

Where is R2P grounded in international law?

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## ABSTRACT

The Responsibility to Protect doctrine (R2P) is not a new practice of international customary law, It has grounding in international law. This can be shown through an analysis of international humanitarian and human rights law. This research shows that states have responsibilities, duties and obligations in international law to prevent and protect their citizens from harm. It also shows that R2P as a concept, does not add anything new to existing international customary norms on war crimes, crimes against humanity, genocide and ethnic cleansing. R2P reinforces these duties by declaring them and it is not distinctive in any way from the responsibilities already inherent in the Charter of the United Nations, the International Court of Justice Statute, the Geneva Conventions, and Vienna Convention on the Law of Treaties, the Nuremberg Charter, the Hague Conventions or any other international customary norm in international law related to humanitarian or human rights law. The legal status of R2P is limited to the crime of genocide and war crimes, On the other hand crimes against humanity and ethnic cleansing must also be clearly identified within these two frameworks and not be separated from them. This research also shows that the justification for intervention into a state is limited to war crimes under the Nuremberg, Hague and Geneva Conventions, and genocide is limited to the Genocide Convention.

R2P is not a new idea, It has been at the heart of the United Nations General Assembly discussions since 1946. Thus credit must be given to the International Law Commission and their *magnum opus* over the past 70 years on the responsibilities of states. The Security Council is the only means through which a state can legally intervene in the affairs of another state. This is determined by the legalities of a breach of International Peace and Security. Each participatory state of the United Nations is responsible for supplying in a timely manner the 'means necessary' to the Security Council to implement their decisions for the maintenance of International Peace and Security. These responsibilities have not changed, They are firmly grounded in international law.

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## TABLE OF CONTENTS

- 1. INTRODUCTION** - Treaties are not empty gestures states have obligations in international law. Principal research findings. Page 7
  - 1.0.1** The chapters. P.8
  - 1.0.2** Thesis application. P.9
  - 1.0.3** How does international law link to the Responsibility to Protect doctrine? P.11
  - 1.0.4** Accreditation – modern and historical influences. P.14
  
- 2. CHAPTER 1 – BACKGROUND - A HISTORICAL PERSPECTIVE.**
  - 2.0.1** Background - What historical notions of responsibility existed within the United Nations before the 2005 World Summit outcome? How does this link in with R2P? P.17
  - 2.0.2** A historical perspective of responsibility. P.21
  - 2.0.3** Jurisprudence and codification of the principles of international law governing state responsibility within the International Law Commission proposals. P.26
  - 2.0.3** Summary of chapter 1. P.33
  
- 3. CHAPTER 2 - RIGHTS, DUTIES AND RESPONSIBILITIES OF STATES – THE MODERN VIEW. P.35**
  - 3.0.1** The final draft articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts (2001). An analysis
  - 3.0.2** Is the act an internationally wrongful act of the state? P.36
  - 3.0.3** What are the elements of an internationally wrongful act? P.38
  - 3.0.4** Can the state use internal or municipal law as a defence for violations of international law? P.39
  - 3.0.5** What attributions of conduct place the state at fault in international law? P.40

- 3.0.6** What factual relationships must be in place to attribute obligations on the state? P. 47
  - 3.0.7** What happens when there is an absence of governmental control? P.49
  - 3.0.8** Can attribution be placed on a state *ab initio*? P.52
  - 3.0.9** Summary of chapter 2. P.54
- 4. CHAPTER 3. THE RULE OF LAW - A DESCRIPTIVE ANALYSIS. P.57**
- 4.0.1** What rules in law provide us with foundations for application of contract on Treaty Law? P.60.
  - 4.0.2** What remedies do contracting parties have in relation to a breach or a violation of a treaty provision? P.63.
  - 4.0.3** What is international customary law? P.64.
  - 4.0.4** Which international laws, (conventions, treaties or statutes) best explain and define crimes against humanity, war crimes, ethnic cleansing and genocide? P.67
  - 4.0.5** The crime of ethnic cleansing. P.68
  - 4.0.6** The crime of genocide. P.72
  - 4.0.7** War crimes. P.75
  - 4.0.8** Crimes against humanity. P.90
  - 4.0.9** Summary of chapter 3. P.95
- 5. CHAPTER 4. STATE DEROGATIONS - AN APPLICATION ANALYSIS. P.97**
- 5.0.1** The International Covenant on Civil and Political Rights (1966) P.98
  - 5.0.2** Prohibited violations. P.99
  - 5.0.3** Non-prohibited violations. P.100
  - 5.0.4** Criteria for a state of emergency for derogations. P.104
  - 5.0.5** An analysis of derogations for the state of emergency. P.109
  - 5.0.6** What are the most commonly cited/used articles for derogations? P.109

- 5.0.7** What are the reasons given for a state of emergency? P.111
  - 5.0.8** How many states are in breach of the iccpr due to not identifying the reasons for the state of emergency? P.112
  - 5.0.9** Can any of these situations be interpreted as a reason for intervention? P.114
  - 5.0.10** What happened to civilian rights? P.115
  - 5.0.11** How does this affect R2P application? P.115
  - 5.0.12** Discussion – Where do we go from here? Further considerations. P.117
- 
- 6.** CHAPTER 5 – CONCLUSION. P.123
- 
- 7.** BIBLIOGRAPHY
    - 7.0.1** Primary resources. P.129
    - 7.0.2** Secondary resources. P.132
    - 7.0.3** Table of legal contents. P.135
    - 7.0.4** Multilateral treaties and other documents (Signatories and parties). P.137
- 
- 8.** APPENDIX. P.142
    - 8.0** Digital online database on armed conflict. P.142
      - 8.0.1** International law commission (yearbooks). P.148
      - 8.0.2** United Nations digital resources. P.151
      - 8.0.3** Security Council resolutions. P.154
      - 8.0.4** Security Council resolutions (By country and year) P.162
      - 8.0.5** Derogations of States from 1966 to 2012 ICCPR (1966). P.190

INTRODUCTION – *Treaties are not empty gestures states have obligations in international law.*

## PRINCIPAL RESEARCH FINDINGS

The principal findings of this research show that states are subject to international customary law. They are dependent on their bilateral and multilateral relationships in contract and their sovereignty is subject to their compliance with international law. State legitimacy is found to be dependent on state actions, which include its responsibility to prevent and to protect its citizens from harm.

Treaties are not empty gestures: they are agreements that bind the state to duties, obligations and responsibilities in international law. States are restrained in their affairs and their objectives by their obligations to protect and prevent breaches and violations. These obligations include implementing the treaties, statutes and conventions they are a party to, into their local jurisdiction, local education and military programmes. These agreements that they choose to make, contain prevention applications and they include obligatory non-discrimination rights. The practices that the state must not engage in include genocide and war crimes, Crimes against humanity are non-derogatory as they amount to breaches of international peace and security. The Security Council can implement resolutions to enforce compliance with these international laws and norms to intervene in a state where rights are being abused and international law is being violated.

These rules of law have not changed. The responsibilities of states are not new ideas or practices but are firmly grounded in international law, both in application and in principle. This research helps to clarify that states have responsibilities in international law to refrain from committing atrocities. These obligations extend to supplying the Security Council with the means necessary to conduct and complete the application to restrain a state in violation of their duties. These are not just responsibilities: the state is bound to act in a manner consistent with international law as a party to the United Nations Charter and the Statute of the International Court of Justice (1945). These obligations are well documented and the Security Council has shown its willingness to follow through, to prevent abuse and protect these duties in international law. This research shows how the Responsibility to Protect (R2P) doctrine adds nothing new to these duties and obligations. It provides a declaration to remind states of these duties. R2P cannot enforce these duties because it is not international law in its own right, It

is grounded in international law and it is restricted by these obligations to comply. This research also shows how ethnic cleansing and crimes against humanity are not separate from genocide and war crimes. They are additional to these and cannot as yet be used alone to justify intervention.

Lastly this research shows how during a state of emergency some rights may be derogated from in international law. The International Covenant on Civil and Political rights shows us how states can use the state of emergency to divert and legally refrain from international customary laws under certain provisions. This means under these circumstances it may be illegal to intervene in a state where the state is clearly not committing war crimes and or genocide even though it may be suspected of collective abuse of civilian rights. If the international community cannot prove that the state is in a conflict with another party under the Geneva Conventions the state cannot be accused of committing war crimes during a state of emergency. This research clarifies these points under four chapters.

## THE CHAPTERS

The first chapter clarifies that R2P is not a new idea but that it is well grounded in the United Nations General Assembly (GA) discussions and the International Law Commission's work on responsibilities of states since 1946. The second chapter explores the rights and duties of states under international law. It clarifies the elements of internationally wrongful acts of a state, as well as attributions of conduct, defences in international law, factual relationships between the state and subject and situations when there is an absence of governmental control. This Chapter focuses on the International Law Commissions work from the 1960s through to 2001. The third Chapter clarifies the foundations of law that are applicable to R2P. This includes the Charter of the United Nations and the International Court of Justice Statute, (1945) as well as the Vienna Conventions on the Law of Treaties (1969). Lastly it clarifies the limits of ethnic cleansing, genocide, war crimes and crimes against humanity. The fourth chapter focuses on the International Covenant on Civil and Political Rights (1966) and the state of emergency. It includes prohibited and non-prohibited violations and a section on the statistical approaches of states during a state of emergency since 1966. This research clarifies that states regularly breach and violate international law and that the Security Council and United Nations is limited in their



frameworks to intervene in a state, which is not committing war crimes or genocide. It is followed by a section on civilian rights and lastly considers where we go from here. The conclusion summarises material from the previous Chapters.

## THESIS APPLICATION

Prior to the intervention by the North Atlantic Treaty Organisation (NATO) with Security Council approval in Libya in 2011, there had been a tremendous amount of application invariance of the Responsibility to Protect (R2P) doctrine (2005) by the United Nations Security Council and the United Nations member states.<sup>1</sup> This invariance extended to the academic and political community. One apparent case of this can be seen in the data collected from United Nations discussions on R2P post 2005 and academic discourse post 2001 regarding the International Commission's work on State Sovereignty and State Intervention. This discourse and observational or application invariance led the author to conduct research into the legal application of the Responsibility to Protect (R2P) doctrine from the 2005 World Summit outcome document, paragraphs 138 and 139.

The research has been limited to the Rule of Law to human rights and humanitarian law as customary international law to the application of the R2P. This also meant restricting the research by eliminating academic non-legal and political commentaries

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<sup>1</sup> See for example variations in approaches and debates from member states and NGO's on R2P. United Nations document A/63/PV.97, General Assembly debates on R2P, 97<sup>th</sup> plenary meeting, Thursday 23 July 2009, 3pm New York, as well as A/63/PV.100, General Assembly debates, 100<sup>th</sup> plenary meeting, Tuesday, 28 July 2009, 10am, New York; A/63/PV.98, 98<sup>th</sup> plenary meeting, Friday, 24 July 2009, 10am, New York; A/63/PV.99, 99<sup>th</sup> plenary meeting, Friday, 24 July 2009, 3pm, New York; A/63/PV.101, 101<sup>st</sup> plenary meeting, Tuesday, 28 July 2009, 3pm, New York; A/63/677 United Nations General Assembly sixty-third session, Agenda items 44 and 107, 12 January 2009, Report of the Secretary-General, Implementing the Responsibility to Protect; A/64/PV.89, United Nations General Assembly, 89<sup>th</sup> plenary meeting, Friday, 21 May 2010, 10am, New York; A/64/PV.88, United Nations General Assembly sixty-fourth session, 88<sup>th</sup> plenary meeting, Thursday, 20 May 2010, 3pm, New York; A/63/PV.105, United Nations General Assembly sixty-third session, 105<sup>th</sup> plenary meeting, Monday, 14 September 2009, 10am, New York; A/HRC/18/NGO/86, United Nations General Assembly, Human Rights Council, Eighteenth session, Agenda item 3, *Joint written statement submitted by the Indian Movement 'Tupaj Amaru', a non-governmental organisation in special consultive status, the World Peace Council, a non-governmental organisation on the roster*; E/C.2/2009/2/Add.3, United Nations Economic and Social Council, Committee on Non-Governmental Organisations, 2009 regular session, 19-28 January 2009, *Quadrennial reports for the period 2004-2007 submitted by non-governmental organisations in consultive status with the Economic and Social Council through the Secretary-General pursuant to Council resolution 1996/31*; A/HRC/10/NGO/71, United Nations General Assembly, Human Rights Council, tenth session, Agenda item 4, 26 February 2009; A/65/PV.15, United Nations General Assembly, sixty-fifth session, 15<sup>th</sup> plenary meeting, Friday, 24 September 2010, 3pm, New York.

from the application, the purpose being to view R2P as international law. To do this, R2P application had to be grounded in customary international law. The two paragraphs from the World Summit outcome document (paragraphs 138 and 139) are the *obiter dictum* of the United Nations member states on R2P. The purpose of application is to prevent genocide, crimes against humanity, ethnic cleansing and war crimes and to intervene when necessary and possibly by force. In law the paragraphs are not considered as binding, however, as will be shown, the underlying customary laws that predate the paragraphs are binding on states. Prior to the unanimous decision to adopt these paragraphs the debates on R2P were grounded in the Canadian International Commission on State Sovereignty and Intervention (2001). This extensive report gave rise to the tenet that R2P was a new idea, however through the application of research and analysis most academics now agree it is indeed a very old idea going back much further than previously realised.

Although the debate on R2P descriptions has now waned substantially, information on its application to enforce legal duties by political academics is limited. The legal discourse however is not as limited and can be seen as progressively active. This progression did not start with the International Commission on State Sovereignty and Intervention (2001) as some may still believe but much earlier, predating the 1900s and then from the first sessions between the United Nations General Assembly (UNGA) and the International Law Commission (ILC) meetings in 1946.

This thesis analyses the progressive international legal discourse by explaining the historical aspects of the Responsibility to Protect doctrine in a manner consistent with international law on state responsibility. This is done in the first chapter through the analysis of documents and discourse between the United Nations and the International Law Commission. The articles show a comprehensive database of preparatory collective research on the responsibility of states and its application to international law. This collection of international discourse on international law collates into well-known customary international norms. Much of the earlier discourse clarifies the behaviour of modern day states and the notion of intervention. It also clarifies where the responsibility of states originated and how that is applied today in the International Court of Justice hearings especially to *obiter dictum* and *opinion juris* of the court to genocide, crimes against humanity and war crimes.

## HOW DOES INTERNATIONAL LAW LINK IN WITH R2P?

In the first chapter research shows that R2P is not a new concept and does not add anything new to the primary rules of international law. Secondly it shows how all members of the United Nations are *ipso facto* conjointly and severally liable and accountable to jurisdiction in international law. Thirdly it shows that each member state can be held accountable for breaches of international peace and security. Lastly it shows that any country can be the subject of intervention if their actions are seen as a threat to international peace and security. The research develops with this central theme of accountability. The ILC final draft articles in Chapter 2 on international wrongful acts of a state and the early work of the United Nations member states on state responsibility provides an argument that obligations and responsibilities of states are well documented in international law.

The third chapter discusses the secondary rules of international law, which relate to the application or interpretation of international law, the area of law into which R2P fits most comfortably. In this section the connections between international law and the binding nature of contracts is analyzed and the *ipso facto* connectedness of member states to the International Court of Justice is researched. Next an analysis of the Vienna Conventions on the Law of Treaties illustrates the ways in which the application of certain international laws can be binding on all states within the international community, showing that in some cases international rules apply to all states, not only those that are a party to the contract or treaty. This research also covers the area of *jus cogens* and the duties associated with this type of customary international law. The Rome Statute and its application to member states that are a party to the Covenant is briefly analysed and included in the descriptions on genocide, crimes against humanity, ethnic cleansing and war crimes. The jurisdiction of the courts is researched in relation to contentious cases in international law and *opinio juris* of the court is analysed in relation to connecting international opinions, showing that the court has the final say whether it has jurisdiction or not, while also showing that the courts are ready to apply international law to cases pertaining to genocide, crimes against humanity and war crimes.

This analysis of descriptions reflects the discourse on genocide, crimes against humanity, ethnic cleansing and war crimes and where they can be found in

international jurisdiction. Humanitarian law is analysed in the Nuremberg principles, some Hague conventions, as well as the Convention on Prevention and Punishment of the Crime of Genocide initiated by Lemkin in 1945. Finally this chapter concludes with an analysis of the Geneva Conventions in relation to application for protection for civilians. This research shows that the application of humanitarian law is limited to a time of war; it does not cover civilian rights in regards to civilian uprisings or peaceful protest, therefore further research was needed to cover the responsibility to protect civilians in a time of peace or under other similar political conditions.

Chapter 4 analyses the limited human rights application to *jus cogens* international customary law. The International Covenant of Civil and Political Rights (1966) is analyzed in light of civil disorder and state responsibility. This research shows that states may derogate from some internationally protected civil and political rights when the state is under the state of emergency. However it also shows that the states that do not follow strict protocol in relation to the Covenant are in breach and in violation of the Covenant and customary international law or *jus cogens* rules.

The final chapter concludes the arguments in the preceding four chapters on the responsibility of states, the rule of law and *jus cogens* customary international law, including humanitarian and human rights law in regards to the state of emergency, concluding that R2P<sup>2</sup> is well grounded in international law, not only recently but also historically, once again confirming that the primary rules are customary in nature and states cannot derogate from them. This includes the *jus cogens* rules in relation to genocide, crimes against humanity, ethnic cleansing or war crimes.

This research complements the already well known dictum that the Security Council can intervene in states where certain actions or omissions are a concern for international peace and security. This includes committing mass atrocities against citizens that is a breach of international peace and security and can lead to intervention by any means. The thesis argues against the pretext that the concept lacks precision and substance<sup>3</sup> and that there is a considerable disconnection between responsibility to protect and other developments in international law. It also argues against the tenet that R2P introduces a new set of international norms on

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<sup>2</sup> United Nations. (2005). *2005 World Summit Outcome*. General Assembly. United Nations.

<sup>3</sup> Stoll, T. (2008). Responsibility to Protect. *Human Security Journal*, 15.

intervention<sup>4</sup> and agrees more along the lines of a recent Council for Security Cooperation in the Asia Pacific report and others<sup>5</sup> that R2P does not set new precedents.<sup>6</sup> This thesis is not an attempt to analyse previous discourse by academics on R2P prior to the 2005 World Summit. This area is well covered by authors such as Alex Bellamy, Edward Luck, Ramesh Thakur,<sup>7</sup> Jennifer Welsh, Sara Davies, Luke Glanville, James Pattison,<sup>8</sup> Chesterman<sup>9</sup> and others.<sup>10</sup> Nor is it an attempt to analyse the data from recent interventions in Libya.<sup>11</sup> Lastly the thesis was not in any way written to attempt to define the application of R2P with political limitations, by the international community.<sup>12</sup> Political application I would suggest deserves a distinctive

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<sup>4</sup> See Larrinaga, D., & Doucet. (2008). Sovereign Power and the Biopolitics of Human Security. *Security Dialogue*, 39, 517.

<sup>5</sup> Bogliolio. (2009). From Humanitarian Intervention to the Responsibility to Protect: The changing face of conflict. *Human Security*, 8 (Spring), 20-34.

<sup>6</sup> See The Council for Security CoOperation in the Asia Pacific. (2011). *Study group on the Responsibility to Protect*. CSCAP, Final Report

<sup>7</sup> Thakur, R. (2003). No more Rwanda's: Intervention, Sovereignty and the Responsibility to Protect. *Humanitarian Exchange*.

<sup>8</sup> Patterson, J. (2010). *Humanitarian Intervention and the Responsibility to Protect: Who should Intervene?* Oxford.

<sup>9</sup> Chesterman. (2003). *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press.

<sup>10</sup> For an excellent resource on these debates see Bellamy, A. (2009). *Responsibility to Protect*. Polity Press; Bellamy, A. (2011). *Global Politics and the Responsibility to Protect: From words to deeds*. Routledge.

<sup>11</sup> An excellent resource for this commentary can be found in the Asia Pacific Centre for the Responsibility to Protect situated in Brisbane Australia. Last accessed 8<sup>th</sup> October 2011. <http://www.r2pasiapacific.org/> See also the Carnegie Council for a preview of the Ethics and International Affairs Journal on R2P and the Intervention into Libya. Issue September 2011. [http://www.carnegiecouncil.org/resources/journal/25\\_3/index.html?sourceDoc=002069](http://www.carnegiecouncil.org/resources/journal/25_3/index.html?sourceDoc=002069) Last accessed 8<sup>th</sup> October 2011. See also United Nations Security Council. (2011). *Resolution 1973 (2011) Adopted by the Security Council at its 6498th meeting, on the 17th March 2011*. New York: United Nations; United Nations Security Council. (2011). *Resolution 1970 (2011) Adopted by the Security Council at its 6491st meeting on 26th February 2011*. New York : United Nations .

<sup>12</sup> See Bellamy, A. Responsibility to Protect: Trojan Horse: The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics and International Affairs* (19), 31-34. See also United Nations . (2009). *Report of the Secretary-General: Implementing the Responsibility to Protect*. United Nations; United Nations Security Council. (2011). *Security Council Sixty-sixth year, 6509th meeting, The Situation in Libya*. New York: United Nations; United Nations Security Council. (2011). *Security Council 6505th meeting, 24th March, 2011, The Situation in Libya*. New York: United Nations; United Nations Security Council. (2011). *Security Council 6498th meeting, March 17th 2011, The Situation in Libya*. New York: United Nations; United Nations Security Council . (2011). *Security Council 6479th meeting, 11th February 2011 at 3.00pm , The Situation in Libya*. New York : United Nations; United Nations Security Council. (2011). *Security Council 6479th meeting 11th February 2011 at 10.00 am*. New York : United Nations . United Nations Security Council. (2011). *Security Council 6472nd meeting, 21st January 2011 at 10.00 am*. New York: United Nations.

separate analysis with a country focus in mind.<sup>13</sup> On this note this thesis has been strictly limited to grounding in international law in relation to R2P *jus cogens*<sup>14</sup> customary international law, and humanitarian and human rights law. It does not attempt to analyse the problem of enforcement in international law that has been covered by other academics<sup>15</sup> and which is also the focus of everyday activity for international lawyers. However consideration has been given to all the aforementioned debates and parts will be touched on at various points throughout.

## ACCREDITATION – MODERN AND HISTORICAL INFLUENCES

There are many people that can be credited with the development of R2P. Firstly Raphael Lemkin should be mentioned for his coining of the word ‘genocide’ and for his extensive work on the Convention on the Prevention and Punishment of the Crime of Genocide. The authors of the Universal Declaration of Human Rights, including Eleanor Roosevelt, Charles Malik, PC Chang, Rene Cassin and others, also deserve credit. Garcia Amador who was the first writer and rapporteur for the International Law Commission on state responsibility must be mentioned for his *magnum opus* work over a period of twenty years.

Edward Luck, the current special advisor at the Assistant Secretary-General’s office at the United Nations, must be given credit for his work on R2P through the

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<sup>13</sup> See United Nations. (2009). *Sixty-fourth session Third Committee, Agenda item 69 (b) Protecting and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*. United Nations. (2010). *Report of the Secretary-General: Early warning, assessment and the responsibility to protect*. United Nations; United Nations . (2009). *General Assembly sixty-third session, 96th plenary meeting: Agenda items 44 and 107*. New York. United Nations; United Nations. (2009). *General Assembly, sixty-third session 97th plenary meeting*. United Nations; United Nations. (2009). *General Assembly sixty-third session, 98th plenary meeting* . New York : United Nations; United Nations. *General Assembly sixty-third session, 99th plenary meeting* . New York: United Nations; United Nations . (2009). *General Assembly Sixty-third session, 100th plenary meeting* . New York: United Nations; United Nations . (2009). *General Assembly Sixty-third session, 101st plenary meeting*. New York: United Nations.

<sup>14</sup> See United Nations. (1969). *Vienna Convention on the Law of Treaties*. Vienna: United Nations Article 53, *jus cogens* is a peremptory norm of general international law that is a norm accepted and recognised by the international community as a norm from which no derogation is permitted. Page 25

<sup>15</sup> For an excellent resource on this subject see Proukaki, E. K. (2011). *The Problem with enforcement in International Law: Countermeasures, the non-injured state and the idea of International community*. Routledge.

International Commission on State Sovereignty and Intervention (2001).<sup>16</sup> Frances Deng, the current special advisor for the prevention of genocide, and Roberta Cohen for their early work on internal displacement. Lastly credit must be given to Alex Bellamy for his extensive work on R2P, through his prolific books and articles. There are many more that I have not mentioned here but who have added to the debate significantly on R2P, they will be mentioned at various times throughout this thesis.

Nevertheless the historical influence on R2P doctrine in international law is more in keeping with this thesis. This leads us into Chapter 1 on the background of R2P and a historical analysis of responsibility in international law.

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<sup>16</sup> See the report of the International Commission on Intervention and State Sovereignty. (2001). *The Responsibility to Protect*. Canada: International Development Research Centre.





## CHAPTER 1 - BACKGROUND

What historical notions of responsibility existed within the United Nations before the outcome of the 2005 World Summit? How does this link in with R2P?

On the 26<sup>th</sup> June 1945, forty-nine member states came together to sign the Charter of the United Nations and the Statute of the International Court of Justice. They declared unanimously their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.<sup>17</sup> To this end they agreed to practice tolerance, to unite strength to maintain international peace and security and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.

