata claimed no less than the right to initiative for her organization. In the 1992 Note on International Protection, she argued that "the Office should continue to seek specific endorsement from the Secretary-General or General Assembly *where* these activities involve a significant commitment of human, financial and material resources" (NoIP 1992, italics mine). As such, Ogata moved to fulfill tasks that were originally for the state to fulfill. UNHCR moved to fill

a void for which national authorities (and the absolute conception of state sovereignty) were responsible in a double sense: first by not fulfilling the obligation of protection themselves, and then by impeding other organizations to do so.

The "vacuum of responsibility"

Looking at the plight of the internally displaced and the refugees within their care, both the Special Rapporteur on IDPs and his collaborators, and the UNHCR arrived at the same conclusion. Protection is not a natural outcome of an unambiguous political status as a citizen in a nation-state. It rather means upholding the rights of individuals as they are defined in international humanitarian law (related to conflict), human rights instruments and refugee law, and thus involve the respect for the most fundamental right to life, freedom from bodily harm and torture.

The way of articulating the peculiarity of the IDP's status was to say that they "fall into a vacuum of responsibility that is normally associated with sovereignty" (Deng 1995; Cohen 1996). The "vacuum of responsibility" signaled a range of tasks and obligations that should be normally fulfilled under national sovereignty. However, governments often failed to "discharge [their] responsibility of sovereignty" (General Assembly 1993; E/CN.4/1995/50/Add.1 1994), because of perceiving certain parts of their population either as enemies or supporters of the enemy (Deng 1995; ACCORD 1996), or as inferior, threatening and simply as "other" (Cohen 1996). Thus, the vacuum of responsibility was first and foremost of a *moral* nature, and it arose when states disowned parts of their population and explicitly denied protection for these "forsaken" people (Deng et Cohen 1998). Governments might abandon IDPs not only because of their unwillingness but also because of lacking capacity. As the Special Representative for the Internally Displaced

People pointed out, internal conflicts were frequently marked by few or no accepted ground rules of battle, belligerents increasingly diverted life-saving assistance for their own purposes, and used civilians themselves as weapons (E/CN.4/1995/50/Add.1 1994, 6).

The vacuum of responsibility was also legal. One of the main purposes of appointing a Special Representative on the issue was to gather and evaluate existing legal standards that might be applicable to the internally displaced. One finding was that many of the conflict situations that cause displacement are often "below the threshold of application of humanitarian law." In other cases, "guarantees crucial for the displaced are legitimately derogated or restricted," or they were not applicable because the state in question had not ratified key treaties on these guarantees (E/CN.4/1995/50/Add.1 1994, 6). The other source of legal vacuum was that no agency was directly responsible for IDPs. To this legal vacuum of responsibility, the solution was to strengthen collaborative arrangements within UN agencies (E/CN.4/1995/50/Add.3 1990) and fill the "vacuum in terms of institutional policy formulation and operational activities" (E/CN.4/1993/35 1993, 29).

The vacuum of responsibility was not only a descriptive term; it discursively served to constitute the responsibilities of protection and also to interrogate states and other actors in fulfilling them. The 1990 Note on International Protection welcomes adjustments in asylum policies, to ensure a better sharing of responsibilities by all concerned States, including countries of origin (NoIP 1990). It advocates for developing "the concept of State responsibility under international law, particularly as it relates to the responsibilities of countries of origin" and also for the international community to "explore the possibilities for *providing safety and security for concerned individuals within the country of origin*" (NoIP 1990 italics mine). Reporting on its work

in countries of origins, UNHCR is said to "supplement the obligations of asylum countries by placing responsibility for the prevention and lasting resolution of refugee problems on the authorities of the refugee-producing country, a *natural corollary of state responsibility*" (UNHCR 1996). Once the conflict is over, UNHCR scales down its involvement as "national protection mechanisms" are re-established, "linked to a wider network of human rights monitoring and verification mechanisms and national protection efforts" (UNHCR 1996).

Protection is not the consequence, a natural corollary of political status any more. It is a set of tasks, the outcome of "mechanisms" and "efforts," the obligation of the state to generate certain social goods that the state is obliged to undertake. The emerging notion of responsibility first of all defines, outlines and constitutes the obligation that fundamental human rights must be upheld. Second, it initiates a debate on how to allocate this obligation, decoupling this responsibility from national sovereignty. It now involves providing physical security to people that are more often than not affected by internal armed conflict; bringing them under the radar of applicable human rights instruments; and finally, compensating for their abandonment by national authorities. Protection was ideally fulfilled by national authorities, but it now became an "imperfect duty" (Tan 2006) in the sense that in the case of sovereign default, it could be fulfilled by other actors, opening up the question of how to assign this duty to any agent in particular.

The notion of "state responsibilities" indicates that this obligation used to be, for most of the twentieth century, unambiguously allocated to the state. In light of the new developments, however, this assumption appeared to be increasingly untenable. The fact that the state itself created a void uprooting its population or was incapable of preventing non-state actors to do so on its territory showed that the state does not necessarily fulfill the responsibility to provide

protection. The question then was whether this responsibility could be allocated to other actors. The magnitude and needs of internally displaced populations forced an answer of yes to this question. The perseverance of responsibility in the discourse showed, however, that agreeing to allocate this responsibility to a wider circle of actors does not necessarily mean that the principle of allocation is consensual. As a result of internal displacement in the context of internal wars, by the early 1990s the question became who can, and who should, provide protection; in other words, whose responsibility it was to protect.

Redefining protection as responsibility

In the 1993 Note on International Protection, the UNHCR Executive Committee told its state donors that protection now depended on the "ability and political will of the international community to persuade States to accept responsibility for the welfare of all the people within their territory" (NoIP 1993) . The 1993 UNHCR Report on World Refugees went as far as saying that "the preventive approaches being developed today are based on notions of state responsibility […] This is in keeping with a growing tendency for the international community to concern itself with conditions that until recently would have been treated as internal matters" (UNHCR 1993, 10).

The formerly "internal matters" that the UNHCR report outlines are "violations of human rights, repression of minorities, indiscriminate violence and persecution." The importance of this change is especially highlighted in comparison with the earlier practice of UNHCR. Previously, the starting point of protection and UNHCR's concern was the refugee arriving to a third country, where she was without protection. UNHCR stepped in because the links between the person and that country were broken. By 1993, UNHCR was saying that "prevention and solutions are

different aspects of the same goal, which is *to maintain or restore the links between individuals, communities and Government within a country"* (NoIP 1993 italics mine). UNHCR came a long way to become primarily concerned with restoring the link the dissolution of which justified its very existence.

In line with the aspiration to restore the link of "responsibility" between the individual and her country of origin, we arrive within a short span of time not to the affirmation of the "right to leave" that was the foundation of the refugee regime, but that of its reverse: the "right to stay" within one's own country. In a 1995 resolution, the General Assembly Subcommission on Prevention of Discrimination and Protection of Minorities affirms the right of persons to remain in peace in their own homes, on their own lands and in their own territories [and urges] Governments and other actors involved to do everything possible [to cease] all practices of forced displacement, populations transfer and ethnic cleansing (General Assembly 1995, 588).

As much as UNHCR expanded its activities in ongoing conflicts to create livable circumstances, it was in no position to enforce the "right to stay." Once the obligation to protect was dissociated from national sovereignty, the discussion on fulfilling this obligation raised both the issue of the impermeability of state sovereignty and the role of other states to intervene. Already in 1992, Secretary General Boutros-Ghali pointed to the antiquated nature of "absolute and exclusive sovereignty" and the need to rethink the use of force (Boutros Boutros-Ghali 1992).

It was his successor Kofi Annan, however, who put rethinking the concept of sovereignty and its relationship to intervention on the agenda, and advocated for embedding intervention in the existing structures of the United Nations. Annan rose to the position from heading the Department of Peacekeeping Operations, which was only two years old when it faced the

Rwandan genocide. "Personally haunted" by the Rwandan failure (Annan 1999a), Annan embraced the idea that the responsibilities of sovereignty must be spelled out both at the national level and for the United Nations, especially as UN involvement in ongoing conflict followed the inappropriate Cold War template (Annan 2012).

He confronted the UN General Assembly with both the consequences of inaction and that of unauthorized action in the case of mass atrocities. The latter he used to argue that if the Security Council does not find a way to accommodate intervention, other actors will rise in its place to do so, eventually to corrode the international system on the use of force. He furthermore argued that intervention should not be seen as military only, and it should extend to post-conflict reconstruction as well (Annan 1999b).

In what would later be familiar in the context of the Responsibility to Protect, his position on sovereignty was that it never meant to be a "licence for governments to trample on human rights and human dignity" and that "state frontiers should no longer be seen as a watertight protection for war criminals or mass murderers" (Annan 1999a, 118). In these arguments, Annan departed from the Cold War reading of the UN Charter and its absolute prohibition on interference in the internal affairs of sovereign states. He argued that states should be seen as "instruments at the service of their peoples" and that the main aim of the UN Charter is to "protect individual human beings, not those who abuse them" (Annan 1999b). Sovereignty, he concluded, "implies responsibility, not just power."

Conclusion: The birth of protection as responsibility

Today, protection means protecting populations from qualified instances of mass atrocities, crimes against humanity, war crimes, genocide and ethnic cleansing. It means directly,

sometimes by force, shielding individuals from violence. For most of the twentieth century, however, protection did not mean protecting individuals physically and directly, and for most of this time, it was incompatible with military intervention. For the ICRC, protection consisted of mitigating the impact of violence on non-combatants by creating an international normative framework and spreading awareness of it on the ground. The other traditionally protecting organization, UNHCR provided substitute legal protection for people who left their countries of nationality for fear or fact of persecution. In the early 1990s however, another significant group emerged in need of both security and assistance, which was at the same time beyond the reach of existing protection regimes. Internal displacement was a result of the new features of mostly intra-state conflicts in which civilians increasingly became direct targets. Internal displacement presented a challenge to all existing forms of protection, and especially for UNHCR. In grappling with providing protection, now mostly understood as security, UNHCR gradually extended its activities to in-country and temporary protection, and it openly problematized the responsibility of the state in providing livable circumstances for the people on its own territory.

In light of the needs of the internally displaced, the meaning of protection moved away from legal protection towards providing physical security and respect for human rights. Not only the definition of protection changed; it now became a duty, which, if unfulfilled, generated threats to international peace and security. Therefore, it emerged as a duty not only for nation-states but also for different members of the international community. Protection was not an activity reserved for particular groups of people and performed by particular organizations any more. It was a responsibility of nation-states and a collective effort to restore the links between individuals and their sovereign state. Although protection emerged as a duty, it remained

"imperfect," leaving open the questions who should fill the vacuum of responsibility, upon the failure of national authorities and who had the capacity and the right to protect. The following two chapters present two models of protection, one that justifies protection based on accountability and one that justifies it on the basis of an ethics of responsiveness. Both were instrumental in turning protection into a "perfect duty," i.e. allocating it to specific, albeit different, responsibility-bearers. They thus came to define the discourse and practice of intervention from the early 1990s onward.

CHAPTER 2: THE CONTRACT OF PROTECTION
The origins of indirect protection

In the changing understanding of protection, what first came to the foreground was the position of the state in two senses: first, as the agent that should prevent internal displacement, and second, as the obstacle to international assistance to those already displaced. What during the Cold War would have been the taboo of international interference was now a policy problem and a question: what is the role of the state in providing protection, and can it seal populations from other "providers," if the need arises?

The conceptual response to this question came from a person who constructed internal displacement as a policy area, and did so from a particular, African perspective. The first Special Representative of the Secretary General for IDPs, Francis Deng, served as human rights officer at the UN Secretariat for decades, then in ambassadorial role and as Sudan's Minister of Foreign Affairs before joining the ranks of the United Nations again. Not only a politician and a civil servant, he was also a scholar, deeply concerned with countries of various ethnicities, religions and conflicting tribal allegiances similar to his own. As Special Representative for IDPs, he saw that conflicts in which states disown parts of their population constitute a structural problem. He also had first-hand experience of this structural problem in Africa, a continent that was in a special position after the Cold War had drawn to an end. International engagement with the continent was shifting, and once a site of ideologically motivated proxy wars, African states now seemed to face social conflicts and development problems alone. In parallel to his work for the UN, Deng ran a research project at the Washington-based Brookings Institute, which inquired into the consequences of the new world order on African conflicts and security. The Africa project that

spanned the years from 1989 to 1998 was motivated by the concern that the continent would be left to its own devices in managing its conflicts, now forlorn to what used to be the First and the Second Worlds.

Africa now had to provide for its own security, and key to that development was to keep its states standing and capable. Despite its weaknesses, the researchers of the Africa project believed that the state had no alternative as the basic political unit in Africa; but also that it had to change in adapting to the new circumstances. In this adaptation, the crucial element was strengthening its capacity in conflict management, by external assistance if need be, thus reconciling that external assistance with the concept of sovereignty.

The concept of sovereignty that Africa "inherited" was not only unfit for African realities, but also directly harmful. Forged in the context of decolonization, sovereignty as an absolute quality served the liberation struggles against colonial rule and helped newly independent African states enter the society of sovereign nations (Oliveira et Verhoeven 2018, 10‑11). The goal of independence temporally bracketed societal cleavages. After independence, however, the unitary concept of sovereignty often meant in practice that one group seized power and distributed privileges based on kinship, marginalizing or completely excluding other groups from social goods and political power. Other channels of retribution closed, this marginalization finally led to armed conflict (Zartman 1996). The task that Deng and his colleagues ultimately set themselves was to find the conceptual grounds for managing conflicts domestically and containing them at the regional and international level. For that, the "negative" notion of sovereignty as non-interference had to be replaced by something "positive." This "positive" notion of sovereignty had to include the function of providing the fundamental social goods of

security and means of living for the entire population of post-colonial African states.

The conceptual response of Deng and his colleagues was the notion of "sovereignty as responsibility," which stipulated that "national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and are accountable both to the national body politic and the international community" (Deng et al. 1996, 211; Deng et Lyons 1998). Their publications, including *Conflict Resolution in Africa* (1991), *Sovereignty as Responsibility: Conflict Management in Africa* (1996), *Governance as Conflict Management: Politics and Violence in West Africa* (1997) and *African Reckoning* (1998) are all dedicated to the themes of responsibility, accountability and the role of regional actors and global partnerships in conflict management. In other words, to what was to become "Africa's new sovereignty regime" (Geldenhuys 2006).

Conflict management required strengthening the state's relevant capacities and at the same time placing it in a broader system of control. "Sovereignty as responsibility" was therefore as much an interventionist idea as it served the purpose of strengthening state sovereignty. This double potential would have consequences for how "protection" is then conceptualized and practiced, as well as why it would be appealing to states themselves, not only in Africa but also elsewhere on the globe. To straddle both purposes and to turn (African) heads of states into a willing audience, Deng and his colleagues argued that sovereignty as responsibility is a concept that has always been enshrined in the notion of the social contract. Indeed, they argued that spelling out the sovereign's responsibilities towards the population is nothing more than "returning to the original meaning of the social contract" (Deng 1996). They argued that the social contract is about the sovereign's contractual obligation of protection, and the international principle of non-intervention is about shielding this contractual relationship between sovereigns

and populations from external interference. Second, they framed international involvement positively, as assistance rather than as punishment for underperformance (Welsh 2010, 420; Cohen et Deng 2016, 83).

Deng's reliance on the concept of social contract is part of the process we have identified as embedded norm entrepreneurship, i.e. the process in which norm entrepreneurs consciously set out to change the perceptions and values of others, mobilizing normative and institutional resources in the course of resolving a normative conflict (Finnemore 2004, 5). In the case of African security in the early 1990s, this normative conflict was about the notion of sovereignty. On the one hand, given the heterogeneous African societies and the arbitrary colonial borders the continent inherited, any revision of the current boundaries threatened with conflict. On the other hand, many African states were not strong enough to handle societal conflicts on their own and needed external assistance. In order to effectively manage conflicts in Africa, sovereignty had to be both strong and permeable. In practice, this meant that African sovereigns had to be reinforced in their right to rule in order to have sufficient authority to regulate and contain internal conflict, provide a secure physical and regulatory environment, and not be vulnerable to terrorism and other illicit activities, or the exploitation of their natural and social resources. At the same time, they had to be opened up to regional and international support in case the task exceeded their capacities.

Drawing on the continuity with the social contract was crucial in bridging this normative conflict at the core of African sovereignty and sovereignty in general. First, it allowed Deng to acknowledge the importance and value of state sovereignty as a norm. This is also why, in particular, he reached back to its Hobbesian variant. A hypothetical model of political community

formation in Western modern political philosophy, the concept of the social contract was articulated in different forms by Thomas Hobbes in his Leviathan (1651), John Locke in the second of his Two Treatises on Government (1689) and by Jean-Jacques Rousseau in The Social Contract (1762). Among the three, what distinguishes the Hobbesian account and makes it particularly apt for Deng's purposes is that it talks about the state of nature, the condition that precedes the contract, in terms of orderlessness and the ever-present possibility of violence. For Hobbes, war "consisteth not of actual fighting; but in the known disposition thereto during all the time there is no assurance to the contrary," (1996, 84). Although the Hobbesian state of nature is a hypothetical construct, the disruption of social order and the possibility of violence were the most powerful specters that Deng and his colleagues chose to describe the post-Cold War African realities. As a second attribute of the Hobbesian account that made it particularly befitting the conceptual task is that Hobbes vested his sovereign with absolute authority to sustain order. The conditions of creating absolute sovereignty thus resonated with the problem at hand and provided an appealing "tradition" for sovereigns in Africa and elsewhere to frame the debate. However, where for Hobbes, the assurance against war was the pledge of subjects to each other guaranteed by the sovereign, for Deng the assurance had to be external to African sovereigns.

Reliance on the concept of the social contract thus performed various functions. It was relevant for African post-Cold War reality in the absence of international engagement. It provided a conceptual shortcut to describing what is at stake if African sovereigns and others do not rise up to the task of taming social conflict on the continent. At the same time, it reaffirmed the importance of sovereigns ruling over the state of nature and reinforced the image of absolute sovereignty as the principal locus of political authority.

Talking about the Hobbesian social contract allowed Deng to place himself firmly among the "supporters" of sovereignty. It also allowed him to downplay the revolutionary and potentially controversial edges of his own formulation. Saying that he only "returns" to the original meaning of the social contract put him in a position to argue that his proposals are not new, he is merely unearthing existing obligations that underpin the social contract. This move would be repeated in the context of introducing the "responsibility to protect," buttressing its importance for embedded norm entrepreneurship. Just as Deng, later UN Secretary General Ban Ki-Moon as well as the ICISS Commissioners would argue that RtoP does not create new obligations, it only garners political commitment to uphold existing ones. Deng did not want to attack the concept of sovereignty. On the contrary, he believed that strengthening African sovereignty under the post-Cold War circumstances is crucial. By invoking the notion of the social contract, he grounded every further discussion in that position.

As important as returning to a concept in political philosophy was, however, its skillful adaptation to the new problems at hand. This adaptation consisted of two moves. The first was to establish that "sovereigns are duty bound to ensure minimum standards of security, while the second was that they are "accountable to the national body politic and the international community" (Deng et al. 1996, 211). In other words, the novelty was to think about protection as an obligation, and an obligation that leads to accountability at both the national and the international levels. The first was important because it emphasized that the mere existence of an independent and absolute sovereign is not enough for social order and in it, protection, to exist. As opposed to the original Hobbesian formulation, social order did not follow from the sovereign's mere existence, but it was a social good that had to be *generated* by the sovereign. Hence follows

Deng's first adaptation of the social contract. Protection is not a consequence of the social contract but an obligation at its core. In order to turn protection into an obligation, Deng conceptualized the sovereign not only as a beneficiary of the social contract that subjects create among themselves but as a party to the contract itself.

Defining protection as an obligation of the social contract

In the Hobbesian formulation, the social contract is a covenant between the subjects, a horizontal allegiance the beneficiary of which is the sovereign (Malcolm 2002, 446). Following the laws of nature, subjects know that they should seek peace. In the face of the imperative of self-preservation, however, peace is only sustainable if they make a commitment to each other that they would uphold their obligations. They institute the sovereign as a guarantor of the promise they make to each other. Commentators differ whether the sovereign only enforces rules that are already given by the law of nature (Malcolm 2002) or the sovereign also establishes the rules themselves (Moloney 1997; Williams 1996). In both cases, subjects covenant with each other in accepting the sovereign, and thus the "protective function" of the sovereign is exhausted by the epistemic certainty it provides, so that a moral and legal order can be established and their rules enforced (Williams 1996, 2005).

In Hobbes's formulation, the sovereign's mere existence solves the originary problem of epistemic uncertainty. Once solved, the subjects acquire the capacity to build the social order and not to lapse into the state of nature. Deng faced sovereigns whose mere existence rarely solved the problem of protection, and often created it. Therefore, he could not be satisfied with a "negative" understanding of protection, where it is the "natural consequence" of the sovereign's existence. His two related problems of African state capacity and internal displacement required

a “positive” understanding of protection, that of a social good that had to be provided. It was about preventing groups from being marginalized, from resorting to violence to address grievances, and to protect people physically. As long as the social contract was a horizontal covenant between subjects, the sovereign was not under any obligation whatsoever (Ryan 2016). Its conduct was only subject to prudential rules not to upset the balance created by the social contract.

For these reasons, protection as epistemic certainty was insufficient for a thinker like Deng. His solution to redefine protection as a social good was to replace a horizontal social contract with a vertical one; one in which the sovereign was itself a “signatory.” In his formulation, the subjects not only create a sovereign to be a guarantor of their covenant, but they covenant with the sovereign directly. This conceptual move had two consequences, both to the effect of allowing alternative providers of protection to legitimately step in. First, if the social contract binds the subjects on one side and the sovereign on the other, the subjects have the right to decide which sovereign they want to covenant with. Second, as the vertical contract involves undertaking obligations on both sides, it also requires the effective fulfilment of obligations and allows for accountability of performance.

The first consequence of the vertical social contract is that the sovereign becomes replaceable in its position as signatory. This, as Anne Orford argues in her *International Authority and the Responsibility to Protect,* is a consequence of defining protection as legitimate grounds of authority (Orford 2011a). The capacity to effectively protect is not a result of the social contract but an attribute of various competitors for the position of sovereign. The social contract is then concluded with the sovereign that has potentially the most capacity to provide protection.

Creating order this way corresponds not to "sovereignty by institution" but to "sovereignty by acquisition" (Ryan 2016).

For Orford, grounding political authority in the effective capacity to protect is part of a long tradition. This tradition valued protection mostly in times when public order was disrupted. Hobbes himself wrote in the context of the English Civil War. Closer to the 20th century, Carl Schmitt advocated protection as the distinctive feature of the real sovereign against the background of the crumbling Weimar Republic. In the 1990s, state sovereignty faced competitors both in the form of non-state and international actors. In such contexts, subjects do not create the sovereign so that it can protect them, but they accept as the sovereign the claimant that is most likely to protect them. A contextual reading of Hobbes supports this interpretation. Hobbes apparently was favorable to submitting to a new sovereign if, "in spite of our efforts, the sovereign disintegrates," and to the one that is most likely to restore political order (Ryan, 2016). In cases of sovereignty by acquisition, as opposed to sovereignty by institution, subjects have the moral obligation to covenant with the sovereign that is most likely to lead them out of the state of nature. As Orford argues, in the midst of various justifications for legitimacy, including religion or tradition, the capacity to effectively protect settles the argument for the sake of creating social order.

Deng's vertical social contract involves the same idea. From the context of internal displacement, protection must be provided even in the "vacuum of responsibility." In such situations, the authority capable of effective protection should have the right to rule. In terms of Deng's vertical social contract, protection becomes an open-ended obligation that can be fulfilled by other actors if the state manifestly fails. International actors in this case would not violate state

sovereignty but step in to fulfill its contractual obligation. Hence write Deng et al. that sovereignty is a "pooled function," which should be exercised in "layers" (Deng et al. 1996).

External accountability for the obligation of protection

The formulation "sovereignty as responsibility" expresses that the sovereign enters into a voluntary alliance with its subjects in the context of which it undertakes obligations towards those subjects. The sign of voluntariness on behalf of the sovereign can be discerned from its claims to non-intervention. Any claim of sovereign immunity is based on claiming the right to govern well, without external interference and in accordance with the will of the political community. The sovereign becomes accountable for the obligation to provide protection based on its own will, not only in the sense of creating the conditions of social order by its presence, but providing the social goods of basic means of living and the absence of generalized violence.