The purpose and principles of the Charter entailed provisions for the maintenance of peace and security. Members agreed to take collective measures for the prevention and removal of threats to the peace, acts of aggression and in conformity with the principles of justice and international law.<sup>18</sup> Member declarations at the time show that fundamental principles of human rights were to be protected in international law and an act of aggression could be seen as a threat to international peace and security. The Charter gave precedence to international law and justice as supreme tenets,<sup>19</sup> and members agreed to act in accordance with these rules.

In 1945, as in 2011, member states agreed on principles that form the basis of the Responsibility to Protect doctrine. At a World Summit<sup>20</sup> in 2005 the members of the United Nations strongly agreed that certain customary norms in international law are

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<sup>17</sup> See United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations, preamble page 2. Last accessed at <http://treaties.un.org/doc/publication/ctc/uncharter.pdf> October 8th 2011.

<sup>18</sup> See United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations, purposes and principles, page 3.

<sup>19</sup> Charter of the United Nations (1945), article 92 the Statute of the International Court of Justice declares, "The international court of justice shall be the principal judicial organ of the United Nations". Article 93 of the same statute also declares, "All members of the United Nations are *ipso facto* parties to the statute of the International Court of Justice". Article 94 (2) declares "if any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the court, the other party may have recourse to the security council, which may, if it deems necessary, make recommendations or decide on measures to be taken to give effect to the judgement. Page 17.

<sup>20</sup> See United Nations Resolution 60/1.2005, page 30. United Nations. (2005). *2005 World Summit Outcome*. General Assembly. United Nations.

considered *jus cogens*.<sup>21</sup> They did this by asserting that member states have the responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This statement relates directly to several customary laws in international law.<sup>22</sup> The members agreed that this responsibility entails prevention of such crimes, including their incitement through appropriate and necessary means. Prevention is specific not only to the Charter but also to humanitarian law, in that application includes the integration of principles into local jurisdiction and education. All members who agreed to R2P accepted customary rules of responsibility, not because this was a new declaration or doctrine, but because each member state is bound to their contractual relationships, reinforcing the fact that the World Summit outcome document paragraph 138 is complementary to already binding international laws.

The members agreed that the international community should encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning system, reinforcing existent general international law on application, duties and obligations. These duties include observance of treaties that are *pacta sunt servada*, meaning that every treaty in force is binding upon the parties and it must be performed in good faith,<sup>23</sup> rather than *nudum pactum*, a bare promise without any consideration.<sup>24</sup> In paragraph 139 of the World Summit outcome document, the members reinforced the Charter of the United Nations under Pacific settlement clauses and threats to the peace under Chapters VI and VIII. They declared once again, that member states had a responsibility to use diplomatic humanitarian and other peaceful means to help protect populations from genocide, ethnic cleansing and crimes against humanity.

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<sup>21</sup> See United Nations. (1969). *Vienna Convention on the Law of Treaties*. Vienna: United Nations Vienna convention on the law of treaties (1969), article 53. "A peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted..." page 25

<sup>22</sup> For example, the Convention on the Prevention and Punishment of the Crime of Genocide (1948) the Charter of the United Nations, (1945) the Hague conventions, (1907) the Nuremberg principles and the International Covenant on Civil and Political Rights (1966).

<sup>23</sup> United Nations. (1969). *Vienna Convention on the Law of Treaties*. Vienna: United Nations, article 26, page 14.

<sup>24</sup> Spiller, P. (2001). *Butterworths New Zealand Law Dictionary* (Vol. 5). Wellington, New Zealand : Butterworths, page 206

The members declared that they are prepared to take collective action, in a timely and decisive manner through the Security Council, reinforcing again the already existing obligations in international law. Chapter VII<sup>25</sup> of the Charter of the United Nations stipulates where the Security Council can determine the existence of any threat to the peace, breach of the peace, or act of aggression. If the Security Council finds peaceful measures inadequate it may enforce action by other means. At all stages the Security Council can call on member states to give effect to its decisions. Article 43 of the Charter, says the members will contribute to the maintenance of peace and security and will undertake to make available armed forces, assistance, and facilities including the rights of passage necessary for maintaining international peace and security. In order for the Security Council to take urgent military measures (timely and decisive action) members should make available national air-force contingents for combined international enforcement action.<sup>26</sup>

Paragraph 139 of the World Summit outcome document also specifies that these actions will be taken in accordance with regional organisations and on a case-by-case basis. It lastly informs and stresses that the General Assembly needs to further consider the Responsibility to Protect doctrine in terms of genocide, ethnic cleansing, war crimes and crimes against humanity. However, due to the extensive application of international customary law in these paragraphs, the approach for consideration is more likely a reminder of performance duties already enforced in international law. On this note the application of existing international customary norms is at the core of preventative action. If states have integrated the principles of international jurisdiction into local legislation and education, early warning systems would be in place. International customary laws are primarily prevention tools. The remaining paragraphs and actions of R2P are binding on states. These include the participatory signatories to the Charter of the United Nations and the statute of the International Court of Justice.

In this light it is my intention to discuss thoroughly the responsibilities of states in international law in connection with paragraphs 138 and 139 of the United Nations

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<sup>25</sup> See United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations . Articles 39 to 41, pages 9 and 10

<sup>26</sup> United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations Article 45, page 10, <http://treaties.un.org/doc/publication/ctc/uncharter.pdf>

World Summit outcome document on R2P, clarifying where R2P is grounded in international customary law as important for application enforcement issues. This research is collective in that the developments over the past seventy years from the principles of the Charter of the United Nations to the interventions in Libya in 2011 clarify these responsibilities and duties. The doctrine that has developed into what is now recognized as R2P is not new, nor does it add responsibility to states that are already bound by contractual agreements to other states in the international community. It does however reinforce these duties by framing international law as responsibility, justifying the moral and ethical tenets of natural law with the customary norms of international law.

What it does not mean, as some have suggested, is that states have a right to intervene in any situation, including grave crimes against humanity without Security Council approval.<sup>27</sup> R2P reinforces, complements and educates; it does not extend laws that are primarily customary in nature. International customary laws that are existent are binding on states; R2P reminds states of these duties. It reminds all that treaties are not empty gestures; non-performance is a violation of international law and if derogations equate to a threat to international peace and security, action may mean intervention and this may extend to intervention by any means necessary.

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<sup>27</sup> See Bogliolio. (2009). From Humanitarian Intervention to the Responsibility to Protect: The changing face of conflict. *Human Security*, 8 (Spring), 20-34. Bogliolio, I. (2009) pages 22-34; Larrinaga, De & Doucet. (2008). Sovereign Power and the Biopolitics of Human Security. *Security Dialogue*, volume 39 page 517

## A HISTORICAL PERSPECTIVE OF RESPONSIBILITY

Notable people in the history of rights and duties of the state include Christian Wolff who wrote *Juris Naturae* (1750) and *Jus Gentium* (1749). He is given credit as the first originator of the theory on fundamental duties and rights of states. In France, Abbe Gregoire is given credit for presenting a declaration on Rights and Duties at a Convention in 1793 and again in 1795. Early international jurists have been credited with enumeration of rights and duties of states including Jeremy Bentham (1827), Pasquale Fiore (1890) and Jerome Internocia (1910) among others.<sup>28</sup>

Post 1945, the Secretary-General of the United Nations noted that several non-governmental agencies had been working on the rights and duties of states for several decades.<sup>29</sup> As early as 1891, the Universal Peace Congress had adopted a declaration on the principles of law. The International Parliamentary Union consisting of 30 states at the time recommended a declaration on rights and duties in 1899. After prolonged debate and discussion it was adopted in 1928. The American Institution of International Law adopted an initiative by James Brown Scott in 1916, called 'The Declaration of the Rights and Duties of Nations'. This document propagated several conferences including the United Nations Conference on International Organization by the Panama delegation and the Convention on Rights and Duties of States signed at Montevideo in 1933. The Carnegie Endowment for International Peace and the American and Canadian Bar Associations released ten principles of legal duties for states based on Professor Manley O Hudson's work in 1944. This set off another two years of proposals and conferences that ended with the delegation in Panama in 1946, at which the first draft of rights and duties of states to the General Assembly of the United Nations in 1946 was presented.<sup>30</sup>

Based on the divergent interest internationally on the rights of duties of states in 1947, the United Nations General Assembly asked the International Law Commission to draft a declaration. The Secretary-General declared at the time "the rights and duties

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<sup>28</sup> See United Nations Document A/CN.4/2 pages 1-3

<sup>29</sup> See United Nations Document A/CN.4/2, preparatory study concerning a draft declaration on the rights and duties of states, pages 4-9 (1948)

<sup>30</sup> Pages 7 to 11

of states is, in fact, the entire domain of international law”.<sup>31</sup> In 1949, the International Law Commission adopted a final draft and submitted it to the General Assembly, which commended the International Law Commission in Resolution 375 (IV) and the Secretary-General asked all member states to comment on the draft. Sixteen states made comments including Canada<sup>32</sup>, Czechoslovakia<sup>33</sup>, Denmark<sup>34</sup>, Dominican Republic<sup>35</sup>, El Salvador<sup>36</sup>, Greece<sup>37</sup>, India<sup>38</sup>, Mexico<sup>39</sup>, Netherlands<sup>40</sup>, New Zealand<sup>41</sup>, the Philippines<sup>42</sup>, Sweden<sup>43</sup>, Turkey<sup>44</sup>, the United Kingdom<sup>45</sup>, the United States of America<sup>46</sup> and Venezuela.<sup>47</sup> Two years after the request was made, the General Assembly agreed that there had been too few comments to take the matter any further. On the 7<sup>th</sup> December 1951 in Resolution 596 (VI) it was decided to postpone the matter.

Among the final fourteen draft articles several stand out as applicable to R2P. Firstly Article 2 declares that every state has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by

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<sup>31</sup> See United Nations (1948). *Secretary-General memorandum; Preparatory study concerning a draft declaration on the rights and duties of states*. United Nations Document A/CN.4/2

<sup>32</sup> Canada made comments on 12<sup>th</sup> May 1947, 19<sup>th</sup> July 1947 and 7<sup>th</sup> April 1948. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pp 286 - 290

<sup>33</sup> Czechoslovakia made comments on 11<sup>th</sup> August 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pp 286 - 290

<sup>34</sup> Denmark made comments on 22<sup>nd</sup> September 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pages 286 - 290

<sup>35</sup> Dominican Republic made comments on 4<sup>th</sup> June 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1) pages 286 - 290

<sup>36</sup> El Salvador made comments on 28<sup>th</sup> April 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1) pp 286 - 290

<sup>37</sup> Greece made comments on 4<sup>th</sup> September 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1) pp 286 - 290

<sup>38</sup> India made comments on 26<sup>th</sup> September 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pp 286 - 290

<sup>39</sup> Mexico made comments on 7<sup>th</sup> June 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pp 286 - 290

<sup>40</sup> Netherlands made comments on 23<sup>rd</sup> June 1947. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1), pp 286 - 290

<sup>41</sup> New Zealand made comments on 25<sup>th</sup> July 1947 and on the 9<sup>th</sup> April 1948, pp 286 - 290

<sup>42</sup> The Philippines made comments on 19<sup>th</sup> December 1947 and the 27<sup>th</sup> May 1948. International Law Commission. (1947). *Yearbook of the International Law Commission* (Vol. 1).

<sup>43</sup> Sweden made comments on 30<sup>th</sup> May 1947 and on 26<sup>th</sup> April 1948.

<sup>44</sup> Turkey made comments on 14<sup>th</sup> August 1947.

<sup>45</sup> The United Kingdom made comments on 1<sup>st</sup> May 1947 and on 24<sup>th</sup> August 1948.

<sup>46</sup> The United States of America made comments on 29<sup>th</sup> May 1947 and on 11<sup>th</sup> March 1949.

<sup>47</sup> Venezuela made comments on 12<sup>th</sup> September 1947.

international law. Secondly, Article 3 declares every state has the duty to refrain from intervention in internal or external affairs of another state, emphasizing the United Nations Charter, Chapter I, Article 4:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations”.

Article 6 of the Draft Declaration on Rights and Duties of States (1949) declares that every state has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language and religion. Reiterating the preamble of the Charter of the United Nations,

‘We the peoples ... reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small’.<sup>48</sup>

Article 7 of the draft declaration on Rights and Duties of States (1949) declares every state has the duty to ensure that conditions prevailing in its territory do not menace international peace and order. R2P describes prevention and protection of civilians as the duty to protect civilians from harm this duty firstly remains with the state.<sup>49</sup>

Article 9 declares that every state has the duty to refrain from resorting to war as an instrument of national policy and to refrain from the threat or use of force against territorial integrity or political independence or in any other manner inconsistent with international law and order. Once again reiterating the Charter under Article 2 (4).

Article 10 that declares that every state has the duty to refrain from giving assistance to any state that is acting in violation of Article 9, or against the United Nations in taking preventative measures or enforced action against a state. Article 13 declares that every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law and it may not invoke its provisions in its constitution or its laws as an excuse for failure to perform this duty. This particular article has been integrated into Article 27 of the Vienna Convention on the Law of

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<sup>48</sup> United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations, p3

<sup>49</sup> See United Nations. (2005). *2005 World Summit Outcome*. General Assembly. United Nations paragraph 138

Treaties (1969) now considered as customary international law.<sup>50</sup> It states that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Lastly, Article 14 of the Draft Articles of Rights and Duties of a State (1949) declares that every state has the duty to conduct its relations with other states in accordance with international law and with the principle that the sovereignty of each state is subject to the supremacy of international law, once again directly linking to the Charter of the United Nations under Chapter XIV Article 93, that declares that all members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice and linking to Article 94 that declares that each member of the United Nations undertakes to comply with the decisions of the International Court of Justice.

Although the Draft Articles of Rights and Duties of a State (1949) were postponed in 1951, it remains one of the founding documents of R2P under the United Nations General Assembly debates. On this note the debates and submissions must be mentioned. Firstly there were eleven votes for and two against adopting the draft articles. The voters against made statements to justify their decisions. Several of these reasons are tangible, worthy of mention and applicable to R2P. Mr. Koretsky a member of the International Law Commission declared that he voted against the draft declaration because the draft articles deviated from the notion of sovereign equality and the right to self-determination of peoples. Second, he said the articles did not protect the interests of states against interference by international organisations or groups of states in matters essentially falling within their domestic jurisdiction. Third, the draft articles did not set out the most important duties of states to take measures for the maintenance of international peace and security, including the prohibition of atomic weapons and disarmament. Fourth, the articles ignored the duty of states to take measures for the eradication of vestiges of fascism. Fifth, the draft articles ignored the duty of states not to allow the establishment of any direct or indirect restriction of the rights of citizens or the establishment of direct or indirect privileges for citizens on account of their race or nationality. Sixth, the draft declarations did not recite the

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<sup>50</sup> United Nations. (1969). *Vienna Convention on the Law of Treaties*. Vienna: United Nations Document, Chapter XX iii 1, Volume 2, Title 23.1, page 13



duty of states to ensure the effectiveness of fundamental freedoms and human rights including the right to work and to be protected against unemployment. Lastly he mentioned Article 14, which he thought, denied the sovereignty of states.

It was his view he said, that instead of reinforcing the principles of sovereignty, equality of states, independence and the freedom of states from dependence upon other states, the draft declaration instead derogated from the great movements to rid the peoples of the world of the scourges of exploitation and oppression.<sup>51</sup> Mr. Hudson another Commissioner, on the other hand limited his opposition to Article 6, which he thought went beyond international law at its present state of development.<sup>52</sup> In terms of guiding considerations the International Law Commission and the General Assembly felt that the draft Articles should be in harmony with the Charter. They also agreed that it should be applicable to sovereign states, all sovereign states and not just members of the United Nations. From the original 24 Articles, proposed from the Panamanian Draft fourteen remained. Four were rights of a State and ten were duties that were to be imposed on states. After the draft declaration was completed another Commissioner Mr. Shuhsi Hsu from Japan proposed that a duty of states was to condition military necessity by the principle of humanity in the employment of armed forces, legitimate or illegitimate. Objections were made and the Commission did not accept the proposed addition due to the reference to warfare.

The early proposals made by the International Law Commission and the United Nations demonstrates that R2P is not a new concept.<sup>53</sup> The idea of protecting peace and security post 1945 started with the Charter of the United Nations and the International Court of Justice Statute. The Draft Articles followed this closely on Rights and Duties of States, which formed the basis of the next stage in the development of R2P.

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<sup>51</sup> See United Nations Document A/CN.4/SR.22, pages 13 -14, and Yearbook of the international Law Commission (1949) page 287. Last accessed on the 18<sup>th</sup> August 2011 at website, [http://untreaty.un.org/ilc/publications/yearbooks/ybkvolumes\(e\)/ilc\\_1949\\_v1\\_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/ybkvolumes(e)/ilc_1949_v1_e.pdf)

<sup>52</sup> See United Nations document A/CN.4 SR.25, pages 3 and 6, and Yearbook of the International Law Commission (1949) page 287

<sup>53</sup> Stoll, T. (2008). Responsibility to Protect. *Human Security Journal* , page 15

## JURISPRUDENCE AND THE CODIFICATION OF THE PRINCIPLES OF INTERNATIONAL LAW GOVERNING STATE RESPONSIBILITY

In 1954, the United Nations<sup>54</sup> asked the International Law Commission to undertake the codification of the principles of law governing state responsibility. At the Law Commission's seventh session in 1955 Garcia Amador was appointed as a special Representative on the subject. Garcia Amador presented six consecutive reports. In a collective report dated 20<sup>th</sup> January 1956<sup>55</sup>, he showed how extensive the subject was in regards to international law. He included a range of laws including reparation, acts and omissions, civil responsibility, criminal responsibility, and imputability as an essential condition of responsibility to individuals, to international organisations and states. The reports further covered diplomatic protection and international recognition of the essential rights of man,<sup>56</sup> the international standard of justice and the equality of nationals and aliens,<sup>57</sup> exoneration, attenuating and aggravating circumstances and the exhaustion of local remedies, reparation and punitive damages.<sup>58</sup> A chapter was also dedicated to modes of settlement, diplomatic protection, the principles of non-interference and peaceful means of settlement.<sup>59</sup> The report emphasized codifications by the League of Nations,<sup>60</sup> the Hague Convention,<sup>61</sup> and other inter-American bodies of law.<sup>62</sup>

At this point Garcia Amador and the Law Commission realised that the subject of responsibility of states had always encompassed vast and complex subjects of international law. It would be difficult, they said, "to find a topic more beset with

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<sup>54</sup> See, United Nations. (1953). *United Nations General Assembly Resolution 799*. New York : United Nations.

<sup>55</sup> Amador, G. (1956). *International Responsibility*. International Law Commission, YILC Volume ii, pages 176-190

<sup>56</sup> Pages 192-198

<sup>57</sup> Pages 199-202

<sup>58</sup> Pages 203-208

<sup>59</sup> Pages 215-219, chapter ix

<sup>60</sup> See, League of Nations . (1926). *Committee of Experts for the Codification of Law* . League of Nations page 221

<sup>61</sup> See League of Nations. (1930). *Conference for the Codification of Interantional Law*. Hague: League of Nations page 223

<sup>62</sup> See First American Conference, Washington (1889), (1890), the second conference, Mexico (1902) page 226, and the seventh conference of American states, Montevideo (1933) on the Responsibility of the State.

greater confusion and uncertainty”.<sup>63</sup> The topic is vast they said, due to the practically unlimited number and variety of circumstances that can give rise to international responsibility, and the fundamental questions and principles are common to all.<sup>64</sup>

Amador also noted that the doubts and differences of opinion had related to particular questions or points in detail rather than the validity of the concepts themselves. He said that there was a growing tendency to accept the individual as a subject of international rights and obligations. He clarified that there was also a growing acknowledgement of a community interest in breaches of international law.<sup>65</sup> He regarded the function of international responsibility to fall within the breach of non-performance as international obligations.<sup>66</sup> And the state he said, was under a duty to make reparation for the injury occasioned. He clarified this on several fronts.

The term ‘responsibility’ he said, was identified with liability of municipal law. Contemporary international law however similar considers that the notion of responsibility covers not only the duty to make reparation for damage or injury, but also other legal consequences of the breach of non-performance. The obligations in question he said are those for which the breach is punishable and in international law in its present stage of development, (1950s) can include both civil and criminal responsibility. According to the nature of the obligation, the breach or the non-performance gives rise to the responsibility.<sup>67</sup> Amador recognized that responsibility does not originate in the act itself but rather in the conduct of the state in relation to the act. The nature of the act committed influences the way in which the law regards the state’s conduct as a source of international responsibility. He went on to say that certain violations of fundamental human rights, namely crimes against humanity, now involve international responsibility of a criminal character. He said this came from the obligations of the Convention on the Prevention and Punishment of the Crime of Genocide, in that it gave rise to obligations for states to prevent and punish.<sup>68</sup>

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<sup>63</sup> Page 175

<sup>64</sup> Page 176

<sup>65</sup> Garcia Amador (page 176), also agreeing with Professor Jessup, Responsibility of states for injuries to individuals, Columbia Law Review, vol xlvi, (1946) page 904

<sup>66</sup> See chapter ii, page 180

<sup>67</sup> Page 180

<sup>68</sup> Page 183

Amador realised in the 1950s that it was no longer true that international law exists only for its sole *raison d'être* in the protection of the interests and rights of the state; rather, its function was now to protect the rights and interests of its subjects who may properly claim its protection. This critical analysis and understanding of international law was to become a strain in arguments of objection to R2P in the 2005 and the 2009 World Summit debates. And yet Amador had clarified these problems and arguments in international law nearly 60 years before. This conquest in hindsight was an inaugural introduction to how international law, and the responsibility of states was going to codify over time. The development from the Hague Conference in 1930<sup>69</sup> that accomplished some agreement on fundamental principles but ultimately ended in refraining from embodying a definite formula, was a process that was going to continue throughout the life of the debate.

Amador clearly defined four areas of responsibility for the state. These included firstly acts or omissions of the legislature, judicial and executive branches. Secondly, he added acts or omissions on the part of political subdivisions of a state or its colonies or other dependencies. Third, he mentioned acts or deeds committed by private persons, occurring during internal disturbances; and lastly he identified acts committed in the territory of a state by a third state or international organization. The first he said involves international state responsibility, the situation varying according to the authority that acts or omits to act. This may include legislative or constitutional measures that are adopted and are contrary to or incompatible with international obligations to treaties and or conventions. This may be when the state has failed to adopt or to apply the measures that are necessary for the purpose of discharging them.

He clearly covers R2P in regards to obligations in international customary laws, including the rules associated with Article 53 of the Vienna Convention on the Law of Treaties (1969) written nearly 12 years later, where it states that, “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.”<sup>70</sup> He also recognizes that the omission to act is also a violation. The same is mentioned in paragraph 139 of the World Summit outcome document whereby the responsibility of states to take collective action only comes after peaceful means has

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<sup>69</sup> Conference for the Codification on International Law, Hague (1930) p 223

<sup>70</sup> United Nations Document Chapter XXiii 1, volume 2, United Nations . (1969). *Vienna Convention on the Law of Treaties*. Vienna page 25

been exhausted, and when a state is ‘manifestly failing’ to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. Amador said that international responsibility might arise and be imputable to the state, as a consequence of any acts or omissions that constitute a breach of non-performance of an international obligation.<sup>71</sup> This may include the denial of justice for the non-performance of an obligation to make provisions in local law for international jurisdiction. The only way that one could clarify the denial of justice would be to ask whether the decision was compatible or incompatible with international law. Amador said that one test would be to ask whether the decision independently of all other factors, constitutes an action comporting a breach of non-observance of an international obligation incumbent on the state.<sup>72</sup>

In light of this, Amador recognized that states were failing to exercise due diligence to prevent and enforce relevant penalties to individuals who violated international law. He said that the state should be treated as ‘objectively responsible’ especially when the act or the deed is not what caused the injury but rather the non-performance of the duty.<sup>73</sup> Sir Hersch Lauterpacht had similar concerns. He said strictly speaking all obligations as well as responsibilities for non-fulfillment are attributable to human beings and human agencies.<sup>74</sup> In regards to Treaties and customary international law in commerce, finance and administration it is just and proper, he said, that in law responsibility should be imputed to the state as a whole and the state should appear exclusively as the subject of international law for that purpose. Lauterpacht maintained that there would appear to be no reason why the official responsibility should not be made jointly liable with the state; criminal responsibility he said should be imputed solely on the official.

Amador also extended this into the human rights framework by arguing that a new principle was needed based on universal respect for and the observance of human rights, and fundamental freedoms.<sup>75</sup> Regarding responsibilities imputable to

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<sup>71</sup> Page 185, section 11, paragraphs 68-70

<sup>72</sup> Page 186, paragraph 70

<sup>73</sup> Page 187, paragraph 73

<sup>74</sup> See Lauterpacht, E. (1950). *International Law and Human Rights*. London: Stevens & Sons, pages 40-43

<sup>75</sup> Page 190 section 13

international organisations he said that the object of internationalization of rights and freedoms is to ensure the protection of the legitimate interests of the human person irrespective of his nationality.<sup>76</sup> He recognized there was discrepancy in relation to protection of nationals and the protection of aliens from another state. He also recognized the underlying problems associated with the protection of civilians and citizens alike from whatever country or nation state. However, he did not expand on this further. He could have considered how civilians can apply international law when their own governments are violating these principles. Nor did he cover intervention in regards to violations of aliens in another state that have no apparent legal standing in international law. On this note, the accuracy and magnitude of the work that Amador and the International Law Commission proposed over the 25-year period would today constitute a *magnum opus*. He must be credited with being a founding father of R2P on many fronts.