The vertical social contract and a "layered" view of sovereignty created the opportunity for external actors to provide protection in the vacuum of responsibility, on the grounds of their capacity to protect. However, the principal provider of protection, of conflict management, had to be *African* sovereigns. Strengthening African agency but also placing it in a regional and international system of assistance and control would have not been compatible with a notion of sovereignty inherited from the Cold War. Hence Deng's second adaptation of the social contract, which is to make sovereignty "accountable" for its performance and conduct, liable for the consequences of bad governance.

As protection is an obligation it has undertaken voluntarily, the sovereign becomes accountable first to its domestic audience. In the Hobbesian formulation, where sovereigns were only the beneficiaries of the subjects covenanting with each other, the sovereign did not incur

any obligation towards the subjects. In the vertical social contract, however, the sovereign becomes answerable for its obligations. Already in the original Hobbesian formulation, the subjects have the right to dissolve the sovereign, but only at the price of relapsing into the state of nature. For Deng, for whom the stakes was positive performance in creating social goods, this "accountability mechanism" was simply too limited. The alternative had to go beyond domestic accountability.

For Hobbes, international accountability was incompatible with sovereignty. Protection as an epistemic function required the sovereign to be an ultimate authority, which excluded compliance with any externally imposed standards. For Deng, however, providing the social good of protection was an obligation, which had to be fulfilled preferably by the sovereign, but also by others if the situation so required. Protection had to be provided even in the "vacuum of responsibility." The concept of responsibility directly responds to the double aims of strengthening state sovereignty and placing it within a wider system of accountability and control. Bringing the notion of accountability into play, it allows for delineating the subject's sphere of action and a supervision of that action in terms of a transparent system.

The notion of accountability is first predicated on a capable subject, to whom actions and their consequences can be "attributed." As its name indicates, the notion presupposes the existence of some sort of a moral account where actions that invite praise and blame are registered (Feinberg 1974; Ricoeur 2000). In order to put an action on someone's "account," there must be a notion that these actions are properly hers. In Western philosophy, this requires that she is the source of these actions, their effective cause. For these latter conditions, we need to assume that the causes of actions are *neither* external to the subject *nor* that they happen

randomly, independent of her (Williams 2004). In the first case, imputation is impossible because, if all effects have a cause, then every cause can be traced back to its own cause and so on until the chain becomes infinite. In this case, the subject's actions would always be attributed to an external cause. The same would be the case if we do not assume any sort of causality between the subject and her actions. If effects are random, they again cannot properly be understood as attributable to the subject. A subject to be accountable must possess what Kantian philosophy called transcendental freedom. Responsibility assumes that the subject is the origin, the cause of her actions and is in full control of them. With these assumptions in place, action follows from the subject's choice to act in a certain way. As the subject *could have chosen* to act differently, she becomes responsible for her actions (Ricoeur 2000, 24). Accountability rests on imputation, which is predicated upon the subjects' transcendental freedom to act (Ricoeur 2000; G. Williams 2004; Raffoul 2010).

The second condition of accountability is to collectively define certain actions as entailing obligations and duties. As HLA Hart pointed out, for stealth or robbery to result in legal liability is a matter of *judgment* and not that of logical or linguistic inference. It is an idiosyncratic operation of legal thought to establish what action has legal consequences and what exactly these consequences should be (Hart 1948). Conduct that breaches a prohibition or misses to fulfill an obligation is a *fault.* Following from the structure of responsibility as accountability, subjects are responsible for their faults, since they were free to act otherwise. On this basis, they bear responsibility to compensate for the consequences or undergo punishment. The mechanism of accountability rests on the assumptions that "an infraction has been committed, the author knows the rule, and […] he is in control of his acts to the point of having been able to have acted

differently" (Ricoeur 2000, 24). Accountability thus first constitutes the subject and her capacity to act freely. Vesting the African state with accountability thus contributes to instituting the African sovereign as an accountable *subject*: it respects both its freedom of action and its capacity to act. On the other hand, it constructs it as an *accountable* subject that is answerable and accountable for its actions, within relevant regional and international institutional structures. With the introduction of a vertical social contract, protection is then collectively defined as entailing an obligation as well as triggering accountability.

The message Deng wanted to convey was that understanding sovereignty as responsibility would ultimately strengthen and reinforce rather than weaken African sovereignty. His normative proposal in the form of the social contract facilitated exactly this purpose. The same was the case with regional and international intervention, which the introduction of accountability allowed. Intervention as a potential means of holding African states as subjects accountable would ultimately strengthen, rather than weaken the sovereignty of the subject and the system of accountability of which it is part.

Constituting an actor as an accountable agent has an important social function by fostering two capacities. The first is the capacity to exercise deliberate and sustained control over one's conduct, the second is to respond to others' censure and encouragement (Williams 2004, 7). In the African context, accountability's double performative function both helped emphasizing African agency and defining that agency within a regional and international system of accountability for poor government. Accountability's double performative function rests on constituting the subject in an "unavoidable double-bind," where it is "both in a position of mastery and [is a] possible seat of accusation and punishment" (Raffoul 2010, 21). Instituting

protection as an obligation and external accountability for it helped draw African states into a community of responsible states in which both the capacity of reflexive conduct and the regulation of that conduct by peers would become possible.

"Africa's new sovereignty regime"

Deng's ideas were formulated in a scholarly environment in Washington, yet it is important to remember that Deng himself was a leading figure of a grassroots movement to reform Africa's security regime. Initiated by Nigerian general and former president Olesegun Obasanjo in 1991, the African Leadership Forum brought together political leaders and members of the civil society and sought, in the spirit of finding "African solutions to African problems," to examine and understand Africa's economic and political condition. The question of responsibility was a central theme of the discussion, convened under the name of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). In Obasanjo's words, the key reform idea behind the initiative was that "national sovereignty can only be meaningful if it discharges a certain level of responsibility in providing adequate protection and assistance to citizens and all those under state jurisdiction" (Obasanjo in Deng et al. 2002, xvi).

The CSSDCA process sprung up in 1991 at Obasanjo's initiative, but with wide support from civil society actors. Attentive to the parallel processes in Central and Eastern Europe, Southeast Asia and the Americas, participants of the Kampala process discussed security, stability and development as separate "calabashes" – named after the Europeans "baskets" of the Helsinki process – or pillars of the areas in need of reform. Although the process did not produce its own definition of sovereignty, a new conceptualization emerged as involving "minimum standard of decent behavior to be expected and demanded from every government," and the recognition

that problems that surpass individual capacities of states should be addressed collectively (Deng et al. 2002, 118–19).

The CCSDCA meetings culminated in the formulation of the Kampala Document (19-20 May 1991). The principles enshrined in the document reflect both the importance of the sovereignty on the African continent and the need of re-interpreting it under the changing circumstances. Thus, while the first Kampala principle reaffirms "the rights inherent in the territorial integrity and political independence of all other African states," the second says that "the security, stability and development of every African country are inseparably linked with those of other African countries. Consequently, instability in one African country impinges on the stability of all other African countries" (CSSDCA 1991; Ero 1995). The rest of the principles lay the conceptual groundwork for a new collective security regime for the African continent, driven by Africans, in accordance with African interests.

Not only was sovereignty reformulated in terms of providing minimum standards of protection and internal and external responsibility, simultaneous to the Kampala process was the phenomenon of "sovereign national conferences" (SNCs) that swept across francophone Africa throughout 1990 and 1991. In what comes closest to drawing up vertical social contracts in practice, the peoples of Central and West African countries seized the opportunity to rewrite the social contract on their own terms. The model of these conferences was the Beninese SNC in February 1990. The participants from all walks of life declared their conference as "sovereign" and literally redrew the country's political system: they suspended the constitution, dissolved the national assembly and set the date for the first multiparty elections, leaving the ruling elite in power only ad interim (Robinson 1994). Not all such conferences were successful in terms of

transforming the political system towards democratic governance and social inclusion (Onwudiwe 1999). Throughout 1990 and 1991, however, SNCs took place in Gabon, Congo, Mali, Togo, Niger and the Democratic Republic of Congo (then Zaire), and opposition forces mobilized towards holding a conference in the Central African Republic, Cameroon, Madagascar, Burkina Faso, Mauritania and Chad (Robinson 1994, 576).

Sovereign national conferences is the phenomenon that comes closest to seeing the institution of responsible sovereignty by Deng's vertical social contract. At the SNCs, African peoples sought to set the terms of their political systems in accordance with social inclusion, democracy, multiparty election and responsible governance. Transitioning to democratic elections introduced the ritual for the elected representatives to "sign" the contract in the sense that any representative of sovereign power was supposed to rise to its position by credibly promising to undertake the obligation of protection, i.e. to provide livable conditions and the inclusion of the whole population.

The wave of these grassroots, truly democratic initiatives soon hit the rocks of "traditional" sovereignty. Heads of states who felt threatened by similar democratic initiatives in their own countries either resisted the initiative actively or sought to slow down incorporating its recommendations in the work of the OAU (Deng et al. 2002, 10). With the incarceration of Obasanjo in 1995, the Kampala Initiative laid dormant for four years until his return to the political stage. During this time, the interim head of the African Leadership Forum was a familiar figure in Washington, Francis Deng.

Resistance on behalf of incumbent African heads of states and OAU officials is also justified by the fact that traditional sovereignty served African nation building in other aspects. The OAU

was built on the prohibition of interference in 1963 and for a reason. Strict adherence to the principle of sovereignty protected nascent African states from former colonial influence, as well as potential territorial contestation. It would take the replacement of the OAU with another continental organization, the African Union, to shift this regional forum definitively from non-interference to non-indifference, not only because of political opposition from certain heads of states but also because of the intrinsic value of respecting territorial sovereignty on the continent. However, as the OAU was developing its own conflict management regime, it incorporated ideas from the Kampala meetings. As Obasanjo wrote, "imitation was the best form of opposition to the CSSDCA" (Deng et al. 2002, 10).

The inflexibility at the OAU also did not mean that African leaders were not sympathetic to ideas articulated by the movement. African heads of states accepted that the lack of accountability plays a role in mismanaging societal conflicts. Salim Ahmed Salim, the Chairperson of the OAU argued in 1996 that the "State which provokes through its actions of omission or commission the large exodus of its own people […] has not only lost its responsibility to the people, but violated and abused the sovereignty of the receiving states and neighbours" (ACCORD 1996, 11). Others openly raised the prospect of accountability as solution. They asked "how the African state could be accountable to its people and the international community consistently in varying contexts" (Berhe-Tesfu 1996, 15).

The changing perception of sovereignty was not only theoretical. Africa was a continent that, faced with new security challenges, "experimented" with new solutions (Chergui 2016). The negative repercussions of failing governance were immediately felt, and they created a distinctive sense of subregional and regional responsibility. When civil war spiraled out of hand in Liberia

after Charles Taylor removed Samuel Doe from power by a coup, the rift between the new and old conceptions of sovereignty first came to the fore. After the failure of diplomatic initiatives, the originally development-focused Economic Community of West African States (ECOWAS) decided to deploy a multinational military contingent under Nigerian leadership. The Economic Community Monitoring Group (ECOMOG) was deployed in August 1990. The OAU could not openly advocate for military intervention, but it endorsed the ECOWAS mission retrospectively, just as the Security Council of the United Nations did. ECOMOG, which was later also deployed in Sierra Leone and the Gambia to manage the spillover from the conflict, marked the first time in history when a regional organization undertook action under Chapter VIII of the UN Charter to address a threat to international peace and security in the absence of prior authorization from the UNSC.

The model of indirect protection

Whereas the African continent was the scene of numerous regional and international interventions as well as failures to intervene in the coming years, pan-African leaders like Obasanjo and South African president Thabo Mbeki pushed the agenda of developing an African capacity to handle conflicts on the continent (Oliveira et Verhoeven 2018). Soon after Obasanjo became president of Nigeria again in 1999, the Kampala Principles were officially endorsed by the OAU's Assembly of the Heads of State and Government (AHG/Decl.2 (XXXV) 1999). With the African Union succeeding the OAU in 2002, sovereignty as responsibility and the practice of intervention became further reality. The Constitutive Act of the AU, laying the foundations of the African Peace and Security Architecture (APSA) not only allowed member states to request intervention (Article 4 sections (h) and (j)), but it also articulated the right of the Union to

intervene in a member state in "grave violation of human rights," i.e. war crimes, genocide and crimes against humanity (Article 4 (h) (Constitutive Act 2000). Paragraph (p) of the same article condemns and rejects unconstitutional changes of governments, which, in the practice of the AU, has developed into a further justification for military interventions.

The African continent increasingly endorsed the possibility of intervention from the early 1990s, and intervention took a particular form that we might call the model of indirect protection. The norms developed in the African context revolve around the core idea captured by sovereignty as responsibility: that the most important goal is to have functioning institutions as a guarantee of protection. Both state sovereignty and the practice of external accountability serve the purpose of fulfilling the obligation of protection, i.e. effective conflict management. To make conflict management efficient, APSA is built on African ownership and homegrown solutions, with the involvement of sub-regional organizations. In addition to the norm of "non-indifference" in the cases of grave violations of human rights, African conflict management is further inspired by the following norms. Reconciliation, or the involvement of contenders in power-sharing agreements, pan-Africanism, or the solidarity among Africans both on the continent and in the diaspora, and the establishment of porous borders to live with the reality of artificial state boundaries and overlapping political loyalties within and across states (de Waal 2012).

The rejection of unconstitutional changes in government also aligns with the notion of sovereignty as responsibility and the commitment to functioning institutions. Military coups and deviations from democratic rule contradicts institutional continuity and threatens the construct of accountability on which Africa's new sovereignty regime rests. This is why the African Union, hindered though it might be by financial and logistical lack of capacity, practices responsibility and

has become a first mover in conflict resolution ever since its establishment. In accordance with the structure of sovereignty as responsibility, all these norms cluster around increasing the resilience of institutions, an objective that defines the practice of intervention as well. Interveners must act to sustain social and political order at the national, regional and international levels. In addition to the reinforcement of sovereignty, this respect for structures and the regulated nature of intervention are the other reasons why sovereignty as responsibility was appealing to states forged under the aegis of non-intervention.

These developments are often assessed as Africa's implementation of, or compliance with the R2P framework, described by the concept of norm localization (Acharya 2004; Williams 2007). As this chapter shows, however, Africa's current thinking and practice of intervention is a result of successful embedded norm entrepreneurship, and it is an organic development of the African security context, resolving the dilemmas of African statehood after the Cold War. The argument presented here thus supports the claim that RtoP is an African concept, rather than an adaptation of a Western norm to the African local context (Acharya 2013; Verhoeven et al. 2014). Sovereignty as responsibility created the conceptual framework for external, primarily regional, accountability for African states and reconciled that accountability with the notion of sovereignty. At the same time, it reinforced the sovereignty of African political subjects, based on the notion of responsibility as accountability.

Although the notion of sovereignty as responsibility was developed in response to a specific African context, the model of indirect protection and its commitment to institutional structures has wider appeal. Describing the Southeast Asian thinking about the responsibility to protect, Tan suggests that states in the region think about state responsibilities in terms of

provision rather than protection (Tan 2011). The "responsibility to provide," however, reflects the notion that states are under the obligation to provide basic means of living and security, and the Association of Southeast Asian Nations (ASEAN) shows signs of institutionalizing external assistance to strengthen national capacities to "provide" and to step in in extreme circumstances.

This wider appeal of sovereignty as responsibility directly follows from the productive tension between empowering the subject as a wielder of action and holding it accountable to keep that action at bay. Whereas for Deng in the context of African security both aspects were equally important, in the practice of intervention the emphasis can be shifted both towards the state's sovereign prerogatives and towards its accountability. This is why arguments that fall in line with indirect protection range as widely as the Sri Lankan government's claim that fighting a secessionist group on its territory is a legitimate way of exercising its responsibility to protect, to Russia's justification for its Georgian intervention that it must protect its own citizens. The African Union's resistance towards ICC persecution of African heads of states also reflects the logic of indirect protection. What animates all these arguments is the importance of functioning institutions as a guarantee of protection.

Conclusion: Protecting structures

To the two opening questions of this chapter, i.e. what is the role of the state in providing protection and whether it can seal populations from other providers, Francis Deng's answer was that protection should be understood as part of state sovereignty, an obligation that is formed by the social contract between sovereigns and their people. States remain accountable for the performance of this protection, and if they fail to discharge it, other providers can legitimately step in. For this reason, intervention is not a violation of sovereignty because a state that does

not uphold its foundational obligation for the performance of which it has become sovereign, it cannot claim immunity from external interference.

This reconciliation of sovereignty with intervention responded to a tension, a normative contradiction around African statehood. African decision-makers wanted to strengthen the African state and the African region's capacity to provide good governance and deal effectively with African conflicts. They were aware that in line with the declining international attention to the continent, they could count on less international intervention, broadly speaking, to address these conflicts. At the same time, however, they wanted to have guarantees that international actors do not completely abandon the continent once the magnitude of conflicts surpasses the given state or regional actors' capacity. The revision of the social contract and the conceptualization of sovereignty as responsibility helped Deng address the double goal of strengthening African state capacity and at the same time opening it up to external control, i.e. of keeping international actors as much in as out in the context of African conflict resolution.

Sovereignty as responsibility performs this double function by relying on the notion of accountability. Accountability is based on the transcendentally free subject that is the owner of its actions. Once such imputation is possible, this subject is answerable for the consequences of its own voluntary actions. Sovereignty as responsibility first defines the acting subject by establishing the obligation of protection as deriving from Deng's adaptation of the social contract. Then, it introduces international accountability for performing this obligation. It thus pronounces the state as the primary actor fulfilling the obligation of protection, but at the same time, via accountability, it provides the guarantees that conflicts will be legitimately managed beyond the state. Sovereignty as responsibility is an interventionist doctrine, but many African thinkers and

decision-makers readily accepted it because intervention was conceived as strengthening state institutions within a system of accountability, irrespective of who held power. Its reliance on accountability, and thus the fact that it conceptually foregrounds the state as the primary agent of protection made it not only palatable, but also attractive for many. The literature on the responsibility to protect often portrays the RtoP's trajectory as one that imposes on states, *against their interest*, the idea of intervention. Looking at embedded normative entrepreneurship around protection in the African context shows, however, that this configuration corresponded with the concrete aspiration of African states to be the primary actors in protection and having guarantees of assistance in case of failing via the notion of accountability. It also explains the wider appeal of the indirect protection model. It reasserts the state as the primary agent in protection, and this is eventually the legitimate basis of other claims, such as that of the Sri Lankan or the Russian governments, to justify the use of military force *as an exercise of* responsibility to protect. This grounding commitment to sustain institutions made sovereignty as responsibility appealing and influential as the indirect model of protection, one of the legitimate models of intervening in conflict situations.

CHAPTER 3: THE ETHICS OF PROTECTION
The origins of direct protection

"Hardships do not belong exclusively to the governments who manage them. […]
The volunteers of humanitarian organizations are institutors of law"[2]
(Bettati et Kouchner 1987)

"At the origins of 'ingérence,' there were five of us."
(Kouchner quoted in Taithe 2004)

The 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) mentions the resulting "sovereignty as responsibility" concept as the most important forerunner of the 'responsibility to protect,' saying that it is of "central importance" to the Commission's approach (ICISS 2001, 8). Francis Deng and Roberta Cohen call sovereignty as responsibility a "building block" for R2P (Cohen et Deng 2016). Subsequently, the two were integrated into one framework as the "three pillars" of RtoP, where the first pillar corresponds to the state's responsibility to protect, the second to the responsibility to assist in protection, and the third to that of the international community to protect populations from RtoP crimes (Ban 2009).

However, although the two are presented as part of one framework to protect populations from the four R2P crimes, "sovereignty as responsibility" and the "responsibility to protect" display important differences. First, whereas the former was about reforming state sovereignty in terms of better conflict management, the latter is about protecting individuals directly from harm. Where the former envisaged intervention within a layered institutional

[2] "Le malheur n'appartient pas aux seuls gouvernements qui l'administrent. […] Les volontaires des organisations humanitaires sont des « faiseurs de droit »" in French.

framework, the main focus of the latter is to facilitate action for the widest circle of actors possible. Sovereignty as responsibility is about accountability within institutional structures, be they regional security organizations or normative constructs such as international law, with the purpose of preserving that normative and institutional framework as the guarantee of protection.

In other words, sovereignty as responsibility and the responsibility to protect differ in two crucial aspects: in their notion of "protection" and their notion of "responsibility." For Francis Deng, the protection of populations from violence was predicated upon functioning institutions, and most importantly, functioning states in Africa. Functioning institutions meant practicing good governance, which in turn meant including all segments of the population and the management of societal conflicts so that they do not turn violent. Protection was an obligation that derived from the social contract between the state and its subjects; it was the state's very essence. Whether the state complied with this obligation was monitored within regional and international structures, both strengthening the state in its authority and providing a safety net if it proved unable or unwilling to protect. This structure had implications for the shape of intervention as well. Since the ultimate purpose of any intervention was to strengthen these structures, under no circumstances could it lead to their dismantling or weakening. Intervention had to unfold in the existing structures, be they normative or institutional, and respect them all along.

The pursuit of the ICISS was entirely different. Their starting point was what they called the "right" of the individual "to be protected," a right derived from international humanitarian law, refugee law and human rights instruments. As the Commissioners regarded the right to be protected as given, what they set out to conceptualize was its corollary obligation. If there is a right to be protected, who is supposed to fulfill that right, especially in cases when it was violated?

Asking the question this way presupposed that the right to be protected is a positive rather than a negative right, meaning that it needs enforcement rather than just refraining from certain actions. In other words, the question was how to enforce the right to be protected – who should enforce it, against whom, and under what circumstances.

To put it differently, the main purpose of the Commissioners was to identify the corresponding obligation-bearers of the right of every individual to be protected. Similarly to sovereignty as responsibility, RtoP also thought about protection as an obligation rather than the discretion of the protecting actors. Sovereigns were supposed to protect, but eventually they had the liberty to decide whether they actually do so – sovereignty coupled with non-intervention facilitated that choice and allowed states to get away with the omission. ICISS was most concerned by the fact that protection remained discretionary as long as the debate was about whether there is a "right to intervene," i.e. whether there are states that might decide whether they would intervene or not. However, whereas Francis Deng conceptualized the obligation of protection as part of the social contract that binds the state to protect, the ICISS asked who might bear this obligation once the state fails. In this sense, they asked a new question, conceptualizing the obligation of protection in a new, international, terrain.

The second difference between the two constructions of protection concerns the notion of responsibility. The kind of responsibility endorsed by the ICISS is grounded in the fact of the suffering of one party, which suffering already implies an obligation on everyone else to alleviate and respond to suffering. The obligation is universal, it is cast on everyone, irrespective of whether that actor was instrumental in bringing about these circumstances. This kind of responsibility has no resemblance to the accountability-based model we have identified in

Chapter 2. Chapter 2 was about strengthening and reinventing an institutional structure within which physical protection of individuals is ultimately guaranteed. To create that institutional structure, it introduced accountability as a derivative of the willful obligation a sovereign is undertaking vis-à-vis its people in the form of a social contract. Accountability thus reinforced both the capability of the sovereign to undertake such obligations and introduced a control over that subject by way of this very capacity.

The responsibility emerging from the 2001 ICISS report, on the other hand, starts from the fact of suffering, whether or not this is in any relation to the voluntary actions of a willful subject. In these features, it displays a distinctly modern notion of responsibility, in which, as we will see in Chapter 4 in more detail, responsibility is an existential condition that manifests in relationship of the subject to other entities rather than derive from its free will and capacity to act. In terms of responsibility as responsiveness, suffering necessitates a response, implicating everyone in this imperative. In this latter case, the very fact of suffering constitutes responsibility.

Moving away from the right to intervene, the RtoP report successfully shifted the perspective away from the decision of the right-bearers to the necessity to protect individual human beings. It thus shifted the debate away from a more legalistic or institutionalized discussion of controversial rights and obligations towards a universal moral problem of providing preventive or remedial action. In principle, human suffering poses a universal moral problem, it is only that we do not necessarily have the best principles to allocate the remedial responsibility to answer that problem (Miller 2001; Tan 2006). The moral notion of responsibility, however, refocuses the debate from the institutional positions and privileges towards the obligation itself. As the supplemental research volume of the ICISS report says, the answer to who is responsible

for alleviating suffering is "ultimately everyone" (Weiss et Hubert 2001, 147). With turning the debate from a legal into a moral one, the RtoP report, in accordance with responsibility as responsiveness, expands the number of potential protectors to the maximum, casting the responsibility as responsiveness universally.

Responsibility served the purpose of opening up the number of potential protectors also because, as opposed to its deontic counterparts such as rights, obligations or duties, responsibility leaves more leeway to its bearer. If the subject is responsible, as opposed to being obligated, the scope of how it should act upon this responsibility is less clear than in the case of duties or obligations. There exist certain expectations, often competing ones, which demand conduct from that subject, without necessarily defining what *exactly* the conduct should be. What distinguishes responsibility from obligation or duty is the fact that responsibility strongly relies on the decision or judgment of the subject. Obligation or duty suggests a more defined scope of required conduct, whereas responsibility captures the liberty of the responsible agent to decide how to fulfill their responsibility.

The idea of responsibility, as opposed to duties or obligations, also differs in the notion of ownership. If the subject has a duty or an obligation, it is subsumed to this obligation or duty. A responsible agent, on the other hand, is trusted with the object of her responsibility. What the subject is responsible for is assigned to it; it becomes a "property" in the sense that the subject becomes a custodian or guardian of the object of its responsibility. While obligations and duties are subsuming the subject's judgment, responsibility necessitates and empowers it. In the case of duties and obligations, the subject needs to act because she has an external incentive to do so. In the case of responsibility, action follows from the empowerment – and burden of - being

trusted with the object of responsibility. The motivation to act is thus internal, and relies on her judgment as the responsible agent. Therefore, even if this makes responsibility more elusive a concept than obligation or duty, it opens up wider possibilities of action. What directly follows from this notion of responsibility as responsiveness is that action which addresses suffering is responsible and therefore legitimate, wherever it may come from: individuals, regional organizations, non-governmental organizations. Action is not the privilege of those who are institutionally positioned; rather, as the SV says, everyone is invited to act who *morally feels obligated* to do so (Weiss et Hubert 2001, 148, italics mine).

Thus, the responsibility to protect brings with it its own configuration of protection compared to sovereignty as responsibility. It displays distinctive ideas about who should protect and on what basis (individual human beings, based on their right to be protected), it shifts the legitimation of action to the moral level, it introduces a moral responsibility which dilutes the legal and institutional structure of responsibility and detaches it from the concepts of fault or imputing the consequences of voluntary action to their author. Instead, it introduces the ideas of individual vulnerability, and individual and collective suffering as a universal basis of responsibility, irrespective of specific ties between the sufferer and the actor who might address this harm. It casts responsibility universally (ultimately, everyone is responsible), and it opens up the possibility of action universally (everyone who morally feels obligated). Responsibility does not derive from being an initiator or cause of that action. Responsibility implicates everyone, irrespective of their involvement in bringing about any harm. The responsibility to protect arises not from the consequences of our actions but, in the words of Emmanuel Levinas, from "exposure to an event that does not come from us and yet calls us" (Raffoul 2010, 23). This indicates that

responsibility here must have different origins than the causal impact of the subject on the events of the world.

This distinctly modern notion of responsibility was appropriate in the R2P context because in the moral field the concept has gradually lost its relationship to imputation and ceased to arise from the consequences of voluntary action. Throughout the twentieth century, responsibility was extended to cover indemnification for harm, and also to prevent harm. It started to implicate not only the actors that caused harm but anyone who could potentially prevent and indemnify for that harm (Ricoeur 2000; Ewald 1991). This evolution has fundamentally altered the relationship that responsibility constitutes. In moral terms, actors become responsible not for the consequences of their voluntary action (or ignorance in cases where they could have been expected to act otherwise) but for a wide range of present and future events which are potentially harmful. The responsibility calls for the prevention of the harm (hedging against risk) and for indemnification once harm has been done.

Thus, a moral concept of responsibility as the corollary of the right to be protected not only widens the pool of actors who are implicated in this responsibility to the maximum, it also broadens the scope of responsibility. While in a legal domain, an actor is responsible if a fault was "officially determined to have been a causal factor in the production of harm" (Feinberg 1974, 27), that is, retrospectively for something that has been committed or omitted, in the moral realm the scope of responsibility potentially implies present and future events. From this perspective it is not surprising that a morally defined responsibility to protect is tripartite: it presumes a responsibility to prevent, to react and to rebuild (ICISS 2001; Bellamy 2009). RtoP's prospective logic pushes it to engage in early warning, which indeed is one of the main line of its

institutionalization (Bellamy 2014). This means, however, that it is not only atrocity crimes themselves but already their risk that leads to responsibility. Responsibility implicates not only accountability for causing harm but implies monitoring the risk of harm and its prevention.

Through the lenses of strategic social construction, this chapter shows the origins of this second, direct protection model. It shows an ethical commitment to cross-border assistance originating from medical humanitarianism based on the right to life. The chapter thus reveals the third normative shift in which intervention got reconciled with sovereignty, and protection with providing physical security. To be successful, the normative proposal justified rescue with the right to life and placed this right, in the context of medical assistance, above the norm of sovereignty. I thus trace the origins of direct protection to the institutionalization of the "right to assistance," which constituted the right of the individual to receive assistance on the one hand, and the right of the provider – primarily non-state actors, and in particular, medical humanitarians – to provide that assistance.

The "right to assistance" overwrote sovereignty in different terms than sovereignty as responsibility. Sovereignty as responsibility allowed for controlling sovereignty for conflict management within regional and international normative and institutional frameworks. The "right to intervene" in its original conception created a direct, immediate link between the needy and the helper. It cast the obligation to address suffering universally, and it opened the channels of assistance beyond the state, based on the moral imperative of responding to suffering. This ethics of protection relies on responsibility as responsiveness, and it set the ground for the direct protection logic that still infuses intervention debates today.

Medical humanitarianism and the origins of direct protection

> "It's simple really: go where the patients are. It seems obvious, but at the time it was revolutionary"(Kouchner 2016)

We are thus in search of the origins of protecting the individual from individual harm, and the notion that this protection should be morally superior, at least in certain cases, to the norm of sovereignty and non-intervention. The origins of this model need to be distinct from ICRC and UNHCR because neither protection model involved the idea of rescuing people physically, absent of sovereign consent. In the case of refugee law, protection involved extending legal status to a group of people, whereas for ICRC it meant providing legally protected status for people affected by conflict. Assistance was a different form of care altogether.

Protection for the ICISS is the right to be protected in the sense of being rescued, meaning that the individual's life and physical integrity is preserved in the context of atrocities. The first task then is to trace the origins of rescuing individual human beings from suffering. Second, we need to ask why fulfilling this right, i.e. why action that eases suffering confronted the question of sovereign boundaries. Before the 1990s, neither assistance nor traditional protection activities could happen without state consent. If we recall the aspiration of UN specialized agencies from Chapter 1 to the "right to initiative," we can see that all these activities were subordinate to the will of sovereign states. What we need to trace, therefore, is the normative conflict where for the first time action to alleviate suffering confronted rather than complied with the norm of sovereignty.

I argue that this normative conflict was generated by an organization that introduced a

different idea of "rescue" from both assistance and the traditional models of protection. The organization in question is Médecins Sans Frontières, or Doctors without Borders (MSF), and the activity that instilled a new notion of rescue even at the cost of overwriting sovereignty is medical humanitarianism. The purpose of MSF's activity was to save lives in a medical sense. It linked the patient and the doctor, based on a medical need and a medical expertise. The normative basis of providing such assistance was the right to life. The right to life for medical professionals was a non-negotiable moral basis, one that is prior to the political norm of sovereignty in the normative hierarchy. The question is how, through embedded norm entrepreneurship, this normative logic was transposed to the international level in the process of institutionalizing the right to intervene.

Doctors without Borders was founded in 1971 to operate in accordance with two principles. The first was *sans-frontièrisme,* or practicing the medical profession across international borders. The second was *témoignage,* or standing witness to abuses that led to those medical conditions MSF was to treat. MSF's founders were French physicians who served with the ICRC in the Southern Nigerian provinces that fought for independence under the name of Biafra. The founders of MSF believed that the Nigerian government's war tactics amounted to genocide and found the terms of their engagement, the ICRC principles of impartiality and neutrality, complicit in allowing the atrocities to continue against the Biafrans. Upon their return to France, they created MSF to endorse emergency medical assistance, wherever it is needed over the globe. MSF invited medical professionals as its members, and up to 5% of its membership, professionals of the medical press and civil servants in public health to help carrying out its function [Charter, MSF Statute Article 6]. Although MSF was inspired by opposing ICRC's neutrality, in its Charter it reaffirmed its adherence to confidentiality in exercising its functions.

While committing to neutrality and independence in political affairs, MSF nevertheless claimed, "in the name of its universal vocation, entire and complete liberty to exercise its medical function" ("The MSF Charter"). It claimed both the right of any individual to receive medical assistance, and the right of the medical professional to provide that assistance. It claimed nothing less than the desired right to initiative, or to act without state invitation or state consent. It based this position on a medical professional ethics: the superiority of the right to life to any other norm, including sovereignty and non-intervention. So strictly was MSF built on this professional ethics that in the first six years of its existence its fundraising campaigns only addressed physicians rather than the general public. For its associates, "international relief was perceived as an organic extension of the medical practice and part of the ethical obligations of the medical practitioner" (Givoni 2011, 59).

In its Statute from 1974, the organization "reserved the right to take initiative and to send, within its capacities, emergency teams to distressed populations" [MSF Statute, Article 2, para 2]. Its notion of emergency medical interventions and that of coming to place to treat patients owed a lot to the French institutions of Emergency Medical Assistance Service (SAMU, Service aide médicale urgente) and Emergency Medical and Reanimation Service (SMUR, Service médicale d'urgence et de reanimation), both grounded in the notion of *urgence* (emergency). Both services were built on a semi-voluntary basis during the 1960s and were designated to help on the site rather than taking patients to hospitals (Taithe 2004, 151).

Because of its grounding in medical humanitarianism, MSF's right to initiative was justified based on the right to life, i.e. the right to life of any patient in need of life-saving assistance. At the intersection of rescue and the medically defined right to life, what emerges is a particular

"politique des corps"[3] (Maillard 2008, 5) or "politics of suffering" (Whyte 2012, 21). The starting point of this politics of suffering is the primordial fact of the corporal existence of a human being, which precedes political categorizations in terms of race, religion, social status or ideational belonging. Attending to the needs of the body provided an ideologically "neutral" way of defining an individual, as well as a morally justifiable ground for addressing suffering. MSF refused to define its patients solely on the basis of belonging to particularistic political communities. Patients were first and foremost suffering human beings, and not nationals of a state. MSF's notion of rescue thus prioritized the needs of the body of individual human beings over the political norm of sovereignty. This ethical hierarchy grounded the principle of sans frontièrisme, the notion that the doctor's obligations to patients transcend political boundaries.

With its professed neutrality, this "body politics" garnered wide support from the French public. MSF's medical humanitarianism and politics of suffering was inserted in a public discourse that was generally disenchanted with ideological projects. Coming to terms with Nazi crimes was already a prevalent theme in French public discourse (Brauman 2006), but the 1960s and 1970s also induced a critical reexamination of Marxism as the dominant framework of analysis in the traditionally left-leaning French political elite (Dews 1980). The taboo of critically engaging with Marxism was slowly disintegrating with the appearance of competing frameworks to analyze social phenomena, such as Foucault's *Discipline and Punish* (Tarifa 2008, 227) and by coming to terms with the historical crimes of communist regimes. It was finally shattered by the appearance of Russian dissident literature, most notably of Solzhenitsyn's Gulag Archipelago, which made it impossible to explain away repression with a "misreading" of Marxist thought. This opening

[3] "Politics of the body"

allowed a short-lived philosophical movement, the so-called "new philosophers" to burst to the stage of French intellectual life in the 1970s and redefine Marxism as a philosophy of domination (Dews 1980). This rather disparate group of thinkers, denounced equally throughout the spectrum of French thought for their pursuit of public attention and "marketing" instead of principled reasoning (Deleuze 1998, 38), nevertheless made its mark by delegitimizing Marxism as an untouchable framework of thought. This development also took the wind out of the sails of another trend in French public thought inspired by Marxism, that of "tiers-mondisme" or Third Worldism. Sympathizing with emancipatory struggles against colonial rule, representatives of tiers-mondisme were accused of being too lenient on human rights violations by Third World governments under the pretext of development and independence (Davey 2011).

With these larger emancipatory projects increasingly discredited, MSF's allegedly neutral humanitarianism provided an alternative framework for international solidarity for the French public and elite. MSF seemed to reinvent a "concrete, realizable and immediate heroism in a world without heroes" (Maillard 2008, 155). Intellectuals embraced the "politics of suffering" for various reasons, including giving a particular meaning to the notion of humanity as a political community. Francois Ewald, a French intellectual in support of MSF's activities wrote that "thanks to humanitarian assistance, man rises through suffering towards a humanity that is at the same time international, multinational and independent of States" (Ewald 1987, 212).[4] Ignoring the calls of assistance would have meant accepting that man is nothing more than a national, and ignoring the obligations of "international citizenship" (Foucault 2015). From the perspective of

[4]"[…] voici donc que, grâce aux actions d'assistance humanitaire, l'homme resurgit par sa souffrance à travers une revendication d'une humanité à la fois internationale, multinationale et indépendante des Etats" (Ewald, 212)

international citizenship, every victim, no matter if their need arose from climatic, nutritional, social, political or strategic emergency, is defined only through their need to be saved (Glucksmann 1987).[5] The right to assistance, at its original formulation, is thus a relationship between individuals, and this provides its legitimacy. The intervention, then, comes from "citizens, citizens of the world" (Jacoby 1987)[6]. Or, as Foucault put it, "we are here only as private individuals" and this constitutes exactly our "entitlement" (Foucault 2015).

For intellectuals supporting MSF's initiative, medical humanitarianism meant the dawn of the individual as an actor in international politics in its own right. The right to initiative, argued Foucault, challenged the usual division of labor in international politics, according to which the right to act is reserved for states, and individuals are left with nothing but the voice to express discontent. MSF claimed, for the first time, the right of individual doctors to act upon a primarily professional and moral obligation, on their own initiative. Arguing in favor of this kind of assistance, Foucault says that "the will of individuals must be present and expressed in the order of reality which governments have sought to monopolise. Step by step and day by day, their purported monopoly must be rolled back" (Foucault 2015).

The MSF split

Although MSF's success and normative position was propelled by its medical professionalism, in practice soon differences emerged about what direction the organization should take. One of the options was to keep MSF a mobile medical emergency unit that functions

[5] "Tremblement de terre ou de société, toute victime est d'abord perçue comme « à sauver ». Il suffit d'une urgence tellurique, climatique, nutritionnelle ou sociale, politique, stratégique, pour redécouvrir la possibilité de se rassembler, sans distinction d'opinion ou de religion" (Glucksman)

[6] "de notre côté, il s'agit d'ingérence de citoyens, de citoyens du monde" (Jacoby)

worldwide, the other to transform it into a more "sedentary" organization that is involved in a crisis for a longer term. This dilemma mapped on the generational differences within the organization, dividing the so-called founders or "Biafrans" who came to be represented by Bernard Kouchner, and a younger generation, often characterized as the "68ers" or, by their French name, the "soixantehuitards," with people like Claude Malheuret and Rony Brauman as their representative figures. After seven years of operation, the conflict between the two factions escalated. The new generation was pushing for a permanent organizational structure and broadening the source of funding. The first of their reasons was the behavior of Kouchner and his group by regularly initiating missions on an individual and impulsive basis, without discussing with the elected collective leadership of the organization. For Kouchner, such initiatives represented the true "spirit" of the organization (Kouchner quoted in Binet and Saulnier 2019, 32). For others, it was a source of irritation, to learn about newly formed alliances and new missions from the press like everyone else (Claude Malheuret, MSF president (1978-1979) quoted in ibid, 31). The second reason was the financial constraints of a volunteer organization run on and run by contributions from doctors. Malheuret, criticizing the unpaid voluntary work at the MSF center as well as the unpaid participation in missions he himself experienced in Thailand, said that "I am not interested in going on a mission with three drug samples in my pocket" (Malheuret in Binet and Saulnier 2019, 29). By the late 1970s, Kouchner's group was dubbed the "genocide and tourism" faction; Malheuret and his supporters, in turn, the "bureaucrats" (Francis Charhon, MSF president (1980-1982) quoted in ibid, 29).

The other controversy within the organization related to the role of témoignage and its meaning in practice. Whereas sans-frontièrisme complied with - and was nurtured by - the

medical professional ethics that lent MSF its legitimacy, the form témoignage would eventually take fundamentally challenged it. The original Hippocratic Oath, upheld in the original MSF charter, says that the doctor maintains complete confidentiality while she is healing, "for [the patients'] problems are not disclosed […] that the world may know" ("Hippocratic Oath"). The Charter states that members of the organization retain full confidentiality and discretion while practicing their profession. MSF relied on the mediatization of its activities as a way of gaining publicity and support from private donors from the beginning. The dilemma at the core of témoignage was, however, a deeper dilemma of every humanitarian: should they address the political "cause" of distress, or narrow their focus to treating the "consequences"?

Kouchner and the "Biafrans" hailed from a French domestic discourse that grappled with the crimes of Nazism and assessed humanitarian activity through the lenses of ICRC's alleged silence in that context. The moral decision of ICRC was not to speak out of the realities of the death camps, although in hindsight it is questionable to what extent they were aware of the scale of destruction happening there (Favez 1989). In the case of some, such as that of Kouchner himself, the question of how to react to crimes of the gravity of the Holocaust was not only abstract but also deeply personal, having lost his grandparents in Auschwitz (Caldwell 2009). In Biafra, as well as in subsequent conflicts, his group relied on parallels between the Holocaust and the conflict at hand to convey a moral lesson and to depict a situation in which action appears both imperative and easy.

Most of MSF, including the vocal younger generation, were uncomfortable with this practice of "witnessing." Many of its members were marked by the events of May 68 in France, and usually had a past sympathizing with the revolutionary left. As Rony Brauman, president of

MSF between 1982 and 1994 would recall, this sympathy drove them to serve as medical professionals in faraway places in the first place, where, however, they would see the inhuman and violent face of such revolutionary projects. This experience brought, for many, "a break with the utopia of a moral world," imposed in the name of whatever political ideology, be it communism or later, democracy (Brauman 1995, 383). Driven by the willingness to help but revising third-worldist ideas, this generation became wary of moralizing political projects, including Kouchner's practice of témoignage. For them, the parallels between genocide, the identification of "victims" and "perpetrators," however easy to sell in the media, was a simplification of political realities. They were also less convinced that such practice of speaking out actually achieves the purpose of protecting people. In terms of humanitarianism, therefore, they acknowledged that in order to treat human suffering they need to accept and maneuver political realities. As Brauman elsewhere noted, "the reality, more prosaic and more interesting, is that of the negotiations, compromises and collaborations in which NGOs engage with the political powers of a concerned country" (Brauman 2010, 115).

The two groups thus took different sides in answering the humanitarian dilemma, whether to engage with the "cause" or to treat the "consequence." Kouchner's group believed that raising awareness and generating action saves lives, and the means to get there was to speak about conflicts in terms of moral panels, of victims and perpetrators, and of suffering in general. For Brauman's group, témoignage was defined against "speaking freely and agitatively" (Brauman 2006, 196), while it remained an "undeniable component of field action" (Brauman 2006, 201). It was this latter group that, while at odds with Kouchner's approach, organized the "March for the Survival of Cambodge" in 1979, and later again spoke out in Ethiopia against the forced

resettlement program of the Ethiopian government. This latter, combined with the worst drought in decades, produced a severe famine in the otherwise bountiful provinces of the country (1985). MSF felt that its distribution of humanitarian services strengthens the humanitarian framing of the events and provides a useful excuse for the government to proceed with its devastating policy of collectivization. Unwilling to perpetuate the situation this way, MSF paid the price of being expelled from the country (Brauman et Lecomte 1986).

From individual actors to state policy

These irreconcilable differences finally led to the split of MSF in 1979, as Kouchner and his group quit the organization. Under the leadership of the younger generation, MSF gradually adopted ICRC's principles after Kouchner's departure (Brauman 2012). Kouchner and his circle established a new organization, Médecins du Monde (MdM or Doctors of the World), embracing the politically confrontative practice of témoignage. They would subscribe to a modified Hippocratic Oath that says, "I engage, to the extent of my means, to offer my treatment to those who suffer, in body or mind," and "refuse science or medical knowledge to veil oppression or torture" (Bettati et Kouchner 1987, Annex).

This new organization espoused the ideals professed by Kouchner, which eventually became the concept of the "devoir d'ingérence" or the task - or duty - to intervene. With Sorbonne law professor Mario Bettati, Kouchner convoked a conference in 1987 with the participation of the French elite: journalists, philosophers and most importantly, then Prime Minister Jacques Chirac and President Francois Mitterand. The contributions to the conference were published under the title "Devoir D'Ingérence." Although the 51 chapters to the volume are far from homogeneous, their explicit purpose was to produce a manifesto and a roadmap through

which the right to intervene can be incorporated in the Universal Declaration of Human Rights (Bettati et Kouchner 1987, 10 and 12). The event was the first political step to have the right to assistance adopted as state policy. Kouchner, who became Miterrand's adviser, and Bettati assumed political offices as representatives of the French state at the United Nations General Assembly, to institutionalize this particular ethical perspective in international politics.

The fruits of this effort were two General Assembly resolutions in 1988 and 1990, which stipulate that states are obliged to accept humanitarian assistance in "natural disasters and similar emergency situations" given that it is driven by "strictly humanitarian motives" and the traditional humanitarian principles of impartiality, neutrality and humanity.[7] As Mario Bettati reminisced, the success of having the right to assistance accepted was predicated upon taking into account the "territorial sensibilities" of states (Bettati 2012, 5). In practice this meant that the right to assistance was modeled on already accepted legal provisions, a strategy that the norm literature identifies as "grafting" (Price 1995; Finnemore 1996). In maritime law, it was already accepted practice that a ship might enter sovereign waters to help a shipwreck, given that this operation is limited in time and space.

Humanitarian assistance was incorporated into international law based on this premise, and on the surface this means that it was accepted reinforcing the traditional notions of sovereignty and non-intervention. From the perspective of institutionalizing protection, however, the resolutions were revolutionary in acknowledging that "the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity" (Torelli 236). Thus, they were a step in

[7] https://digitallibrary.un.org/record/77696/files/A_43_PV-75-EN.pdf and http://undocs.org/fr/A/45/PV.68

institutionalizing the ethics of responsibility to address human suffering wherever they may occur, but most importantly, in institutionalizing the obligation of states to accept other actors to legitimately alleviate that suffering. In other words, the norm entrepreneurship of Bernard Kouchner and Mario Bettati, channeling the spirit of the MSF at its foundation with the support of French political leadership, contributed to institutionalizing the obligation of protection for states as an "inverse obligation." This inverse obligation meant the obligation of states to accept alternative actors to provide protection, even if this activity was contradictory to their sovereign will.

Thus, instead of extrapolating sovereignty as responsibility at the international level, "RtoP" relies on a different notion of protection and also a different model of responsibility. The first is institution-based, the second links the individual in distress to whoever has the capacity to alleviate this distress. This broadening of potentially responsible agents goes beyond the institutional framework, and at times defies strict adherence to it. If "ultimately everyone" is responsible, and the priority is to prevent and reduce suffering, institutions are subordinated to this moral purpose, constituting the core of the direct protection model.

Kouchner's norm entrepreneurship contributed to institutionalizing direct protection, based on the individual as the object of protection, and responsibility as responsiveness as its corresponding responsibility. In the context of the Gulf War in 1991, resolution 688 of the Security Council – influenced by the norm entrepreneurship of Ogata and UNHCR – elevated Kouchner's inverse obligation of protection to the level of precedent. Throughout the 1990s, one of the vehicles in which the "right to intervene" rose in prominence was that this responsibility as responsiveness resonated with the experience of many who felt under the imperative of "never

again." This responsibility appealed to many leading decision-makers who felt personally implicated in (failing to) saving populations from mass atrocities. Thus considering the "interested audience" from the perspective of embedded norm entrepreneurship, this certainly includes prominent people whose "lesson learnt" was that any kind of action is morally superior to non-action. Among these prominent personalities is Kofi Annan himself, who felt that, heading the nascent UN Department of Peacekeeping Operations, the Rwandan genocide happened under his watch. That formative experience defined his time in office as Secretary General. The international relations literature recognizes that such formative experiences can work as vehicles to "institutionalize" primarily individual and immediate emotions (Heinze et Steele 2013). In addition to the Rwandan genocide, the Bosnian war was among the formative experiences of many American key decision-makers of the Clinton and Obama administrations. Among them are Samantha Power, who was Permanent Representative of the United States at the Security Council between 2013 and 2017, and whose formative experience was being a journalist during the Bosnian war (Power 2007). Secretary of State Hillary Clinton under Obama, when facing the dilemma of intervening in Libya, was quoted to prefer "doing something rather than not doing anything" (Becker et Shane 2016). For these decision-makers, French President Mitterrand's statement that the "obligation of non-intervention stops precisely where the risk of non-assistance begins" (Michel-Cyr 1992, 572)[8] was not only a moral imperative, but also guidance in policy-making.