On 16<sup>th</sup> December 1961,<sup>77</sup> the General Assembly of the United Nations recommended that the International Law Commission continue its work on state responsibility. In 1962 the commission held a debate on its program for future work. They set up a sub-committee to submit a preliminary report with suggestions on the scope and approach. The Law Commission in its sixteenth session in 1963 agreed on certain provisions. These were that priority should be given to the definitions of general rules governing international responsibility of the state. Second, special attention should be given to responsibility for injuries to persons or property of aliens. However, repercussions on state responsibility and the responsibility of international organisations were not to be discussed. In hindsight this was unfortunate as the responsibility of states and organisations must inherently be bound by enforcement policies. The same problem exists nearly 60 years later in international law.

In 1963 the International Law Commission appointed a new special rapporteur, Roberto Ago. For several years he and the commission worked on the responsibility of states. In 1967 and 1968 the General Assembly recommended that they expedite the study.<sup>78</sup> Over the next two years the International Law Commission at their

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<sup>76</sup> Page 203, section 157

<sup>77</sup> See United Nations. *Resolution 1686 (xvi)*.

<sup>78</sup> See United Nations. (1963). *Resolution 1902 (xviii)*. United Nations and *Resolution 2272 (xxii)*

nineteenth, twenty-first, twenty-second, twenty-fifth and thirty-eighth sessions sent out special missions and worked on relationships between states and inter-governmental organisations on state responsibility. In 1970 they presented 'the origin of international responsibility' to the United Nations General Assembly. These draft articles as they were then called, were to become customary international law under the guise of final articles called the Responsibility of States for Internationally Wrongful acts. (2001)

However, it took another twenty- seven years before the draft articles had a second reading based on four reports by the new rapporteur Mr. Crawford. In 2001<sup>79</sup> the final drafts were completed, and submitted to the General Assembly. Again several years passed and it was not until 2004 and 2007 that the General Assembly seriously considered the articles. These final drafts clarified the questions that Amador had presented on numerous occasions in early sessions on state responsibility. The draft articles from the third United Nations General Assembly meeting in 1946 and the first session of the International Law Commission to customary international law in 2011 are a definitive description of state responsibility in international law. This history of progress suggests how contentious future motions on state responsibility were foreseeable.

Lastly it is important to note that the International Law Commission pointed out that it was not their intention to define the rules governing inter-state relations, obligations and breaches that could be a source of responsibility and which could be described as primary. They said on the contrary they undertook the task to define the secondary rules, those that are aimed at determining the legal consequences of failure to fulfill obligations that are established by the primary rules. They said that it is only these secondary rules that fall within the actual sphere of responsibility. Roberto Ago said that it is one thing to define a rule and another to determine whether that obligation has been violated and what should be the consequences of the violation.<sup>80</sup> R2P is

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<sup>79</sup> See United Nations. (2001). *International Law Commission volume ii, Part Two, Corrected Document A/56/49 (vol i) Correction 4*. United Nations.

<sup>80</sup> See International Law Commission. (1973). *Yearbook 1973, volume ii, A/9010/REV.1REV.para 36-57*. International Law Commission and International Law Commission . (1970). *Yearbook 1970, volume ii, page 306 A/8010/REV.1para 66*. International Law Commission.

within the secondary category, it does not have the intention to write new rules and regulations, but it does have an interest in the breaches and violations that take place.



## SUMMARY

This chapter has illustrated how R2P is not a new debate. Amador initiated the same debates that are prevalent today. He was the prime motivator of the responsibility of states and their obligations in law under the International Law Commission's proposals. He set the scene for future debate by clarifying that states have duties to contracts and are bound by treaties, conventions and agreements under the premises and preamble of the United Nations Charter. Amador identified future problems with responsibilities with civilian rights from other states but nether-the-less continued to remind the General Assembly that states have duties and those duties included the protection of their civilians. He touched on preventative actions of states such as the act of omission entailing criminal responsibility. He said that international responsibility might arise and be imputable to the state, as a consequence of any acts or omissions that constitute a breach of non-performance of an international obligation,<sup>81</sup> clarifying paragraph two of paragraph 138 of the World Summit outcome (2005) that says, "this, responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means". He said contemporary international law considers that the notion of responsibility covers not only the duty to make reparation for damage or injury, but also other legal consequences of the breach of non-performance, therefore reinforcing paragraph three that " We accept this responsibility and will act in accordance with it".

The discussions, recommendations, and proposals including the extended time frame is a reminder of the complexities involved in state responsibility. In modern terms this means that international violations of a state combined with reprisals can equate to intervention with Security Council approval. Therefore it is the states' responsibility to provide and enforce policies to prevent breaches from taking place, also shows that preventative action is the lack of omission, in state application, of international customary law.

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<sup>81</sup> Page 185, section 11, paragraphs 68-70



## CHAPTER 2 – RIGHTS, DUTIES, AND RESPONSIBILITIES OF STATES

### THE FINAL DRAFT ARTICLES - COMMENTARY AND DISCUSSION

From the 1960s the International Law Commission had been working on the responsibility of states for internationally wrongful acts. This work borrowed from and building on earlier work by Amador Garcia reflects the collective *oeuvre* of the International Law Commission since 1946. Like Amador Garcia's early work it can be considered today a *magnum opus*. Although the work has not been considered at the United Nations general assembly meetings since 2007 the work nevertheless has been integrated into *obiter dictum* and *opinio juris* of the International Court of Justice on several occasions. In light of this, some parts of the work are still considered contentious, especially regarding the rules concerning peremptory rules, *jus cogens* and *erga omnes* jurisdiction in international law. These discussions will be further analyzed in Chapter 3 under the rule of law. The emphasis of the draft articles is on the secondary performance rules of international law, which relate specifically to responsibility of the state. This includes the wrongful actions or omissions of the state and the legal consequences of these actions or inactions in international law.

Roberto Ago, as mentioned previously, was the main Special Rapporteur to the International Law Commission for orientation and collation of the project. Roberto Ago stated that the responsibility arose from the violation of the primary rules. The articles focus on the secondary rules in that they lay down the foundations for determining the obligations of the state and the legal consequences that come from the violation or breach of those rules. In other words the articles deal with the conduct of the state and the breach or omission that has taken place.

“International responsibility results exclusively from a wrongful act contrary to international law.”<sup>82</sup>

Article 1 declares that, “every internationally wrongful act of a state entails the international responsibility of the state”. In other words the state that has breached or

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<sup>82</sup> International Law Commission. (2001). *Draft Articles on the Responsibilities of States for internationally wrongful Acts with commentaries A/56.10*. United Nations, Yearbook of the International Law Commission, Volume ii, Part two, (2)

violated an international obligation is responsible for its actions. The report mentions that this can exist in relation to actions or omissions or a combination of both.

#### IS THE ACT AN INTERNATIONALLY WRONGFUL ACT OF A STATE?

The International Law Commission commentary discusses attribution as being the most important aspect of this work. Almost every article can be applied to R2P. The R2P focus is on the act or omission that entails obligations in international law. These violations are considered attributable only to the state meaning that the state, the organ of the state, the individual or representative of the state must be acting in accordance with the duties of the state. If the individual, organ or representative actions cannot be attributable to the state then the violation cannot be attributed to the state, therefore the action could not constitute a violation of international law. Within these articles the limited scope of application can be analyzed.

Firstly it is only the actions or omissions of a state that can be attributable to the state, meaning that the state is the central tenet of international responsibility for international obligations. State obligations can be seen as bilateral, between states in international law, or multilateral, between many states. All of these obligations have internationally legal consequences and attribution in international law. The state in the context of the draft articles is concerned with the whole field of international obligations of states.<sup>83</sup> When a state commits an internationally wrongful act against another state, international responsibility is established immediately between them.<sup>84</sup> This responsibility is well established in international law,<sup>85</sup> and has prominence in many international advisory opinions including interpretation of peace treaties between states, whereby a “refusal to fulfill a treaty obligation involves international responsibility”.<sup>86</sup> The Rainbow Warrior case shows that “any violation by a state of

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<sup>83</sup> Page 32

<sup>84</sup> *Phosphates in Morocco Judgment*, (1938) PCIJ series A/B No 74, page 10 paragraph 28

<sup>85</sup> See *Wimbledon* (1923), PCIJ series a, no 1, page 15, paragraph 30. *Factory at Chorzow*, Judgment (1927) no 8, no 9, paragraph 21. *Cofu Channel case*, Merits Judgment, ICJ (1949) page 4 paragraph 23. *Military and paramilitary activities, Nicaragua v. United States*, ICJ (1986) p14, page 142, paragraph 283 and page 149 at paragraph 292. *Gabcikovo Nagymaros case*.

<sup>86</sup> See *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. Second phase*, Advisory opinion, ICJ reports (1950) page 221

any obligation of whatever origin gives rise to state responsibility”.<sup>87</sup> The Charter of the United Nations and the 2005 World Summit outcome paragraphs outline these responsibilities whereby the state is responsible for the prevention and protection of its population from harm. <sup>88</sup> As the report points out, it has increasingly been recognized that some wrongful acts can concern the international community as a whole. The *Barcelona Traction* case<sup>89</sup> cites that:

“An essential distinction should be drawn between the obligations of a state towards the international community as a whole and those arising vis-à-vis another state ... By their very nature the former are a concern of all states. In view of the importance of the rights involved, all states can be held to have a legal interest in their protection; they are obligations *erga omnes*.”

The ILC commentaries on the draft articles also point out that “Every state, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations.”<sup>90</sup>

The *Barcelona* case includes “the outlawing of the acts of aggression, and of genocide ... concerning the basic rights of the human person, including protection from slavery and racial discrimination”.<sup>91</sup> These ideas are not limited to single opinions or jurisdictions <sup>92</sup> but are becoming increasingly global in perspective. The international wrongful act may in turn be the responsibility of one state, of several states or the international community as a whole. This is discussed at length by the commentaries in relation to conduct of the states in question and the issue of attribution under interpretation of the courts. This leads us to the second tenet in Article 2, whereby the elements of the internationally wrongful act of a state is analysed.

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<sup>87</sup> See *Rainbow Warrior* case p 251, para 75, (*New Zealand v. France*) (1987), (1990), 81 AJIL, 325, pp 670-2, (no 2) 82 ILR 499, 400, 405-7, 673

<sup>88</sup> Paragraph 138, 2005 World Summit outcome document and see also Evans & Thakur (2001) *The Responsibility to Protect*, ICISS, Canada; Evans. (2008). *The Responsibility to Protect: Ending Mass Atrocities once and for all*. Washington DC

<sup>89</sup> *Barcelona Traction Light and Power Company (Belgium v. Spain)* ICJ reports 3, pp 323-4, 438-9 (page 32, para 33)

<sup>90</sup> *ibid* page 33

<sup>91</sup> *ibid* paragraph 24, also cited in the commentaries page 33

<sup>92</sup> See *East Timor, (Portugal v. Australia)* ICJ reports (1995), page 90, page 102 para 29: *Legality of the Threat or use of Nuclear weapons* Opinion, ICJ, (1996), p 226, p 258 para 83 and *Application of the convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary judgment, ICJ reports (1996), p 595, pp 615 – 616, paras 31-32

## WHAT ARE THE ELEMENTS OF AN INTERNATIONALLY WRONGFUL ACT?

The breach of an internationally wrongful act must be attributable to the state and it must constitute an act or an omission of an international legal obligation of that state. Article 2 deals with the conditions that need to be fulfilled for an obligation to be seen as breached by other states. The elements that the commentaries identify are twofold, firstly the conduct in question must be attributable to the state and secondly the conduct must constitute a breach of the international legal obligation. Several international cases and opinions can be applied.

The commentary provides the *Phosphates in Morocco* case where the principle states that there must be an act that is attributable to the state in question and it must be contrary “to the treaty right(s) of another state.” Another well-known argument comes from the *Tehran case*<sup>93</sup> which points out that in order to establish responsibility the court must first determine, “how far legally the acts in question may be regarded as imputable to the ... state. Secondly it must consider their compatibility or incompatibility with the obligations ... under treaties in force or under any other rules of international law that may be applicable”.<sup>94</sup> The commentaries also provide the *Dickson Wheel Company* case where the court said, that in order for an act to be attributed to the state there must “exist a violation of a duty imposed by an international judicial standard.”<sup>95</sup> The circumstances surrounding each case would therefore be interpreted at the time the breach arises.

There are many examples of breaches by omission in international law as there are actions. This can be seen in the application of international law in several cases. One prominent case includes the *Cofu Channel* case whereby Albania did nothing to warn others of the impending danger in the channel where mines had been laid. It was found that Albania should have known and this in itself created responsibility.<sup>96</sup> Another example is the *Tehran* case whereby Iran failed to take action to protect United States

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<sup>93</sup> See United States Diplomatic and Consular staff in the Tehran case, (*United States v. Iran*) (1980) ICJ reports page 3

<sup>94</sup> See commentaries of the ILC page 34 or *Tehran* case page 3

<sup>95</sup> *ibid* page 34

<sup>96</sup> *Cofu Channel* case, (*U.K. v. Albania*) (1949) ICJ reports 4

diplomatic and consular staff.<sup>97</sup> These acts or omissions constitute responsibility; they are not primary laws but secondary in that the acts or the omissions are secondary to the primary rules. The primary rules outline the duties or obligations and yet it is the actions or omissions that constitute the breach.

The state itself is not a person and yet these actions or omissions are attributable to the state. The actors of the state are members of the society that have permission to act on behalf of the state. The “act of the state must involve some action or omission by a human being or group ... states can act only by and through their agents and representatives.”<sup>98</sup> The question then arises as to what conduct (actions or omissions) can be attributed to the state? Several cases can provide clarification of this question. In 1930 a Hague conference adopted the term “any failure ... to carry out international obligations of the state”.<sup>99</sup> In the *Rainbow Warrior* case a breach was “any violation by a state of any obligation.” The commentary by the ILC refers to terms including “non-execution of international obligations, violation of an international obligation or breach of engagement”, it also refers to the codification of international law. The elements therefore are wide and this is further reflected in Article 3.

#### CAN A STATE USE INTERNAL OR MUNICIPAL LAW AS A DEFENCE FOR VIOLATIONS OF INTERNATIONAL LAW?

Article 3 and the commentaries by the ILC focus on the denial of internal law as a defence against an act or omission of an internationally wrongful act. A state cannot plead that the breach does not apply because the actions were in conformity with internal or municipal law. Apart from Article 27 of the Vienna Convention (1969) which states that “A party may not invoke the provisions of its internal law as justifications for its failure to perform a treaty”, there are many other relevant cases and opinions of this defence in international law. The ILC commentary says “a state cannot by pleading that its conduct conforms to the provisions of its internal law escape the characterization of that conduct as wrongful by international law”. Nor

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<sup>97</sup> United States Diplomatic and Consular staff in Tehran case, (*United States v. Iran*) (1980) ICJ reports pp 31-32, see also *Velasquez Rodriguez v. Honduras* case, (1988) Inter-American Court of Human Rights, series c, no 4, para 170

<sup>98</sup> See *German settlers in Poland*, Advisory opinion, (1923), PCIJ series b, no 6, page 22: also cited in commentaries page 35

<sup>99</sup> See Conference for the codification of International Law, the Hague (1930) Yearbook (1956) volume ii, page 225, A/CN.4/96 Annex 3, article 1

can a state rely on another state constitution as illustrated by the *Treatment of the Polish nationals* case, which stated “a state cannot rely, as against another state, on the provisions of the latter constitution but only on international law and international obligations”.<sup>100</sup> It is well recognized in International law that states cannot use municipal law as a defence for violations of international customary laws.<sup>101</sup>

The commentary on the articles provide the International Court of Justice (ICJ) principle in the *Reparation for injuries* case where it was held that “as the claim is based on the breach of an international obligation (...) the member cannot contend that this obligation is governed by municipal law”. As well as the *ELSI* case the Chamber of the Court said “Compliance with municipal law and compliance with the provisions of a treaty are different questions. What is a breach of a treaty may be lawful in the municipal law and what is unlawful in the municipal law may be wholly innocent of violations of a treaty provision” in international law.<sup>102</sup>

The commentaries also repeat some aspects of the work on the Rights and Duties of States. For example as previously mentioned, “every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law and it may not invoke provisions in its constitution or its law as an excuse for failure to perform this duty”.<sup>103</sup> In regards to the scope of interpretation on the issue international law in itself determines whether the breach is a violation of international law, as the commentary points out that “the characterization of state conduct as internationally wrongful is governed by international law and secondly by affirming that conduct (...) as wrongful under international law cannot be excused by reference to the legality of that conduct under internal law”.<sup>104</sup>

## WHAT ATTRIBUTIONS OF CONDUCT PLACE THE STATE AT FAULT IN INTERNATIONAL LAW?

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<sup>100</sup> See *Treatment of Polish Nationals and other persons of Polish origin or speech in the Danzig Territory*, Advisory opinion (1932) PCIJ series a/b no 44, page 4

<sup>101</sup> See *Greco-Bulgarian communities*, Advisory opinion, (193), PCIJ series b no 17, page 32: *Free zones of upper Savoy and the district of Gex*, (1930) PCIJ series a no 24, page 12 as well as the *Treatment of Polish Nationals* case see footnote 96.

<sup>102</sup> *ibid* page 37

<sup>103</sup> See United Nations. (1949). *United Nations General Assembly Resolution 375 (iv)*. United Nations.

<sup>104</sup> *ibid* page 38



The state itself is not necessarily responsible for all acts committed by its citizens. This was validated in 1923 with the *Tellini case*. At that time the council for the League of Nations decided that the matter between Italy and Greece involving the assassination of several members of an international commission was proof of this. The commission concluded, “the responsibility of a state is only involved by the commission in its territory of a political crime against the persons (...) if the state has neglected to take all reasonable measures for the prevention of the crime”. This includes the pursuit, arrest and bringing to justice of the criminal involved.<sup>105</sup> The general rule is that “the only conduct attributed to the state at the international level is that of its organs of government, or of others who have acted under the direction, instigation or control of those organs (...) as agents of the state”.<sup>106</sup>

The attribution of the state must clearly show that it is an act of the state that gives rise to responsibility in international law. We have seen already that a state may be responsible for acts of its citizens if it has failed to take reasonable steps to prevent or protect the violation from taking place. In the *Tehran case* it was held that the government had failed to take all reasonable steps to protect the diplomats and the embassy. In the *Le Grand case* it was held that the conduct in question was incompatible with the state’s obligations in international law and this gave rise to responsibility “irrespective of the level of administration or government at which the conduct occurs”.<sup>107</sup> Where the state has separated off parts of its internal administration to be run by private companies it does not mean that the state is not responsible for the actions of the Corporation or associated divisions. A commissioner’s view of this explains.

“International law does not permit a state to escape its international responsibility by a mere process of internal subdivision. The state as a subject of international law is held responsible for the conduct if all the organs, instrumentalities and officials which form a part of its organization and act in that capacity, whether or not they have separate legal personality”.

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<sup>105</sup> See League of Nations *official journal*, 4<sup>th</sup> year, number 11 (November 1923) page 1349

<sup>106</sup> See International Law Commission *fifty third session*, (2001) a/56/10 page 38

<sup>107</sup> *ibid* page 39 ILC commentaries

In order to attribute an act to the state it is necessary to identify with reasonable certainty that the actors are associated with the state.<sup>108</sup> These commentaries show us that not all activities of the state can be attributable to state responsibility. Article 4 of the Responsibility of States for Internationally Wrongful Acts (2001) says that “the conduct of any state organ shall be considered an act of that state under international law whether the organ exercises, legislative executive, judicial or any other functions, whatever position it holds (...) and whatever its character as an organ of the central government (...)”.

The principle that an official of the state is the responsibility of the state is well documented including the *Moses case* whereby the official acted as a representative of his government. The Mexico Missed Claims Commission concluded, “An officer or person in authority represents *pro tanto* his government.” This includes “all officers and men in authority”.<sup>109</sup> The League of Nations Conference for the codification of International law provides a similar opinion. They agreed that the actions or omission of the state must be attributed to the state.<sup>110</sup> In their third committee meeting they agreed that “any failure on the part of its organs to carry out the international obligation of the state shall be incurred by the state”<sup>111</sup> once again showing that the failure to act can attribute responsibility to the state.

There are many cases that attribute responsibility to acts of officials whether judicial, legislative or administrative. This includes the *Salvador Commercial Company case*, which held, “a state is responsible for the acts of its rulers whether they belong to the legislative, executive or judicial departments of the government”.<sup>112</sup> As well as the ruling in the *Difference relating to the immunity from legal process of a special rapporteur of the Commission of Human Rights* where it was held that, “According to a well established rule

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<sup>108</sup> *ibid* page 39, ILC, commentaries, see also *Kenneth P Yeager v. The Islamic Republic of Iran*, US-C.T.R Volume 17, page 92, at pp 101-102, (1987)

<sup>109</sup> *ibid* page 40 ILC, International Law Commission. (2001). *Draft Articles on the Responsibilities of States for internationally wrongful Acts with commentaries A/56.10*. United Nations.

<sup>110</sup> See League of Nations Conference for the Codification of International Law pages 25, 41, 52

<sup>111</sup> See ILC Yearbook (1956) Volume ii, page 225, Document (A/CN4.96) Annex 3

<sup>112</sup> See *Salvador Commercial Company UNRIAA*, Volume XV, Number 66 v3, page 455, 477 (1902)

of international law, the conduct of any organ of a state must be regarded as an act of that state. This rule (...) is of customary nature".<sup>113</sup>

There is no distinction between government organs and commercial organs of the state. In a decision of the European Court of Human Rights in *Swedish Engine Drivers Union v. Sweden*<sup>114</sup> it was stated that it does not matter for the purposes of attribution that the conduct of the state may be classified as commercial or as *acta iure gestionis*.

All parts of the state must act in accordance with international law and it is the state's responsibility to ensure that its constitutive parts are undertaking implementation. This has been consistently applied with reference to the *La Grand case* whereby the ICJ held that "the Government of the United States is consequently under the obligation to transmit the present order (...) whereas the Governor of Arizona is under the obligation to act in conformity with the international undertakings of the United States".<sup>115</sup> It does not matter that an official is acting *ultra vires* of his or her official position. The *Claire case* showed us that exclusion from responsibility is only possible when the act had no connection with the official function and was an act of a private individual.<sup>116</sup> If the state official is acting *ultra vires* in his official capacity the attribution of responsibility remains with the state.

Article 5 of the Responsibility of States for Internationally Wrongful Acts (2001), contends that the conduct of a person or entity which is not an organ of the state under Article 4 but which is empowered by the law of that state to exercise elements of the governmental authority shall be considered an act of the state under international law, provided that the person or entity is acting in that capacity in that particular instance.<sup>117</sup> For the purposes of attribution any entity, public or private, that is exercising elements of government authority is considered an act of the state. Again the preparatory committee for the 1930 Hague conference outlines some support from governments for the attribution of conduct of autonomous bodies

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<sup>113</sup> *ibid* page 40 ILC, International Law Commission. (2001). *Draft Articles on the Responsibilities of States for internationally wrongful Acts with commentaries A/56.10*. United Nations.

<sup>114</sup> See page 41 ILC commission commentary, as well as European Court Human Rights Series a, number 21, (1976) page 14

<sup>115</sup> See *LaGrand (Germany v. United States) (Judgment) (2001) ICJ reports 466* and *LaGrand (Germany v. United States) (Provisional measures) (1999) ICJ reports 9*

<sup>116</sup> See *Caire claim (1929) 5 RIAA 516*

<sup>117</sup> ILC page 42,

exercising governmental functions. The German government at the time asserted that “when a delegation of powers, bodies, act in a public capacity e.g. police an area (...) the principles governing responsibility of the state for its organs apply with equal force.

From the point of view of international law, it does not matter whether a state polices a given area with its own police or entrusts the duty to a greater or lesser extent to autonomous bodies.”<sup>118</sup> If the entity is acting on behalf of the state the responsibility lies with the state that is in control of the entity. Article 6 of the ILC draft articles covers the conduct of an organ placed at the disposal of a state by another state. Under Article 6 this is considered an act of the former state under international law if the organ is acting in the exercise of elements of the governmental authority of the state at whose disposal it is placed.

Where an organ is placed at the disposal of another state, the responsibility shifts from the sending state to the receiving state. The sending state must have relinquished control over the organ or entity, such as an army or other organ. The organ must act in accordance with the receiving state’s rules or machinery of that state and it must act in accordance and under the exclusive direction of control of the receiving state in order for attribution to be placed on the receiving state. The ILC commentaries on Internationally Wrongful Acts of a state include, “health services or some other unit placed under the orders of another country to assist in overcoming an epidemic or natural disaster”. This may include organs that are placed in direct control of a receiving state in a state of emergency (which will be discussed in Chapter 4). The commentaries add that aid or assistance offered by organs of one state to another would not be considered the responsibility of the receiving state.