[8] "L'obligation de non-ingérence s'arrête à l'endroit précis où il naît le risque de non-assistance"

Conclusion: Protecting individuals

The normative project of MSF successfully articulated a different notion of protection, that of saving lives by direct, medical intervention, which was propelled by a particular notion of responsibility, that which derived from the fact of human suffering. Through strategic social construction, this normative project was institutionalized under the "right to intervene." Thus, the right to intervene at its conception was not about intervention in the political sense, but intervention in the medical sense. Arguing for intervention on this basis, however, challenged sovereignty on the account of sans frontièrisme and the practice of témoignage. Parting with MSF, Kouchner was of the view that this direct protection model, with its focus on the individual and driven by a responsibility as responsiveness to suffering can only be successful if embraced by states. As opposed to the new leadership of MSF, therefore, he assumed political office and, as an example of embedded norm entrepreneurship, he set out to push the "right to intervene" to be accepted in international law. In 1988 and 1990s, two General Assembly resolutions represented the first steps towards institutionalizing protection, this time as an inverse obligation of states. Whereas Francis Deng's idea conceptualized protection as part of the social contract, direct protection institutionalizes it as the obligation of the state to accept other actors to protect on its territory. The model of responsibility that emerges from the RtoP report and its research materials corresponds with this direct protection model, grounded in the right of the individual to be protected, and the call of responsibility on ultimately everyone to address that suffering. The kind of responsibility that is articulated in the RtoP document taps into the deontic powers of the moral concept of responsibility to alleviate suffering and hedge against its risk. In its name, it not only extends the right to come to rescue universally, linking the suffering individual to

anyone who feels obligated to act to alleviate this suffering, but it also broadens the scope of responsibility way beyond the consequences of voluntary action. It projects responsibility also for potential harm in the future, and for actions that are independent of any subject's actions. In other words, this responsibility "allows" traversing political and institutional boundaries and sovereign boundaries in the name of easing suffering. At this point, however, by the early 1990s we see two different models of responsibility being established: one focusing on institutional structures, and the other one on the right of individuals. One is based on responsibility as accountability, the other on responsibility as responsiveness. Often presented as part of one RtoP framework, these protection models differ fundamentally. The aim of the next chapter is to present how fundamental these differences are, and to show what their co-existence implies for intervention debate and practice. The next chapter hence elaborates the main argument of this thesis that the RtoP framework is built on two responsibilities to protect, each with its own priorities and prescriptions for protective action.

CHAPTER 4: INTERVENTION AND THE RESPONSIBILITIES TO PROTECT

Although often portrayed as part of one framework, sovereignty as responsibility and the responsibility to protect have different historical trajectories and display different models of protection. I have argued that understanding the normative trajectory of these protection models matters, because these conditions had shaped the legitimate ways of protective action. From this historical trajectory and normative shape, sovereignty as responsibility and the responsibility to protect emerged as the models of what I called "indirect" and "direct" protection. The focus of this chapter is to show how fundamentally different they are, and what this fundamental difference implies for intervention practice. The main argument of the thesis is that the implementation of the RtoP framework remains problematic, and this chapter supplies the substantive part of this argument: why are these two models actually irreconcilable. My argument is that these models are "constitutive" in function. They create protection in different ways, including the object of protection, the source and demands of responsibility, and the legitimate ways of protecting.

Since accountability is conditioned on functioning institutions, the target of protection becomes the integrity of these institutions. Responsiveness aims at reducing human suffering, and consequently it tends to define protection as identifying the perpetrator and neutralizing it. At a moment of decision in intervention practice, these imperatives lead to different courses of action. Indirect protection might suggest, as the best way of resolving a conflict, to keep a head of state in place. Direct protection might suggest to remove a head of state, potentially by force. Where indirect protection is prone to give ample time for negotiations, direct protection demands

"timely and decisive action," action that immediately prevents physical harm. If indirect protection is most concerned with the unfolding consequences of any action and attributing responsibility for it, direct protection focuses on reducing suffering to the broadest group of people and without delay. These prescriptions are ideal typical formulations, and they guide behavior without determining it. Nevertheless, at any moment where a decision has to be made, they appear mutually exclusive. Actors either negotiate with a ruler or support regime change. They are either sensitive to the urgency involved in the threat of violence or they are not. Either they tolerate a violent conflict to unfold if the benefits of an action are questionable, or they prioritize the imperative of saving people physically. The elements of the two models are thus not incommensurable. Once the object of protection is institutions, it cannot be individuals. Once responsibility is perceived as accountability, it cannot accommodate the imperatives of responsiveness. As the two models constitute protection and responsibility differently, they in fact constitute two different worlds that have no correspondence with each other. This chapter conveys the argument that the two responsibility models do not focus on different aspects of the same world, but constitute two different worlds, populated by different subjects, responsibility-bearers and objects of protection.

A genealogy of responsibility reveals that the concept has a long history and multiple formulations across disciplines (Raffoul 2010). Responsibility as accountability constructs the subject through its capacity to initiate and attribute the consequences of that initiated action to the subject based on that capacity. Responsibility as responsiveness, on the other hand, abandons the willful subject and imputation as its ground, and conceptualizes responsibility as an ontological condition triggered by another's vulnerability. In this tradition, the subject is

responsible, because it is already implicated in particular relationships by its very existence.

These models correspond to different social functions that the notion of responsibility fulfills. In traditional moral philosophy, the notion served to construct the willful subject and a community in which this subject can be educated and its conduct regulated. After Nietzsche, however, responsibility lost its connection to the willful subject and was located in different relationships. In the modern tradition, responsibility does not hinge on the subject as a source of action, but is always already responsible irrespective of its own choice or actions. The implications are important not only for the kind of subject the two protection models and their respective responsibilities articulate, but mostly for the kind of relationships these subjects have towards others. It is this constitution of responsibility within a community, or rather, constituting a community through responsibility as accountability and responsiveness respectively, which defines how the two models are implemented in practice, and why they prove to be incompatible.

The first two sections of the chapter places sovereignty as responsibility and the responsibility to protect in different paradigms of moral philosophy, to highlight their fundamental differences, and to present the kind of subject they constitute alongside the community such subjects can form. The last two sections of the chapter asks what the implications of these two models are for intervention. What is the responsible subject responsible for in situations associated with RtoP? In what ways should it act upon its responsibility? The argument is condensed in the form of two tables at the end of the chapter. One shows the responsibility-related arguments in intervention situations, the other the legitimate courses of action they enable. The discussion, in Chapter 5, proceeds from there to the analysis of the 2011 Libyan intervention.

Responsibility as accountability

As discussed in Chapter 2, the accountability model of responsibility rests on four pillars (Raffoul 2010, 8; Ricoeur 2000). These are the existence of the subject as the ground of imputation, the assumption of transcendental freedom to act, i.e. the subject's free will, the assumption of rational agency as the basis of that action, and a particular notion of causality that links the source of action to its consequences. The subject, through its will, is the cause of any action and this constitutes the basis of its accountability.

Locating the capacity to act freely allows for distinguishing between events in the world that follow from that free action initiated by the subject, and events that do not. Once imputation is possible, the subject is in a special relationship with the consequences for its own actions. If a consequence is deemed to have a negative impact on other subjects, the author-subject can be singled out as obliged to compensate for those consequences or undergo punishment.

Consequences cannot be altered retrospectively. But consequences are evaluated within a community, and defined as beneficial or harmful. Depending on this evaluation, the author-subject is praised or blamed, undergoes punishment, or owes restitution. Having put an action on the author-subject's account, the subject becomes liable for the consequences. This is the rationale of responsibility in the domain of law. The social function of liability is not to undo the actions and their consequences as this would not be possible; but it is to educate members of a community of the collective assessment of the consequences of certain actions, and to sanction the commission or omission of those actions (Williams 2004). Since a community is built on more or less equally capable author-subjects, with the exception of some members, such as children, who have limited or no such capability, any subject can draw conclusions about the collectively

held standards of behavior. Accountability-based responsibility is thus to construct the subject in a particular way, create a community of similarly accountable subjects along with the standards of co-habitation in that community. The construction of the subject this way is, therefore, only a stepping-stone towards conceiving a particular kind of community that comprises such subjects.

From the African context, we can reconstruct the importance of building and regulating a community based on the accountable subject, and understand why this model would fit a broader "international" community when it comes to protection. Accountability is possible among subjects that are all equal in their autonomy for making decisions about how to act. It thus has an effect of levelling subjects, thus recalling and affirming sovereign equality. However, it does not mean returning to "traditional" sovereignty and non-intervention; it constitutes sovereign equality as a basis for a system of accountability.

Revisiting Africa's new sovereignty regime from Chapter 2 helps elaborating on this argument. Introducing sovereignty as responsibility and constructing protection as an obligation for which states are accountable for their peers is to re-constitute sovereignty through accountability, in accordance with its double potential: both to reassert the agency or autonomy of the African state as a political authority and to embed it into a system of accountability. Now we also see that by constituting African sovereigns as subjects capable of accountability, Francis Deng's conceptual project also reinvented the African regional political community. African political entities used to be wired into international politics through their colonial ties. These colonial ties were gradually replaced, in the Cold War, with superpower patronage. Despite the fact that colonial relationships and superpower patronage were different, African states remained outward rather than inward-looking. In other words, their significant political

relationships tied them individually to external actors. Newly independent African states became nominally equal sovereigns with the rest of the world, a status reinforced by their membership at the United Nations. In practice, however, African ownership over African political affairs remained an aspiration.

Through sovereignty as responsibility, Deng laid the conceptual foundations for a self-sustaining continent, able to re-settle political authority on its own soil. To unfasten African states from their engagement meant sealing them from external influence but opening them up within a community of peers. The concept of African renaissance and ownership conceptually means that through accountability within the region, states become truly equal. Such true equality is constructed through accountability, through the construction of the African state from one essential perspective, through one essential attribute: its capability of being the author of its actions, i.e. its decisions in governance, and therefore its accountability to fellow sovereigns that are similarly defined by their authorship and accountability.

Hobbes's and Deng's view of the social contract thus constitute different political communities and appear as each other's inverse. For the former, African states were nominally equal sovereigns, whereas in practice they remained embedded in their extrospective relationships. Deng's view of the African sovereign, however, vests these sovereigns with the "subjectivity" or agency that is primarily defined by the capacity to be accountable to similarly defined peers. This means reaffirming the sphere of action that is "up to" each individual subject, and constituting a political community that comprises only subjects thus defined. Responsibility as accountability, through its very mechanism of correcting sovereign behavior, replaced a vertically oriented political community with a horizontal one. Building a community of African

sovereigns through accountability was the condition of enjoying sovereign equality within the region. This is why post-Cold War Africa could accommodate the practice of intervention, on condition that it is designed and carried out by African actors. International accountability – meaning primarily accountability within equal subjects – is the condition of enjoying sovereignty in its absolute sense within a newly constructed regional political community of "responsible sovereigns." In the Hobbesian view of the social contract, no external accountability was possible, because it would have undermined the primary function of the sovereign to provide epistemic certainty. In Deng's view of social contract, accountability and responsible decision-making becomes the condition of sovereign equality, because every subject is held accountable based on the consequences of its actions to other sovereigns. This also explains the importance of upholding borders inherited from colonial times. These borders nominally define the autonomous, accountable African subject.

The new basis of Africa's new sovereignty regime is thus a regional community predicated upon the interaction and cooperation of autonomous units. The concept of sovereignty as responsibility reflects this double ambition of sealing the region from outside and refocus it towards the inside. The potential of responsibility as accountability for community building is to create the autonomous subject and to link this subject to other similarly autonomous subjects in a particular way.

The politics of sovereignty as responsibility therefore is an attempt to reverse the "politics of extraversion" (Bayart 2000), in which African sovereigns are more wired into their respective non-African (colonial, formerly colonial) relationships than in their local or regional ones. Infusing the subject with the notion of accountability created and reinforced a horizontal allegiance

between states of the region. From this perspective, sovereignty as responsibility and its various incarnations are not a reaffirmation of traditional sovereignty and non-intervention, but reimagining an inter-national community of equals, each vested with the subjectivity necessitated by accountability. Accountability-based responsibility thus creates a community by creating autonomous subjects, a community that educates and re-educates its members by this mechanism of accountability about the acceptable standards of behavior.

Responsibility as responsiveness

Other accounts, however, have a different starting point for responsibility, discarding accountability as the grounds of responsibility. Instead, following Nietzsche's lead, philosophers in the 20th century derived responsibility as an existential condition, something that the subject is drawn into by the mere fact of existence. The source of responsibility is not the authorship of the subject and the effect of generating actions and consequences in the world. The subject is thrown into responsibility by the mere fact of her existence. Since the essence and meaning of existence is not given, responsibility entails the burden and freedom of inventing, imagining essence, i.e. to give meaning to existence (Raffoul 2010 on Sartre). Responsibility follows from the necessity to invent, imagine and give meaning to existence. In other words, a defining feature of modern responsibility is that it does not follow from the willful actions of the autonomous subject, but that its source is placed outside that subject. The subject is drawn into a relationship of responsibility irrespective of its intentions or actions. Modern philosophers on responsibility gave various responses to this condition. For Jean-Paul Sartre, responsibility was the obligation to "supply the lacking ground" of existence. The "groundlessness of values," he wrote, "the very absence of an *a priori* morality" is what responsibilizes the subject. "Our ontological abandon is

an abandonment *to responsibility*" (Raffoul 2010, 139).

In addition to being disconnected from fault and becoming a deontic relationship to others, the second relevant change in thinking about responsibility in the 20th century is a change in the concept of compensation, together with the notions of risk and insurance (Ewald 1991). French thinkers point to the shift in the changing nature of the welfare state that had a transformative impact on our understanding of compensation. The scope of responsibility has broadened significantly both spatially and temporally; insurance was now about hedging against potential harm in the future, and establishing a relationship of indemnity, irrespective of the often intractable causal chain that resulted in harm. Spatially, responsibility was directed at other human beings, but also increasingly towards future generations or nature. The idea of responsibility was as a result less and less wedded to the idea of a fault. As opposed to the retrospective structure of accountability for the consequences of action, the scope of responsibility as responsiveness to a particular condition, risk or harm, extended to the future. In the 20th century, indemnification replaced accountability as the main form of relationship between the one who is responsible and the person in need of compensation. "One becomes responsible for harm because, first of all, one is responsible for others" (Ricoeur 2000, 29).

We are gradually moving away from responsibility as authorship towards responsibility as guardianship, of being connected to others. These others include not only any other human being and their needs, but also that of nature or future generations, and everything with which the subject potentially interacts. Responsibility in this case means being called to address these needs and the well-being of other people or our common heritage. The acting subject is not constituted by authorship over the limited sphere of her voluntary action any more, but is involved in multiple

relationships where she is trusted with, made a guardian of, the well-being of others.

Into this tradition fits a very specific thinking about responsibility and obligation towards others that stems from the experience of the Holocaust. That experience imprinted the direct protection model in various ways. The founders of MSF in 1971 positioned themselves against an organizational behavior that they saw as complicit in sustaining the conditions they were supposed to alleviate. The debate about ICRC's actions in the Holocaust was also a debate about its principles of neutrality and impartiality. Was impartiality and neutrality limitless? Did it require the organization to cooperate with any kind of political power, including even the Nazis, in order to carry out its work? Favez shows that ICRC was not necessarily acting in bad faith when it visited Nazi camps of political prisoners and worked towards improving conditions there (Favez 1989). Yet, the broader implication was the imperative of "never" allowing harm like the Holocaust "again." After the Rwandan genocide "never again" was later reasserted and fed into the creation of the responsibility to protect.

The person who conceptualized responsibility in the shadow of the Holocaust was Emmanuel Levinas, the Lithuanian-born Jewish philosopher. He was born in Lithuania and lost his whole family to the Holocaust, which he himself survived hiding in Paris. As Samuel Moyn's book on Levinas's intellectual trajectory attests (Moyn 2005), Levinas's construction of the Other is anything but a direct result of his autobiography. At the same time, it is a result of decades-long work of understanding the relationship between Hitlerism, as he called it, Heidegger's philosophy, which was among the strongest influences on his own thinking, and coming to terms with him being simultaneously Heidegger's disciple and the target of Nazism (Levinas 1990). Levinas conceptualized responsibility building on the distinctly modern context in which responsibility is

an existential condition of the subject, irrespective of its will.

He gave the philosophical elaboration of "never again" in a similar spirit to what led the "Biafrans" within MSF to position themselves against ICRC principles. Reconstructing the elements of this philosophy helps us understand more fundamentally the ethics of the direct protection model, the kind of subject and community it constitutes and ultimately, why these moral imperatives are irreconcilable with accountability-based responsibility. In contrast with the philosophical tradition that placed the voluntary action of the transcendentally free subject in the center, Levinas detached responsibility from the acting subject and moved its ground outside of the subject. Responsibility does not follow from the consequences of the actions that the subject had the choice to undertake. Rather, Levinas argues that responsibility is an ontological condition.

The existence of the self in this world is embedded in assimilating objects of the world physically (by eating, dwelling) or mentally (by comprehension) to its own world. This way of existence, however, is challenged by the appearance of the Other who cannot be assimilated into the world of the self like other aspects of the world can. Levinas argues that the Other cannot be killed, and cannot be assimilated, thus, it constitutes a fundamental challenge: the self needs to find a place for the Other under the sun, a way of coexistence, it must face the impossibility of integrating the other, but also the demand that the mere existence of the Other imposes on her. Responsibility is thus an originary relation that implicates the subject irrespective of what it chooses to do. The existence of the Other already implies that the subject must be *for* the Other, because its appearance puts the limit on satisfying the subjects' own needs, and therefore reveals and grounds its obligations towards the Other (Peperzak 2005, 21).

What punctuates the responsibility imposed by the Other's existence is their vulnerability.

This vulnerability is often defined further in terms of physical vulnerability to hunger or diseases. The impossibility of integrating the Other into the world of the subject is further accentuated since vulnerability is defined as physical suffering. In her analysis, Elaine Scarry shows that physical pain and suffering defy being expressed in language and therefore cannot be shared; it is also a sensory experience which does not have a referent object such as fear or love. Not only is it difficult to express physical pain, the experience itself can be language-destroying – the person which experiences pain might actually be reduced in their capacity to engage, connect or ask for help. Pain and the infliction of injury are thus accorded a particular place in human practices because they are capable of "unmaking the world," of "emptying the world of its content" (Scarry 1987, 29).

When the responsibility to protect foregrounds the perspective of the victim of atrocity crimes, it argues that the origin of responsibility is the experience of physical pain, the vulnerability of bodily and mental integrity that must be avoided, because its consequences are world-destroying. Hence the significance of suffering and vulnerability, and the reason why responsibility implicates everyone, irrespective of their causal relation to the harm caused. This is why the exposure of the victim to extreme violence and their right to be protected strengthen the inescapable demand on everybody to mitigate this exposure. The responsibility that derives from the vulnerability of the Other is external to the subject, but it still draws it into an inescapable relation. As Raffoul explains, in this articulation of responsibility, the subject is not an initiator anymore, but is a hostage to the Other's demand and bears the burden of responsibility to respond. Remember the notion in the Supplemental Volume of the RtoP report that "the power of obligation varies directly with the powerlessness of the one who calls for help" (Weiss et Hubert

2001, 149, quoting Catherine Lu) In addition, the vulnerability of the Other and all Others inevitably constitute an infinite demand on the finite capacities of the subject. Its finite capacities force the subject to choose where to help, yet, its choice, and hence its abandonment of certain Others will always remain unjustifiable (Raffoul 2010, 16).

It is from this perspective that supporters of RtoP respond to one of the oldest exhortations against RtoP, the question of double standards. Accused of only saving some and not others, corresponding with the power political frontlines of global politics, supporters of RtoP respond that just because not everyone can be saved, it does not mean that no one should be. They acknowledge, in accordance with the logic of responsibility as responsiveness what the Supplemental Volume has already stated, that "personal and institutional resources are far from unlimited," and "egregious suffering, wherever it is located, morally requires similar responses" (Weiss et Hubert 2001, 149). Whereas critics of RtoP point to double standards as the weakness of the norm in a sense that it is subjected to power politics, supporters of RtoP accept the presence of double standards as an ontological given. The demand on a protector's finite capacities will always exceed those capacities; this, however, does not diminish or delegitimize the demand, nor the responsibility to do what a protector can within those limited capacities.

It is not by chance that the origins of such an ethics are not to be found in state practice or international organizations. Responsibility as responsiveness is a fundamentally individual, intimate ethics. Responsibility is located in the intimate relationship that is constituted by the Other's demand on every other subject. Because of its intimate and unmediated nature, this is not an ethics that would naturally function in an institutionalized form. Not because institutions, or especially the individuals that are bound in these institutions would not be able to experience

the call. But the call itself calls to the self, it calls to the "I". Extrapolating this intimate ethics to the international level creates a second tension within direct protection, beyond the question of who to save. Responsibility as responsiveness is the moral obligation of the "never again," that rests on the strongest moral foundation: protection and respect for all forms of life, integrity and the prevention of suffering. One of the lessons of the post-Cold War years are, however, the gap between the purest moral imperative and the practical steps in which to realize that imperative. The direct protection model thus grapples with the consequences of acting upon that moral imperative, based on the structure of responsibility as responsiveness.

What we have seen above are two different notions of responsibility. Whereas accountability-based responsibility reinforces the willful subject and a community comprising subjects of this kind, responsibility as responsiveness reinforces a broader community of "responsible actors" as it conceives of responsibility universally. Recalling the historical context in Chapters 2 and 3, the first conceptualized the obligation of the state to protect, and the obligation of fellow states to assist or intervene through state-based and state-reinforcing structures. The latter, on the other hand, conceptualized protection as an "inverse obligation" for the state, the obligation to accept other actors to act on their responsibility based on the responsiveness paradigm.

Intervention and the responsibilities to protect

How do these models translate into practice? The academic literature on RtoP is cognizant of the role of responsibility in defining rights and obligations about protection, including its function of allocating them to various actors. Some argue that RtoP prescribes the "duty of conduct" (Welsh 2013) or the "responsibility to try" (Bellamy 2014, 72) to "do what one can"

(Pattison 2015, 196). These formulations mean that RtoP prescribes the duty to *consider* the best course of action, which might be no action at all (Pattison 2015, 206). Luke Glanville argues that the notion of responsibility in the responsibility to protect helps allocating the imperfect duty of protection (Glanville 2011), a general obligation which is either not assigned to any agent in particular (Tan 2006), or can be allocated based on various, competing principles (Miller 2001). Glanville argues that thinking of protection in terms of a responsibility reinforces mechanisms of allocating the imperfect duty of protection, based on institutional authority on the one hand, and capacity on the other. Once the notion of responsibility to protect is in place, it strengthens the expectations towards those who are authorized to act upon protection (for instance, the members of the UN Security Council) and towards those that have the capacity to act (for instance, the United States by virtue of its military might) to fulfill such responsibility. James Pattison concurs from a normative theory perspective that under the notion of the responsibility to protect, the obligation falls on those actors that have the capacity and are seen as the most legitimate to intervene by virtue of their special relationship to the conflict-affected populations or countries (Pattison 2010). In these approaches, the notion of responsibility intervenes as a mechanism of clarifying or allocating what we might call the moral responsibility of institutions, and of the United Nations in particular (Erskine 2004).

However, the RtoP literature remains limited in two senses. First, they fail to take into account that there are two models of protection and responsibility incorporated in RtoP, and the actual outcomes depend on the dynamics *between* the two. Second, while it correctly points out that the main social function of responsibility is to define and allocate entitlements and obligations with regard to protection, it fails to ask what happens when we have two competing

models of responsibility to guide action. The fact that responsibilities not only differ, but also hail from different paradigms, has implications for their compatibility. These notions of responsibility are constitutive in function. They do not only describe the external world, but also produce and reproduce it in different ways. They act as two closed systems, existing next to each other. This means that it is not possible to substitute the responsiveness paradigm's object of protection within the accountability system. Vice versa, the imperative of responsibility in the former, i.e. the obligation to prevent individual suffering would not work within the remits of the accountability paradigm, because the latter is conditioned on a functioning institutional framework. Looking at the two traditions behind accountability and responsiveness already forecloses their conflicting relationship in practice. The remainder of this chapter presents this relationship in detail, and shows why exactly these two internally coherent models of protection are incompatible with each other in practice.