In some instances the conduct may be attributable to two or more states, where armed forces are sent to assist another state but remain under the control of the sending state but some control is relinquished to the receiving state. The work may be seen as collective and therefore responsibility will be spread between the states. As the commissioners discuss “where the forces in question remain under the authority of the sending state, they exercise elements of the governmental authority of that state and

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<sup>118</sup> See League of Nations . (1930). *Conference for the Codification of Interantional Law*. Hague: League of Nations

not the receiving state. Situations can also arise where the organ of one state acts on the joint instructions of its own and another state (...) In these cases the conduct in question is attributable to both states”.<sup>119</sup>

In regards to R2P, responsibility may be attributable to several states especially in regards to NATO intervention. In a state of emergency for example, states that send in troops to quell peaceful protests with machinery or weapons may later find that their participation has created attribution to both the sending and the receiving state. (This will be discussed further in Chapter 4). If the sending state retains its their own autonomy the responsibility and attribution will remain with the sending state. Articles 17 and 18 cover territorial occupation or enforced participation. The commentary<sup>120</sup> excludes private military firms as an ambit for responsibility of the receiving state and it outlines two further criteria. Firstly the organ of the state that is being sent must in fact be an organ of the state, and secondly the conduct must involve elements of government authority, which is why private firms cannot be included in the attribution to state responsibility unless that authority is directly related to the state in question.

The commentaries also exclude mutual defence, aid and development from the ambit of the responsibility of the receiving state. The onus of responsibility in these situations remains with the sending state. Delegated powers must be seen as an act of the state, therefore any state that is receiving entities or organs of another state and has taken full responsibility of their conduct is attributed the responsibility. Where there is any governmental control over an entity in another state the state that has control has attribution.

On the other hand where a state is not a party to an international treaty that has been breached and the other state is, it is likely that the courts will hold that the party that is not part of the international treaty was acting under its regulations. This is because when the parties concluded their consent or full powers they did so with consent and therefore the treaty is binding on both parties at the time of participation. In the case between *Liechtenstein* and Switzerland the commission held that “Switzerland exercised its own customs and immigration jurisdiction in *Liechtenstein* albeit with the latter’s

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<sup>119</sup> See page 44 ILC commentaries

<sup>120</sup> Page 44 paragraphs 1-7

consent and in their mutual interest. The officers in question were governed exclusively by Swiss law and were considered to be exercising the public authority of Switzerland. In that sense they said that they were not “placed at the disposal” of the receiving state.<sup>121</sup> These attributions of state responsibility are limited to sovereign states. There is not apparent law discussed in the commentaries on attribution whereby the United Nations or NATO is in control of the situation of a Security Council-approved intervention into another state.

However as will be seen in Article 7 the conduct of an organ of a state or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the state under international law. If the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions, the attribution remains with the sending state. Article 91 of the protocol additional to the Geneva Conventions of 12<sup>th</sup> August 1949 states that a party to the conflict “shall be responsible for all acts committed by persons forming parts of its armed forces”. The commentators of the ILC on the Responsibility of States of Internationally wrongful Acts (2001) says that this alone “clearly covers acts committed contrary to orders or instructions” of the state.<sup>122</sup> The well known and previously discussed *Caire claim case* showed us that the officers that acted contrary to instructions as well as *ultra vires* outside their jurisdiction were nevertheless acting “as officers and used means placed at their disposal on account of their status”.<sup>123</sup>

All of these considerations show us that state responsibility is inherent and well grounded in international law. R2P paragraphs 138 and 139 clearly outline and reiterate these notions of responsibility. Paragraph 138 declares that each individual member state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility includes the prevention of such crimes, including their incitement, through appropriate and necessary means. The previous discourse discussed on attribution of conduct to the state shows that state responsibility is well grounded in international customary laws

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<sup>121</sup> See footnote 116

<sup>122</sup> See ILC commentaries page 46, International Law Commission. (2001). *Draft Articles on the Responsibilities of States for Internationally Wrongful Acts with Commentaries A/56.10*. United Nations.

<sup>123</sup> See *Caire case* footnote 112

that have been integrated to prevent and protect citizens from harm. The act of omission is also well covered and conversely connected to Paragraph 139 of the World Summit outcome document (2005), whereby acts of omission are clearly cited as “manifestly failing to protect” showing yet again that international law is thoroughly conversant with attributions of omissions and breaches in international law.

The breaches of conventions are well documented as mentioned in the *Velasquez Rodriguez case* where it was concluded:

That a breach of convention “(...) is independent on whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority, under international law a state is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”

The message is clear; the international courts will not tolerate violations or breaches of international law, states are responsible for the protection of their citizens from harm.

So far this thesis has covered the attributions of officials and officers of government, entities or organs of the state and delegations of authority from receiving and sending states. The next section covers the conduct of persons or groups of persons who have acted in accordance with the state. Article 8 covers the conduct directed or controlled by a state; including the conduct of a person or group of persons, which can be considered an act of a state under international law. When the person or group of persons are acting on the instructions of or under the direction of, that state attribution will be placed on the state that has that control.

#### WHAT FACTUAL RELATIONSHIPS MUST BE IN PLACE TO ATTRIBUTE OBLIGATIONS TO THE STATE?

There must be in place a factual relationship between a person or persons and the state for attribution to be placed on the state in question. The commentaries on Article 8 of the draft articles on Responsibility of States for Internationally Wrongful Acts of a State, describe the attribution in detail. This section covers two areas: firstly, the acts have taken place because the state has given instructions to an actor; secondly persons have acted under the direction or control of the state. In light of these it does not matter that the person is a civilian or private individual so long as they have acted

in a manner consistent with governmental activity.<sup>124</sup> The attribution of conduct by individuals under the control of the state is well recognized.<sup>125</sup> State responsibility is most likely to appear where private individuals have been employed on behalf of the state to undertake specific missions or duties within the state and abroad. However in relation to missions outside of the directing state, the onus will be placed on the state that has direct control of the persons being held accountable.

This can be seen in the *Parliamentary Activities and Nicaragua case* whereby the United States planned, directed and supported operatives in Nicaragua but did not exercise control over the specific actions of the mission in breach.<sup>126</sup>

The ICJ concluded that; “without further evidence, that the United States directed and enforced the perpetration of the acts contrary to human rights and humanitarian law (...) Such acts could be well committed by members of the *contras* without the control of the United States. For this conduct to give rise to legal responsibility (...) it would in principle have to be proved that the state had effective control of the military or parliamentary operations in the course of which the alleged violations were committed”.<sup>127</sup> The commentators of the ILC draft articles claim that the Court confirmed, “A general situation of dependence and support would be insufficient to justify attribution of the conduct to the State”.<sup>128</sup>

Other courts have also relayed the same attributions in regards to providing financial or other support to private individuals or groups. For example in the *Tadic case*<sup>129</sup> it was held that the exercise of control by the state must be shown in the affirmative, and each case would be based on factual merits of the situation. The Appeals Chamber held “authorities over these armed forces required by international law for considering the armed conflict to be international was *overall* control going beyond the mere financing and equipping of such forces and involving also participation in the

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<sup>124</sup> See ILC reports (2001) page 47

<sup>125</sup> See *Zafiro case*, UNRIAA, volume vi (1955) volume 3; *Stephens's case, Lehigh Valley Railroad Company and others, U.S.A. v. Germany*, as well as the *Kingsland and Black Tom* incidents, (1930) page 84 and (1939) pages 458

<sup>126</sup> See *Military and Parliamentary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (merits) (1986) ICJ reports 14

<sup>127</sup> *ibid* page 51 para 86

<sup>128</sup> ILC Draft Articles (2001) page 48

<sup>129</sup> *Prosecutor v. Dusko Tadic*, International Tribunal for the former Yugoslavia, case IT-94-1-A (1999), ILM, volume 38, (November 1999)



planning and supervision of military operations”.<sup>130</sup> It is clear that there are three distinct areas that the court will assess before making a decision on attribution; these are firstly instructions that are given, secondly the directions and lastly the control of the private individual, persons or company that is in question.<sup>131</sup> Each individual case would be assessed on its own merits and the court would decide whether the control was indicative of the breach in question.

#### WHAT HAPPENS WHEN THERE IS AN ABSENCE OF GOVERNMENTAL CONTROL?

There are some instances where there is no government in control of the breach or of the violations that have taken place. This may include revolutions, *coups d'état*, armed conflict, an occupation or where the state is in between government authority and control, including disintegration of government departments or suppression of government or where a transitional government is taking place. This may mean that there is an absence of regular forces including police and or military forces, including but not limited to air force, ground patrols and/or navy. In these particular situations the civilians may take up arms in self-defence: this is called an action of necessity. Where civilians take up actions of governmental authority in the absence of governmental control the state is still liable for attribution of the breaches in international law. In the *Yeager v. Islamic Republic of Iran case*<sup>132</sup> it was held that the guards acted as the governmental authority of the state. The Iran United States Claims Tribunal at the time said that the actions “exercised elements of governmental authority in the absence of official authorities, in operations of which the new government must have knowledge and to which it did not specifically object”.

Article 9 of the ILC draft Articles (2001) describes the rules as being:

The conduct of a person or group of persons shall be considered an act of the state under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of

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<sup>130</sup> ILM, Volume 38, no 6 (1999) page 1546, para 145

<sup>131</sup> See ILC commentaries on the Draft Articles page 48

<sup>132</sup> *Yeager v. Islamic Republic of Iran (1987)* 82 ILR 179, page 104, para 43

the official authorities and in circumstances such as to call for the exercise of those elements of authority.<sup>133</sup>

This shows that the absence of government has given rise to the breaches and violations that have taken place. The state remains responsible for these elements in these circumstances. The same applies where an insurrectional movement becomes the new government. The actions that are taken by the insurrectional movement whether they contravene international law or not are seen as attributions of that state.

Article 10 of the ILC draft articles describes this in detail.

The conduct of an insurrectional movement that becomes the new Government of a State shall be considered an act of that state under international law. Secondly the conduct of the movement, insurrectional or other that succeeds in establishing a new state in part of the territory of a pre-existing state or in a territory under its administration shall be considered an act of the new state under international law.

This explicitly states that the insurrectional movement must be successful in its attempt to take over the state. If on the other hand it is not successful then the actions of the private individuals will not be attributable to the state.<sup>134</sup> While an insurrectional movement is against the governmental authority that is in place it is seen as a rebellious group or an organized movement, in international law. In these particular cases attribution is not placed on the state because the actions cannot be considered actions of the state. They are in fact actions of private individuals or groups acting contrary to government directions.

At a League of Nations conference (1930) the preparatory committee agreed that “the conduct of organs of an insurrectional movement could not be attributed (...) to the state or entail its international responsibility (...) only conduct engaged in by organs of the state in connection with the injurious acts of the insurgents could be attributed to the state (...) and then only if such conduct constituted a breach of an international

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<sup>133</sup> ILC draft articles (2001) page 49

<sup>134</sup> See for example *Iloilo claims*, UNRIIAA, volume vi (1955) volume 3, page 158

obligation of that state”.<sup>135</sup> The insurrectional movement is not considered an act of the state because it sits outside and independent of the state until such time as it succeeds in over taking the government. As the ILC commentaries explain; the state does not cease to exist at any point in the transition as a subject of international law, only the party has changed and not the state itself.<sup>136</sup> Because the state is the only accountable institution in international law the state remains to be attributable for the actions of the parties involved. The ILC commentaries clearly point this out when they say that the state is the only subject of international law to which responsibility can be attributed.

In light of this, distinction is not made between different types of movements on the basis of legitimacy issues in international law. The focus in international law is directed at the specific conduct of the parties at the time of their actions.<sup>137</sup> The ICJ reflected this in an advisory opinion in relation to Security Council Resolution 276 when they said “physical control of a territory and not sovereignty or legitimacy of title is the basis of state liability for acts affecting other states”.<sup>138</sup> In the *Bolivar Railway Company claim* the court said that “the national is responsible for the obligations of a successful revolution from its beginning, because in theory it represented *ab initio* a changing national will, crystallizing in the finally successful result”.<sup>139</sup>

The *French Company of Venezuela Railroads case* also emphasized that the state cannot be held responsible for the acts of revolutionaries unless the revolution was successful since the acts themselves involve the responsibility of the state.<sup>140</sup> Unsuccessful insurrections are not covered under state responsibility because they do not include attribution to the state. The movement itself may come under individual criminal

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<sup>135</sup> League of Nations. (1930). *Conference for the Codification of International Law*. Hague: League of Nations

<sup>136</sup> See page 50 ILC commentaries (2001)

<sup>137</sup> See for example, *Legal consequences for states on the continued presence of South Africa in Namibia (South West Africa) Security Council Resolution 276 (1970) Advisory Opinion ICJ reports (1971) page 16 and p 54,*

<sup>138</sup> *ibid* see footnote 134

<sup>139</sup> See *Bolívar Railway Company claim (1903) UNRIIAA, volume ix, (sales no 59.v5) page 445 and 453 see also French company of Venezuela railroads case volume (1902) x (sales number 60.v4) page 285, 354*

<sup>140</sup> *ibid* Commentaries from the ILC (2001) page 51

prosecution in regards to humanitarian and human rights law, which is outside the scope of this thesis.

#### CAN ATTRIBUTION BE PLACED ON A STATE *AB INITIO* OF THE CONDUCT AND BREACH THAT HAS TAKEN PLACE?

There are cases whereby the state has adopted attribution of situations where initially they had no control of the direction of the situation. This includes the *Tehran case* as previously mentioned. The *Ayatollah* government accepted and endorsed the takeover of the embassy *ab initio* of the fact and used it as an action to exert pressure on the United States government. In this particular case the ICJ held that the “decision to perpetrate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that state”.<sup>141</sup> This example of omission *ab initio* is dealt with under Article 11 on conduct acknowledged and adopted by the state.

#### DISCUSSION

As discussed above the state is responsible for insurrectional movements if they are successful in taking over the preceding government. The first half of this section also illustrated how this relates to civilians in an environment that gives rise to self-defence in absence of any governmental authority. This research showed that the state is still responsible for these actions when the civilians become the actors of the state itself, once again confirming that R2P in relation to responsibility of states is well grounded and documented in international law. State responsibility is wide and varying in relation to omissions and acts by persons acting on behalf of or in absence of state authority. Lastly this research also has shown that states acknowledge or take on private persons’ actions as acts of the state even when they are *ab initio* of the fact they become attributions of the state. Article 12, of the ILC draft articles on Responsibility of States of Internationally Wrongful Acts of a State (2001) incorporates this broad mindedness. It says that there is a breach of an international obligation when the act in question is not in conformity with which, is required by that obligation (in international law) regardless of its origin.

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<sup>141</sup> *Tehran case* see footnote 94

This shows that a breach is not limited in scope and includes bilateral and multilateral agreements. It can also include minimal breaches as well as serious crimes against humanity without distinction to the vicariousness of the violation at hand. The agreement that is in breach ascertains the responsibility of the state in question. The ILC commentators reflect this position when they stated that. “The breach by a state of an international obligation constitutes an internationally wrongful act, whatever the subject matter or content of the obligation breached and whatever description may be given to the non-conforming conduct”. This shows again how wide and varying the scope of responsibility is that remains with the state. The state that has acted in good faith or *pacta sunt servada* is also responsible for its failure to act on its international obligations in international law.

When the courts assess whether the obligation has been breached they have also been known to ask, what more could the state have done to make international law more effective?<sup>142</sup> This illustrates that effective implementation or application of international law is dependent on the state’s readiness to apply and effectively incorporate the agreements into local law. This readiness combined with responsibility is also the basis of the Responsibility to Protect doctrine, whereby each state must not only protect its citizens from atrocities but must also prevent these from taking place. This includes implementation of obligations in international law into local jurisdiction and local education. (This will be covered in more detail in chapter 4). There are many other important distinctions in internationally wrongful acts of the state, however this thesis has limited room for the question at hand. It is suggested that a more comprehensive study is required to ascertain the full scope of international responsibility of the state, in relation to application principles, for now this research shows that R2P is well grounded in the ILC commentaries, international law and in international courts both in *opinio juris* and in *obiter dictum*. It also shows how courts of arbitration, human rights courts and other tribunals are ready and willing to incorporate the responsibility of states into their decisions in relation to internationally wrongful acts of the state.

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<sup>142</sup> See *Colozza v. Italy*, (1985) European Court Human Rights series A No 89, pp 15-16 para 30

## SUMMARY

R2P is not a new doctrine. This can be seen by the attempts to clarify the rights, duties and responsibilities of states in the early stages of the United Nations General Assembly debates and the International Law Commission's proposals on state responsibility.

The research in the second chapter clarified that states have responsibilities in international law through attribution to acts or omissions of the state in question. This complements the R2P World Summit outcome whereby states firstly have the responsibility to prevent and protect their citizens from harm. This chapter showed how 'responsibility' is not a new idea and that it is well grounded in international opinions and *juris*. The draft declaration on rights and duties of a state showed that responsibility has been a concern of the United Nations General assembly since 1946. This linked in with the International Law Commission through their *magnum opus* on state responsibility. The first Special Rapporteur, Garcia Amador and the second, Roberto Cohen showed how responsibility entailed the whole area of international law. They clarified that obligations *erga omnes* or *jus cogens* rules were applicable to the prevention of genocide and that this was binding on all states.

The rulings of courts as explained in the second chapter also showed how willing the courts were to adopt responsibility as international law. This clarified that responsibility not only entailed duties but also obligations that could manifest into breaches and violations of international law inherently threatening peace and international security. Prevention was shown as commitment to implement international jurisdiction into local legislation and education and breaches included omissions, actions, and the failure to act. Attributions included once again omissions, actions and the failure to act including the failure to implement, direct, control and manage persons or people carrying out governmental authority. The acceptance of actions could equate to attribution as was seen in the *Tehran case*. This also showed how states can be attributed responsibility even when they did not initially instigate the violation or breach.

The omission or failure to act ties in with the responsibility to prevent mass atrocities from taking place under paragraph 138 of the 2005 World Summit outcome document, where the responsibility to prevent firstly remains with the state in question.

This research showed that the term ‘responsibility’ was extensive and not limited to crimes against humanity, ethnic cleansing, war crimes or genocide. The term included not only gross violations of international law but also minimum breaches and this responsibility was globally applicable to any state that has a contract with another state, with several states or with the United Nations as a whole. These violations and breaches were not only legally attributable but also internationally enforced by the courts. This showed that responsibility is inherent in all internationally binding agreements and any violation of these could in fact bring about a breach in international law. The failure to act could also pose a threat to international peace and security depending on the severity of the threat and the violations of the breach in question. This research shows how the International Law Commission draft articles on Responsibility of States for Internationally Wrongful Acts (2001) is solidly grounded in international law, leaving no room for debate on its application principles for courts dealing with international legal breaches. This research clearly illustrates that the responsibility to prevent and to protect firstly remains with the state in question. It is deeply grounded in international law protecting both citizen and state in order to prevent threats to international peace and security.

This brings us to chapter 3 where further research has been undertaken to build on the responsibility of states in R2P and international law under the jurisdiction of the Rule of Law.





### CHAPTER 3 – THE RULE OF LAW

This chapter covers the rule of law in relation to the concept of R2P and international law. The question of the rule of law is important because it is the framework for violations or breaches of contract in treaties. This applies to the question on grounding in international law because it defines the areas of obligations and the responsibilities of states. There is no universal concept of the rule of law but it is instead referred to as a family of related concepts.<sup>143</sup>

For example the Secretary-General Ban Ki-Moon describes the rule of law.

“It refers to a principle of governance in which all persons, institutions and entities, public and private, including the head of state itself, are accountable to laws that are publically promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures, to ensure adherence to the principle of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.<sup>144</sup>

The Charter of the United Nations could be considered the ultimate rule of law for states on international peace and security. The Charter not only is binding in regards to international peace and security but it can also back these up with Security Council decisions to enforce the duties in place. At the same time the International Court of Justice Statute is as enforceable as the Charter itself because it was conjointly signed by all members of the United Nations, It presents an *ipso facto* agreement of state’s binding to international law in relation to violations and breaches between states before the court. Each state that becomes a party to the Charter of the United Nations also *ipso facto* becomes a party to the ICJ statute. The states acknowledge its binding

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<sup>143</sup> Levine, D. (2010). Rule of Law, Power distribution and the problem of faction in Conflict Interventions. In M. Sellers, & T. Tomazewski, *The Rule of Law in Comparative Perspective, Jus gentium: Comparative perspectives on Law and Justice* (p. 147). Found on Springer Science+ Business Media B.V. 2010 DOI 10.1007/978-90-481-3749-7\_9 last accessed 22<sup>nd</sup> September 2011

<sup>144</sup> Ki Moon, B. (2004). *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*. United Nations. (S/2004/616) para 6

nature by conjointly agreeing to both the Charter and the ICJ Statute. This means they are bound to both equally in law conjointly and severally. Each member state gives rise to its responsibilities in international law through first being a party to these agreements. They are not only bound to the Treaty and Statute but also to all other member states of the United Nations.

This truly universal binding nature is distinctive from other Treaties in international law that conjoin only certain members or states to agreements that they have made between them. Although some Treaties are considered *jus cogens* from which no derogation can apply most are bilateral or multilateral in context. The Charter and the ICJ Statute on the other hand are universal because a majority of states have agreed to be bound by their terms.<sup>145</sup> This bindingness means that states have agreed to limit their sovereignty in order to protect the contracts of agreement between them. Each member state has freely given their consent to abide by the rules of the agreement. This freedom of consent is consistent with the rule in international law that a treaty is only binding on states that are a party to the treaty. This is called the general rule of *pacta terti nec nocent nec prosunt*. This literally means that a third party will not bear duty, nor will it endow a third party with a right.<sup>146</sup>

The responsibility of the state that has freely given its word<sup>147</sup> or signature is under an obligation to perform that duty in good faith. As already mentioned in Chapter 2 this is called the general principle of *pacta sunt servanda*, a general rule, which is well accepted in international law.<sup>148</sup> In the event that there is a conflict between the United Nations Charter responsibilities of a member state and any other international agreement the responsibility prevails to the Charter of the United Nations.<sup>149</sup> This shows that the Charter of the United Nations takes precedence over all other Treaties in international law. This also shows that there are indeed some rules of international law that are considered *jus cogens*.

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<sup>145</sup> See *Reparation for injuries suffered in the service of the United Nations*, Advisory opinion (1949) ICJ reports, 16 ILR 318

<sup>146</sup> Conte, A. (2006). *An Introduction to International Law*. Lexis Nexis page 53

<sup>147</sup> See *S.S. Lotus case*, judgment number 9, 7<sup>th</sup> September (1927), PCIJ, series a, WCR (1927-1932), volume ii, 20, 35

<sup>148</sup> See *Yuen Kwok-Fung v. Hong Kong special administrative region of the Peoples Republic of China*, (2001) 3 New Zealand Law review 463, 468

<sup>149</sup> See Article 103 of the Charter of the United Nations and the Vienna Convention on the Law of Treaties Article 30(1)

The ICJ Statute declares (Article 93) that all members of the United Nations are *ipso facto* parties to the Statute of the ICJ. Article 92 also stipulates that the ICJ shall be the principle judicial organ of the United Nations, indicating that the ICJ has jurisdiction in relation to any contentious issues in international law and the United Nations member states.<sup>150</sup> The ICJ itself has on many occasions reinforced this by reminding parties that the ICJ always has jurisdiction in relation to the United Nations member state violations and breaches of international treaties. In each case that is brought to the court it firstly assesses whether it has jurisdiction in relation to the action at hand. The court has only ever once decided that it did not have jurisdiction over matters pertaining to an opinion<sup>151</sup> and it was only turned down because the question did not arise within the scope of the World Health Organization activities. This illustrates that ICJ jurisdiction is wide and encompassing and the rule of international law is grounded strongly in the ICJ Statute and the Charter of the United Nations.

Each member state is bound to the international legal framework of the ICJ and the Charter. The state recognizes these as principal documents that have standing in international law. The state also acknowledges through being a member of the United Nations, that it is no longer the sole judicator of international law. Its sovereignty is subject to conditions, obligations and duties that arise out of the duty to perform. The state is only recognized as sovereign through being a member of the United Nations.<sup>152</sup> This means that it cannot stand alone independently or be recognized as sovereign unless the members of the Security Council accept the state as legitimate in international law. The state is therefore not only subject to conditions of the Charter of the United Nations and member state agreements but it is also liable for any breach

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<sup>150</sup> See article 65, paragraph 1 of the ICJ statute, which says the court “may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. The General Assembly is also authorized to make a request of the ICJ under article 96, paragraph 1 of the Charter of the United Nations that states “the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”. See also, ICJ summary of the advisory opinion of 9<sup>th</sup> July (2004) on the *legal consequence of the construction of a wall in the occupied Palestinian territory*, page 1

<sup>151</sup> See ICJ Advisory opinion 8<sup>th</sup> July (1996) on the *Legality of the use of nuclear weapons in Armed conflict*, page 89

<sup>152</sup> See ICJ summaries of judgments, advisory opinions and orders of the ICJ, *Competence of the General Assembly for the admission of a state to the United Nations*, Advisory Opinion, 3<sup>rd</sup> March (1950) as well as, summaries of judgments, Advisory opinions and orders of the ICJ, *Conditions of admission of a state to membership in the United Nations* (Article 4 of the Charter), advisory opinion, 28<sup>th</sup> May (1948)

or violation of international law that is attributable to it by their actions or omissions of responsibility. This research reinforces the tenet that the state has responsibilities in international law and they are firstly responsible for the prevention and protection of their citizens from harm.