Indirect protection reinforces structures both when foregrounding the state and when holding it accountable. Direct protection, in both cases, overwrites structures in the name of protection. It allows other actors to act upon responsibility, and obliges the state to accept that protection by external actors. Accountability, which saddles empowerment on the one hand and answerability on the other, harbors the potential for states to emphasize that they are primarily responsible but also that states should be held accountable for their conduct within appropriate structures. When it comes to responsiveness, the circle of responsibility-bearers is much wider ("ultimately everyone") including humanitarian, non-governmental or intergovernmental organizations. Acting upon responsibility means on the one hand that all these actors might "intervene" for the sake of physically protecting people, and on the other that state structures

might be altered to provide protection, in extreme cases, by regime change. In terms of direct protection, the state bears responsibility to accept protection coming from outside. With the indirect and direct protection models in place, the discourse and practice of protective interventions should fall within the following four possibilities (Table 1.).

The spectrum of responsibility-related arguments	Accountability 'indirect protection'	Responsiveness 'direct protection'
Who is the responsibility-bearer?	State is the primary agent performing protection **strengthens state sovereignty**	States and non-state actors have a "right to intervene" **overwrites state sovereignty**
What are the implications of the responsibility for protection?	States are held accountable within regional and international structures **strengthens structures**	States must accept that any other actor is entitled to address suffering **overwrites structures**

Table 1: The spectrum of responsibility-related arguments

Relying on the specific characteristics of the two models of responsibility, we can hypothesize what kind of actions would these types empower as legitimate. In particular, we might ask what the arguments in the columns of accountability and responsibility potentially imply in terms of the following. 1) How do they define the reasons for intervention, 2) how do they characterize the conflict situations that warrant intervention; 3) what object of protection they stipulate 4) what propositions of action they entail to achieve protection, 5) what allegiance they favor vis-à-vis the parties to the conflict and finally, 6) how they define responsible conduct.

For indirect protection, structures must be in place that define the acting subject as well as the community that can hold it accountable. As accountability is a notion centered on

imputation, i.e. attributing the events as consequences to a subject as a cause, accountability is structurally retrospective. An action, in turn, is legitimate if it leads to the right consequences. Within this model, we should expect justifications of intervention that seek legitimacy from the perspective of the expected or real *consequences* of interventions.

In this configuration of protection, the object of protection becomes the *state* itself, and all *structures* that potentially guarantee stability and have the capacity to manage conflicts. Other, structuring entities might involve the established spheres of authority of organizations or their organs. What necessitates intervention is that these structures might break down, since in this case there is no framework left for containing and managing social factions. From this primary stance follows a sort of *impartiality* when it comes to power-holders and contender(s) of power in a conflict situation. Power transitions might happen, as long as it does not threaten with the breakdown of structures. This accounts for why African states propose to intervene in cases of unconstitutional takeovers of power (Bassett and Straus 2011; de Waal 2012).

Responsibility as responsiveness constitutes responsible action and legitimate conduct on different grounds. The triggers for intervention are physical suffering and vulnerability. Conflicts are often characterized as one between a side that inflicts violence and the side that suffers it. Those relying on this logic often identify perpetrator(s) and victims, or characterize a conflict in terms of the "good guy-bad guy model" (Walzer 1995). This type of responsibility to protect not only allows, but demands *partiality* in favor of the victim. Action that strives to impartiality, in turn, might be portrayed as playing into the hands of perpetrators. The object of protection is the "Other" who is suffering, who is vulnerable, and whose vulnerability imposes responsibility on everyone. This "politics of rescue" (Walzer 1995; Pasic et Weiss 1997) presupposes a temporary

and unmediated link between the rescuer and the one to be protected, which overwrites the multiple relationships that otherwise exist between them. “The moral barriers between ‘us’ and ‘them’ dissolve as we encounter naked humanity […] as humanitarian subjects they are equally close to all of us” (Pasic et Weiss 1997, 123).

Fulfilling responsibility as responsiveness to the fact of suffering momentarily overwrites other political, social and economic links with the population under threat of atrocity crimes, and brings about the “deterritorialization of responsibility” (Campbell 1994). Once the immediate threat is averted, however, these links regain importance. Exercising responsibility therefore potentially leads to what Roland Paris identified as one of the structural tensions in preventive military humanitarianism (Paris 2015), the tension deriving from mixed motives. Rarely do actors undertake interventions for purely humanitarian reasons, but reasons that are less related to “naked humanity” and more to the otherwise existing ties put the legitimacy of the enterprise in question. Another tension, which Paris refers to as exit, is another problematic aspect of the responsibility as responsiveness. What was to follow supposedly “surgical” actions? Should rescuers assume a more long-term responsibility? In the case of Libya, this particular dilemma appeared for NATO troops as to whether they could leave Gadhafi’s army standing. Should they stop at a ceasefire, should they continue operations until the threat, identified as Gadhafi in power, is averted by regime change? The responsibility to protect framework says that responsibility equally involves prevention, reaction and rebuilding, thus calling for a longer-term commitment to rebuild societies so that the threat of violence does not arise again. This, however, already calls for a different type of responsibility that goes beyond the immediate response to ease suffering wherever it is experienced.

Not only does responsibility as responsiveness legitimize what we might call direct protection, i.e. intervening to protect the Other in its physical integrity, it also foregrounds responsiveness and the fact of *responding* as the legitimate move. This type of responsibility vests the act of rescue with *urgency*, where there is no time to waste or consider the consequences. In the words of Pasic and Weiss, "immediate and direct access to civilian victims becomes an absolute priority. Issues of sustainable order, much less its quality, appear so distant that even thinking about them detracts from the immediacy of the life-saving tasks at hand" (Pasic et Weiss 1997, 113).

Following their thought a little further, responsibility as accountability and responsibility as responsiveness correspond with what Pasic and Weiss labelled "restorative" and "revolutionary" humanitarianism. While the former aims at restoring the sovereign state and strengthen its capacity to prevent atrocities, the second aims at changing the authority structures and the political relations so that the threat of conflicts is averted. The first does so by deploying entitlements and obligations surrounding the notion of accountability, which has the social function of regulating the responsible subject and ordering society by controlling the sphere of voluntary action. The second follows from what Pasic and Weiss call the "humanitarian impulse" and the French intellectuals supporting Médecins du Monde "the most basic human feeling:" the imperative to help identified as a distinctly Levinasian ethics.

We might also say that responsibility as accountability instills in international politics the common law principle of the "duty of care" (Arbour 2008), the obligation of the subject to anticipate the potentially harmful consequences of her actions and adjust its actions accordingly. Responsibility as responsiveness, on the other hand, institutionalizes an "ethics of care" (Marlier

et Crawford 2013), a moral obligation to respond to suffering and vulnerability. In the first case, the emphasis is on the prudence of the subject to act so that the action's consequences are not harmful. In the case of responsiveness, the ethical call is to care about others, since the condition of the other is every subject's inescapable responsibility.

Table 2 summarizes what action the two models of protection engender. Equipped with this analytical framework, I will proceed, in the next chapter, to the empirical analysis. Chapter 5 presents the two narratives that the responsibility models lead to about the *same* case: the 2011 international intervention in the Libyan Arab Jamahiriya.

Configuring intervention in terms of indirect and direct protection	Accountability 'indirect' protection	Responsiveness 'direct protection'
Reason for intervention	Threat of structures – and therefore, order - breaking down	Physical suffering and vulnerability
Characterization of conflict	Conflict between power-holder and contender(s) to power Potentially described in terms of how legitimate their claims are, for instance, the African position on whether these are democratically elected leaders; whether takeovers of power are constitutional or not	Perpetrator-victim of violence
Object of protection	Existing structures of authority	Victim(s) of violence (individual or collective)
Implications for intervention	<u>Indirect</u> protection 1. Protection is guaranteed by institutional structures in place (national, regional or international) 2. Protecting the structures which guarantee protection 1. State structures intact	<u>Direct</u> protection 1. Prevent suffering at the individual level (where the responsive agent inserts themselves between the victim and the victimizer) 2. Disable or remove the

	2. Comply with international law (rules of using force)	victimizer (potentially regime-change)
Allegiance to parties to the conflict	Impartiality Keep the structures intact Reconciliation and often power-sharing agreements	Partiality – and a necessary one with the victims
Legitimacy of action is judged by:	Consequences 1. judges the legitimacy of an action in terms of whether it happened according to the existing accountability structures (spheres of authority) 2. and retrospectively whether it brought about the right consequences to keep structures intact	Responsiveness the fact of responding (rather than weighing the consequences) Urgency Response should come as soon as possible (hesitation only prevents or postpones life-saving assistance, 'timely and decisive' action)

Table 2. Templates for action derived from the two protection models

Conclusion

This chapter explicated the main argument of the thesis. Implementing RtoP as a norm is problematic because RtoP is built on two, internally coherent but incompatible models of protection. This chapter focused on the reasons for this incompatibility: the responsibility concepts they build on hail from different philosophical traditions, and they constitute the question of protection differently. Accountability constitutes the willful subject and holds this subject accountable in structures that comprise similarly accountable subjects. Responsiveness derives responsibility from ontological conditions, irrespective of the subject's will, and rather locates it in the relationships in which the subject is always-already implicated.

These responsibilities lead to different courses of action when deciding how to implement RtoP. The model of indirect protection prioritizes structures as the guarantee of protection,

corresponding with accountability. The other, direct protection model prioritizes individuals as an immediate concern. The first would thus be prone to seeking a negotiated, potentially power-sharing solution to keep state structures intact, i.e. keeping the accountable subject or political authority intact. The other would be more prone to sacrifice institutional stability in order to follow the imperative of rescuing people in immediate danger. Whereas direct protection de-territorializes responsibility for the sake of rescue, indirect protection tends to reinforce territoriality, because this is one of the foundations of the political authority of the state.

Both models allow for intervention, but in the first case intervention aims at keeping territorially bound entities in place as the cornerstones of accountability, the other calls for intervention that physically protects individuals from violence, often at the price of suspending or even dismantling state structures (regime change). Given their structure, the two protection models also have a different sensitivity to time. Direct protection emphasizes urgency in the short run, while indirect protection is stronger in the long run when consequences of actions unfold. It is wary of hasty actions, for fear of the undesirable consequences. So far, we have seen that given the normative evolution of protection based on embedded norm entrepreneurship, the two models of protection in terms of accountability and responsiveness are prone to be incompatible. In the following, I will show how this incompatibility manifests in practice, by looking at one of the most prominent and contentious RtoP-cases, that of the international intervention in Libya in 2011.

CHAPTER 5: THE PRACTICE OF PROTECTION
Indirect and direct protection in the 2011 international intervention in the Libyan Arab Jamahiriya

"Rescue is thus a radically ambiguous principle, persisting incoherently between revolutionary and restorative humanitarianism" (Pasic &Weiss 1997)

It now seems commonly accepted that wherever the threat of mass atrocities arises, the question is not whether the international community has a responsibility to protect, but rather how it should act to prevent or react to these events. Protecting people in situations of systemic violence have thus become a responsibility, articulated in two principal forms: as a derivative of the hypothetical social contract between the state and its subjects, and as a corollary obligation of the right of the individual to be protected. This chapter is about how different narratives emerge about the *same* conflict when read through the prism of responsibility as accountability and responsibility as responsiveness. Using the conclusions of the previous chapter, I analyze the 2011 international debate on the conflict in the Libyan Arab Jamahiriya.

The Libyan intervention was the most prominent application of the RtoP framework since its endorsement in 2005. State officials across the political spectrum, whether they were supporting military intervention or not, referred to their responsibility to protect the Libyan population from violence. Not only was the Libya intervention explicitly framed in terms of the responsibility to protect by most actors, as opposed to other cases where the frame was either less significant or contested, the composition of the Security Council was also representative of influential regional powers such as India, Brazil, Nigeria and South Africa. Given its composition in 2011, the deliberations of the Security Council at the time was also an exchange between the

most influential great and regional powers on the institutions of international society (Gaskarth 2017).

Following the uprisings in Tunisia and Egypt, demonstrators took to the streets in Tripoli, the Libyan capital, in early February 2011. The government of Muammar al-Gadhafi, in power for the last 40 years, answered with live ammunition to the demonstrators' demand for a more equitable and democratic political system. The demonstrations quickly turned into an armed uprising. The Libyan government's attempts to violently repress the demonstrations provoked speedy and unanimous international condemnation, not least because the Permanent Representative of Libya at the United Nations himself explicitly called upon the international community to help the Libyan people "to put an end to this regime" (S/PV.6491 2011, 7). The UN Council for Human Rights, where Libya had got admitted only a year before, suspended its membership saying that the actions of the Libyan authorities do not comply with the principles of the Council. Prominent regional organizations, including the African Union and the League of Arab States (LAS or the Arab League) issued statements condemning the resort to violence on behalf of the government (PSC 261 2011). The UN Security Council, referring to the request from these regional organizations, and the Permanent Representative of Libya, accepted Resolution 1970 on 26 February 2011 unanimously. The resolution referred the situation to the Prosecutor of the International Criminal Court, put in place an arms embargo, a travel ban and asset freeze for Libyan officials that were implicated in serious human rights violations (S/RES/1970 2011).

While Resolution 1970 represented a wide consensus on the magnitude of the threat and the sanctions it imposed on Gadhafi's family and high-level officials in his regime, the main actors had diverging views on how to solve the conflict. The AU created a High-Level Panel with five

heads of states to work out a political solution based on a negotiated power-transfer as a key of future peace. Simultaneously, members of NATO and the Arab League created the so-called Libya Contact Group, also known as the Friends of Libya or the International Contact Group for Libya, to serve as the main political forum of coordinating the international response for Libya. France and Britain, especially the former, favored intervention, and when the initially reluctant US President Barack Obama was won over, NATO started preparations to impose a no-fly zone over Libya, should it be authorized to do so. Members of the Arab League sat on the Contact Group meetings, and even hosted some of them. At these meetings, the African Union participated as an observer, only to see NATO circumventing its efforts to establish talks between the Gadhafi regime and the political representative of the rebel forces, the Transitional National Council (TNC). Members of the High-Level Panel were even barred from landing in Tripoli where they aimed at starting negotiations between the parties. Some observers say that internal divisions did not help the African cause, and that they have failed to invest in appropriate public relations management to communicate their position and their results to a wide international audience (de Waal 2013). We will see, however, that in the long-term the African position had widespread acceptance.

For the analysis, I have collected the meeting records of the Security Council from the breakout of the conflict on 21 February 2011 to 31 October 2011 when the intervention officially ended. I have collected for the same period the public statements of the most prominent regional organizations that participated in the conflict resolution: NATO, the AU, the League of Arab States and the European Union (EU). The focus on regional organizations is further justified by the pivotal role accorded to them within RtoP, especially in their own region (Ban 2009). Among all regional

organizations, the AU has the most institutionalized relationship to the UN Security Council, with annual meetings between the two bodies since 2006 on the subject of peace and security. This latter partnership has been part of a broader tendency in which the UN sought to share the burden of peacekeeping with its regional counterparts, under Chapter VIII of its Charter. Furthermore, the positions of the AU and the LAS had a strong legitimizing impact. Both the People's Republic of China and the Russian Federation justified their decisions not to block military intervention in Libya by pointing to the positions of these two regional organizations. In addition to the communiqués of regional organizations, I also included statements from other influential groups such as the Libya Contact Group that was responsible for political coordination backing NATO's military intervention. I complemented this database with public statements made in the individual capacities of states that assumed leading roles in conflict resolution.

I reconstruct the two narratives in terms of how they define the reasons for intervention, how they characterize the conflict, the object of protection, the implications for intervention, the allegiance to parties to the conflict and the type of legitimate action. The analysis rests on the assumption that this body of data is a collection of structured public argumentation about how to protect and states, perceptive of the boundaries of legitimate action, need to provide a legitimate justification for what they propose to do. Such legitimate justifications need to show an acceptable motivation which leads to action, whether it was the real motivation or not (Kratochwil 2000, 67). The aim of this chapter is therefore not to give an account of whether it was protection that impelled action (Hehir 2013, 140). Rather, the focus is on "interpretive dominance" (Paris 2002, 425), to ponder the collectively held understandings of protection as an obligation in international politics, and how it can be legitimately practiced. In other words, the

analysis is not an account of whether NATO members intervened out of humanitarian or other motives, but rather to show that NATO, determined to act in a certain way, was compelled to justify its action in terms of either of the two models of protection we have identified. In the same way, critics of NATO's action also had to voice their disagreement through the discursive tools provided by the two protection models.

Based on the analysis, my argument is that the AU consistently argued based on the accountability model, whereas NATO's narrative largely followed the model of responsibility as responsiveness. The critics of NATO's action then challenged this position again by relying on the legitimizing force of the accountability model. If this is the case, however, further questions might arise. How do the two models interact, and is one configuration more powerful, under certain circumstances, then the other? Looking at justifications and explanations of what is legitimate and illegitimate in protection, we can identify the social organization of protection based on the notion of responsibility.

Characterization of the conflict: contenders to power versus perpetrator/victim

Despite the initial unanimity of the UNSC resolutions, and even the acceptance of resolution 1973, two main narratives emerged about the source and nature of the conflict, as well as the appropriate ways of solving it. The first point of divergence was the characterization of the conflict itself. NATO member states were, from the very beginning, vocal about how Gadhafi, for the reasons of using weapons against his own population, lost the legitimacy to rule. The European Council issued a similar statement on 11 March (EUCO 7/1/11 REV 1 2011). The statements portray Gadhafi and his regime as the perpetrator of violence, and the population of Libya as the side that suffers it. When the conflict erupted, African and Arab statements also called upon

Gadhafi to refrain from violence. Later on, however, the African position did not polarize the conflict between a perpetrator and victims. AU statements instead emphasized that displaying the parties in such antagonistic terms actually hinders a political solution that they would have preferred. In a statement, the AU says that there should be no a priori conditions for starting the negotiations (PSC 275 2011), as opposed to the TNC's position, encouraged by NATO, which demanded the departure of Gadhafi.

In contrast with NATO members' position on the culpability of the regime for the conflict and the opposition's just political cause, the African Union deliberately avoided demonizing the regime. Its characterization of the conflict is rather that of two opposing parties to the conflict that need to come to an agreement on a power transfer. This is not to say that the African Union was apologetic with the regime. In its early communique in February, it straightforwardly condemns the regime for resorting to violence (PSC 261 2011). Later on, however, it consistently emphasizes negotiation, the position of the opposing parties, and characterizes the conflict as one between two political forces, without taking a position on their political cause. We can see that the dominant configuration of protection in the African Union's discourse has been the one on accountability that, while not apologetic to the potential crimes committed on both sides, aimed at keeping the state structures intact.

Object of protection: regional stability versus civilian population

The necessity of averting violence and sparing the civilian population appear prominently in both dominant narratives. When looking closer, however, NATO member states and the officials of the AU identified the "object of protection" differently. Undoubtedly concerned about the civilian population in Libya and in neighboring countries, when it comes to identifying the

target of protective action, official African communication gives priority to *regional stability*. Entirely missing from the NATO side, African official documents consistently raise the question of "African migrant workers" in Libya, from the very beginning of the conflict. The Peace and Security Council of the African Union (PSC) repeatedly calls on the AU Commission to facilitate the repatriation and socio-economic reintegration of African migrant workers who had left Libya in the course of the conflict (PSC 265; 291; 294 2011). The Chairperson of the Commission, Jean Ping, commended neighboring countries for receiving these migrant workers, often at the price of difficulties (Ping 2011, 1). Other African officials lamented the lack of attention to the hardships of African migrant workers leaving Libya or the countries that receive them (Mwencha 2011; PSC 275 2011). They often call on the international community to provide resources for the reintegration of these migrant workers (PSC 275 2011). The reintegration of African migrant workers who return to their home countries in large numbers as a result of the conflict is one of the five main points of the African Union's roadmap, for fears that reintegration puts overwhelming burden on neighboring countries, ultimately threatening regional order (AU 2011).

The concern with "regional stability" is also clear in the references about the flow of arms looted from the Gadhafi regime's arsenal. At its 291 and 294 meetings, the Peace and Security Council of the African Union "reiterated its concerns regarding the proliferation of arms, emanating from the Libyan depots and the risk that this situation poses for regional and continental peace and stability" (PSC 291; 294 2011). The Dep. Chairperson voiced the same concern at the Istanbul meeting of the Libya Contact Group and in the report of the ad hoc High-Level Committee at its Pretoria meeting on 14 September (Mwencha 2011; AU HLP 2011b).

In addition to African migrant workers and regional stability as the objects of protection,

references to "international legality" also abound in the African Union's official statements on the Libyan conflict. The Union was adamant to find an "early solution to the crisis consistent with international legality," that is, in accordance with the resolutions of the Security Council, by promoting an international consensus on how to solve the conflict and putting a mechanism in place for continuous consultation (AU 2011; PSC 275 2011). We can thus describe the AU's position in terms of indirect protection, where the object of protection is principally structures that can guarantee the containment and resolution of conflict. This is because the object of protection is regional stability through preventing destabilizing events such as the sudden repatriation of migrant workers, the consequences of re-distributing the Libyan weapon arsenal and stepping out of the structures of international legality.

In contrast, the narrative of NATO and its member states followed the model of direct protection. In this narrative, the object of protection is the suffering human being, which is defined most often as the "civilian population," "civilians" and "civilian-populated areas," "unarmed" or "innocent civilians" or the populations of the big coastal cities in Libya ("the people of Benghazi" or the "people of Misrata"). Most representatives of this narrative describe the violence against the civilian population in emphatic terms. French president Nicholas Sarkozy advocated protecting civilians from the "murderous madness of a regime" (Sarkozy 2011), whereas British Prime Minister David Cameron argued that civilians are innocent and defenseless, facing a regime that is displaying "murderous brutality" (Cameron 2011). In such a situation, as the French representative said at the Security Council meeting of 17 March, "we must not abandon civilian populations, the victims of brutal repression, to their fate" (S/PV.6498 2011, 2). As opposed to the preservation of structures, defining the object of protection in these terms

testify the importance of the responsiveness-based model, the idea of protection that aims at relieving the individual, the suffering human being, from violence.

How to protect? The implications of indirect and direct protection

In accordance with the models of accountability and responsiveness, the two models of protection have different implications for intervention. How to act upon the imperative of "protecting regional stability" or that of "protecting civilians from a murderous regime" respectively? In the accountability paradigm, actors bear responsibility to preserve the structures that can guarantee protection. These structures involve the Libyan state but also regional and international regimes, organizations or, more abstractly, order. Therefore, in the accountability paradigm it was of utmost importance to prevent the division of Libya. On April 26, the AU Chairperson in his report to the PSC indicated that the situation could "lead to the fragmentation of the country with the attendant consequences in terms of regional security and stability" (PSC 275 2011). The Deputy Secretary General of the UN, echoing the logic of indirect protection, called on the new leadership in Libya to "undertake every effort to protect civilians and *public institutions*…to maintain law and order…and to promote national reconciliation and unity" (UN DSG 2011, italics mine). Avoiding such a division is consistent with African visions of security about compromise solutions in heterogeneous societies and the evolving African conflict resolution strategies in accordance with the Charter, which emphasizes intervention in cases of unconstitutional takeovers of power.

The stability of these structures is also conditional upon taking into account region-specific solutions. Sovereignty as responsibility creates subjects that are equal and accountable to each other within the regional context. In accordance with the relationship between accountability and

creating the potential for sovereign equality on the African continent, the AU speaks of its responsibility to promote region-specific solutions and take the lead in conflict resolution. African voices urged a unified African solution to win over other actors' preferences. In the spirit of former South African president Thabo Mbeki's call for "African solutions to African problems," AU official statements express the commitment to "spare no efforts to facilitate a peaceful solution, within an African framework (PSC 275 2011)." They call to the Libyan people to "allow Africans to continue to provide Africa-owned and Africa-led solutions to our problems" and "enable Africa to fully play its role in search for a solution […] and ensure that its position is given due consideration in the international arena" (AU HLP 2011a). Beyond the AU arguing for its own primacy in solving the Libyan conflict, Brazil also argued that the legitimacy of the Libyan uprising rests largely on its "homegrown" nature, and a foreign intervention could eclipse this narrative with detrimental consequences (S/PV.6498 2011, 6).

In accordance with the focus on direct protection in the responsiveness paradigm, the purpose of intervention is to stop physical violence immediately and preserve the bodily integrity of human beings. Therefore, intervention must be immediate and must be inserted at the point where individuals experience physical suffering. Intervention can, and at times must, be military, since it is the direct way of hindering the perpetrator to commit violence. The inequality between perpetrator and victim might further necessitate military action. Its aim is openly to weaken the regime and its capacity to exert violence, as confirmed, among others, by French Minister of Foreign Affairs Alain Juppé (2011a). "If we intervene alongside Arab countries, it is not to impose a final outcome on the Libyan people but in the name of universal conscience, which cannot tolerate such crimes" (Sarkozy 2011). The aim is to "protect civilians from the murderous madness

of a regime which, in killing its own people, has lost all legitimacy" (Ibid).