## WHAT RULES IN LAW PROVIDE US WITH THE FOUNDATIONS FOR APPLICATION ON CONTRACT ON TREATY LAW?

As already mentioned the Charter of the United Nations and the International Court of Justice Statute provide the foundations for interpretation of responsibilities and obligations of a state in international law. Beyond these, the Vienna Convention on the Law of Treaties or VCLT<sup>153</sup> (1969)<sup>154</sup> outlines state duties to binding contracts and treaty obligations. The Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations (1986)<sup>155</sup> binds states and international organisations to treaty provisions and duties in international law. On this note Article 2 of the VCLT provides us with the scope of treaty relations in that it says that a treaty is an international agreement concluded between states in written form.<sup>156</sup> The terminology in the VCLT between states and international organisations only changes slightly by adding “one or more international organisations or between international organizations”.<sup>157</sup>

This section outlines the provisions, responsibilities and duties of the state under the VCLT. (1969)

When a treaty is ratified it is expected that the person who has signed the treaty has competent authority from the state in question and is therefore acting with full powers for delegation.<sup>158</sup> The representative of the state plays the role of negotiator on behalf of the state and his/her position is to act on behalf of the state and adopt or

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<sup>153</sup> The short version VCLT may be used to describe the full convention from this point.

<sup>154</sup> The Vienna Convention on the Law of Treaties (1969) was adopted on the 22<sup>nd</sup> May 1969, opened for signature on the 23<sup>rd</sup> May 1969; Entry of force took place on the 27<sup>th</sup> January 1980. As of June 2011, 111 parties and 45 signatories were in place. See United Nations Treaty Series Document volume 1155

<sup>155</sup> See United Nations Series Document volume 2, chapter xxiii, title 23.3

<sup>156</sup> Article 3 of the VCLT also outlines that the Convention does not apply to any Treaty that is not in written form.

<sup>157</sup> See Article 1 (a) i, 1 (a) ii, and Article 2 (b)

<sup>158</sup> See Article 2.1 (a) and (b) of the VCLT

authenticate the text so that when the consent is given freely it binds the state to the treaty in question. The person is seen as legitimate when they act in a position of authority. This may include heads of State, heads of government, ministers for foreign affairs, heads of diplomatic missions and representatives accredited by states to an international conference or organization for the purpose of adopting the text of a treaty.<sup>159</sup> When the state is engaged in the process of clarifying its obligations and responsibilities it has an opportunity to exclude or modify the legal effect on the state by expressing a reservation to the treaty provisions in question.<sup>160</sup> The consent of the state to be bound by a treaty may be expressed by signature,<sup>161</sup> exchange of instruments<sup>162</sup> constituting a treaty ratification<sup>163</sup>, acceptance, approval, accession<sup>164</sup> or by any other means,<sup>165</sup> if so agreed. Some treaties provide options for only partial agreement.<sup>166</sup>

However all parties agree to refrain from any actions that would defeat the object and purpose of the treaty as a whole,<sup>167</sup> in addition to this, adoption of the text of a treaty does not take place until two thirds of the state parties at the convention accept its provisions.<sup>168</sup> This illustrates that provisions have been put in place to eliminate any grounds for failure to comply with the treaty in question that the state will be bound to in international law. It is clear that reservations to a treaty may be made providing that they do not prohibit the treaty in any way.<sup>169</sup> Consequently in this case some reservations may modify the relationship between states. Where a reservation is established and particular provisions are modified it may modify the relationship

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<sup>159</sup> See Articles 5, 7.a and 7.b, and 7.2, VCLT

<sup>160</sup> See Articles 2(1) c and 2(1) d, VCLT

<sup>161</sup> Article 12.1 a, treaty provides that signature should have that effect or 12.1 b, the states agreed to give that effect to signature or 12.1 c, it is the intention of the state to give that effect.

<sup>162</sup> Article 13 a, exchange shall have that effect, or 13 b, it is otherwise established that those states agreed that exchange of instruments should have that effect. VCLT

<sup>163</sup> Article 14(1) a, consent to be expressed by ratification or 14(1) b, the negotiating state agreed that it should be required or article 14(1) c, the representative signs the agreement subject to ratification, VCLT

<sup>164</sup> Article (15) a, b, c, VCLT

<sup>165</sup> Article 16 provides for instruments, ratification, acceptance, approval or accession to establish consent as well as their exchange, depository or notification as agreed, VCLT

<sup>166</sup> Article 17 (1) VCLT

<sup>167</sup> Article 18(a), 18(b), and article 19 (c) VCLT

<sup>168</sup> Articles 9 (1) and 9 (2) VCLT

<sup>169</sup> Article 19 (1), VCLT

between the reserving state and accepting states,<sup>170</sup> but it does not modify the relationship between all parties to the Treaty.<sup>171</sup> When a party to the treaty objects to the reservations and does not oppose its entry into force the reservations to the treaty do not apply between the states.<sup>172</sup>

The law on interpretation in the VCLT is determined by the ordinary meaning of the words in their context and in the light of its object and purpose.<sup>173</sup> In addition to the text of the document it includes the preamble and annexes, any agreements that were made between the parties, the practice between the parties and any relevant rules of international law that are applicable to the case.<sup>174</sup>

Just as significantly, when other matters relating to the treaty are taken into consideration they will be dependent on the rule of *pacta sunt servada* as mentioned previously.<sup>175</sup> A party cannot invoke its internal laws for justification of its failure to perform treaty duties.<sup>176</sup> Each treaty that is binding on a state is applicable to its entire territory including those that it occupies.<sup>177</sup> This means that a state cannot derogate from Treaties in occupied areas that are within its jurisdiction and control. Regarding the rule of *pacta terti nec nocent nec prosunt* Article 34 provides clarification; a treaty does not create obligations or rights for a third state without its consent.<sup>178</sup> However nothing in the articles precludes a rule in a treaty from becoming binding on a third state as a customary rule of international law<sup>179</sup> showing us once again that some rules of international law are binding on all states. This also clarifies that duties of a state include the duty to fulfil any obligations embodied in the treaty to which it would be subject under international law, independent of the treaty in question.<sup>180</sup>

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<sup>170</sup> Articles 20(5) and 21 (1) a, 21 (1) b, VCLT

<sup>171</sup> Article 21(2) VCLT

<sup>172</sup> Article 21 (3) VCLT

<sup>173</sup> Article 31, VCLT

<sup>174</sup> Articles 31 and 32

<sup>175</sup> Part iii, section 1, article 26, VCLT

<sup>176</sup> Article 27, VCLT

<sup>177</sup> Article 29, VCLT

<sup>178</sup> Conte, a, *An introduction to international law*, lexis Nexis (2006) page 53

<sup>179</sup> See article 38, this also includes customary laws against the crime of genocide, war crimes and crimes against humanity. As will be discussed in chapter 3, section 2.

<sup>180</sup> See articles 43 and 40 (2) VCLT

The law on peremptory norms is covered in the VCLT (1969). It provides that a treaty is void if at the time of its conclusion it conflicts with a peremptory norm of general international law. It also describes a peremptory norm as a norm accepted and recognized by the international community as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.<sup>181</sup> If a treaty conflicts with a peremptory norm of international law it will be deemed invalid.<sup>182</sup> The parties will also eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm, as well as conform with the peremptory norm in question.<sup>183</sup>

If a new peremptory law comes into existence any existing treaty that is not in conformity with that norm becomes void.<sup>184</sup> This releases all parties to the treaty that were or are in violation of the new peremptory norm in international law, showing the commitment to international peremptory norms in international law, and providing the foundation to work on the customary nature of crimes against humanity, war crimes and genocide under R2P.

#### WHAT REMEDIES DO CONTRACTING PARTIES HAVE IN RELATION TO A BREACH OR A VIOLATION OF A TREATY PROVISION?

If a material breach by one or more of the parties has taken place it entitles other parties to invoke the breach as grounds for termination or suspension of the treaty in question.<sup>185</sup> If one party is specifically affected that party can invoke the violation as a ground for suspending the operation of the treaty between themselves and the defaulting state.<sup>186</sup> A material breach may include repudiation or a violation of an essential provision of the treaty in question.<sup>187</sup>

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<sup>181</sup> Article 53, VCLT

<sup>182</sup> Articles 64, and 71, VCLT

<sup>183</sup> Article 71 (10a, and 71 (1) b, VCLT

<sup>184</sup> Article 64, VCLT

<sup>185</sup> Articles 60 (1) and 60 (2) VCLT

<sup>186</sup> Article 60 (2) b, VCLT

<sup>187</sup> Article 60(3) a, and 60 (3) b, VCLT

## WHAT IS INTERNATIONAL CUSTOMARY LAW?

The International Law Commission (ILC) describes customary international law as including treaties, decisions of the courts both local and international, legislation, opinions, diplomatic correspondence and the practice of international organizations.<sup>188</sup> The International Court of Justice (ICJ) includes general principles of international law recognized by civilized nations to be a source of international customary law.<sup>189</sup> As already mentioned the Vienna Convention on the Law of Treaties (1969) states that a treaty is void if it conflicts with a peremptory norm of general international law.<sup>190</sup> The ICJ considers the VCLT customary. Some principles are considered customary such as those that are included in the Charter of the Nuremberg Tribunals<sup>191</sup> and the Judgment of the 1950 tribunal.

This includes crimes associated to individuals,<sup>192</sup> the non-applicability of internal law for defence,<sup>193</sup> and the non-limitations on Heads of States for committing atrocities or violations of international law.<sup>194</sup> The crimes that are punishable under the Nuremberg principles are set out under Principle VI. They include crimes against the peace, including the planning, preparation, initiating, waging of a war of aggression or a war in violation of international treaties, agreements or assurances. War crimes, include violations of the laws or customs of war, as well as murder, ill treatment or deportation to slave labour or for any other purpose of the civilian population in an occupied territory. They also include murder or ill treatment of prisoners of war, of persons on the seas, hostages, plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity. Lastly they include crimes against humanity, including murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds when such acts are

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<sup>188</sup> See United Nations document (A/CN.4/ser.a/1950/add.1) (1957) ILC yearbook 367

<sup>189</sup> Article 38, of the International Court of Justice Statute

<sup>190</sup> Article 53, VCLT

<sup>191</sup> United Nations (2005) *Principles of international law recognized in the Charter of the Nuremberg tribunal and in the judgment of the tribunal (1950)*, ILC yearbook (195) volume ii para 97

<sup>192</sup> Principle 1

<sup>193</sup> Principle 2

<sup>194</sup> Principle 3



done or are carried out in execution of or in conformity with any crime against peace, or any war crime. The affirmation concluding the principles which declares “complicity in the commission of a crime against peace, a war crime or a crime against humanity is a crime under international law” is also considered customary international law.<sup>195</sup>

Certain Conventions are considered customary including the Convention on the non-applicability of statutory limitations to War crimes and Crimes against humanity (1968) and the European Convention on the non-applicability of statutory limitations to Crimes against Humanity and War crimes (1974). Both recognize that war crimes and crimes against humanity are grave crimes in international law and stipulate that no statutory limitations shall apply to war crimes as described in the Nuremberg Tribunal (1945) or the Geneva Conventions (1949) nor to crimes against humanity committed in times of war or in times of peace, even when these crimes do not constitute a violation of the domestic law of the country in which they were committed.<sup>196</sup>

The *Convention for the Protection of Cultural Property in the event of Armed Conflict and protocols (1954)*, The *Hague Conventions (1907)* on the rules and customs of war and the *Geneva Conventions (1949)* For Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) and the Relative Treatment of Prisoners of War (1949) as well as the Protection of Civilian Persons in a Time of War (1949 and their additional protocols (1977) relating to the Victims of Non-international Armed Conflict, are all considered customary international law. The *Convention on the Prevention and Punishment of the Crime of Genocide (1948)* is also considered customary even though there are only 141 parties signatory to the Convention.

Lastly the United Nations Charter and the Statute of the International Court of Justice are both considered customary international law. In relation to state practice some Conventions and Treaties with a high percentage of signatory states could also be considered as customary law, including the *Convention on the Rights of a Child* with 193 state signatory parties or the *Convention on the Elimination of All Forms of Discrimination*

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<sup>195</sup> Principle vii, see also the United Nations General Assembly, Resolution 95 (1), (1946)

<sup>196</sup> See Convention on the Non-applicability of Statutory Limitations to War crimes and Crimes against humanity (1968)

*against Women* (2005). In addition some other similar human rights conventions are considered customary including the *International Convention on the Elimination of All Forms of Racial Discrimination* (1966) with 174 parties to the Convention. The *International Convention on Civil and Political Rights* (1966), *The International Convention on the Suppression and Punishment of the Crime of Apartheid*, (1973) with 107 parties and the *Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment* (1984) with 149 parties are also considered customary by the ICJ.

Overall it is clearly evident that the general consensus on customary international law is for the protection of collective groups, individuals including men, women and children in time of war as well as in time of peace. It also shows that a state's responsibility in terms of customary law is broad and envelops a large portion of general international law. The message of customary international law is clear. "Any person who commits an act which constitutes a crime under international law is responsible and liable for punishment."<sup>197</sup> Customary laws include any convention or treaty that generates responsibility in law to states regarding crimes against humanity, war crimes, ethnic cleansing and genocide, among other breaches of international law against communities, civilians, prisoners of war or hostages in time of war. Peremptory breaches include grave crimes against humanity or any serious breach of general international law affecting the stability of international peace and security.

The next section looks into more specific descriptions of crimes against humanity, war crimes, ethnic cleansing and genocide in order to define the limitations of intervention in regards to general customary law with a *jus cogens* or peremptory nature, relating directly to R2P and the responsibility of the state to prevent and protect all civilians from grave crimes against humanity, ethnic cleansing, genocide and war crimes, as described in paragraph 138 of the World Summit outcome document.

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<sup>197</sup> Principle 1 of the Charter of the Nuremberg Charter (1950)

WHICH INTERNATIONAL LAWS, (CONVENTIONS, TREATIES OR STATUTES) BEST EXPLAIN AND DEFINE CRIMES AGAINST HUMANITY, WAR CRIMES, ETHNIC CLEANSING AND GENOCIDE?

Although the *Rome Statute of the International Criminal Court (2002)* is not yet considered customary it does define and add to the debates on definitions of grave crimes against humanity. In this light it will be analyzed for its descriptive use. The jurisdiction of the International Criminal Court is limited to the most serious crimes of concern to the international community as a whole.<sup>198</sup> The Court has jurisdiction in accordance with the Statute and in respect only to the following crimes; the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Article 7 describes crimes against humanity as acts committed as part of a widespread or systematic attack against any civilian population. This includes murder, extermination,<sup>199</sup> enslavement,<sup>200</sup> deportation or forcible transfer <sup>201</sup> of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, as well as torture,<sup>202</sup> rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violation of comparable gravity. It also includes persecution against any identifiable group collectively on political, racial, national, ethnic, cultural, and religious, gender or other grounds that are universally recognized as impermissible under international law. The crime of apartheid is included as well as any other inhumane act of a similar character intentionally causing great suffering or serious injury to body, mental or physical health. The statute is broad and covers all areas of R2P descriptions. The next section covers the crimes individually.

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<sup>198</sup> The Rome Statute of the International Criminal Court (2002) Article 5, page 2

<sup>199</sup> Article 7(2) b, of the Rome Statute (2002) it describes extermination as the intentional infliction of conditions of life, *inter alia* the deprivation of access to food or medicine, calculated to bring about the destruction of part or the whole of a population.

<sup>200</sup> Article 7 (2) c, describes enslavement as the exercise of all or any of the powers attaching to the right of ownership over a person or persons and includes the exercise of such power in the course of trafficking in persons in particular women and children.

<sup>201</sup> Article 7 (2) d, describes deportation or forcible transfer of the population as displacement of persons concerned by expulsion or other coercive acts from an area in which they were lawfully present, without grounds permitted under international law.

<sup>202</sup> Article 7 (2) e, describes torture as the intentional infliction of severe pain or suffering whether physical or mental upon a person in the custody of or under the control of the accused, except where that torture includes pain or suffering arising from inherent or an accident to lawful sanctions

## THE CRIME OF ETHNIC CLEANSING

The *Rome Statute of the International Criminal Court (2002)*<sup>203</sup> under crimes against humanity covers ethnic cleansing in regards to the crime of apartheid, and persecution to any identifiable group on the basis of cultural, ethnic, racial or political grounds. It also covers war crimes in relation to deportation, extermination, enslavement, forcible transfer and murder, as well as genocide as a widespread or systematic attack directed at any population with the intention of extermination. This Statute collectively covers grave crimes against humanity in relation to genocide, crimes against humanity, ethnic cleansing and war crimes all of which are covered in paragraph 138 of the 2005 World Summit outcome document on R2P.

The *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*, which is considered customary, also covers ethnic cleansing. It does this by explaining that killing members of the group or causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births or forcibly transferring children of the group to another is considered genocide with the intent to destroy in whole or in part a national, ethnic, racial or religious group.<sup>204</sup>

This shows that ethnic cleansing not only comes within the framework of crimes against humanity but of genocide as well. As already mentioned the Rome Statute by inference adds to the definition of ethnic cleansing by specifying ethnic or racial dimensions to crimes against humanity. As well as those already mentioned other descriptions are found in Article 7.2 (g) under persecution of the group including intentional and severe deprivation of fundamental rights contrary to international law by reason of identity of the group. Article 7.2 (j) includes crimes of apartheid, while 7.2 (f) includes forced pregnancy with the intent of affecting the ethnic composition of the group. The Rome Statute defines apartheid under Article 7.2 (h) as inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group.

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<sup>203</sup> United Nations. (2002). *The Rome Statute of the International Criminal Court*. United Nations .

<sup>204</sup> United Nations (1948). *The Convention on the Prevention and Punishment of the Crime of Genocide*. New York: United Nations, Article ii

*The International Convention on the Elimination of All Forms of Racial Discrimination (1966)*, also considered customary, defines ethnic cleansing. Article 1 describes racial discrimination as,

“Any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose of or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.<sup>205</sup>

The Convention also shows how the state has responsibilities for the prevention of racial discrimination. Each party to the Convention is resolved to adopt all necessary measures for speedy elimination of racial discrimination in all its forms and manifestations and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination.<sup>206</sup> The state is responsible for promoting understanding among all races.<sup>207</sup> These provisions are not only accepted by the signing state as it also has a responsibility not to engage in any practice of racial discrimination and it must enforce the provisions into public institutions, nationally and locally. It also has to refrain from endorsing or sponsoring racial discrimination in any manner or form.<sup>208</sup>

Each signatory to the statute is bound to ensure that local legislation is changed, amended or reviewed to nullify any law that endorses racial discrimination of any kind.<sup>209</sup> It also provides for the elimination, prohibition and prevention of racial segregation and apartheid<sup>210</sup> by stipulating that the state is responsible for ensuring that criminal liability is enforced and is punishable by law.<sup>211</sup> Article 5 binds the state to protect the right to security of the person from violence or bodily harm whether inflicted by governmental officials or by an individual, a group or an institution. This

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<sup>205</sup> Article 1 United Nations. (1966). *The International Convention on the Elimination of all forms of Racial Discrimination*. United Nations. New York

<sup>206</sup> Article 1(2)

<sup>207</sup> Article 2

<sup>208</sup> Articles 2(1) and 2.1(b)

<sup>209</sup> Article 2.1 (c) and article 2.1 (d)

<sup>210</sup> Article 3

<sup>211</sup> Article 4, page 4

extends to ensuring that political rights are available to everyone, without discrimination to race, colour, national or ethnic origins.<sup>212</sup> These rights include civil rights such as the right to freedom, movement and residence within the border of the country, the right to leave the country and the right to return to one's country as well as the right to nationality, freedom of thought, conscience and religion, freedom of opinion, expression and the right to freedom of peaceful assembly and association. Article 6 reinforces the responsibilities of the state in relation to protection of its citizens.

“The state will ensure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination which violate human rights and fundamental freedoms contrary to this convention”.

The state signatory is also responsible for implementing the provisions into local education, which includes and extends to educating citizens of the state on the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the United Nations Declaration on the Elimination of all forms of racial discrimination,<sup>213</sup> effectively bringing other international customary laws under the jurisdiction and protection of the International Convention on the Elimination of All Forms of Racial Discrimination (1966). The extension of international law to cover ethnic cleansing in this context shows that it can be included, as well as distinctively separated from, definitions on crimes against humanity, war crimes and genocide. The International Convention<sup>214</sup> also shows that state responsibility goes beyond the acceptance of the international contract in question. The rules are clear; the state has the responsibility to prevent atrocities through application principles and it also has the responsibility to protect by ensuring that legislation is up to date with the requisites applicable to them in international law, reinforcing again the responsibilities inherent in R2P paragraphs 138 and 139 of the World Summit outcome document (2005).

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<sup>212</sup> Articles 5 (a) to 5 (d), i – ix and 5 (e) i – ii, pages 5 to 6

<sup>213</sup> See Articles 6 and 7 page 6

<sup>214</sup> As of June 2011 there were 174 parties to the Convention.

The *International Covenant on Economic, Social and Cultural Rights (1966)* also acknowledges and guarantees rights without discrimination to race, colour, sex, language, religion, political or other opinions including national or social origin, birth and other status.<sup>215</sup> This particular Convention goes beyond general protection duties of a state to protect civilians under grave threats. It includes the right to work,<sup>216</sup> the right to steady economic, social and cultural development and the right to fundamental and economic freedom.<sup>217</sup> It also covers the right to a minimum wage without distinction of any kind, reinforcing non-tolerance for discrimination in the work place.<sup>218</sup> This non-discrimination policy extends to equal opportunity for promotion, working conditions, holidays and the right to join trade unions.<sup>219</sup>

It ascribes special conditions for pregnant women and children. The state signatory must protect children from economic and social exploitation and age limits are imposed on the state to ensure protection of the vulnerable. Women are given special rights for pregnancy leave.<sup>220</sup> The state is assigned the responsibility to continuously improve production methods, conservation and distribution of food, which includes being considerate of import and export problems associated with need.<sup>221</sup> The responsibility extends to the prevention, treatment and control of epidemics, occupational and other diseases.<sup>222</sup>

Although this Convention goes beyond grave breaches against humanity in terminology it also shows that the state is responsible for the underlying problems that create grievances in the home, in the work place and the general environment. It shows us how these grievances can be prevented if the state complies with their duties in international law. It also shows how individual grievances can turn into collective grievances based on race, gender or culture. Differential treatment from the government or employers could become an underlying source of collective grievance.

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<sup>215</sup> United Nations. (1966). *The International Covenant on Economic, Social and Cultural Rights*. New York : United Nations. As of June 2011 there were 160 parties to the Convention

<sup>216</sup> Article 6. (1)

<sup>217</sup> Article 6 (2)

<sup>218</sup> Part iii, article 7 (a) and (i)

<sup>219</sup> Part iii article 7 (d) and 8 (1)

<sup>220</sup> Article 10

<sup>221</sup> Part iii article 11 (b)

<sup>222</sup> Part iii, articles 12 (1), 12 (2), a, 12 (2) b, and 12 (2) c

This convention seeks to ensure that equal rights are given across the board. Last all Conventions and Statutes that have been mentioned demonstrate the ways in which ethnic cleansing is different from genocide, crimes against humanity and war crimes in that it is racially distinctive based on the identity of the person.

## THE CRIME OF GENOCIDE

The *Convention on the Prevention and Punishment of the Crime of Genocide (1948)* is the most extensive convention on genocide. Genocide constitutes of any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. This includes killing members of the group, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births and/or forcibly transferring children of the group to another group.<sup>223</sup> On signing the convention all signatories recognised that genocide whether committed in times of peace or in war is a crime under international law that all signatories will undertake to prevent and punish.<sup>224</sup> This convention is considered customary law, even though there are currently only 141 signatories.

The preamble outlines that genocide is a crime under international law and is contrary to the spirit and aims of the United Nations. The signatories agree that in order to liberate mankind, international co-operation is required. This is consistent with paragraph 139 of the World Summit outcome whereby the member states agreed to take collective action in a timely and decisive manner, reinforcing the urgency and customary nature of this convention in relation to R2P and the crime of genocide. The actions of genocide are set out in Article III that includes genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide and no person is protected from crimes committed in this convention. Article IV states that this convention applies to rulers, public officials or private individuals and for enforcement measures. Article V provides for the duties or the responsibilities of the state in relation to prevention. It declares that signatories undertake to enact the necessary legislation to

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<sup>223</sup> United Nations. (1948). *The Convention on the Prevention and Punishment of the Crime of Genocide*. New York, paragraph 1, verified copy, page 3, see also Article 2 (ii)

<sup>224</sup> Article 1 (1)



give effect to the present convention and in particular to provide effective penalties for persons guilty of genocide or any other acts enumerated in Article III. Thus the responsibility to protect and prevent such crimes including their incitement remains firstly with the state.<sup>225</sup> Article VI reinforces this position by stating that persons charged with genocide will be tried by the state in the territory where the act was committed. For application purposes Article VIII says that ‘any contracting party may call upon the United Nations for the prevention and suppression of the acts of genocide’. Article IX gives the ICJ jurisdiction and this includes disputes on the responsibility of a state for genocide. Finally any party may invoke a request in relation to genocide indicating the seriousness of the crime of genocide and the lengths the United Nations will go to enforce this jurisdiction on any party committing a violation or a breach.