From the responsiveness model of responsibility, it also follows that not only it is legitimate to force the perpetrator to stop violence, but also removing him from power to prevent further attacks. Responsibility as responsiveness thus confers legitimacy upon regime change, which sits uneasily with the norms of non-interference and sovereign equality. This contradiction is visible from many statements displaying the logic of responsiveness. No leader arguing on the responsiveness platform would openly use the exact expression of "regime change," but almost all of them would say that Gadhafi has lost legitimacy, and need to step down.

The result of this inconsistency was a series of contradictory statements that followed from the responsiveness model. Echoing President Obama at the Security Council, Permanent Representative Susan Rice said early in February that "when a leader's only means of staying in power is to use mass violence against its own people, he has lost the legitimacy to rule" (S/PV.6491 2011, 3). Germany, which unexpectedly of a NATO member state abstained at the voting of resolution 1973, still argued that the aim of international action should be sending "clear messages to Qadhafi and his regime that their time is over and that he must relinquish power immediately" (S/PV.6498 2011, 4). In an op-ed on the pages of the New York Times signed jointly by Presidents Obama and Sarkozy and Prime Minister Cameron, the authors argued that "our duty and our mandate under U.N. Security Council Resolution 1973 is to protect civilians, and we are doing that. It is not to remove Qaddafi by force. But it is impossible to imagine a future for Libya with Qaddafi in power" (Obama et al. 2011). US Secretary of State Hillary Clinton called for continuing to "pressure on and deepen the isolation of the Qadhafi regime to make clear to Qadhafi that he must go" (Clinton 2011). According to the French Foreign Minister, "when you've

behaved as he's behaved, when you've used heavy weapons, planes and tanks to fire on the population, when you've threatened a city's entire population with a blood bath, when you're facing an investigation by the International Criminal Court and extremely tough sanctions at the United Nations, *you're out of the running*." He added, however, that "it's up to the Libyans to get rid of him" (Juppé 2011b).

Allegiance to the parties: impartial accountability and partial responsiveness

The discussion above already reflects the "attitude" of indirect and direct protection towards the sides to the conflict. The bias or impartiality against the "perpetrator" is especially evident in the case of direct protection. The focus on preserving structures as the object of protection in the accountability model feeds into what I have identified as the impartiality of the African Union's position, in a sense that the AU was careful not to alienate either sides to the conflict in its official discourse. It does not mean that individual African states did not take their various positions on the Gadhafi regime. South Africa and Nigeria, for instance, supported the resolution which authorized the International Criminal Court to prosecute Gadhafi (S/PV.6491 2011).

If, however, the object of protective action is a functioning institution, and the threat to that object is the use of force as such, then action must aim to prevent the collapse of such structures and the resort to arms by any of the contenders. Accordingly, the position of the AU as an organization was to repeatedly invite both the Gadhafi regime and the TNC to the negotiating table and reject any allusions to regime change. The PSC communique from 26 April says "the [Council] considers that it should be left to Libyans to choose their leaders and that international actors should refrain from taking positions or making pronouncements that can only complicate

the search for a solution. The role of the international community should be to help Libyans achieve their legitimate aspirations, in a nationally-owned and nationally-led process" (PSC 275 2011, 12). At a Security Council debate on 15 June, the representative of the AU's Ad Hoc High-Level Panel said that "nothing in the [African Union's] road map could be legitimately interpreted as stemming from an inclination to support any given party" (S/PV.6555 2011, 3). The AU was also reluctant to recognize the TNC as the interlocutor for the international community and legitimate representative of the Libyan people. When it finally did, it noted that its decision "should be based on the exceptional circumstances…and without prejudice to the relevant instruments of the AU, particularly those on unconstitutional changes of Government" (AU HLP 2011b). Recognition from the African Union followed a few days after the General Assembly has accepted the TNC to take over Libya's seat on 16 September. The AU's conduct stands in sharp contrast with the position of NATO that already recognized the TNC as the legitimate interlocutor for the Libyan people as early as 15 July (LCG 2011).

In contrast, as the responsiveness model defines the object of protection as victims of violence, this responsibility not only allows but also demands partiality on behalf of the victims. Obama, Cameron and Sarkozy write in their op-ed that when a head of state inflicts this violence, and loses its legitimacy, it is illegitimate to take his side, and even to treat him as a legitimate interlocutor for the Libyan people. "Leaving Qaddafi in power would be an unconscionable betrayal […] So long as Qaddafi is in power, NATO must maintain its operations so that civilians remain protected and the pressure on the regime builds" (Obama et al. 2011).

Grounds of legitimate action: consequences vs responsiveness

In the accountability model, legitimacy is measured in terms of the consequences of action

on the structures that are necessary for protection. Judging the legitimacy of protective action by consequences is not only a feature of the African Union's statements. In accordance with a wider configuration of protection in terms of responsibility, it is evident in other actors' discourse as well. The Brazilian initiative on the "Responsibility while Protecting" problematized NATO's intervention immediately as it came to close (A/66/551–S/2011/701 2011). According to the proposal, responsibility must imply answerability (i.e. accountability) for the use of force. The Security Council should retain an overview over the way actors carry out their mandates, especially if it implies the use of military force. As we will see in the subsequent chapter, not only had the Brazilian proposal wide positive reception after the Libya conflict, but accountability for the use of force became one of the most prominent themes in the debates on protection after Libya. In the course of the yearly informal interactive dialogues on the responsibility to protect, Brazil went on to propose two review mechanisms to hold intervening actors accountable: regular briefings familiar from peacekeeping missions and assessments from a panel of experts. Both were supposed to help the Security Council to retain supervision over the missions carried out with its authorization, and the right to adjust its decisions accordingly (Brazil 2015).

Holding accountable the actors that use force was not only a Brazilian aspiration. Numerous other states accused NATO of stretching the parameters of the resolution, and of stepping beyond the authorization of Resolution 1973 by deploying troops on the ground (India 2012). Read from the accountability model, this means that NATO stepped out of the parameters of its authorization, and thus the structures within which it was supposed to act. In other words, NATO's action endangered the very structures that ultimately guarantee any kind of protection on both levels. Not only did it contribute to dismantling the Libyan state, it also created a

precedent of overwriting the parameters of a UNSC resolution on the use of force. What constituted an immediate, timely and decisive response to the suffering of individuals in the paradigm of responsiveness, in the accountability model it stood for nothing else but "the old European politics of the cannon and revenge which privileges the systematic and exclusive use of force at the expense of non-military options in solving African conflicts" (Ping 2014).

For the high-ranking officials of leading NATO member states, legitimate action was one that stopped the suffering of Libyan people by the Gadhafi regime. For them, the intervention "prevented a bloodbath, saved tens of thousands lives" and liberated the people of Libya from "suffering terrible horrors at Qaddafi's hands" as he tried to "strangle its population into submission" (Obama et al. 2011). Acting otherwise, the "international community would have been condemned for failing to protect innocent life" said British Foreign Secretary William Hague (Hague 2011).

Perhaps some NATO members were interested in intervention, and responsibility as responsiveness provided a convenient rhetorical tool to justify this policy option. A sample of statements from countries other than NATO members, however, attests to the wider legitimacy of direct protection. South Africa voted for resolution 1973 to pass. In justifying its decision, its representative said that "the United Nations and the Security Council could not be silent nor be seen to be doing nothing in the face of such grave acts of violence committed against innocent civilians." He added, "the resolution was necessary to save the lives of defenseless civilians who are faced with brutal acts of violence carried out by the Libyan authorities" (S/PV.6498 2011, 10). The representative of Brazil, of a country that is traditionally wary of the use of force, said that all members of the UNSC felt the pressure to act in the Libyan case, and that urgency was imperative,

a definitive factor in not vetoing resolution 1973.[9] Facing such acts of violence, action had to be timely and effective. We should remember the most paradigmatic statement of responsibility as responsiveness from the French representative at the Security Council: "when civilians die, to think about how to protect them is good, but to protect them is much better" (S/PV.6650 2011, 19).

Conclusion: the incommensurability of protection models

In this chapter, I have presented a case study of the most prominent "RtoP intervention" after the endorsement of the responsibility to protect framework in 2005. The debate on the Libyan conflict demonstrates that the two models of protection lead to two different, but equally coherent and powerful narratives about every element of the intervention: what the conflict is about, what the object of protection is and what kind of action is warranted to solve the conflict. Furthermore, these two narratives rely on different models of responsibility.

Based on a database of public statements from the period of February to October 2011, I have reconstructed these two narratives as two coherent sets of arguments. In reality, both protection models have a strong appeal, as they both ingrain a powerful model of responsibility. Together with a partial and temporally limited understanding of what is happening on the ground, actors have these two models at their disposal to evaluate different courses of action and decide on the "best" one. As a consequence, actors grapple with making the right decision in between these two narratives. Wrestling with the two protection models is evident in many countries' position. Brazil had abstained at the voting of 1973 and was, as always, skeptical of what force

[9] Author's conversation with a former member of the Brazilian Permanent Representation at the Security Council, 8 December 2015, Berlin.

can achieve in solving the conflict. Yet it allowed the resolution to pass because decision-makers felt that something must be done, and done urgently, to prevent the bloodshed. India, like Brazil, argued in accordance with the accountability paradigm, but it also abstained at the vote allowing it to pass. In their statements, Germany and South Africa argued in accordance with the responsiveness model, although Germany eventually refused to carry it to its logical extreme. Whereas the former, surprisingly for a NATO member, abstained, South Africa voted in favor of the resolution despite its record of wariness of Western-led military interventions and being a regional power in the AU, the champion of the indirect protection model in the Libyan crisis.

The fact that actors are shifting positions between the two models of responsibility in their statements, or appear as accepting responsiveness arguments during the conflict but then argue in accordance with the accountability paradigm afterwards, points to the fact that the "persuasiveness" of the two models of responsibility is dependent on time. Given the kind of action it commands and legitimizes, responsibility as responsiveness might be more imperative in the midst of the conflict, where information is sporadic, less accurate or available, and actors can only rely on their estimates of the worst-case scenario as a counterfactual. As actors gain more knowledge about the facts of the ground, and as the consequences of actions become clearer over time, it is easier to evaluate events in terms of their consequences – a core element in the accountability paradigm. Thus, in the short-term, responsiveness might be stronger; in the long-term, we can expect the accountability paradigm to gain upper hand. If this is the case, the incompatibility of the indirect and direct protection models within the responsibility to protect framework adds to the contradictions within the logic of preventive military intervention (Paris 2014) that pull its legitimacy apart and make it problematic to implement.

CHAPTER 6: THE ENDURANCE OF THE RESPONSIBILITIES TO PROTECT

RtoP debates beyond Libya at the General Assembly, 2012-2018[10]

The intervention in Libya had far-reaching consequences for the RtoP framework, primarily because the members of the Security Council that authorized a no-fly zone over Libya felt that NATO's ground intervention violated the terms of Resolution 1973. We know already, however, that the question of exit strategy is particularly pressing for the direct protection model: when is protection accomplished? In accordance with the logic of direct protection, as long as physical harm is a possibility, protection is not complete. Freezing a conflict or putting it on hold is postponing the risk of harm, and thus it does not relieve the responsibility-holders of their commitment. From this perspective, putting troops on the ground eventually to remove Gadhafi from power complied with the imperative of physically protecting individual human beings. For those that read the situation through the lenses of indirect protection, however, waging a war on the ground and removing Gadhafi by force eventually threatened the very state institutions that constituted the object of protection. Not only did the NATO intervention threaten the Libyan state with collapse, it also meant disrespecting the terms of the resolution that authorized the use of force. Many states on the Security Council that allowed Resolution 1973 to pass felt "betrayed" by the course of intervention (Verhoeven et al. 2014, 526), not to mention the African Union that was completely sidelined.

[10] The country statements for the GA debates are available on the website of the International Coalition for the Responsibility to Protect, a New York-based think tank: http://responsibilitytoprotect.org/index.php/about-rtop/government-statements-on-rtop

This "buyer's regret" over Libya [Singapore, 2012] manifested in many states being vocal in condemning the intervention, and some, such as Russia, pledged never allowing the Libyan scenario happen ever again (Clover 2012). In accordance with the structure of the two protection models, whereas in the first months of Libya the compelling urgency of Gadhafi's threats favored direct protection arguments, it quickly swung to the other extreme once the consequences of the intervention became clearer. This implication was most visible in the reactions to the unfolding civil war in Syria (Morris 2013; Brockmeier et al. 2016), where China and Russia consistently opposed any use of force. Traditional opponents of the use of force, including Brazil and India were reinforced in their conviction that resorting to force often creates more problems than solutions. Brazil was so inspired by the Libyan events that it proposed in November 2011 the Responsibility while Protecting (RwP, A/66/551–S/2011/701 2011). The aim of the initiative was to introduce the obligation of reporting to the Security Council while carrying out its mandates, the right of the Council to monitor the course of intervention and alter its course.

Consequently, although the Libya case was initially hailed as a "textbook case" of RtoP (Evans 2011, 7), after the intervention many predicted the end of the doctrine (Rieff 2011). These observers asked whether Libya meant the end of RtoP. Given the main argument of this dissertation, however, the question rather is whether Libya meant the end of the *direct* protection model. This last chapter addresses this question and argues that although states indeed learn and assess the implications of the interventions, and that Libya demonstrated the challenges of the direct model, this latter continues to produce legitimate arguments of protection. To do so, I shift the analytical focus from state discourse and debates at the Security Council to the General Assembly of the United Nations. If in the preceding chapters we saw how

the conceptual boundaries and principles of protection were constructed and manifested in practice, in this last chapter we look at how practice drives the revision of principles, i.e. how states redefine the conceptual boundaries in light of the lessons of implementation.

One objection to this move can be that to assess RtoP's relevance, we should analyze the practice of intervention. The first answer to this objection is that such an approach would not be consistent with the main assumptions and purposes of the thesis. The focus throughout the dissertation was on justifications and communicative action, rather than on eliciting the alleged motives for any particular action, as discursive behavior was expected to tell us most about the acceptable rules of the game. We have been investigating what is generally accepted as legitimate and why, what action might be legitimately justified as protection, and the answers to these questions were lying in the discourse (Ruggie 1998; Hurd 2011).

Second, the literature on RtoP has convincingly shown that the occurrence of military interventions are an inadequate indicator of the norm's hold. Military interventions are always a result of multiple factors instead of simply whether the norm commands enough compliance. Furthermore, RtoP has never been only about military intervention, but a range of measures, non-coercive ones included, with which the international community engaged with a conflict. Finally, asserted regularly in the literature, the kind of action that RtoP commands is subject to prudential principles, which can also advise against military means (Brown 2003; Evans 2008b; Welsh 2013).

Why focusing on the debates at the General Assembly instead? Following Ruggie's observation, a norm's resilience, and intersubjective standards of appropriate behavior are mostly evident in the justifications states offer for their behavior as well as the reaction to these justifications (Ruggie 1998, 98). The analytical yields of the General Assembly debates have been

harnessed in various studies of RtoP, for showing how the shared understandings have changed over time, and how they impacted the validity or the implementation of the norm itself (Ercan 2019; Welsh 2019).

At the same time, the GA dialogues unfold in a different format than the Security Council debates, which further increase their analytical value. The latter address situations which require "timely and decisive" decision in a setting where power inequalities are institutionalized in the form of permanent or non-permanent membership. The GA format, on the other hand, resembles the ideal-typical speech situation in which, for the sake of the debate, all participants are equal. This allows all arguments to enter into the debate with equal force, facilitating, in principle, that the best argument wins the day. For these reasons, we might treat the GA debates as a form of argumentative action, where the objective is not to decide upon the best implementation of a rule, but rather to determine "what the rule means in the first place" (Risse 2000; Deitelhoff 2009). These debates serve to provide orientation by "thinking something through" together, and arrive at a common understanding of an event or a norm by the better argument (Venzke 2016, 14).

Seeking to establish a common understanding of what a particular event should mean, actors evaluate the validity claims involved in every statement in terms of both facticity and normativity. While actors thrive to establish interpretive consensus by convincing others, they also remain open for persuasion. "Arguing," in Risse's definition, "constitutes a learning mechanism by which actors acquire new information, evaluate their interests in light of new empirical and moral knowledge [and] reflexively and collectively assess the validity claims of norms and standards of appropriate behavior" (Risse 2004). Therefore, analyzing these debates

comes closest to what states "really" think about RtoP, the value of ideas and models, and these debates provide the closest to an "honest" evaluation of indirect and direct protection in practice.

A possible criticism against this approach might be that the GA debates are rather instances of epiphenomenal interaction than that of communicative action, which does not have any consequences to the practice of intervention. Actors just endlessly repeat their preferred phrases on these occasions. In that case, however, they would waste an opportunity to shape the scope of the norm in terms of their preferences. It is thus in their interest to take the debate "seriously" and evidence suggests that they do so. In addition, even if participants to the debate were primarily interested in establishing an interpretive consensus based on their own convictions of the norm, which we can safely assume, they have no choice but to present their arguments in the conceptual framework of the responsibility to protect, which in our case means the two existing models of protection. They need to convince others by relying on the rules of the discourse, deriving from both the specific institutional setting and the models of indirect and direct protection.

The first GA interactive dialogue in 2009 and the two last ones in 2018 and 2019 were organized as part of the formal agenda of the GA, whereas the ones in between were informal. The GA dialogues every year follow a relevant RtoP theme defined by the Secretary General's Report prepared for the occasion. The debates focused on, respectively, implementation (2009), early warning and assessment (2010), the role of the regional and sub-regional arrangements (2011), the meaning of timely and decisive response (2012), state responsibility and prevention (2013), collective responsibility and international assistance (2014), reaffirming the commitment to RtoP (2015), mobilizing collective action (2016), accountability for prevention (2017), from

early warning to early action (2018) and, finally, the responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity (2019).

In this chapter, I trace the annual informal and formal interactive GA dialogues on RtoP, and focus on the post-Libya period between 2012 and 2018. I follow the contributions of the Security Council members at the time of Libya. Apart from the P5, members were Bosnia and Hercegovina, Brazil, Colombia, Gabon, Germany, India, Lebanon, Nigeria, Portugal and South Africa. This adds up to a sum of 62 documents, as not all states contributed to all debates. Within this body of selected documents, I identify the recurrent themes and show how the arguments around them continue to reflect the two responsibilities to protect.

Formal or informal dialogue at the General Assembly

Before considering the main question about the direct model of protection, we should return briefly to ask whether Libya discredited the framework writ large. Is RtoP important at all, or is it so irreconcilably polarized that the international community slowly backtracks from it? Keeping the RtoP on the agenda of the UN in itself does not necessarily prove support for RtoP. This might be explained by some institutional lock-in effect, whereby once RtoP is on the agenda, it is less costly to continue with the dialogues rather than arguing for discontinuing them. A similar argument was made about how RtoP was initially "locked" in the discussions by replacing the right to intervene – it was more difficult to explicitly argue against a responsibility to protect than a right to intervene (Chesterman 2011). Aidan Hehir provides another explanation, arguing that RtoP has become a "hollow norm" (Hehir 2018), which means that, in the case of RtoP, the social levers of rhetorical entrapment or pressure towards compliance do not function. Norm violators can subscribe to RtoP with impunity and therefore, keeping debating RtoP is inconsequential.

The actual trajectory of the GA debates, however, suggests something different. At the 2017 informal dialogue, General Assembly members discussed the option of putting RtoP back on the formal agenda – the first such occasion since 2009. The difference between a formal and an informal discussion on RtoP is that a formal setting obliges the UN Secretariat to prepare verbatim and sound recording of the meetings and make them available for all participants. It is also obliged to publish the proceedings in the Journal of the United Nations. Most importantly, however, formal settings are the only fora where resolutions and decisions are adopted (Permanent Mission of Switzerland to the United Nations 2017; General Assembly Rules and Procedures). In other words, putting RtoP on the formal agenda allows for keeping an official track of the debate, and for binding decisions to be accepted. Undoubtedly, formal debates would increase RtoP's "binding" nature as well as its status as a normative framework.

States that argued in favor of including RtoP in the formal agenda were aware of the benefits this change would bring. Many countries, otherwise very critical of the use of force argued for reincorporating RtoP in the formal discussion. Both Brazil and India argued that such a format would allow states to clarify and understand better each other's position on RtoP, and emphasized the importance of translation and official minutes in studying these positions [Brazil, India 2017]. They openly argued that these procedures would help improving RtoP in its crucial role. Having observed the continuing problems within Libya, the subsequent crises in Mali, as well as the deadlocks over Syria, we could assume that most states would agree with the representative of the Russian Federation who argued that the fragile consensus of 2005 had evaporated [Russia 2018]. The goal of RtoP in Libya, he argued further, was only to achieve regime change, and that on no account does it differ from its predecessor, the notion of "humanitarian

intervention."

However, RtoP was included in the formal agenda of the GA in 2018, and remained an agenda item in 2019 too. For recent accounts in norm theory, this development attests to RtoP's enduring *validity* as a norm throughout the years, despite the backlashes. Its successful reintegration in the formal GA discussions, as opposed to arguments about RtoP's hollow nature, attests that RtoP's validity remains strong (Deitelhoff et Zimmermann 2018; Welsh 2019). It also confirms Ramesh Thakur's argument that despite the failures of interventions under the RtoP umbrella, the international community still has a demand for a global framework to discuss and regulate intervention (Thakur 2016). However, even if we might say that RtoP retains its significance after Libya, can we say the same about direct protection? We can now turn to the more specific question of how the two models fare in the aftermath of Libya. Was direct protection, if not RtoP, hollowed as a result?

"Sequencing"

Whereas the question of formal or informal debate was about RtoP's overall validity, dominant themes in the debate reveal the enduring tension between the two protection models. The first among these themes is that of "sequencing." Sequencing in the context of RtoP refers to the question of whether all peaceful means should be dutifully exhausted before the international community proceeds to military coercion. In the 2001 ICISS report, this notion was expressed in the form of the precautionary principles that should determine the use of force, and more specifically, that of last resort. The ICISS suggested that the responsibility to prevent has precedence over reaction, and the responsibility to prevent should be "fully discharged" before considering military intervention (ICISS 2001, 36). Yet, in the next sentence, the Commissioners

relaxed this criterion arguing that instead of actually exploring all the options, if there are reasonable grounds to believe that they would not work, the international community might legitimately opt for military coercion.

Since Secretary General Ban Ki Moon introduced the three pillar structure of RtoP in his 2009 report *Implementing the Responsibility to Protect*, sequencing refers both to military intervention being a last resort and the hierarchy between its three pillars of state responsibility, assistance and the responsibility of the international community. Sequencing the pillars means that before intervening, the international community should verify whether the state in question has done everything in its power to protect its own population. This question is particularly pertinent in cases such as the one in Sri Lanka, where the government claimed to use military force in order to protect its citizens from Tamil terrorism. This very same case implied grave human rights violations on the other hand, and put the question of sequencing in a new light.

Proponents of indirect protection argue in favor of sequencing. The logic of indirect protection is apparent: protection is the outcome of order, and order is only guaranteed by the sustained adherence to institutional and normative structures. Adherence means respecting not only the hierarchy of the RtoP pillars and thus the primacy of states in protecting, but also the layered institutionalized ways of non-coercive modes of intervention. The argument is often formulated in a way that pillar three, and within it military means, should be the last resort. "[T]he use of military force should not be our first, but our last option. This is what stands behind the notion of 'logical sequencing' alluded to in the RwP concept paper," argued the Brazilian representative (Brazil 2016). The strict adherence to sequencing is also evident in the Indian [2013] contribution. Military force should not only be the last resort among the pillars, but also

within pillar three. As the Indian representative argued, for the use of force to follow, "not only all peaceful means must be exhausted, but also all non-military coercive means" [India 2013].

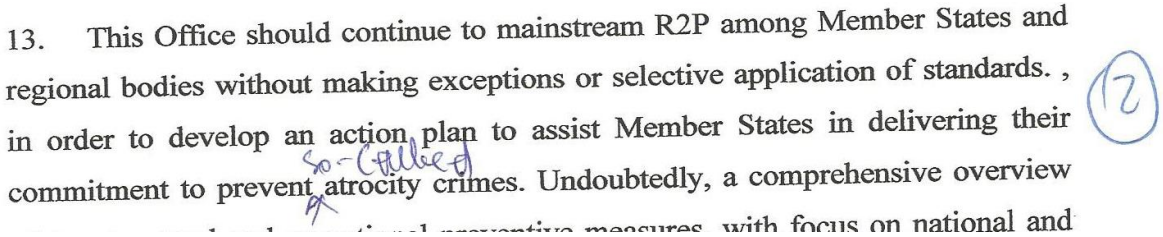
Opponents of sequencing, on the other end of the spectrum, argue from the platform of direct protection. In terms of the direct protection logic, the imperative is to prevent and ease suffering, and deciding on the most effective course of action to achieve this purpose. From the direct logic perspective, setting up any tentative list of non-coercive measures that need to be tried out is irresponsible action. We might recall the French representative from the 2015 debate saying that "thinking about protecting people is good, protecting them is even better" [France 2015]. The Secretary General himself argued in the first debate that "in dealing with the diverse circumstances in which crimes and violations relating to the responsibility to protect are planned, incited and/or committed, there is no room for a rigidly sequenced strategy or for tightly defined 'triggers' for action" (Ban 2009).

Those arguing from a direct protection perspective think of the three pillars as strengthening and complementing each other, providing a wide range of toolkit in the service of one purpose: protection in a sense of shielding individual human beings from violence. Germany [2012], for instance, opined that "the full equality of all three pillars precludes an 'either/or approach' with regard to prevention and more coercive action, as well as a strict sequencing of actions under each pillar. Rather, we need to ask ourselves in each case how best to achieve the objective of protecting those who are or may be the target of atrocities." The United Kingdom and the United States [2012] seconded Germany in arguing that the pillars are "closely linked" and "mutually reinforcing" rather than sequential. This means that peaceful coercive measures should be backed by a credible threat of enforcement. France, the most vocal advocate of

"action" under the direct protection model, goes as far as arguing that sequencing, just as setting any predefined criteria for action is a pretext for inaction. Despite all the repercussions of the events in Libya, the legitimacy of arguments pronounced by France, the UK and the US are all based on direct protection, the right to life and that states have an inverse obligation to protect, i.e. to accept alternative protectors on their territory.

The debate about sequencing resurfaces in the form of merging the different aspects of RtoP, such as those of prevention and response. Whereas Germany (2012) would affirm that it remains "committed to the application of R2P as a holistic concept that merges prevention and response" in accordance with the direct protection logic, Brazil would argue from the platform of indirect protection. The Brazilian representative proposed prevention not to be confused with response [Brazil 2016]; if military intervention is defined as prevention, she argued, it is problematic to disentangle what kind of action correspond to each other the pillars, ultimately leading to their confusion. The question of muddling the meaning of RtoP is not only prevalent with regard to sequencing. Whether it is possible or desirable to expand the meaning of the responsibility to protect constitutes a recurrent topic of debate on its own.

"Diluting" the meaning and scope of RtoP


13. This Office should continue to mainstream R2P among Member States and regional bodies without making exceptions or selective application of standards. , in order to develop an action plan to assist Member States in delivering their commitment to prevent so-called atrocity crimes. Undoubtedly, a comprehensive overview

Excerpt from the Nigerian contribution to the 2013 debate on State Responsibility and Prevention

The next recurrent theme in which direct protection arguments are strongly present at the GA debates concerns "diluting" or expanding the meaning of the established definitions

around RtoP. In 2005, UN member states narrowed the scope of RtoP from "large scale loss of life" and "large scale atrocities" to the four specific crimes of war crimes, genocide, crimes against humanity and ethnic cleansing. Although in practice there is always a political debate whether a particular situation constitutes any of these four crimes, specifying RtoP's scope this way brought about consensus and helped moving the debate forward. Except ethnic cleansing, a crime emerging from the context of the Balkan Wars in the early 1990s and the jurisdiction of the ad-hoc tribunals, all three crimes were already codified in international humanitarian law and the Geneva Conventions (1949) as international crimes.

Ever since, two types of arguments appear in the RtoP discourse, and these two types correspond with the indirect and the direct protection models. The first position, in accordance with the indirect protection model, is adamant that the international community should not depart from RtoP's definition as agreed upon in 2005. Proponents of this position assert the text of the World Summit Outcome Document as the non-negotiable base for policy discussions and any further debate. The second type of argument treats these RtoP crimes as broader categories that describe impermissible human suffering. For this reason, actors that advance these arguments use umbrella terms such as "large scale loss of life" or general categories such as "atrocity crimes" interchangeably with those stricter definitions of the 2005 Summit Outcome Document.

If in practice it is debated whether a conflict amounts to the four RtoP crimes, why is there such resistance against broadening the scope of RtoP beyond these four? The answer lies in the conflict between the logic of indirect and direct protection. Some argue that the notion of atrocity crimes is an umbrella term, supplying a more convenient short formulation (Scheffer 2009). It is

in this sense that the Secretary General used it in his 2018 annual RtoP report (Secretary General 2018, 1), saying that atrocity crimes in the document is to refer solely to the four acts specified in the RtoP framework. As Straus points out, however, the use of "atrocity crimes" is purposive for the policy community that rallies behind atrocity prevention. From that perspective, the formulation of atrocity crimes or mass atrocities is supposed to generate support for particular policy options, and in this sense, they replace the concept of "genocide," the call word throughout the 1990s. The term atrocity crimes emphasizes the commonalities among the four criminal acts, that are "large-scale, systematic, organized, wide-spread" and "sustained" (Straus 2016) without the criterion of targeting a group as whole (essential for the definition of genocide and ethnic cleansing, but not for the other two crimes). Thus, atrocity crimes relaxes definitional specificities among the four in favor of emphasizing the gravity and systematic nature of these acts.

This issue of clarity is important for the indirect-direct protection dichotomy. Indirect protection insists on accepted normative and institutional structures, whereas direct protection focuses on alleviating suffering. Thus, the logic of indirect protection would demand that international actors do not depart from agreed upon definitions. Despite the assurances from the Secretary General that "atrocity crimes" only refers to these agreed upon definitions, any attempt to extend or dilute definitions elicits widespread resistance from the vanguards of indirect protection.

The Russian representative dismissed the 2017 report of the Secretary General mentioning "atrocity crimes" as being built around non-existent definitions [Russia 2017]. The handwritten insertion "so called" in front of atrocity crimes in the 2013 Nigerian draft signals similar caution about the concept. China recurrently, as in 2015 and 2017, opposes any digression

from the 2005 World Summit Outcome Document. In the words of the Chinese representative, "countries should not expand this concept or interpret it at will, much less to distort or abuse it" [China]. The Brazilian representative also objected to "broad and non-defined expressions" such as "atrocities" as synonyms for the four R2P crimes. The Indian representative seconded its Brazilian counterpart arguing that this "change in phraseology is not appropriate. There are four crimes clearly identified by the WSOD" [India, 2012] and RtoP "must remain confined to these four crimes" [India 2013].

What counts as a dilution of meaning from the perspective of indirect protection, and an unwelcome divergence from the structural (normative, institutional) foundations of RtoP, makes perfect sense from the perspective of direct protection. For this latter perspective, expanding the scope of RtoP is not muddling the scope of the norm; it is to act in accordance with the logic of responsibility as responsiveness. In terms of this latter, responsibility is widespread, prospective and derives directly from the fact of suffering. Therefore, responsibility is not triggered when the situation is officially determined to fall under one of the crimes under RtoP and it is essentially the same if it happens in the context of "atrocity crimes," "large scale mass atrocities" or "crimes against humanity." These institutional categories are secondary to creating an opportunity to respond to the situation that calls for responsiveness. In addition, direct protection projects responsibility in the future, also in the cases of potential harm and the risk thereof. Responsibility as responsiveness might be undefined in its boundaries, but it always targets protecting people from physical harm. Therefore, talking about atrocity crimes, or large-scale loss of life is truthful to the logic of responsibility as responsiveness encompassed in the direct protection model. From this perspective, it is legitimate to talk about "mass atrocity situations" [Nigeria 2015], the

"growing risk of mass atrocities around the world" [UK 2015], or the unacceptability of inaction "when faced with threats or instances of atrocities or mass violence" [US 2014], as opposed to threats of the "four identified crimes" [South Africa 2012].

Security Council "code of conduct"

Relaxing the conceptual criteria for "action," as we have seen in the case of diluting the meaning of RtoP, is only one element that follows the logic of direct protection. The second is to facilitate action by reducing institutional constraints, the most prominent being the unanimity rule among the P5 of the Security Council. Not exactly the sign of deflation, the direct protection model fuels recent attempts to propagate refraining from "veto" when it comes to "atrocity crimes." This so-called Security Council "code of conduct" has come in different forms and propositions ever since the ICISS report, and fell through in the negotiations preceding the World Summit in 2005. Some commentators regarded the proposal as the key innovation behind RtoP, and the concept's true potential to change the practice of intervention. Without it, in 2005 the international community was left with an "RtoP lite" (Weiss 2006, 750).

From the indirect protection perspective, the capacity of the Security Council to regulate the use of force is essential, and so is the unanimity rule. Undoubtedly subject to power politics, the rule is an institutional constraint on intervention. For the model of direct protection, the veto power blocks life-saving responses to conflict situations. In the language of France, one of the champions of direct protection, the imperative of responsiveness is condensed in the notion of "action." Just as previously the sequencing of the pillars, or the narrow conceptual definitions, the possibility of veto is an obstacle for action. It is not surprising therefore, that France put the

SC code of conduct back on the agenda. What is surprising is that it could count on widespread support.

According to the 2013 French proposal, once the nature of the crime is determined by the Secretary General at the request of minimum 50 UN member states, the code of conduct would immediately apply (Fabius 2013). This proposal took the form of a policy initiative jointly sponsored by France and Mexico in 2015 (Political statement 2015), to secure "collective and voluntary agreement" among the P5 to refrain from using their veto in the case of "mass atrocities" because the "veto is not a privilege, but an international responsibility." The statement is open for all member states to sign up, and counted 96 signatories as of March 2017.[11] A similar proposal of the same year was put forward by Liechtenstein, representing the so-called ACT (Accountability, Coherence, Transparency) Group. At the core of this latter proposal is a "pledge to not vote against credible draft Security Council resolutions that are aimed at preventing or ending [genocide, crimes against humanity and war crimes]" [Liechtenstein 2015]. Among the signatories of the latter proposal as of April 2018, we find France and the United Kingdom, who have consistently supported the idea in the context of informal dialogues as well [see, for instance, France 2016, 2018, UK 2016]. Missing from the signatories are the US, China and the Russian Federation as well as South Africa, India and Brazil. With the exception of the US, all of those that are not on the list consistently favor indirect protection in their statements.[12] The position of the US, otherwise consistent with the direct protection model, reflects the will to

[11] http://responsibilitytoprotect.org/veto-map-5c-con_8697710_c58611cb486917bd4405c3304c5d3591eeb7fcb8.jpeg

[12] Although Brazil has signed up to the France/Mexico joint proposal. http://responsibilitytoprotect.org/veto-map-5c-con_8697710_c58611cb486917bd4405c3304c5d3591eeb7fcb8.jpeg

preserve the freedom to act, also evident in the American refusal of signing up to the Rome Statute of the ICC.

From the perspective of the two protection models, the suspension of the veto corresponds with leaving a wider possibility of international action. It favors direct protection, in a timely and decisive manner, and eliminates institutional gatekeeping in the way of those that "feel morally obligated to act." In reverse logic, the insistence on the veto conveys not only a commitment to existing institutional structures in which non-coercive and coercive international action is regulated, but also the commitment to leave this institutional check on direct protective action, however biased and politicized it may be.

"Accountability"

Opposing the idea of a Security Council code of conduct does not mean that supporters of indirect protection are not critical of its current functioning. Criticisms spring from various political agendas related to the long-awaited reform of the Council [Brazil, India], but also from promoting the role of regional and sub-regional organizations within their own geographical area [South Africa 2017]. Nevertheless, the Security Council remains the cornerstone of regulating the use of force. It played a key role in the Brazilian proposal on responsibility while protecting, which envisaged the accountability of those that carry out SC mandates to the mandating body. The debate on the Brazilian proposal represent a strong critique on the direct protection logic from the perspective of the indirect model. We might also say that it was an attempt to regulate the direct protection model within the indirect one, making actions under the direct model accountable within existing structures. The RwP proposal speaks about regular reporting to the Security Council, and the Council retaining oversight of the actions carried out enforcing its

decisions, including the right to change course. In other words, it proposes a framework in which to control and supervise the imperatives of the direct logic. Importantly, the RwP proposal was not about discarding the direct model – it was not questioning its legitimacy. On the contrary, it approved not only protective action, but also the dictates of direct protection in which human lives must be saved by direct action. Reflecting on the implications of the direct protection logic in Libya, however, RwP aimed at putting constraints on direct protection known from the indirect reasoning: institutional control and accountability, within the functioning institutions of the international community.

Accountability is the key concept behind indirect protection, and its prominence in the GA debates signals the strengthening of indirect protection. In addition to the accountability of those authorized to use "all necessary means" to carry out a SC mandate, accountability was also prominent with regard to state performance. Despite the complaints about the deleterious effects of military intervention, in the context of the GA debates many states identified with the position of the responsible state and reported on their recent domestic measures from that perspective.

This development harks back to the argument within the literature on whether RtoP is a norm and what shows if it is. A realist argument here has been that since RtoP does not command interventionist behavior, its strength as a norm is questionable. Alex Bellamy, on the other hand, pointed to the numerous other ways in which RtoP has been institutionalized, within the UN system and beyond. The prevalence of accountability as a theme at the General Assembly debates proves that while states remain cautious towards the use of force or argue against it adamantly, in other respects they willingly adopt the subject position of the accountable state. Throughout

the GA debates, and especially in the context of the one on state accountability, many reflected willingly on the relevant RtoP-related domestic measures, and this discursive behavior went beyond the traditional North-South divide.

Assuming the position of the accountable state, participants to the GA debate reported about recent measures on both the national and the international plains, which, in their view, would help prevent crimes related to RtoP. Depending on their formulation, they fall within either the indirect or the direct protection camps. The US representative reported the creation of the Atrocity Prevention Board under the Obama administration as well as the adoption of the Arms Trade Treaty to prevent the illicit flow of arms to atrocity perpetrators [2013]. Many states, including Nigeria [2016] and Germany [2012; 2013] reported the nomination of a national R2P focal point to propose policies adopted in accordance with RtoP. Germany [2013] added that the RtoP focal point is now involved in inter-ministerial working groups on civil crisis prevention and early warning and thus in the early stage policy formulation for both national and EU levels. The UK mentioned introducing into the legislation an act on preventing sexual violence committed by peacekeepers [2012]. Germany [2012] added a range of legal measures to its domestic legal system on regulating hate speech and holding accountable individuals suspected to be involved in committing atrocities in Libya or Syria.

Nigeria described a plethora of domestic reforms directly related to RtoP. These included the establishment of a human rights officer's desk at the Nigerian army, and monitoring and improving the situation of internally displaced people in camps on Nigerian territory. This aspect of accountability is characteristic of the indirect protection model, which puts particular emphasis on strengthening the state as the primary agent of protection.

References to the fourth and last prominent aspect of accountability, that of criminal accountability, happened in accordance with both the indirect and direct protection models, but the latter faded over time. Examples of the indirect-model inspired statements are those that affirm the complementarity of international criminal jurisdiction to that of the state [France 2015; 2017] or those that advocate for creating strong national institutions to prosecute individuals on the national level [Nigeria 2013, US 2015]. Those inspired by the direct protection model were all about removing acting heads of states because of their individual responsibility in inciting the crimes enshrined in ICC's Rome Statute. These propositions have taken two forms. The first context in which criminal accountability took a distinctly direct protection form was the early years of the Syrian conflict, where France, the UK and the US argued in strong resemblance with Libya, that President Assad lost the legitimacy to rule [France 2012, 2013, UK 2013, US 2013]. The second context is the prosecution of the acting heads of states, a particularly sensitive issue for African states, given that the Sudanese president Omar al-Bashir was the first to face such charges while still in office. These references faded over time and were replaced by arguments in accordance with the indirect protection model.

Indirect and direct protection beyond the General Assembly

The topics of sequencing, stretching the meaning of RtoP, the Security Council's code of conduct and that of accountability demonstrate that indirect and direct protection keeps informing debates on what it means to protect civilians even beyond the Libyan intervention. The extent to which the two models are ingrained in our thinking of protection is further demonstrated by a recent case at the International Court of Justice (ICJ).

In a landmark decision of 23 January 2020, the International Court of Justice (ICJ) ordered The Republic of Myanmar to protect its Rohingya minority from genocide. Systematic and widespread attacks started in October 2016 against individual members and the livelihood of the Rohingya, an ethnic and religious minority in Myanmar, with attacks scaling up throughout the next years. Human Rights Watch (HRW) and the United Nations documented the targeted killings, destruction of livelihood, and testimonies of the stream of refugees into neighboring Bangladesh. MSF has been present since the beginning of the crisis, providing not only vaccinations and health care, but also access to drinkable water, sanitation and other basic life necessities alongside the Bangladeshi state. No substantive countermeasure was taken, however, until the smallest country on the African continent, the Gambia initiated procedures at the ICJ against the government of Myanmar on 11 November 2019.

The Gambia's Minister of Justice, Abubacarr Marie Tambadou served at the International Criminal Tribunal for Rwanda between 2003 and 2016 in different ranks, in the last four years as special assistant to the prosecutor. In that capacity, he helped convict leading military figures responsible for the Rwandan genocide. In its *Application,* the Gambia asked for the preliminary protection of the rights of the Rohingya, who, it argued, are victims of a genocide.

Myanmar responded that, while it is possible that human rights violations were committed in the course of its so-called "clearance operations," those do not amount to genocide. In addition, the Gambia does not have the rights to sue it in front of the ICJ, as it is not a distressed party by the actions in question. However, the ICJ saw enough grounds for it to take preliminary investigation and established its own competence. In its ruling, it ordered Myanmar to take all necessary measures to prevent similar attacks against the Rohingya, to control its military and

irregular armed forces so that the attacks cease, to prevent the destruction of any evidence of the atrocities of the last years, and to submit reports on a regular basis of its measures taken to these effects until a final resolution of the case is achieved.

At first sight, the Gambia vs. Myanmar case is a "traditional" interstate dispute in front of a traditional international tribunal. Looking closer, however, it is possibly a precedent-setting case that continues to reflect the main questions between indirect and direct protection, as well as accountability and responsiveness. The condition of the ICJ's competence is that there is a dispute between the states, and given that Myanmar's action do not "affect" the Gambia directly unlike Bangladesh, for instance, which receives much of the Rohingya refugees, there is a question whether it can qualify as a distressed party. This question, however, directly translates into a question of responsibility that we have identified throughout the dissertation. How is the responsibility cast? Is Myanmar accountable for the direct consequences of its actions on another state, in this case, Bangladesh, or is the responsibility cast universally, *erga omnes,* meaning that the Gambia had just as much right as "ultimately, everyone" to bring a case in front of an international tribunal? That there is no easy answer to this question is indicated by separate opinions to the Court's ruling. Affirming the severity of the case at hand, Judge Xue, Vice-President of ICJ argues nevertheless that Gambia was not directly affected and thus did not have the right to bring the case to the ICJ.

"It is one thing for each State party to the Convention against Torture to have an interest in compliance with the obligations erga omnes partes thereunder, and it is quite another to allow any State party to institute proceedings in the Court against another State party without any qualification on jurisdiction and admissibility" (Xue 2020). Judge Xue's opinion reflects the indirect

protection model not only in the sense of distributing responsibility in terms of accountability for consequences, but also because it recalls the traditional institutional channels of seeking justice and it objects to these channels being overridden in the name of universal obligations.

Her opposite is the separate opinion by Judge Cançado Trindade, who argues on the platform of the "imperative of overcoming the extreme vulnerability of victims" (Cançado Trindade 2020). His main reference point is the II World Conference on Human Rights that took place in 1993 in Vienna, and which focused on the protection of the most vulnerable groups "so as to overcome their defenselessness." On these grounds, and restating the importance of acting on this imperative, Cançado Trindade argued that the gravity of the situation is such that it

> "requires the ICJ to go beyond the strict inter-State dimension (the one it is used to, attached to a dogma of the past), and to concentrate attention on victims (including the potential ones), be they individuals, groups of individuals, peoples or humankind, as subjects of international law, and not on inter-State susceptibilities."

If Judge Xue's position reflected the logic of indirect protection, Judge Cançado Trindade's argumentation reflects the reasoning behind the direct protection model on many accounts. These include the imperative of action that stems from human vulnerability, the object of protection being individuals, groups of individuals, peoples or humankind. Furthermore, its forward-looking character ("including potential victims") and the possibility that based on this imperative state-based structures might be overwritten ("requires the ICJ to go beyond the strict inter-State dimension (the one it is used to, attached to a dogma of the past))" also illustrates the logic of direct protection.

The ICJ established its competence and ruled in favor of preliminary protection of the Rohingya. What the brief overview of the debate shows, however, is that the question of protection is structured in terms of the two models of protection, both of which continue to frame legitimate arguments. The focus of this thesis has been to identify the source of this disagreement over protection, to analyze its structure and the way it impacts the Responsibility to Protect and protection in general. Eventually, to the question why the international community cannot "learn" from past interventions like the one in Libya and converge on an acceptable framework for protection, the argument of this thesis is that the international community is learning in terms of two protection models, each with a different template for action.

Conclusion

What conclusions emerge from this chapter's overview of the General Assembly debates of the post-Libya years? The first is that RtoP as a framework has not been discredited, despite predictions to the opposite effect in 2011. This argument is not only supported by the continuing informal interactive dialogues at the GA, but also by upgrading RtoP to its formal agenda in the last two years, thereby ensuring an official track record of the debates and the possibility of binding decisions. Second, within RtoP, indirect protection seems to gain upper hand, in accordance with the accounts observing a return to state-based protection (Welsh 2019). This is the case not only for wariness of military involvement, but mostly at the various proposals based on the notion of accountability on all levels. On the state level, adopting the subject position of the responsible (i.e. accountable) state, national institutions and infrastructure is strengthened in accordance with RtoP. On the international level, the Responsibility while Protecting demonstrates an attempt to regulate the direct protection model within the accountability

structures prized by indirect protection. The accountability of those that are mandated to carry out SC resolutions is the main example. The third conclusion is that despite the backlash of direct protection after its implementation in Libya, we see that direct protection continues to invigorate arguments in the debate and that these arguments are widely regarded as legitimate. Some direct protection arguments had no support and quickly faded, such as advocating regime change based on criminal accountability of heads of states. Others, the most prominent example being the Security Council "code of conduct," however, enjoy wide-ranging and ever increasing support. Overall, the debates continue to unfold along the lines of indirect and direct protection, which define the following positions on the respective themes (Table 7.)

Indirect protection	Themes		Direct protection
Yes	Sequencing		No
No	Diluting the meaning of RtoP		Yes
Yes	Accountability	Those mandated to use all necessary means	No
Yes In the sense of strengthening state institutions		Responsible state	Yes In the sense of mainstreaming human rights protection
Yes Based on complementarity (i.e. primacy of national jurisdiction)		Criminal accountability	Yes Allowing for removing acting heads of states

Table 7. Summary of the dominant GA themes from the perspective of indirect and direct protection

The Libyan intervention was controversial, because it pitted two legitimate but incompatible protection models against each other. Each following their object of protection and the moral imperatives and obligations that come with it, such a conflicting outcome was not

surprising. After Libya, the main question was whether such an experience convinced the international community, i.e. UN member states, struggling with "putting protection in practice," that the imperative of direct protection produces politically intractable and morally undesirable consequences. To answer this question, I looked at the debates at the General Assembly, as the forum coming closest to revealing a representative evaluation of two models' merits.

Analyzing all GA debates after Libya between 2012 and 2018 and the recurrent themes of sequencing the pillars of RtoP, diluting the meaning of agreed-upon concepts, the "code of conduct" of the Security Council and accountability in its various incarnations, I have found that direct protection keeps its appeal. Eight years after the Libya intervention, both protection models display remarkable endurance. What is left to be addressed in the Conclusion is thus the endurance of the two models and the question whether, if both indirect and direct protection are here to stay, the international community will keep facing the oppositional pulls of two legitimate ways of protecting.

CONCLUSION: THE RESPONSIBILITY TO PROTECT BETWEEN INDIRECT AND DIRECT PROTECTION

The story of the responsibility to protect is thus a story of two responsibilities – that of responsiveness and accountability – and two corresponding models of protection. Indirect protection aims to preserve the state as the fundamental political unit in which social order is sustainable. Direct protection operates through "naked humanity," and the intimate responsibility to intervene in cases of distress. RtoP's logic and origins encompass both. Both are morally and politically defensible principles, and as this dissertation has shown, neither has disappeared permanently from the stage of international politics. At the same time, in a state-based international order, there is a tendency to regard indirect protection as the default option and direct protection as the exception. From this starting perspective, direct protection need not necessarily challenge indirect protection, but could rather serve as temporary "fix" when indirect protection does not work. What this thesis has shown, however, is that the configuration of both models is such that once a decision is made following either of the two, it is impossible to regress to the other. Since they prioritize different objects of protection and are constructed along the lines of two different models of responsibility, they often prove incompatible in implementation.