The *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (1951) gives us some insight into the customary nature of the convention. The ICJ was asked by the General Assembly to give its opinion on the reservations of the Genocide Convention.<sup>226</sup> The Judges said,

The principles underlying the Convention are recognized by civilized nations as binding on states even without any conventional obligation. It was intended that the convention would be universal in scope. Its purpose is purely humanitarian and civilizing. The individual states do not have any advantages or disadvantages nor interests of their own, but merely a common interest. This leads to the conclusion that the object and purpose of the convention implies that it was the intention of the General Assembly and of the states that adopted it that as many states as possible should participate”.<sup>227</sup>

Much later, in 1996, an advisory opinion of the ICJ on the *Legality of the Threat or Use of Nuclear Weapons*, pointed out that “the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent,

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<sup>225</sup> United Nations World Summit outcome document (2005) paragraph 138

<sup>226</sup> See United Nations General Assembly Resolution 16<sup>th</sup> November (1950)

<sup>227</sup> International Court of Justice. (1951). *The Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. Advisory Opinion of 28th May (1951) pp 18-20 in summaries of judgment.

towards a group as such, required by Article II of the Convention on the Prevention and Punishment of the Crime of Genocide”.

These two opinions show firstly that the ICJ is willing to define and express opinions on the crime of genocide, secondly it also shows that it is well within their jurisdiction, thirdly it shows that the crime of genocide is considered a violation of customary law. Lastly it shows that the crime of genocide is applicable to all states, not only to those that are a signatory to the convention, once again reinforcing paragraph 138 of the World Summit outcome document that states “Each individual Member State has the responsibility to protect its population from genocide (...) This responsibility entails the prevention of such crimes, including their incitement through appropriate and necessary means”.

Article 6 of the *Rome Statute of the International Criminal Court (2002)* describes the meaning of genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, racial or religious group; including killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures on the group intended to prevent births or forcibly transferring children of the group to another group. The jurisdiction of the Court includes exercising jurisdiction where one or more of the crimes ‘appear’ to have been committed. The prosecutor may initiate investigation *proprio motu* on the basis that information on a crime is within the jurisdiction of the court. When a crime is seen to have been committed parties to the convention may refer the situation to the Security Council acting under the provisions of the Charter of the United Nations, under Chapter VII.

The *Rome Statute of the International Criminal Court (2002)* had 141 parties and 38 signatories in 2011. Equally important is the fact that there are 45 non-signatories, the majority of whom are from the Asia Pacific region (23), then Africa (7), Europe (6), the Middle East and North Africa (5) and the Americas (5). The universal scope of the statute is limited by the lack of signatory participants.<sup>228</sup> Most if not all the

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<sup>228</sup> Non-signatories to the statute include (Africa) Equatorial Guinea, Ethiopia, Mauritania, Rwanda, Somalia, Swaziland, Togo, (Americas) Cuba, El Salvador, Grenada, Guatemala, Nicaragua, (Asia & Pacific) Bhutan, Brunei Darussalam, China, India, Indonesia, Kiribati, Korea, Democratic

information that is applicable to genocide can be found elsewhere in other Conventions, Statutes and Treaties. The Statute itself does not limit the application or attribution of genocide to a state that has violated its principles in international law.

## WAR CRIMES

The subject of War crimes can be found in a number of Conventions, Charters and Statutes including the Nuremberg Charter of 1945<sup>229</sup> as well as the Hague Convention of 1907 under Articles 40, 50, 52 and 56.<sup>230</sup> However the most common reference to war crimes can be found in the descriptions under the Geneva Conventions which incorporate the definitions in the Nuremberg and the Hague Conventions and cover four Conventions from 1949 as well as the additional protocols from 1977. The Conventions come under international humanitarian law, in that they relate to the protection of civilians, the wounded and the sick in the armed forces on the ground as well as the shipwrecked at sea and wounded in the air. The combination of the four Conventions and the additional protocols are considered customary international law. Each Convention adds a unique perspective to the crimes of war.

## THE GENEVA CONVENTIONS

The first of the Geneva conventions is the *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva (12<sup>th</sup> August 1949).<sup>231</sup> It applies to all cases of declared war or any armed conflict that may arise between two or more parties. It also applies to a state of war where one of the parties does not recognize the state of war as well as partial or total occupations. In the case of an armed conflict that is not of an international character then persons taking no active part in the hostilities

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Peoples Republic of North Korea, LAO Peoples Democratic Republic, Malaysia, Maldives, Micronesia, Myanmar (Burma), Nepal, Niue, Pakistan, Palau, Papua New Guinea, Singapore, Sri Lanka, Tonga, Tuvalu, Vanuatu, Vietnam, (Europe) Azerbaijan, Belarus, the Holy See (Vatican), Kazakhstan, Turkmenistan, Turkey, (Middle East & North Africa) Iraq, Lebanon, Libya, Qatar and Saudi Arabia. <http://www.iccnw.org> last accessed on the 5<sup>th</sup> July 2011

<sup>229</sup> Nuremberg tribunal and Charter 1945, can be found at Yale documents

<http://avalon.law.yale.edu/imt/imtconst.asp> Last accessed on the 8<sup>th</sup> October 2011.

<sup>230</sup> The Laws and Customs of War on Land (Hague ii) 29<sup>th</sup> July, 1899 can be accessed from [http://avalon.law.yale.edu/20th\\_century/hague02.asp#art46](http://avalon.law.yale.edu/20th_century/hague02.asp#art46) Last accessed on 8<sup>th</sup> October 2011

<sup>231</sup> United Nations. (1949). *The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva: United Nations. United Nations Document Collection document on Humanitarian Law Treaties and Documents, Found on the Red Cross website. <http://www.icrc.org/ihl.nsf/full/365?opendocument> Last accessed, 8<sup>th</sup> October 2011.

are protected under this convention. This includes members of the armed forces who have laid down their arms and those placed under *hors de combat* by sickness or detention. No distinction to race, religion, faith, sex, birth or wealth will apply. The following is a list of prohibitions that remain in force at any time and in any place: violence to life and person, including murder, mutilation, cruel treatment and torture, taking of hostages, outrages on personal dignity including humiliating and degrading treatment and the passing of sentences and carrying out executions without previous judgment by a court affording judicial guarantees.<sup>232</sup> With regard to medical care those protected are entitled to medical assistance and care and any attempts on their lives is strictly prohibited. Exposing the protected to conditions that may inflict contagion or infection is also prohibited. The wounded and the sick fall into the following categories: members of the armed forces of a party to the conflict and members of militias or volunteer corps forming part of the armed forces; members of other militias and members of other volunteer corps including those of organized resistance operating inside or outside of their own territory even when the territory is occupied. Such movements must follow these conditions: they must be commanded by a person responsible for the subordinates, have a distinctive sign recognizable at a distance, must be carrying arms openly and conducting operations in accordance with the laws and customs of war. This also includes members of the armed forces who profess allegiance to a government, or persons who accompany the armed forces such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or services responsible for the welfare of the armed services, as well as masters, pilots and apprentices of the marine or civil aircraft groups. Lastly this also covers inhabitants of the non-occupied territories who spontaneously take up arms to resist invasion, provided they carry the arms openly and respect the laws and the customs of war.<sup>233</sup> A belligerent who falls into the hands of an enemy also becomes a prisoner of war and as such, is protected by international law.

Other war crimes under this Convention include the failure to search, rescue and collect the wounded and sick to protect them against pillage and ill treatment, and failure to ensure adequate care.<sup>234</sup> It is a war crime not to record information from

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<sup>232</sup> Articles 2 to 7 pages 1 and 2

<sup>233</sup> Chapter ii, articles 9, 10, 11, and 12, pages 2 to 3

<sup>234</sup> Articles 15 and 16

the wounded, sick or on behalf of the deceased, including the designation, personnel number, army, surname, date of birth, date and place of capture or death and the particulars of his wounds, illness or cause of death.

Medical units must not be attacked, nor hospitals, hospital ships, mobile medical units, including aircraft carriers, trucks and any other vehicle carrying the sick and wounded being used for this sole purpose.<sup>235</sup> It is considered a war crime to deprive persons of medical assistance even when the person is carrying arms, or using arms for self-defence, while protected by escorts, or carrying small arms taken from the sick. The parties of an armed conflict may establish hospital zones and they must fulfill certain conditions including only covering a small part of the territory, thinly populated regarding accommodation, far removed from any military objectives and they should not be placed in a position that is important for the conduct of war. If these protocols are followed, it is a war crime to attack these areas under the protection of this Convention.<sup>236</sup> Grave breaches of these crimes are included under Article 50 as willful killing, torture or inhuman treatment including biological experiments, willfully causing great suffering to body or health, extensive destruction and appropriation of property not justified by military necessity and carried out wantonly and unlawfully.

Each state is responsible for applying this convention to enact legislation necessary to provide effective penal sanctions for committing or ordering to be committed any of the grave breaches of this convention. Each state is under an obligation to search for persons alleged to have committed, or to have ordered to be committed grave breaches and they are under an obligation to bring those accountable for the breaches before their own courts, regardless of their nationality.<sup>237</sup>

This research shows that each state is responsible for searching out and prosecuting those who are being held accountable for grave breaches of war crimes in international law. Each state is bound by these duties in international law to conduct hearings in their own courts against those who commit these breaches. This obligation is customary in nature and it does not matter whether the state is a party to the

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<sup>235</sup> Article 17 to 21

<sup>236</sup> See Annex, Article 4, page 13

<sup>237</sup> See Chapter ix, *Repression of abuses and infractions*, page 10

convention or not. This responsibility is relayed in paragraph 138 of the World Summit outcome document which states; that each individual member state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. This responsibility entails the prevention of such crimes including incitement which would suggest includes following through and persecuting those who have committed these crimes. The state must also ensure that it is preventing these crimes by integrating this Convention into local jurisdiction and education.

The second Geneva *Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of Armed Forces at Sea (1949)*<sup>238</sup> extends these responsibilities of the state in that it includes naval forces, and shipwrecked persons in the event of forced landing at sea from aircraft or from any other cause. Anyone on board a warship can demand the wounded, sick or shipwrecked from offshore military hospital ships so long as they can show they have the facilities to protect the sick and provide medical care. Conditions to this request are that the wounded no longer play a part in combat or warfare from the time of transfer. This convention enforces as a war crime attack on a military hospital ship that has been built and/or is equipped with medical equipment to assist the wounded. Medical transporters are included by air or by sea, so long as they are exclusively employed for the wounded, sick and shipwrecked for transport of medical personnel and equipment. To attack any of these vehicles is a war crime.<sup>239</sup>

The third Geneva *Convention relative to the Treatment of Prisoners of War (1949)*<sup>240</sup> applies to prisoners of war and acceptable minimum provisions. This convention applies to the same protected persons as Convention I and II. Prisoners of war may fall into the following categories: members of the armed forces as well as militias or volunteer corps, other groups of militias, volunteer corps or resistance movements. A war crime under this convention includes removing sums of money, articles for personal use, including clothing, drinking bottles, gas masks, helmets and the like from a prisoner of

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<sup>238</sup> United Nations. (1949). *The Geneva Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked members of the Armed Forces at Sea*. United Nations.

<sup>239</sup> See articles 14, page 4, Chapter iii, article 22, page 5, Chapter v, articles 38 to 40 pages 6 to 7

<sup>240</sup> United Nations . (1949). *The Geneva Convention relative to the Treatment of Prisoners of War*. United Nations.

war.<sup>241</sup> They must be provided with an identity card showing that they are a prisoner of war and they must be removed from the war zone to an area that is not considered dangerous to health or safety. They must be sheltered from bombing to the same extent that is provided to civilians in the same area. Other provisions that must be maintained are the right to clean water, food and clean surfaces as well as warmth for sleeping. Sufficient lighting must be made available during the day and special consideration must be given to them regarding food and other special needs. Medical care must be provided for dentistry, artificial appliances such as spectacles as well as surgery.<sup>242</sup> Religious ceremonies shall be provided for each distinctive religion.<sup>243</sup> Labour must not exceed the same conditions as local labour laws. These occupations must not be unhealthy or dangerous such as the removal of mines or other similar labour. Prisoners must be paid a minimum wage for their labour, receive an hour lunch break and the fitness of each prisoner must be examined on a monthly basis.<sup>244</sup> The families of prisoners must be contacted immediately when the individual becomes a prisoner of war and information of (sic) whereabouts and his state of health must be given freely. The prisoner must be allowed to send and receive letters to loved ones and if he becomes seriously sick he must be sent back to his own country immediately.<sup>245</sup> This includes those with serious wounds, mental or physical sickness, and those who are unlikely to recover.<sup>246</sup> Access must be given to representatives of the prisoners or delegates of war, and this must not be limited to time, place, duration or frequency.

The responsibilities of the state are to ensure that this convention is widely interpreted, and included in the study of military programmes and civil instruction so that the principles become widely known to their armed forces and the entire population.<sup>247</sup> Grave breaches are breaches committed against any person or property protected by this convention, including willful killing, torture, inhuman treatment, including biological experiments, causing great suffering or serious injury

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<sup>241</sup> See articles 1, page 1, article 3 (1), 3 (2), page 2 article 18, paragraph 3, page 5, article 19, article 22, 23 pages 5 and 6

<sup>242</sup> Articles 29 to 32, pages 7, 8 chapter iii

<sup>243</sup> Articles 33 to 38 pages 9 to 10

<sup>244</sup> Articles 51 to 57 pages 11 to 13

<sup>245</sup> See pages 31 to 33 for a full breakdown of serious wounds and sickness

<sup>246</sup> See articles 109 and 110, part iv, page 24

<sup>247</sup> See part vi, section 1, article 126, page 29 and article 127

to body or health, as well as compelling a prisoner of war to serve in the forces of the hostile power or willfully depriving a prisoner of war the rights of fair trial prescribed in this convention.<sup>248</sup> This Convention has shown that grave crimes may include any war crimes committed against a prisoner of war and that grave crimes are not limited to thousands or hundreds of thousands of people and can be considered grave even when a breach has taken place against one person.

The fourth *Convention relative to the Protection of Civilian Persons in a time of War* (1949) applies to all cases where a war has been declared, or any other conflict arises between one or more parties. It covers partial or total occupation and is for the protection of those persons who are not taking an active part in the hostilities. Protected persons are those who find themselves in the middle of a conflict or occupation or in the hands of a party to the conflict or occupying power to which they are not nationals. If protection cannot be arranged or supplied the protecting power must request or accept the offer of services of a humanitarian organization to assume the humanitarian functions performed by the protecting powers. This also applies where the protected persons are not benefiting from or cease to benefit from the activities of a protecting power or an organization.<sup>249</sup>

The protecting party will be required to ensure that they are in a position to undertake the appropriate functions and discharge them impartially. No derogations from these provisions are allowed.<sup>250</sup> These provisions apply to neutrals or nationals of a neutral state, who are in an occupied territory or who find themselves in the territory of a belligerent state that does not support normal diplomatic representation. Part II of the Convention covers the whole population of a country, or countries that are in conflict without discrimination. The parties may organize areas of protection for the wounded, the sick, aged and children under fifteen, expectant mothers and for mothers whose children are under the age of seven. Neutralized zones are also allowed to be set up for the protection of the wounded and sick combatants or non-combatants and civilians who are not taking part in the hostilities.<sup>251</sup> The parties to the conflict will ensure that they will conclude local agreements for the removal of the

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<sup>248</sup> Article 130, page 30

<sup>249</sup> See article 11, paragraph 2, page 3

<sup>250</sup> See article 11, para 1, 2 and 3, page 3

<sup>251</sup> Article 15(a) and 15 (b) page 4



wounded, sick, infirm, aged, children and pregnant women. They will also ensure that they will protect as necessary ministers of all religions, medical personnel and medical equipment on their way to neutral zones.<sup>252</sup> Responsibilities include the access of passage for consignments of medical and hospital equipment, objects for rituals, religious worship intended for civilians as well as foodstuffs, clothing and medicine for children under fifteen and for pregnant mothers.<sup>253</sup> Considerations attached to the consignments include fear of diversions from the destination, control which may not be effective, or an advantage which may be given to the enemy if they let them through. The power that permits the passage may prescribe arrangements to ensure that the consignment reaches its destination.

#### SPECIAL PRIVILEGES ARE ASSIGNED TO WOMEN AND CHILDREN

Children are given special privileges; if they are orphaned or separated from their parents they are not to be left to their own devices. The parties to the conflict must ensure their wellbeing, maintenance, religion and their education at all times. If the children are moved to a neutral zone for their protection it must be under safeguards. The children must be identified with identity badges and the parents must be contacted and informed of their whereabouts without delay.<sup>254</sup> The occupying power must ensure the proper working condition of all institutions devoted to the care of children. It must not change the names of children or their personal status or enlist them in formations or organisations subordinate to them.

They must ensure adequate measures for maintenance and education with the child's own nationality, language and religion being primarily taken into consideration.<sup>255</sup> Women are also afforded special protection including being protected from rape, attack, enforced prostitution or any other indecent assault. All protected persons are entitled at all times to have respect for health, honour, family rights, religion, practices, manners and customs. At all times protected persons must be protected against violence, attack, or threats against insults and public curiosity.<sup>256</sup> Protected persons are not to be compelled to enlist or serve in the forces of the occupying power.

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<sup>252</sup> Article 17, page 5

<sup>253</sup> Article 23, page 6

<sup>254</sup> See articles 24 paras 1 to 4, pages 6 and 7, also article 25, page 7

<sup>255</sup> Article 50, paras 1 to 4, page 11

<sup>256</sup> Articles 25, page 7, article 27, paras 1 to 3, and article 29 page 7

No propaganda or pressure is allowed aimed at securing voluntary forces. Work is not permitted for children under the age of 18 years of age and under no circumstance may protected persons be transferred to a county where they may have reason to fear persecution for their political opinions or religious beliefs.<sup>257</sup> Individual or mass forcible transfers or deportations are not permitted regardless of the party motive. The party may make partial or total evacuation of an area if the security of the population is being undermined. Persons removed will be returned as soon as conditions permit. When undertaking evacuation the party must ensure proper accommodation and conditions necessary for good health and safety and nutrition of the people. Families must not be separated at any time and the party must not deport or transfer parts of their own population into any territory that they occupy.<sup>258</sup>

Private property, personal property belonging to individuals, collective units, the state, public authorities, and social or co-operative organisations are protected from destruction unless such destruction is rendered absolutely necessary for military operations. If the whole of an occupied territory or part of its population is inadequately supplied, the occupying power must agree to relief schemes on behalf of all the population in question. It must facilitate these schemes by any means at their disposal. These minimum necessities must be free from tax, charges or customs, including all consignments that are protected under this Convention as supplying the population with the bare necessities for survival. The occupying power must guarantee free passage and their protection and has the right to search the consignments and regulate the passage according to prescribed times and routes.<sup>259</sup>

The representatives of religious organizations, relief societies or any other organization that is assisting protected persons, must be able to distribute relief supplies and material from any source, intended for educational, recreational or religious purposes. They may only be hindered to the extent that it does not affect the supply of effective and adequate relief to all protected persons.<sup>260</sup> Representatives are allowed access including to detention, internment or work places. Access must not be

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<sup>257</sup> Articles 44 and 45 para 3, page 10

<sup>258</sup> Articles 48 and 49, paras 1 to 6, page 11

<sup>259</sup> See articles, 51, 52, 53 and 59 pages 12 to 13

<sup>260</sup> Article 142, part iv, section i, page 32

limited or prohibited except for reasons of imperative military necessity and then only as an exceptional and temporary measure.<sup>261</sup>

## RESPONSIBILITIES OF THE STATE

The states are responsible for disseminating this convention as widely as possible in their respective countries. This includes the study of the convention in military and civil programmes, academies and education so that the entire population can understand the convention. Any person whether civilian, military, police or other authority in a time of war that assumes responsibility for protected persons must possess the text of the convention and be specially instructed in its provisions.<sup>262</sup> Each government must ensure they enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed, any grave breaches of this convention. They are under an obligation to search for persons alleged to have committed or have been alleged to have ordered to be committed such grave breaches. Regardless of their nationality, the accused will be brought before their own courts. If the party prefers it may hand over those suspects for trial to another party concerned provided that it could provide a *prima facie* case.<sup>263</sup>

Grave breaches pertaining to this convention are acts that are committed against protected persons including willful killing, torture, inhumane treatment, subjecting them to biological experiments or willfully causing great suffering or serious bodily harm, committing acts causing serious injury to health or committing unlawful deportation or transfer or unlawfully confining a protected person. Additional breaches include compelling protected persons to serve in the forces of a hostile power or willfully depriving them of rights of a fair trial, taking hostages and or causing extensive destruction to property not justified by military necessity and carried out unlawfully and wantonly. No party will be allowed to absolve themselves or any other party of any liability incurred in respect to breaches referred to above.<sup>264</sup>

This Convention defines an extensive list of war crimes, it shows that war crimes are not limited to hundreds or thousands but to individuals and small groups as well. The

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<sup>261</sup> Article 143, page 32

<sup>262</sup> Article 144 paras 1 to 2, page 32

<sup>263</sup> See article 145 and 146 pages 32 to 33

<sup>264</sup> See articles 147 and 148 page 33

intention as outlined is to disperse this information as widely as possible so that all persons including military, police, civil authorities and citizens have a broad understanding in case a conflict breaks out. These provisions are an act of prevention to protect civilians and protected persons from harm, as reinforced by the provisions in the 2005 World Summit outcome document. The responsibility first remains with the state and if the state implements customary laws into its education, local jurisdiction, policies and frameworks, it would meet the prevention requirements of R2P. This is further reinforced in the last Geneva Convention in relation to international armed conflicts.

*The Additional Protocol to the Geneva Convention of the 12<sup>th</sup> August 1949 and relating to the Protection of victims of International Armed Conflicts*, 8<sup>th</sup> June 1977 <sup>265</sup>

This Convention is the last of the five customary laws of the Geneva Convention series. It starts with a reaffirmation of the Charter of the United Nations.

“Every state has the duty to refrain from the threat or use of force against another sovereignty, territorial integrity or political independence of any state or in any other manner consistent with the United Nations Charter”.

These prevention policies <sup>266</sup> are to ensure protection of civilians; protected by international law and the principles of humanity derived from established customs and the dictates of public conscience.<sup>267</sup> Enforcement rules are added by including a supervision programme. This supervision is taken up by another state or an international organization that has been asked to participate. The supervising party is called a protecting power and it has the duty of safeguarding the interests of the parties to the conflict.<sup>268</sup> If a party is not selected by the states in conflict the International Red Cross Organization can offer its services. <sup>269</sup>

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<sup>265</sup> United Nations. (1977). *The Additional Protocol to the Geneva Conventions 12th August 1949 and relating to the Protection of victims of International Armed Conflicts*. New York : United Nations.

<sup>266</sup> Article 1(1)

<sup>267</sup> Article 2 (2)

<sup>268</sup> Article 5.1 page 3

<sup>269</sup> Articles 5(3), 5(4), 5(5) and 5(6) page 3

Basic rules are defined under Article 35 which state that in any armed conflict the right of the parties to choose methods or means of warfare is not unlimited and it is prohibited to employ methods of warfare which are intended to or may be expected to cause widespread, long-term and severe damage to the natural environment. The parties are prohibited from killing, injuring or capturing an adversary by resort to perfidy. These acts include leading a person to believe that he is entitled to protection under the rules of international law, with the intent to betray that confidence which includes the intention to negotiate a truce by surrender.<sup>270</sup> Murder, torture of all kinds, corporal punishment, mutilation, outrages on personal dignity, humiliating and degrading treatment, enforced prostitution and any form of indecent assault, taking of hostages, collective punishment and threats to commit any of the mentioned acts are prohibited under this Convention.<sup>271</sup>

#### WHO IS NOT PROTECTED UNDER THE GENEVA CONVENTIONS?

Mercenaries do not have a right to be protected as prisoners of war under this convention. A mercenary is a person who is specially recruited locally or abroad in order to fight in an armed conflict. He does not take part in the hostilities and is motivated by the desire for private wealth. He is neither a national nor a resident of the territory controlled and is not a member of the armed forces of a party to the conflict and is not an official on duty as a member of the armed forces. <sup>272</sup>

#### WHO IS PROTECTED?

Civilians are protected against the effects of hostilities. A civilian is defined as a person who is not part of the hostilities. If in doubt a provision is made that the person will be considered a civilian.<sup>273</sup> They are seen as distinct from combatant, between military objectives and civilian objects and the parties to the conflict may only direct their operations against the military. The civilian population is to be protected from

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<sup>270</sup> Article 37, page 15

<sup>271</sup> Article 75 pages 29 and 30

<sup>272</sup> Article 47 page 18

<sup>273</sup> Article 50, page 19

military objectives at all times. Refugees and stateless persons who before the beginning of hostilities were considered as such are protected persons.<sup>274</sup>

Children are afforded special privileges<sup>275</sup>; they must be protected against any form of indecent assault and they must be provided with the care and aid they require. The parties are responsible for ensuring that children under the age of 15 do not take part in hostilities. Children, if they fall into hostile hands, must be treated with special privileges whether or not they are named prisoners of war. They must be held in separate quarters from adults except where families are kept together. The death penalty for children is prohibited.<sup>276</sup> The parties involved in the conflict are prohibited from evacuating children to another country unless it is for the health and safety of the children. The parties need to get written consent from the parents for this to take place.<sup>277</sup> Journalists are protected when they are partaking in dangerous professional missions; at all times they must be considered as civilians provided that they take no action in the hostilities.<sup>278</sup>

#### ATTACKS AND INDISCRIMINATE ATTACKS

An attack means any act of violence against a person whether in offence or in defence.<sup>279</sup> This applies to all attacks in whatever territory including national territory belonging to a party to the conflict but under the control of the adversary. The provisions apply to land, air or sea warfare that may affect a civilian population. These provisions are additional to the fourth Geneva Convention. Indiscriminate attacks are prohibited, including those that are not directed at a specific military objective, attacks that employ a method or means of combat that cannot be limited as required by this protocol.

Prohibited indiscriminate attacks include bombardment by any means that is treated as a single military objective. The objectives must be clearly separated and distinct from civilians or civilian objects. Excessive damage to civilian life or property is

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<sup>274</sup> Article 73 page 29

<sup>275</sup> Children are protected up to 15 years of age

<sup>276</sup> Article 77 (1) to 77 (5) page 31

<sup>277</sup> Article 78 (1) page 31

<sup>278</sup> Article 79, chapter iii, page 32

<sup>279</sup> Article 49 (1) page 18

prohibited. This may include an attack that may be expected to cause incidental loss of civilian life, injury or damage to civilian objects or a combination of these that could be considered excessive.<sup>280</sup> An attack against a civilian population or civilians by way of reprisals is prohibited. Shielding is prohibited including movement of the civilian population, in particular attempts to shield military objectives from attacks or to shield, favour or impede military objectives. It is prohibited to move a population, individual, parts or all in order to attempt to shield military objectives from attacks.<sup>281</sup> Military objects are those that by their very nature by location and purpose make an effective contribution to military action and offer a definite military advantage.<sup>282</sup>

### OBJECTS FOR SURVIVAL OF THE CIVILIAN POPULATION ARE PROTECTED

Objects that are considered as indispensable to civilian survival are prohibited from being attacked or destroyed. This includes attacking, destroying, and rendering inoperative or useless, food crops, agricultural areas, livestock, drinking water, installations, supplies and irrigation works. Deliberate starvation of civilians as a method of warfare is also prohibited. Vital requirements required by military necessary as a defence against an invasion is the only derogation that is permitted under these provisions.<sup>283</sup> Cultural objects are also protected by this convention, including the prohibition of acts of hostility towards historic monuments, works of art or places of worship that constitute a cultural or spiritual heritage.<sup>284</sup>

The natural environment is protected against widespread long-term and severe damage that could prejudice the health or the survival of the population.<sup>285</sup> Any objects that contain dangerous goods are prohibited from military targeting and attack. This includes dams, dykes, and nuclear energy generating stations or anything else that may release dangerous forces and create severe loss among the civilian population.<sup>286</sup> If an attack on these objects is necessary and the only way to terminate

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<sup>280</sup> Article 51 5 (b) page 20

<sup>281</sup> Article 51 (8) page 20

<sup>282</sup> Article 52 (2) page 20

<sup>283</sup> Article 54 (1) to (4) page 20

<sup>284</sup> Article 53, page 20

<sup>285</sup> Article 55 page 21

<sup>286</sup> Article 56 page 21

military warfare then the civilian population is still entitled to protection under international law. This means that all steps necessary will be taken to ensure that the release of dangerous forces will not affect the surrounding areas populated by civilians.<sup>287</sup>

## PRECAUTIONS AND PREVENTION TOOLS

The parties to a conflict must ensure that legal advisors are available when necessary to advise military commanders at the appropriate level on the application of the Geneva Conventions and appropriate instruction must be given to all the armed forces on this subject.<sup>288</sup> Other precautions include providing reliable information to those who are in charge of military attacks so that objectives do not involve attacking civilians or civilian objects. Those that are in charge are required to do everything feasibly possible to ensure that the objective attack is neither near civilians nor civilian objects. The means and methods of attack must take into consideration avoidance of incidental loss of life, injury and damage to civilian objects or a combination of these. Where there is a choice between objectives, the one that causes the least danger to civilians and their objects should be chosen. <sup>289</sup> These rules apply to ground control as well as attacks from the sea and air. Parties to the conflict will avoid locating military objects in densely populated areas,<sup>290</sup> attacking non-defended localities <sup>291</sup> or extending operations into demilitarized zones. <sup>292</sup>

Civil defence organisations are protected under this Convention. This includes their buildings, materials, and their personnel. They must be ensured respect and be protected at all times. They must be allowed to carry out their tasks except in cases of imperative military necessity.<sup>293</sup> In occupied areas or territories civilian civil defence organisations must receive from the authorities the facilities necessary for the performance of their tasks. The occupying power must not change the structure or the

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<sup>287</sup> Article 56.3 page 21

<sup>288</sup> Article 82 page 33

<sup>289</sup> Chapter iv article 57 (2) page 22

<sup>290</sup> Articles 57 2 (b) and c, 57 (5), and 58, page 22

<sup>291</sup> Article 59 (1) to 59 &) page 23

<sup>292</sup> Article 60 pages 23 to 24

<sup>293</sup> Article 62, page 25



personnel in any way that might jeopardize the efficient performance of their mission.<sup>294</sup>

## BASIC NEEDS

The occupying power must ensure that provision of clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population is supplied. Relief supplied by humanitarian organisations is not to be considered as interference in the armed conflict or as unfriendly acts. In the distribution of relief, priority must be given to children, expectant mothers, and nursing mothers. The parties to the conflict must allow rapid and unimpeded passage for all relief consignments, equipment and personnel.<sup>295</sup>

## THE RULES OF APPLICATION OF THIS CONVENTION

The parties to the Geneva Conventions will ensure distribution of the conventions in times of war as well as in times of peace as widely as possible in their respective countries. This includes military instruction as well as instruction to the civilian population so that the armed forces as well as the civilian population at large know these instruments.<sup>296</sup> Breaches are considered grave when they are committed against protected persons and include the wounded, sick, shipwrecked, medical personnel, religious personnel, medical units, medical transporters and all others protected under the Conventions.<sup>297</sup>

Grave breaches include making the civilian population or individuals the object of attack by launching indiscriminate attacks on them knowing that it will result in severe or excessive loss of life, injury to civilians or damage to civilian objects. This also includes making an attack on non-defended or demilitarized zones, or an attack on someone who is *hors de combat* or an attack on the Red Cross or by transferring one's own civilian population into occupied areas in part or whole. Unjustified delay in repatriation of prisoners of war or civilians, as well as any other prohibited act listed in

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<sup>294</sup> Article 63, page 25

<sup>295</sup> Article 69 (1) page 28

<sup>296</sup> Article 83, page 33

<sup>297</sup> Articles 83 to 85 pages 33, 34

the Geneva conventions, constitutes a war crime.<sup>298</sup> It is the duty of all parties to repress grave breaches and take the necessary steps to suppress all other breaches of the Geneva Conventions that result from a failure to act when under a duty to protect.<sup>299</sup> Mutual assistance is covered under Article 88 (1) whereby each party is under a duty to give the greatest measure of assistance in connection with criminal proceedings brought in respect of grave war crimes. They must cooperate in matters of extradition and they must give consideration to any state requests. All parties are to work together, jointly or individually in co-operation with the United Nations and in conformity with the Charter.<sup>300</sup> Each state is responsible for the actions of their armed forces in relation to breaches or violations of these Conventions.<sup>301</sup>

*The Rome Statute of the International Criminal Court (2002)* also provides a section on War Crimes. It is extensive and covers all of the grave breaches that are outlined in the Geneva Conventions.<sup>302</sup>

## CRIMES AGAINST HUMANITY

Crimes against humanity do not have any particular Convention in place to provide definitions. This is because a crime against humanity does not in fact constitute legal bearing in international law on its own. A crime against humanity is a part of war crimes and it is not distinct from them. However, the Rome Statute (2002) does provide a useful range of descriptions. It includes almost every crime cited under the Geneva Conventions for war crimes as well as descriptions under genocide and ethnic cleansing as already mentioned. These include murder, extermination, enslavement, deportation or forcible transfer, severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence. It also includes persecution against any identifiable group, racial, national,

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<sup>298</sup> Article 85 (5) page 34

<sup>299</sup> Article 86 page 34

<sup>300</sup> Article 89 page 35

<sup>301</sup> Article 91 page 37

<sup>302</sup> See United Nations. (2002). *The Rome Statute of the International Criminal Court*. United Nations pages 1 to 65, the definitions on war crimes can be found on pages 1 to 7

ethnic, cultural, religious or other grounds that are universally recognized as protected under intentional law.<sup>303</sup>

In addition to this the statute says that crimes against humanity can include an attack directed against any civilian population, involving multiple commissions of acts in furtherance of a state or organizational policy. It explains a wide range of meanings and descriptions that must be limited. One example of this is enforced disappearance which is explained as the arrest, detention or abduction of persons with the authorization, support or acquiescence of a state or political organization, followed by a refusal to acknowledge the whereabouts of those persons with the intention of removing them from the protection of the law.<sup>304</sup> Crimes against humanity are also described as offences that constitute a serious attack on a collective group of people or in some situations, individuals.<sup>305</sup> The Rome Statute adds to the debate in that it may be a part of a government policy that is being tolerated or condoned by a government with the intention to destroy its population in whole or in part.

At first glance a crime against humanity looks distinctive from war crimes in that it does not require a conflict between two or more parties. However, earlier definitions have failed to defend a crime against humanity as a violation of international law. This was the case with the Charter (1939) of the International Military Tribunal set up for the Nuremberg Trial Proceedings (1945 to 1946). The tribunal provided a statement that a crime against humanity could not be clarified as a violation during a time of peace:

With regard to crimes against humanity, there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute

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<sup>303</sup> Articles 7

<sup>304</sup> Article 7.2 appendix x

<sup>305</sup> See for example the Goldstone report in relation to war crimes in an Occupied state, and references to crimes against humanity, and violations on both sides of the Israeli, Palestinian conflict. United Nations document (A/HRC/12/48) 2009, *Human rights in Palestine and other occupied Arab territories*, Report of the United Nations fact finding mission on the Gaza conflict, human rights council twelfth session agenda item 7

crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

The Charter of the International Military Tribunal for the Far East (IMTFE) also known as the Tokyo Trials follows closely the description in the Nuremberg Charter. The Tribunal added, “Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.” This included “(…), murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal”.<sup>306</sup>

This view includes times of peace as well as war as a category of crimes against humanity and they also refer to the non-applicability rule of domestic law in relation to the violations that have taken place.<sup>307</sup> However in both of these cases they failed to prosecute those responsible under crimes against humanity and under the guise of peace. They were only able to prosecute when they used the term ‘in addition’ to war crimes, not as distinct from them. However this leaves crimes against humanity in a rather precarious position in regards to their legality in international law. For example, in the report of the Secretary General on the legalities of setting up the International Tribunal for the Crimes committed in former Yugoslavia states that the “application principle *nullum crimen sine lege* requires that the international tribunal

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<sup>306</sup> The Charter of the International Military Tribunal for the Far East, article ii, jurisdiction and general provisions, found on <http://www.alhaq.org/etemplate.php?id=81> last accessed on 29<sup>th</sup> September 2011

<sup>307</sup> Nuremberg Trial proceedings, 8<sup>th</sup> August 1945, can be found on line at <http://avalon.law.yale.edu/imt/imtconst.asp> last accessed on 29<sup>th</sup> September 2011

should apply rules of international humanitarian law which is beyond doubt part of customary law, so that problems of adherence of some but not all states to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law”.

He includes the Nuremberg Tribunal Charter, the Hague Convention (1907) and the Geneva Conventions (1949), (1977) as well as the Genocide Convention (1947) as part of humanitarian law. He does not consider crimes against humanity as being distinct from these and therefore does not choose to set up the tribunal under this jurisdiction or description. Instead he adds that crimes against humanity were first recognized in the Charter and Judgment of the Nuremberg tribunal as well as law No 10 of the Control Council for Germany. He does not outline that crimes against humanity in these cases were unsuccessful in the prosecution of individuals. Instead he says that crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an “armed conflict international or internal in character”. Article 5 clarifies this when it restricts the prosecution of crimes against humanity to “crimes when committed in armed conflict”, and no mention is given to times of peace.<sup>308</sup>

Security Council Resolutions 764 (1992), 771 (1992) and 780 (1992) showed that the matters constituted “widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including (...) mass killings and the continuation of the practice of ethnic cleansing”.<sup>309</sup> The Secretary-General said that the Security Council had “determined that the situation posed by continuing reports of widespread violations of international humanitarian law (...) constitutes a threat to international peace and security”. Once again there was no mention of crimes against humanity as being an international law that could constitute prosecutorial procedures on the people or the state, on its own.

In a similar vein the International Criminal Tribunal for Rwanda was set up under the Genocide Convention (1947). It was also established under Resolution 935 (1994).

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<sup>308</sup> United Nations. (1993). *Report of the Secretary-General pursuant to paragraph 2 of the Security Council Resolution 808*. United Nations . (SC/25704)

<sup>309</sup> See articles 10 and 25

This situation also constituted “a threat to international peace and security” and therefore the Security Council was obligated to bring those responsible to justice and to restore peace. Security Council Resolution 955 (1994) was adopted and the International Criminal Tribunal for Rwanda was established. In the Annex, the prosecutors of the International Tribunal for Rwanda were given the power to prosecute crimes against humanity, which constituted a systematic and widespread attack against the civilian population. These acts were constituted in Article 4 as acts “common to the Geneva” protocols, once again showing that crimes against humanity could only be prosecuted as ‘war crimes’.<sup>310</sup>

In regards to standing on its own as a distinct and separate law, crimes against humanity do not yet have this advantage and therefore can only apply in circumstances that are within the jurisdiction of war crimes. It therefore raises serious concerns over the application of R2P in regards to citing crimes against humanity as a reason for intervention into the internal affairs of a state that is not currently in a conflict between two parties or more. The requirement that is inherent in humanitarian law is that there are two parties or more in conflict or war with each other, not the state against its citizens. This also raises other concerns for situations that do not strictly speaking constitute a war or a conflict. This includes political uprisings against a state, or a similar situation whereby the state is not in direct conflict with a warring party but the very citizens that it is responsible for protecting. These questions will be further clarified in Chapter 4 on Application and State Derogations in international law.

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<sup>310</sup> United Nations. (1994). *United Nations Security Council 3453rd plenary meeting on 8th November 1994 (S/RES/955)* see also the letter of the Secretary-General on 1<sup>st</sup> October 1994 (S/1994/1125) as well as (S/1994/879), (S/1994/906) and (S/1994/1157) Annex i and annex ii)

### SUMMARY OF CHAPTER 3

This research shows that there is jurisdiction under the Charter of the United Nations and the International Court of Justice Statute for violations against peace and security and international law. This jurisdiction applies to threats to the peace and violations of these which have been shown to include genocide and war crimes under the ICTY and ICTR. The rule of law showed that states are bound to each other through signing the Charter and the ICJ Statute in that they have responsibilities and duties in international law to prevent and protect their citizens from harm. The Vienna Convention showed the application principles on treaties and contracts between states. It showed that the state was limited in its actions by its obligations in international law. These obligations were shown as preventative tools in that the state had to implement the treaties in good faith into local jurisdiction and education to fulfill the conditions of the contract. If they did not it could be seen as a violation of international law in principle. Other states could withdraw their commitment to the Treaty on behalf of the violation.

Customary laws were shown also as prevention tools in that the obligations of each state to the Treaty provided instructions to comply with the rules of prosecution in one's own courts in regards to grave crimes. It also provided application rules in regards to implementing the Conventions, Statutes and Treaties into local legislation, military programmes and local education. In terms of individual definitions, ethnic cleansing was shown to have distinctive reference to race, based on discrimination, and it could be considered under apartheid or genocide. War crimes and genocide were firmly grounded in international law providing detailed information on their application. On the other hand research showed that the application of crimes against humanity had failed under the Nuremberg and the Tokyo Trials. The establishment of the Tribunals of the former Yugoslavia and Rwanda also showed that the terminology could not yet be distinctively applied as customary international law on its own. This raised questions of applicability and legal standing in relation to R2P application. The question was raised regarding applicability in circumstances that cannot be defined as war crimes where there must be two parties or more to a conflict to be defined under war crimes. This question was left unanswered in Chapter 3 and further clarification of these questions will be provided in Chapter 4.





## CHAPTER 4 - APPLICATION AND STATE DEROGATIONS IN INTERNATIONAL LAW

As explained genocide and war crimes are well defined in international law. This clarifies the point that customary international law is binding on all states. The binding of these grave crimes on all states shows that no derogations from these rules are acceptable in international law. Application principles in regard to genocide and war crimes have also been shown to be a threat to international peace and security. This was clarified by Security Council resolutions allowing state intervention into Rwanda and former Yugoslavia, which means that any situation that arises under these terms could be intervened in legally with Security Council approval. However beyond these terminologies in international law it is difficult to include ethnic cleansing or crimes against humanity as a threat to international peace and security without including them within the provisions of war crimes and genocide. This does not mean that individual states do not have a responsibility to prevent these crimes from taking place. On the contrary, any state that is a party to individual contracts or treaties on ethnic cleansing and crimes against humanity is bound by its duties in international law to prevent them from taking place.

This Chapter researches application and state derogations in international law under customary international human rights law. It has already been shown above that each state is bound by its duties in international law to the treaties, statutes and conventions that it is party to. It has also been argued that certain treaties are considered customary and are binding on all states. The International Covenant on Civil and Political Rights (1966) protects certain inalienable rights and this includes the right to life, however some circumstances including the state emergency, allow derogations to take place over some civil and political rights. This chapter focuses on these derogations, and what this means in terms of the Responsibility to Protect doctrine when crimes that are committed that are normally considered illegal are extraordinarily defined as legal under certain circumstances. This chapter analyses this framework.

## THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (1966)<sup>311</sup> is considered customary law under the Human Rights framework. It covers citizen civil and political rights including the right to self-determination. This right extends to all people and includes the right to determine their political status, the right to freely pursue their economic, social and cultural development and under no circumstances may people be deprived of their own means of subsistence.<sup>312</sup> The state is responsible for ensuring that these rights are protected through local legislation, which includes the right to a remedy through the local courts. This Covenant does not exclude prosecution from those who were working under the capacity of government instruments and this right is non-discriminative in that it does not exclude anyone from protection.<sup>313</sup> In some circumstances that are strictly limited to the state of emergency and the exigencies of the situation, derogations are allowed. These derogations are subject to certain provisions.

Firstly the state must not derogate from any obligations they currently have to other states, under Statutes, Charters or Covenants under international law. Second, they must not be discriminative on the grounds of race, colour, sex, language, religion or social origin. Third, derogations do not include Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of this Covenant. Fourth, the derogating state must inform all other parties through the Secretary-General that they intend to derogate from certain provisions. Fifth, they must say which provisions they intend to derogate from. Sixth, they must provide the reasons why they are derogating. Lastly they must inform the Secretary-General of the date they terminated the derogations.<sup>314</sup> Article 5 (2) states “there shall be no restriction or derogation from any of the fundamental rights recognized (...) pursuant to law, conventions, regulations or custom on the pretext

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<sup>311</sup> United Nations. (1966). *The International Covenant on Civil and Political Rights*. New York : United Nations. [http://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch\\_iv\\_04.pdf](http://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf) can be found on the United Nations website under Treaties, true copies, Chapter iv, Human rights, Last accessed 3<sup>rd</sup> October 2011

<sup>312</sup> See articles 1 and 1(2) page 1

<sup>313</sup> Articles 2 (1) – 2(3) page 2

<sup>314</sup> See articles 3 -5 page 3

that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent".<sup>315</sup>

## PROHIBITED VIOLATIONS

The articles that are absolutely prohibited at all times include Article 6 which refers to the right to life (Article 6(1), and the sentence of death may only be imposed for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Covenant. (Article 6 (2). No state may derogate from any obligations assumed under the Convention on the Prevention and Punishment of the Crime of Genocide (Article 6 (3). Anyone sentenced to death may have the right to seek pardon, amnesty or commutation, Article 6 (4). The sentence of death may not be imposed on those under the age of 18 or on women who are pregnant (Article 6 (5). Lastly this Covenant may not be used to delay or prevent the abolition of capital punishment.<sup>316</sup>

Under Article 7 it is a violation to subject anyone to torture, cruel, inhuman or degrading treatment including being subjected without consent to medical or scientific experimentation<sup>317</sup> and Article 7 provides for the protection against slavery. It is a violation to subject anyone to slavery or the slave trade (para 1) and no one shall be subjected to servitude (para 2). Article 11 provides for protection of imprisonment on the grounds of an inability to pay or fulfil a contractual obligation. Article 15 holds that it is a violation to hold someone guilty of a crime on account of any act or omission that did not constitute a criminal offence under national or international law at the time it was committed. It is also a violation to impose on someone a heavier penalty than one that was applicable at the time when the criminal offence was committed. Article 16 states it is a violation not to recognize every person a person before the law. Article 18 protects freedom of thought, conscience and religion, including the right to adopt a religion or belief of one's choice and freedom either individually, in community with others or in private or public, to manifest one's religion or belief in worship, observance, practice and teaching. Other prohibitions under Article 18 include the right not to be subjected to coercion to impair one's

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<sup>315</sup> See page 4

<sup>316</sup> See page 4, part iii, articles 6 (1) to 6 (6)

<sup>317</sup> See page 5

freedom to have or adopt a religion or belief. These rights may only be subject to limitations prescribed by law to protect public safety, order, health, morals or the fundamental rights and freedoms of others. Each state must not violate the rights of the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

These rights that have been identified are non-derogable rights; they cannot be derogated from even in a state of emergency however the following list of rights may be derogated under the heading of state of emergency and under the provisions explained under Article 4. They contain the majority of the rights that are usually non-derogable during times of peace or under other similar conditions that do not normally constitute an 'exceptional case' or the temporary nature of a state emergency. However some of these derogations also conflict with some of the non-derogable rights already explained.

#### NON-PROHIBITED VIOLATIONS DURING STATE OF EMERGENCY

The rights that are unprotected during a state of emergency are Articles 1, 2, 3, 4, 5, 9, 10, 12, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26 and 27. The other Articles relate only to the provisions and the responsibilities of the state to this Convention. It could also be argued that these too could be derogated from during a state of emergency as the only conditions that were listed as non-derogable were 6, 7, 8 paras 1 and 2, 11, 15, 16 and 18. The following is a list of the derogations that may take place. They will be described in toto rather than separated by individual divisions due to the extensive nature of their descriptions. These articles are not included in the prohibited articles under Article 4.

During a state of emergency states may derogate from the right to self-determination,<sup>318</sup> the right to political status, the right to freely pursue economic, and social and cultural development; the right to freely dispose of one's natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, mutual benefit and international law; the right to subsistence; the right to the present Covenant without distinction; The right to effective remedy, the right to a competent authority, to judicial remedy, and the right to enforcement of the current

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<sup>318</sup> Article 1

provisions are also included.<sup>319</sup> During a state of emergency the rights of all men and women can be subjected to derogations from the state including the enjoyment of all civil and political rights set forth in the present Convention.<sup>320</sup> The right to derogations in a time of emergency must not be inconsistent with other obligations in international law. However these rules are outlined under Articles 4 and 5 of the Covenant and therefore could be argued as derogable rights under this convention. This includes the right to discriminate<sup>321</sup> or any activity that aims at the destruction of any of the rights and freedoms recognized in this Convention or at their limitations to a greater extent than is provided for in the present Covenant.<sup>322</sup>

During the state of emergency the right to liberty and security of the person<sup>323</sup> is undermined and can be derogated from, including arbitrary arrest and detention. The state does not need to inform the person at the time of arrest of the reasons for his/her arrest or the charges against them.<sup>324</sup> The state does not have to bring the person arrested before the Court or a judge or other officer; he/she does not have the right to a fair trial or to be brought before the court within a reasonable time or released within a reasonable time. He/she does not have the right to a lawful arrest or detention and could be deprived of liberty and subjected to disrespect for the inherent dignity of the person. Juveniles would not be protected from being thrown into the same prisons as adults; their treatment by the state could be the same as that given to adults. The state does not need to consider the rehabilitation or reformation of juveniles during the state of emergency period and does not have to accord treatment to their age or legal status.<sup>325</sup> All these rights may be derogated from within the framework of the state of emergency.

Furthermore liberty of movement can be restricted and the freedom to choose one's own residence could be taken away.<sup>326</sup> The state can refuse to allow people to leave the country including his or her own country. These rights are not supposed to be

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<sup>319</sup> Article 2(1), 2(2), 2(3) a, b, and c

<sup>320</sup> Article 3, page 3

<sup>321</sup> Article 4, page 3

<sup>322</sup> Article 5 page 3

<sup>323</sup> Article 9 (1) page 6

<sup>324</sup> Article 9 (2), 9 (3) page 6

<sup>325</sup> Article 10, page 6

<sup>326</sup> Article 12 page 7

subject to any restrictions in times of peace however this article is not protected during states of emergencies and therefore the conditions of this article can also be derogated. The state is not restricted or subject to any restrictions and can willfully refuse citizens entrance into their own country.<sup>327</sup> Aliens living in the country that is in a state of emergency may be expelled to another country; the person does not have the right to be informed why or have any rights to have the case reviewed.<sup>328</sup>

During a state of emergency no one has the right to be heard before the court and tribunals and the state does not have to ensure the right to a competent, independent and impartial tribunal established by law. The state does not have to allow public media into the courts on any basis whatsoever. The state does not have to follow the rules on innocent until proven guilty; they do not have to inform the person promptly, in detail or in language that the person understands. They do not have to provide an interpreter, or give the person time to prepare for their defence; the person does not have the right to council, or trial without undue delay, or to be tried in his/her presence. The person does not have the right to defend himself/herself or have legal assistance of his/her own choosing and the person may be forced to pay for any legal assistance and if they cannot, the state does not have to provide defence.<sup>329</sup>

Furthermore no one has the right to examine or have examined the witness if any, and the person may be compelled to testify against himself/herself to confess guilt. The state does not have to give anyone the right to review and everyone can be punished more than once for the same criminal offence that they have already been acquitted.