The focus of this thesis has been to identify the source of this disagreement over protection, to analyze its structure and the way it impacts the Responsibility to Protect and protection in general. Eventually, to the question of why the international community cannot "learn" from past interventions and converge on an acceptable framework for protection, it argued that the international community learns in terms of two protection models, each with a different template for action.

In other words, I argued in this thesis that the inconsistency of RtoP is, in fact, consistent. It follows the logic of two different models of protection, which I call indirect and direct protection. The model of indirect protection sees the provision of physical security as a social good guaranteed only by functioning institutions, and thus it prioritizes protecting these institutions by establishing institutional pathways of accountability. Direct protection, on the other hand, aims at protecting the individual human being from corporeal violence and suffering, and in this endeavor allows for overwriting institutional structures that rulers instrumentalize to carry out systematic persecution. Whereas state structures are the guarantee for protection in the former, for the latter it might be the main vehicle for persecution. Indirect and direct protection thus sees the "state" in fundamentally different terms.

For direct protection, responsible action is to identify the source of violence, and to quench that violence before it is inflicted. For indirect protection, violence is harmful for its potential to rupture institutional frameworks that are the key for conflict-resolution, and thus the protective effort goes towards channeling conflict-resolution to an institutional platform, for the sake of preserving institutional structures. The explanation to the puzzle of RtoP's "consistent inconsistency" is that the concept retains this particular normative structure, so that neither the indirect nor the direct protection model "wins" over the other. The lessons of interventions feed back to both models, reaffirming their structure instead of reconciling them. There is no synthesis, because for indirect protection, the lesson of the Libya intervention, for instance, remains that functioning state structures would have been the better solution for protection, whereas for direct protection, based on the responsiveness paradigm, saving civilians that were marked for attack defined the legitimacy of the measure. Contestation therefore does not bring clarity over

RtoP's meaning and applicability. Since neither of the models disappear definitely from the debate, implementation remains problematic.

The thesis as a whole aimed to capture why the two models remain incommensurable and resist a synthesis. To this question, it offered two responses, one historical and one conceptual. The historical account in Chapters 1-3 traced the idea of protection as physical security and the two protection models back to their original context. It did so by reconstructing the normative dilemma they responded to, and portrayed them all as innovative solutions to those normative dilemmas. In Chapter 1, the dilemma emerged from the ambivalent status of internally displaced persons that, in principle, were under the protection of their state of nationality, but were denied that protection in practice. This contradiction indicated that the two are not automatically intertwined in the concept of sovereignty. Putting the question of IDPs on the agenda and characterizing their ambivalent status in terms of a "vacuum of responsibility," incoming UNHCR commissioner Sadako Ogata and Special Rapporteur Francis Deng conceptually disentangled the notion of protection as political status (i.e. nationality and residence on national territory) from protection as ensuring physical security and respect for human rights. Ogata and Deng have also showed that, in practice, neither implies the other. In their respective roles, these norm entrepreneurs turned IDPs from being invisible to being visible, and pointed to the fact that being "at home" does not mean being protected. Protection as physical security in terms of being free from persecution and having basic means of living is not a natural derivative of political status on national territory; it is a social good that needs to be generated, if not by the country of origin, then by other actors. This, I have argued, is the birth of protection as (state) responsibility and at the same time the emergence of the question of who can and should fulfill that responsibility.

Chapters 2 and 3 provided two different answers to this question. Chapter 2 showed that if protection is a responsibility, it is first and foremost that of the state by virtue of the social contract. The state becomes sovereign because it voluntarily undertakes the obligation of generating the social goods of protection and means of living. By virtue of the social contract, the obligation of protection becomes the main pillar of the state itself. Chapter 3 showed how the responsibility of protection may be fulfilled by actors other than the state, but based on a different relationship of responsibility: one that connects the vulnerable human being to anyone else that has the capacity to address this vulnerability. In terms of that responsibility, the state also bears a "reverse" obligation of protection, that of accepting alternative actors fulfilling the responsibility of protection. From the historical and normative contexts of "sovereignty as responsibility" and the "right to assistance," two different notions of responsibility and protection emerged. The former harnessed the concept of accountability at the core of responsibility, based on the subject's transcendental freedom to act as it chooses, and being accountable for the consequences that its actions bring about. The right to assistance, on the other hand, builds on responsibility as responsiveness to human suffering and vulnerability. Whereas in the case of accountability, responsibility belongs to the actor that "caused" harm, in the case of responsiveness, everyone is responsible for alleviating suffering.

Having their historical trajectory presented, Chapter 4 supplied the conceptual argument for why these two models are not only different, but also why they resist a synthesis. It showed how both models are constitutive in function and how, based on the responsibility notion they operate with, they "constitute" not just two aspects of the same world, but two different worlds. The first is the community of accountable subjects whose equality is predicated on their

answerability to each other for the consequences of their actions. The second is a community where responsibility to prevent or avert harm is universal, where every member of the community is already implicated in responsibility by the fact of suffering, irrespective of the casual relationship between that suffering and the subject's actions. As a consequence, the two models constitute different objects of protection, imperatives of responsibility and reasonable protective action.

This being the case, however, the existence of the two models of responsibility that define the indirect and direct models of protection create incommensurable imperatives for protective action. Chapter 4 showed that, for the indirect model, the object of protection would be the integrity of state institutions, whereas direct protection might dictate dissolving those state institutions that are mobilized for inflicting violence on the population. Indirect protection would channel international action towards institutional pathways; direct protection disperses responsibility widely, under the imperative of immediate action. As demonstrated in Table 1 on the spectrum of responsibility-related arguments, in all cases indirect protection favors strengthening structures, whereas direct protection overwrites such structures to facilitate immediate action in the face of distress. The incommensurability results from both models remaining legitimate and constituting a dilemma, in the original sense of the word. Is it permissible to expose people to life-threatening violence, while attempting to preserve the institutions so that "normal" political order and conduct can resume? On the other hand, is it permissible to remove perpetrators forcibly from a position of power, therefore definitely preventing them from inflicting harm, if crumbling state structures are to be the long-term

consequence? Actors opt for either of the positions in particular cases, without providing a universal or definite resolution.

Zooming in on one prevalent intervention debate in particular, that of Libya, we have seen in Chapter 5 how the two models of protection pull apart concerted international protective action. The different focus on protecting the population, indirectly through preserving institutions or directly through military force, have produced different templates for action. This case shows with particular clarity the dynamics of the two protection models, not only because the intervention debate unfolded in RtoP language, but also because the two regional organizations most committed to conflict resolution clearly argued from the platform of the two protection models. Whereas the African Union worked to achieve a negotiated power-transfer, another regional organization, NATO, identified Gadhafi as the perpetrator of violence and concerted its efforts to block his capacity to inflict harm on the Libyan population. The chapter showed in detail the frames with which the public officials of both organizations described what was happening in Libya. For representatives of indirect protection, the main concern was regional instability if the Libyan state unravels. Hence, they advocated a negotiated solution to the crisis. To facilitate this political, negotiated transition, the necessity of which they did not deny, officials arguing from the indirect perspective avoided characterizing either side of the conflict in demonizing terms and depicted the Libyan crisis as a violent political struggle. Representatives of the direct protection model, on the other hand, described the conflict in terms of perpetrators and victims. They concluded that the immediacy of this violence generates the imperative for responsible action, which must be timely and decisive to protect the physical integrity of the human beings. For that purpose, all necessary means are allowed, including the imposition of military force between

perpetrators and victims, and targeting the perpetrator itself. Avoiding the explicit use of the term "regime change," representatives of direct protection nevertheless argued that those in position of authority that commit violence against their population on this magnitude have "lost the legitimacy to rule."

In view of NATO's political and military supremacy, it is the direct protection model that governed the way in which the intervention in Libya unfolded. The comparative strengths and weaknesses of the models became visible as a result. For instance, the emphasis of direct protection on urgency pull more weight when decision-makers have to evaluate counterfactuals and potentials, and the imperative is to prevent the worst-case scenario. The priority given to negotiations by indirect protection might appear as hesitation and losing time, endangering human beings in the process. In contrast, on the mid-to-long term, the consequences of any action become more apparent, strengthening the arguments in favor of indirect protection. The Libya intervention triggered a wide range of critical assessments of NATO's action, from the "responsibility while protecting" proposal to Russia and China blocking P3-sponsored resolutions in the case of Syria.

In Chapter 6, I therefore asked what happens to the two protection models after such a significant blow. Have the consequences of Libya overshadowed the direct protection model, in particular? Has it discredited it entirely? What became of the relationship between the two? Analyzing the General Assembly debates on the RtoP between 2012 and 2018, I have found that while many UN member states remain critical of the Libya intervention, the direct protection model continues to inspire legitimate arguments across various geographical and ideological divides. The endurance of the direct protection perspective is evident in, for instance, the

arguments for not sequencing RtoP's pillars, in the recurring proposals for the veto restraint in RtoP cases, or in the attempts to expand the meaning and scope of RtoP to make them more encompassing.

In conclusion, how has the dissertation contributed to our understanding of RtoP and international relations in general? I believe that the thesis offers four main contributions. The first contribution is a novel account of RtoP's internal dynamics based on the models of indirect and direct protection. Indirect and direct protection offers a framework to account for the consistent inconsistency of RtoP's implementation. It shows that RtoP rests on two centrifugal forces that pull concerted action apart each time RtoP's pillar three, that is, the responsibility of the international community is on the agenda. Showing the different objects of protection, defined by alternative notions of responsibility, enabled me to show the structure of the dilemma interventions present.

Second, the thesis opened to scrutiny not only the norm of RtoP, but also its conceptual constitutive units by showing that the meaning of protection is historically contingent. For most of the twentieth century, protection did not mean providing physical security and basic means of living, and it was relegated to two specific organizations that carried out protection in accordance with their mandate. In none of these cases was protection a task for states, or associated with military intervention. If the notion of protection has undergone fundamental changes, neither its meaning nor that of responsibility should be taken for granted. As opposed to the literature that equates protection with enforcing the respect for human rights, this dissertation asked how protection became what it is, and how it was conceptually reconciled with the notion of intervention.

Third, based on these two contributions, my argument provides a welcome addition to the explanations available in the literature. To the question of why RtoP's implementation remains inconsistent, norm scholars answer with RtoP's strength, its inner complexity and resilience, whereas realists answer with RtoP's inconsequentiality. This thesis has put forward a third possible answer in the form of identifying the two internally coherent and legitimate, yet incompatible models of protection. The origin and structure of the two models contextualize norm scholars' observations that RtoP is inherently complex and contains statist and cosmopolitan elements. It provides a better grasp of what exactly state centrism or cosmopolitanism mean in the context of protection, a particular social goal that was formulated after the Cold War. My argument complements the account of norm researchers by showing a specific aspect of RtoP's complexity, which has a significant impact on how it can be implemented. Compared to realist accounts, the thesis argues that RtoP does have a consequential normative structure when it comes to arguing about the third pillar, which defines the range of acceptable justifications for the use of force, even if that use of force is motivated by other reasons.

Finally, to further account for the enduring contestation within RtoP's structure, the thesis has offered a conceptual framework of normative evolution, which I call embedded norm entrepreneurship. I have built this normative framework by elaborating on a recurrent theme in norm research, where normative developments are propelled by resolving contradictions between professed values and actions, or between an actor's identity and actions. I pointed to how, and under what circumstances norm entrepreneurs in protection construct these contradictions in the first place, and how they can successfully propose normative frames that provide a synthesis to this normative controversy. I did so by deploying the narrative method of

emplotment, by reconstructing the normative dilemmas in a protection-related human project and the normative proposal that provided a solution for them. In the development of protection, these meaningful human projects were, first, helping IDPs by making the UNCHR relevant in changing circumstances, second, conceptually solving the dilemma of African statehood after the Cold War, and third, reconciling humanitarian rescue with state sovereignty. The framework of embedded norm entrepreneurship combines the agency of norm entrepreneurs and structural factors in the form of resolving a normative contradiction in the context of a protection-related project.

By virtue of being invested in a normative project, norm entrepreneurs articulate a normative proposal that offers a solution to the normative contradiction at the core of their projects. Chapters 1-3 followed this mechanism to explain that the notion of protection as (state) responsibility was a response to the contradiction surrounding the status of IDPs as being both protected and unprotected. In Chapter 2, sovereignty as responsibility resolved the dilemma of reconciling interference with the sovereignty of the African state that needed both strengthening and embeddedness in a framework of external assistance. It also created a regional community of equal sovereigns that had the right to legitimately interfere in each other's internal affairs. In Chapter 3, the right to assistance responded, through medical humanitarianism, to the contradiction between the moral imperative of responding to suffering and the sovereign right to deny that response. The normative models of the responsibility to protect were thus shaped in these three episodes of constructing and resolving a normative contradiction through embedded norm entrepreneurship.

These contributions open multiple avenues for further research, with the potential to cross disciplinary boundaries. The argument's most immediate application is to extend it to the analysis of intervention dynamics of the early 1990s and of the years after the 2011 Libya intervention. Second, elaborating on embedded norm entrepreneurship further contributes to the constructivist research program on norm dynamics, including norm evolution and contestation. Initially, this research program conceptualized norm research in terms of norm life cycles that displayed a certain kind of linearity. Norm research increasingly questions this linearity of norm development and theorizes contestation as a default mode of applying norms. A closer focus on resolving normative conflicts can further nuance these dynamics of norm evolution.

Third, the thesis invites a more detailed analysis of the early institutionalization of protection, and of the institutional politics behind formulating protection as responsibility. From the perspective of the historian of institutional development, this calls for archival research on the United Nations as it adapted to the post-Cold War environment. One project along these lines would focus more closely on the transformation of UNHCR articulating the question of state responsibility, especially in the context of the Gulf War and the Bosnian War, and the political conflicts within the organization in the context of which Ogata's policies won over the alternatives. The second avenue takes the shape of a comparative project between different institutional logics, looking at how the two traditional protective organizations responded to similar protection challenges. This project would compare the introspection of the ICRC with the assertive UNHCR policy to the challenge of protection, in producing historically contingent understandings of protection. Building on earlier work that compares the two organizations in terms of mandates, internal structures and flexibility, a research project can provide a better

understanding of the institutionalization of protection. In this latter regard, a comparison can be extended to the understanding of protection in the context of UN peacekeeping, where protection, as was the case for the ICRC, meant first and foremost the protection of personnel amidst the new security challenges.

A historical and genealogical approach can further inspire a more comprehensive genealogy of protection. This genealogy can be extended to a historical overview of protection, starting from the origins of the refugee regime in the 1920s. What this genealogy offers is a different view of protection as a political activity or mechanism that, in different iterations, compensates for anomalous political status through history. As Hannah Arendt documents in her *The Decline of the Nation State and the End of the Rights of Man*, refugee protection originates in the anomalous status of statelessness, the result of depriving masses of their political rights as citizens of nation states. Just as with the case of refugees in the early 20th century, protection in the case of IDPs came as a response to their anomalous status of being protected in principle but unprotected in practice because of their not having crossed an internationally recognized border. Protection as a mechanism for compensating human beings that are relegated to the margins of political order is another potential avenue for future research.

RtoP's two models also raise questions for normative theorizing on who should protect and how the prudential principles should apply in particular situations. How does the existence of two different notions of responsibility modify the principles of remedial responsibility for protection? Is institutional moral agency defined, for instance, by accountability, or by the responsiveness of its associated individuals or units? How should individuals associated with institutions balance the intimate call of the responsiveness paradigm with the accountability on

the collective level – if we can associate responsiveness with the individual and accountability with the collective level in the first place? The existence of the two models can generate further fruitful inquiries into these questions.

Finally, the findings of the thesis not only facilitate further research into the conceptualization of protection, but also into the role of responsibility as a distinct mode of governance. As such, it fits into a promising, emerging research agenda that regards responsibility as a substitute mode of governance in policy fields that are less amenable to regulation, and where responsibility can "cater towards governance problems that require a flexible set of norms" (Vetterlein 2018, 546; Hansen-Magnusson 2019). Understanding how responsibility fulfills this particular function in the field of protection demands accounting for its specific structure and the two responsibilities to protect that RtoP comprises (Burai 2020 forthcoming). In that respect, the closing words of this dissertation also constitute a new beginning to understand the dynamics of responsibility, within RtoP and beyond.

ANNEX

Consulted documents for Chapter 1 THE BIRTH OF PROTECTION AS RESPONSIBILITY

Special Representative of the SecretaryGeneral on internally displaced persons Reports submitted to the General Assembly (GA) and to the Commission on Human Rights (CHR)	CHR_1993_1_ECN.4199335 CHR_1994_1_E CN.4 1994 44 CHR_1994_11_E CN.4 1995 50 Add 1 Colombia CHR_1995_1_E CN.4 1995 50 Add.3_Compilation on legal norms CHR (1995)_E CN.4 1995 50 GA_1993_11_A 48 579 GA_1994_11_A 49 538 Report GA_1994_2_A RES 48 135 GA_1995_11_A 50 558 Report GA_1995_2_A RES 49 174 GA_1996_11_A 51 483 Note of SG GA_1996_11_A51483Add 1 Report GA_1996_3_A RES 50 195 Protection of and Assistance to IDPs
Roberta Cohen & Refugee Policy Group (RPG)	RPG (1990) Cohen_UN human rights bodies should deal with IDPs RPG (1991) Conference proceedings_Human_rights_protection_for_internally displaced RPG (1994) Cohen_International_protection_for_internally_displaced_next steps RPG (1995) & Brookings_Improve International Assistance for IDPs Cohen (1996) IDPs_An extended role for UNHCR
UNHCR	UNHCR (1993) The State of World Refugees_The Challenge of Protection UNHCR (1994) Operational Experience with IDPs Note on International Protection 1989 Note on International Protection 1990 Note on International Protection 1991 Note on International Protection 1992 Note on International Protection 1993 Note on International Protection 1994 Note on International Protection 1995 Note on International Protection 1996

Consulted documents for Chapter 5 THE PRACTICE OF PROTECTION
Indirect and direct protection in the 2011 international intervention in the Libyan Arab Jamahiriya

United Nations Security Council & General Assembly meeting records	20110226_UNSC Resolution 1970 20110226_UNSC_Meeting 6491 20110301_UNGA_Meeting 76_Suspending Libya from CHR 20110317_UNSC_Meeting 6498 20110317_UNSC_Resolution 1973 20110324_UNSC_Meeting 6505 20110328_UNSC_Meeting 6507

	20110404_UNSC_Meeting 6509
	20110503_UNSC_Meeting 6527
	20110504_UNSC_Meeting 6528
	20110509_UNSC_Meeting 6530
	20110531_UNSC_Meeting 6541
	20110615_UNSC African States_Draft Presidential Statement on Libya
	20110615_UNSC_Meeting 6555
	20110627_UNSC_Meeting 6566
	20110728_UNSC_Meeting 6595
	20110830_UNSC_Meeting 6606
	20110916_UNSC_Meeting 6620
	20110921_UNGA_Debate
	20110926_UNSC_Meeting 6622
	20111004_UNSC_Meeting 6627
	20111026_UNSC_Meeting 6639
	20111102_UNSC_Meeting 6647
	20111109_UNSC_Meeting 6650
UN Secretary General	SG_Remarks at Extraodinary Summit of the Assembly of the AU_25 May 2011
	SG_Remarks at Paris Summit_19 March 2011
	SG_Remarks at the Cairo Conference on Libya_14 April 2011
	SG_Speech at 1st Libya Contact Group in Doha_13 April 2011
League of Arab States	AL_Resolution 7360_12 March 2011
	GCC_Statement calling for no-fly zone_7 March 2011
African Union	AU (2011) AU Liaison Office to support transition_21 Oct 2011
	AU (2011) AU Summit in Malabo_1 July
	AU (2011) Consultative Meeting on Libya_25 March
	AU (2011) Deputy Chairperson statement at LCG Istanbul meeting_15 July$
	AU (2011) Deputy SG_26 August
	AU (2011) HLP 4th meeting_26 April
	AU (2011) HLP Pretoria meeting_26 June
	AU (2011) HLP second meeting_Addis Abeba_25 March
	AU (2011) HLP_14 September
	AU (2011) HLP_26 May
	AU (2011) Jean Ping intervention_26 August
	AU (2011) Ping attends Paris Conference on New Libya_2 September
	AU (2011) Ping statement at ICG Rome meeting_5 May
	AU (2011) PRess release on attacks_16 August
	AU (2011) Press Release_AU presents conflict resolution plan to Libyan parties
	AU (2011) Press Release_AU visits Tripoli_10 April
	AU (2011) Press Release_Consultation with partners_9 May
	AU (2011) Press release_HLP Nuakchott meeting
	AU (2011) Press Release_Malabo_21 July

	AU (2011) Press Release_Ping at ICG meeting_10 June
	AU (2011) PSC communiqe_261_23 February
	AU (2011) PSC communiqe_265_10 March
	AU (2011) PSC communiqe_275_26 April
	AU (2011) PSC communiqe_285_13 July
	AU (2011) PSC communiqe_291_26 Aug
	AU (2011) PSC communiqe_294_21 September
	AU (2011) PSC communiqe_297_20 October
	AU (2011) PSC press statement_Nueakchott meeting briefing_23 March
	AU (2011) Report of HLP Chairperson_26 April
	AU (2011) Report of HLP Chairperson_26 August
	AU (2011) Urgent Appeal from 30 African Heads of State_26 May
	AU_Malabo_Proposal for Framework Agreement on Political Solution
	AU_PSC_Report_26 April
NATO	0224_NATO Secretary General's statement on the situation in Libya
	0225_NATO Secretary General convenes emergency meeting of the North Atlantic Council
	0318_Statement by NATO Secretary General following the United Nations Security Council Resolution 1973
	0322_Statement by the NATO Secretary General on Libya arms embargo , 22-Mar.-2011
	0324_NATO Secretary General's statement on Libya no-fly zone, 24-Mar.-2011
	0325_Press briefing by NATO Spokesperson Oana Lungescu and GpCapt Geoffrey Booth, Operations Division, International Military Staff
	0329_Libya Group Chairman Statement
	0331_Press briefing on Libya by NATO Spokesperson, joined by NATO Military Committee Chairman and Commander of Operation Unified Protector , Lieutenant General Charles Bouchard
	0405_Press briefing on Libya by NATO Spokesperson, joined by Chief of Allied Operations
	0408_Press Briefing on events concerning Libya
	0412_Transcript of the joint press briefing on events concerning Libya
	0413_Libya-Contact_-Group-Doha
	0414_NATO_Statement on Libya following Berlin working lunch
	0419_Transcript of the press briefing on Libya by the NATO Spokesperson and Brigadier General Mark van Uhm, Chief of Allied Operations, Allied Command Operations (SHAPE) , 19-Apr.-2011
	0426_Transcript of the joint press briefing on Libya by Carmen Romero, NATO Deputy Spokesperson and Lieutenant General Charles Bouchard, Commander of the Operation Unified Protector
	0503_Oana Lungescu, the NATO Spokesperson and Vice Admiral Rinaldo Veri, Commander Maritime Forces for Operation Unified Protector
	0510_Carmen RomeroBrigadier General Claudio GabelliniCommander Peter Clarke
	0513_Transcript of the press briefing on Libya
	0517_Press briefing on Libya by NATO Spokesperson Oana Lungescu and with Wing Commander Mike Bracken, the Operation Unified Protector Spokesperson

	0520_Press briefing on Libya
	0526_G8-Summit-Deauville
	0527_Press briefing on Libya
	0531_Press briefing
	0601_NATO SG
	0608_NATO_Statement on Libya following the Working lunch of NATO Ministers of Defence with non-NATO Contributors to Operation Unified Protector
	0610_Press briefing
	0614_Press briefing
	0617_PRess briefing
	0621_Press briefing
	0628_Press briefing
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	0802_Press briefing
	0816_Press briefing
	0822_NATO SG Statement
	0823_Press briefing
	0830_Press briefing
	0901_Libya Contact Group_ Paris
	0901_Press point
	0906_NATO Press briefing
	0913_Press briefing
	0927_Press briefing
	1111_Press briefing
	1118Press briefing
	1120_Statement by NATO SG
	1121_North Atlantic Council Statement on Libya
	1121_Press conference
	1123_SG STatemenet
	1124_Press briefing
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	1131_Historic Libya Trip
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