The privacy of individuals or families can be interfered with including their mail or correspondence and or their home and attacks may be made on their honour and reputation.<sup>330</sup> The right to hold opinions without interference may be derogated in a state of emergency. The right to freedom of expression, the freedom to seek, to receive and impart information and ideas of all kinds can be prohibited. These prohibitions include the right to information either orally, in writing, in print, art or through any

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<sup>327</sup> Article 12, page 7

<sup>328</sup> Article 13, page 7

<sup>329</sup> Article 14, page 8

<sup>330</sup> Article 17, page 10

other media.<sup>331</sup> During a state of emergency the state may choose to derogate from the prohibition of propaganda for war including any advocacy of national, racial or religious hatred that constitutes incitement to discriminate, or encourage hostilities or violence against those that they are projecting against.<sup>332</sup>

The state may choose to derogate from the right to peaceful assembly and they may restrict the exercise of this right in the interests of national security, public safety, public order, public health or the rights and freedoms of others.<sup>333</sup> The right to freedom of association with others can be removed by the state, including the right to join trade unions.<sup>334</sup> In a state of emergency the state can take away fundamental rights to family, including the right to protection by society and the state. The right to marriage can be taken away as can the right not to be forced into marriage, the right to divorce and the right for provisions for the protection of children. <sup>335</sup> The state can even take away the right of children to protection as is normally required by their status as minors. Children do not have to be named legally and they do not have a right to nationality if they are born within the time at which the state is derogating from these civil and political rights during a state of emergency. <sup>336</sup> The rights of every citizen can be taken away by the state to take part in the conduct of public affairs, through a freely chosen representative, to vote and to be elected, the right to equal suffrage, secret ballot, free expression and to have access to equality, or to public service in his country.<sup>337</sup> The total protection of the law can be taken away by the state in an emergency. Lastly the rights of minorities may be removed including the rights of ethnic, religious, linguistic rights to share community with other members of the group, to enjoy their own culture, to profess and practice their own religions and or to use their own language. <sup>338</sup>

In the normal state of affairs that are not considered a state of emergency all of the above articles are protected as non-derogable in international law. Only within the

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<sup>331</sup> Article 19, page 10

<sup>332</sup> Article 20 page 11,

<sup>333</sup> Article 21 page 11

<sup>334</sup> Article 22 (1) and 22 (2) page 11

<sup>335</sup> Article 23 (1), 23 (2), 23, (3), 23, (4) page 12

<sup>336</sup> Article 24 (1), 24 (2), 24 (3) page 12

<sup>337</sup> Article 25 (a), (b) and (c) pages, 12 and 13

<sup>338</sup> Articles 26 and 27 page 13

provisions set out under the state of emergency can these rights be derogated from. The states are only limited by their agreements in international law to other binding contracts that may be in breach if they choose to carry out these derogations during a time of emergency. Other state parties to similar treaties protecting these rights can bring the violations or breaches of these rights to the attention of the United Nations or the International Court of Justice. These breaches and/or derogations that contain both compliance with one Treaty and non-compliance with another come under the conflict of laws and would be decided on within the court of the parties' choosing.

It can be seen how rights of civilians that are protected in international law as customary can also constitute derogations from the provisions of this convention in a state of emergency. However the state must comply within the strict application of the provisions from which they are derogating including all the steps that ensure the rights of the civilians are being protected. This includes firstly identifying that a state of emergency exists then sending a letter to the Secretary-General and providing the articles from which they are derogating, why and at what date they stopped. If the state violates the provisions then the state is liable for attribution. On this note there are several qualifications given by different courts and organisations on the application of state of emergency. These will be discussed in the next section before the analysis of actual state derogations under this Covenant.

#### CRITERIA FOR A STATE OF EMERGENCY/ FOR DEROGATIONS

A situation that constitutes a state of emergency must be examined. The United Nations Economic and Social Council provides definitions within the Siracusa Principles.<sup>339</sup> Derogations in a state of emergency must only be made when the state is faced with an imminent danger that threatens the life of the nation. This is explained as a situation that affects the whole of the population and part or whole of the territory of the state in question. Second, the situation must be classified as a threat to the physical integrity of the population, either the political independence or the territory itself. This may include the basic functioning of the state and its

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<sup>339</sup> United Nations Economic and Social Council. (1985). *Siracusa Principles on the Limitation and Derogation provisions in the Covenant on Civil and Political Rights (E/CN.4/1985/4)*. United Nations .



institutions.<sup>340</sup> It says that internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4. The Human Rights Council also provides further research: in a general comment, they notioned that, “not every disturbance or catastrophe qualifies as a public emergency”<sup>341</sup> and that the state of emergency could include “natural catastrophes, a mass demonstration, instances of violence and major incidence”. The Geneva Academy on International Humanitarian and Human Rights law adds to this “civil war and other cases of serious, violent internal arrest are by far the reasons most asserted for declaring a state of emergency”.<sup>342</sup> The *Lawless v. Ireland case* also reinforces the exceptional situation of a crisis’ as a condition for a state of emergency, adding that it must affect the ‘whole population and constitute a threat to organized life’.<sup>343</sup> Another example of exceptional circumstances can be found under the *A and others v. United Kingdom case* (2009) whereby the court notioned that the attacks on 9/11 in New York city and terrorism attacks of this nature constitute an emergency situation threatening the life of the nation.<sup>344</sup>

Secondly the state must inform all other parties to the derogations that may take place through the Secretary-General. The Siracusa Principles outlined that this official proclamation must be for the existence of the public emergency threatening the life of the nation<sup>345</sup> and national law changes must follow.<sup>346</sup> The notification to the Secretary-General and all other parties must contain sufficient information to permit state parties to exercise their rights and discharge their obligations under the Covenant.

These include (a) the provisions from which it has derogated or from which it intends to derogate, (b) the proclamation of the emergency including the constitutional provisions, legislation or decrees governing the state of emergency, (c) the date of the

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<sup>340</sup> Articles 39 (a), (b),

<sup>341</sup> See United Nations Document A/56.40 vol.1.202

<sup>342</sup> Last accessed 3<sup>rd</sup> October 2011, [http://www.adh-geneva.ch/rulac/derogation from human rights treaties in situations of emergency.php](http://www.adh-geneva.ch/rulac/derogation%20from%20human%20rights%20treaties%20in%20situations%20of%20emergency.php)

<sup>343</sup> *Lawless v. Ireland*, (no.3) (1961) 1 the European court of Human Rights, EHRR, 15, page 31

<sup>344</sup> *A and others v. United Kingdom*, application no 3455/05, Council of Europe, European court of Human Rights, 19<sup>th</sup> February (2009) para 179

<sup>345</sup> Article 42, last accessed on the 3<sup>rd</sup> October 2011, <http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>

<sup>346</sup> Article 43

imposition and the time frame or period that is being proclaimed, (d) an explanation of the reasons, including a brief description of the actual events or factual situation leading up to the event that has taken place, (e) a description of the anticipated effect of the derogations on the rights recognized by the Covenant. The failure to provide this information to the Secretary-General is a breach of its obligations to other states.<sup>347</sup> The state that is in derogation must terminate the derogations in the shortest time required to bring an end to public safety.<sup>348</sup> On termination of the derogation under Article 4, all rights and freedoms must be restored in full. Steps must be taken to correct injustices and compensate those that have suffered injustice during the derogation measures.<sup>349</sup> In the *Lawless case* the courts ruled that the proclamation must be “without delay”.

In regards to the limits on derogations under the exigencies of the situation, Article 4 (1) some authors say that the measures must be proportionate. This includes the Human Rights Council who held that proportionality must include severity, duration and geographic scope:

“The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes both for states parties and for the Committee a duty to conduct a careful analysis under each article of the Covenant based on the objective assessment of the actual situation”.<sup>350</sup>

The Siracusa Principles also outline the same prerequisites including that the “severity, duration and geographic scope of any derogation measure shall be such as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent”.<sup>351</sup> It also explains that the “principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present or imminent danger and may not be imposed merely because

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<sup>347</sup> Article 47

<sup>348</sup> Article 49

<sup>349</sup> Article 50

<sup>350</sup><sup>350</sup> Citation from the “Rule of law in Armed conflicts,” (2011) website of the Graduate institute, Geneva, page 2, last accessed on 3<sup>rd</sup> October 2011, [http://www.adh-geneva.ch/rulac/derogation from human rights treaties in situations of emergency.php](http://www.adh-geneva.ch/rulac/derogation%20from%20human%20rights%20treaties%20in%20situations%20of%20emergency.php)

<sup>351</sup> Article 51

of an apprehension of potential danger”.<sup>352</sup> “In determining whether derogation measures are strictly required by the exigencies of the situation the judgment of the national authorities cannot be accepted as conclusive”.<sup>353</sup> However in the *Ireland v. United Kingdom case* it was held that the responsibility falls to the national authorities to determine how far they need to go to determine how much is necessary to overcome a public emergency.<sup>354</sup> In the *Brannigan and McBride v. United Kingdom case* the court also declared that the discretion should lie with the state to decide the scope of derogations that would be necessary in its particular circumstances.<sup>355</sup>

As discussed in earlier chapters these derogations must not infringe the rights of other state parties to treaties, statutes or other covenants to which they are also a party. The derogating state for example cannot act or omit to act in breaches that could pose a threat to international peace and security. Nor can a state act in a manner inconsistent with the principles of the Charter of the United Nations or the International Criminal Court of Justice Statute. This means that certain rights are inalienable including the right to life, or freedom from torture, or cruel and inhumane treatment or punishment as well as the right not to be subjected to medical or scientific experimentation without free consent, freedom of thought, conscience and religion.<sup>356</sup>

The Siracusa Principles outline that derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum.<sup>357</sup> A proclamation of a state of emergency is made in good faith *pacta sunt servada* based on an objective assessment of the situation at hand. The Siracusa Principles also point out “Consequent derogations from Covenant

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<sup>352</sup> Article 54

<sup>353</sup> Article 57

<sup>354</sup> See *Ireland v. United Kingdom case*, supra note 20, para 207

<sup>355</sup> See *Brannigan and McBride v. United Kingdom*, ECTHR (5/1992/350/423-424), para 43 also cited in the rule of Law in Armed conflicts website page, [http://www.adh-geneva.ch/rulac/derogation from human rights treaties in situations of emergency.php](http://www.adh-geneva.ch/rulac/derogation%20from%20human%20rights%20treaties%20in%20situations%20of%20emergency.php) last accessed on 3<sup>rd</sup> October 2011

<sup>356</sup> See Siracusa principles on non-derogable rights, Articles 58, 59 and 60, United Nations Economic and Social Council . (1985). *Siracusa Principles on the Limitation and Derogation provisions in the Covenant on Civil and Political Rights (E/CN.4/1985/4)* . United Nations .

<sup>357</sup> Article 61

obligations, that are not made in good faith are violations of international law”.<sup>358</sup> Article 29 (2) of the Universal Declaration of Human Rights outlines these duties of the state to the fundamental freedoms of the citizen. “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and welfare in a domestic society.” These rights are considered customary as they were adopted by the General Assembly on 10<sup>th</sup> December 1948.

As previously outlined some rights in international law are non-derogable violations including breaches of contract, of a treaty or a covenant. These breaches are violations of international law, (Chapter 2) which constitute a departure from respected laws and customs of states and are therefore considered a violation of general international norms and laws. The prohibition against discrimination within the International Covenant on Civil and Political rights is another example of a principle or law that is non-derogable, Chapter 4 (5.1.) This starts with the Charter of the United Nations (Introduction) and continues through to the Convention on the Crime and Punishment of the Crime of Genocide, Chapter 3 (4.6), and into the other internationally recognized treaties on apartheid, and economic and social rights, Chapter 3 (4.5). The international community would not consider therefore derogating from these principles even under a state of emergency. So although they may be listed as derogable in a state of emergency a court may consider that these rights were inalienable and therefore the state would be in breach of the provisions it has violated. The Siracusa Principles outline a number of these rights associated with non-international armed conflicts and the Geneva Conventions (1948), and the rules pertaining to Conventions of the International Labour Organization.<sup>359</sup>

This research in Chapter 3 suggested that it would be difficult to intervene in a country on behalf of its citizens under R2P when the situation is strictly limited to the crime of genocide and/or war crimes. If the situation does not pertain to a non-international armed conflict or an international armed conflict or genocide it cannot be considered an intervention within the definition of R2P. If the conflict is not taking

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<sup>358</sup> Article 62

<sup>359</sup> See article 68, 69 (a) – (i)

place between two parties, and the state is committing grave crimes that do not constitute genocide or war crimes, it cannot therefore constitute a threat to international peace and security within these criteria, and the Security Council may have little legal standing in international customary law to intervene. There may be legal remedies that other state parties to the Conventions can use to bring the situation to the attention of the International Court of Justice and therefore the Security Council but the threat must constitute a real threat to international peace and security. The question then must be asked, does a state of emergency constitute a threat to international peace and security? This question will be addressed after analyzing the next section on state application to derogations.

#### AN ANALYSIS OF DEROGATIONS OF THE STATE OF EMERGENCY

Under the ICCPR it is the state's responsibility to ensure compliance with the requisites on derogations under Article 4. The state must first identify that an emergency exists that is a threat to the public or to the state as a whole. The state must then identify the reasons not in general but in detail of why it wants to derogate from certain provisions and which articles those pertain to under the ICCPR. The state must then advise the Secretary-General and other state parties through a declaration that must declare the above. A minimum statistical analysis shows how many states have derogated and declared their derogations to the Secretary-General since 1966.<sup>360</sup> This section will provide a number of details that pertain to requisites of intervention under the guise of R2P.

#### WHAT ARE THE MOST COMMONLY USED ARTICLES/DEROGATIONS?

First there are 34 countries that have declared derogations from Article 4 since 1966. The majority of these states are currently in breach of the ICCPR by not declaring all the information that is required of them to derogate from the provisions under the ICCPR. They declare that they are under a state of emergency; beyond this requirement they do not say why, or for what, or from which derogations or from which Articles that they are derogating. Finally, many states either omitted to declare when the state of emergency has actually finished or have chosen to continue with the state of emergency for an indefinite period of time.

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<sup>360</sup> See Appendix for data collected for research statistics.

In regards to derogations the most cited is Article 12, which is the right to liberty of movement and freedom to choose one's residence. This includes the right to leave the country as well as the right to enter one's own country. This Article has been cited and derogated from at least 47 times. This is followed closely by Article 21, which protects the right to peaceful assembly derogated from at least 39 times. Third, Article 9 has been derogated from at least 37 times. This includes the right to liberty and security of the person, the right not to be subjected to arbitrary arrest or detention, the right to be informed at the time of arrest, the reasons and the charges against them, the right to be promptly brought before a court a judge or other officer, the right to trial within a reasonable time and the right to have compensation for being a victim of unlawful arrest.

Fourth, Article 19 has been derogated from and declared at least 30 times by states. This Article includes the right to hold opinions without interference, the right to freedom of expression including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in art or through any other media. Fifth, Article 17 has been declared and derogated from on at least 24 occasions. This Article protects arbitrary or unlawful interference with privacy, family, the home or correspondence and the right not to have attacks on your honour and reputation. This is followed extremely closely by Article 22, which has been derogated from at least 23 times. This Article covers the right to peaceful assembly. Article 14 has been derogated from at least 8 times and this article covers the right to be brought before the courts as equal among all others, the right to a fair and public trial, the right to be presumed innocent until proven guilty, to be informed properly, to have adequate time to build a defence, to have an interpreter, to be tried without delay, to be tried in one's presence, and the right not to be compelled to testify against oneself or to confess guilt. Articles 5, 10 and 13 have all been derogated from at least 3 times on separate occasions. Article 5 covers the protection of all the rights within the Covenant; it also protects fundamental human rights, conventions, regulations or customs.

Article 10 covers the right to be treated with humanity and with respect and for the inherent dignity of the person, the right to be separated from criminals if only accused, the right of juveniles to be separated from adults, and be accorded treatment appropriate to their age is not guaranteed. The right to social rehabilitation and

reformation under Article 13 covers the rights of aliens to not be expelled to another country except by the courts.<sup>361</sup>

#### WHAT ARE THE REASONS GIVEN FOR A STATE OF EMERGENCY?

The most common reason for declaring a state of emergency is because of a terrorist threat, an armed aggression, foreign aggression or the threat of a civil war. These have been cited as the reason for a state of emergency on at least 26 different occasions. These derogations include terrorist attacks, escalating aggression, including violence against citizens in Azerbaijan between 1993 and 1995; Martial Law in Bolivia in 2008; extremist groups; the attempt to overthrow the Government of Chile in 1976 and terrorist aggression and the stockpiling of weapons in 1986; armed groups in Columbia in 1976 and 1984 and terrorist activity in 1992 and 1993, and criminal guerilla warfare, violence and terrorist activity in 1994, 1995 and 1996 as well as conflict in Ecuador in 2002; martial law in El Salvador in 1985 and terror and violence in 1989; terrorist attacks in Nepal in 2002; and foreign aggression by the United States to Nicaragua from 1985 to 1988 and Armed attacks in 1993.

Martial Law was used as the reason for Poland in 1982 as well as averting a civil war in 1983. The use of weapons and the problems associated with extremist groups have been used by Russia on a number of occasions between 1990 and 1994; The chaotic war in Sudan from 1989 that continues today as well as civil conflict in Venezuela from 1992 to 1995; and terrorism in Northern Ireland between 1976 and 2001; as well as the terrorist attacks on 9/11 New York cited by the United Kingdom of Great Britain for the state of emergency between 2001 and 2005. Lastly Israel has declared that due to the constant threat of attack it is continuously under the state of emergency, this has been in force since 1948.

The second most common reason for a state of emergency is political uprising. States have chosen this reason for derogation on 19 separate occasions citing uprisings from civilians of one type or another. These have included Bahrain from March to May

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<sup>361</sup> These statistics do not include the articles that have been lumped in as catch all phrases on the application. Nor does it include any assumptions of derogations in cases where the state has not listed any articles at all. Lastly it does not include the constitutional derogations that the state has listed as derogations that are similar to the articles but not exact.

2011 in the Arab Spring, Bolivia on many occasions between 1985 and 1995, political disruption, social disturbance, general strikes, and assemblies were the reason for many state of emergencies during this time period. In 1995 Columbia listed social insecurity, public anxiety and lack of trust by the public for the state of emergency as these were causing internal disturbances and judicial emergencies. Ecuador cited an uprising for the reason of a state of emergency in 1986 and strikes in 1987 and 1988. Namibia declared a state of emergency under the rationale of regaining constitutional order in 1999. Nicaragua declared a state of emergency in 1993 to restore law and order and again in 2005 because of a political crisis. Panama in 1987 declared a state of emergency because of demonstrators and clashes with the defence force. The derogations were to restore law and order. Peru has declared over 50 declarations from derogations; giving very few reasons except in 2010 where the letter to the Secretary-General said that public order had been disturbed. In an attempt to restore public order Russia has derogated on numerous occasions both post derogation and preplanned derogations to curb public disturbances. Trinidad and Tobago declared a state of emergency and post derogations in order to protect public safety in 1990 and in 1995. Venezuela declared a state of emergency under the premise of a breach of the peace in 1994.

This research shows that states are willing to declare a public emergency when civilian uprisings become a threat to public order and control.

#### HOW MANY STATES ARE IN BREACH OF THE ICCPR DUE TO NOT IDENTIFYING THE REASONS FOR THE STATE OF EMERGENCY?

There are a number of cases where states have been seen as not applying the requisites for breaches under the requirements to submit the reasons to the Secretary-General. These include Algeria in a declaration in 1991, which continued for another 11 years until 2011; Argentina in 2001 where any breach or all breaches are assumed but not quantified; Chile in 1976 failed to supply the articles from which it was derogating from; Columbia in 1976 also failed to supply articles; Ecuador failed to say why in 1982; Egypt is a party to the ICCPR and yet has not submitted a declaration to the Secretary-General to say that it has been in a state of emergency since 1967, except for a break in 1980 and after the assassination of Anwar Sadat the state of emergency was renewed. It has been continuously extended every three years since.



France declared a state of emergency in 2005 without reference to reasons or articles. Israel has breached the ICCPR by continuing a state of emergency when the measures for derogations are supposed to be temporary in nature. They did say however that they were derogating from Article 9 relating to the rights of security of the person.

Jamaica declared a state of emergency in 2004 and 2007, without giving reasons. Panama did not provide the articles it was derogating from in 1987. Peru, with over 50 declarations has only ever once given its reasons for derogations. Paraguay has failed to terminate its declaration that was supposed to only be in force for 30 days in 2010. Sudan has not given any correspondence to the Secretary-General on derogations since 2002, therefore leaving the public and other states to assume that the proposed derogations from Article 22 are its only declared reservations. Trinidad and Tobago declared a state of emergency in 1990. They supplied the articles at the time but did not send a termination letter. Great Britain declared that it had terminated its derogations in 1988 and then continued by adding another article to the derogations. They again withdrew derogations in 2001 and then continued some in Jersey, Guernsey and the Isle of Man. It seems that derogations are continuing in these areas.

In terms of compliance many states appear to be failing in their obligations to outline the reasons why they are derogating from certain civil and political rights under the state of emergency provisions in the ICCPR.

Some state parties to the ICCPR have not declared a state of emergency even in the face of grave crimes. This includes Rwanda who has been a member since 1975. The Libyan Arab Jamahiriya has been a party since 1970 and in 2011 Gadhafi publicly declared Libya was in a state of emergency but did not declare it officially in writing to the Secretary-General. President Obama also called for a state of emergency in Libya in a media presentation around the same time. This also raises other questions about the legal aspects of state declarations of a state of emergency in another state. It also raises other questions regarding state declarations that are verbal rather than in writing and state dependence on their own constitutional arrangements for a state of emergency. There does not seem to be any reason why a state does not declare a state of emergency and others do, some even declaring it post facto. It would seem that

these states were in breach of their duties to do so and would have benefited from declaring the state of emergency during these periods, even though genocide and war crimes are not covered as derogations under the ICCPR. The citizens would have benefited also as this could be seen as a breach and pose a threat to international security. Provisions for a time limit on the state of emergency should be in place; although the measures are temporary many states continue to use the protection of the Covenant for extended periods of time.

#### CAN ANY OF THESE SITUATIONS BE INTERPRETED WITHIN R2P AS A REASON FOR INTERVENTION?

As argued above all states have responsibilities in international law to implement and carry out provisions for prosecutions of war crimes and genocide under international customary law. However it has also been noted that ethnic cleansing and crimes against humanity must come within the limits of these two provisions. The ICCPR research has shown that derogations are possible during a state of emergency, however the state is restricted by the rules of application. However some states do not comply with these rules, furthermore some are still derogating from some civil and political rights that are supposed to be protected by international law. Some of these situations may incorporate the Geneva Conventions by proxy. This is because they could be seen as situations that involve armed conflict between two or more parties. If the derogations turn into war crimes, there is no problem in finding the connection between the R2P framework and an intervention into the state that is not protecting their citizens from harm.

On the other hand there are also political uprisings, strikes and other internal conflicts that do not come within the frameworks or jurisdiction on war crimes. The reason why they do not fall within these frameworks is because they are not situations that concern international conflict between two parties until there is an identifiable party that is seen as the 'other' party. A party is not individuals or civilians that are unorganized in a political uprising, peaceful protest or strike union. The Geneva Conventions clearly say there must be an organized group, identifiable by name flag or patch and they must be carrying their arms openly. This is problematic to R2P because it only allows intervention on the premise that there is a threat to international peace and security. Based on the customary laws already explored, this

means that it would be illegal to intervene in a state that was not causing a threat to the peace by committing war crimes or genocide. On the other hand if the breach or violation of an international customary norm was being exploited by a state and that created a threat to international peace and security then the Security Council and the General Assembly could intervene in the state due to the breach. The breach would have to be identified and then the Security Council would have to decide whether it constituted a breach substantial enough under the provisions outlined in the Charter.

#### WHAT HAPPENED TO CIVILIAN RIGHTS?

As mentioned above civil and political rights of civilians are protected under the ICCPR during peaceful periods. However during a state of emergency they can be limited, derogated from and possibly abused due to the exigencies of the situation pronounced by the state. The rules are clear however the boundaries are not as states often breach and violate the provisions. As long as the state is protecting the right to life, refraining from genocide and war crimes, the derogations are legal. The civilian is subject to the wills and concerns of the state. Civilian rights are effectively removed during this period. Unless the state is breaching an international customary law, civilians have very little protection in a state of emergency situation.

#### HOW DOES THIS AFFECT R2P APPLICATION?

R2P is subject to international customary laws and norms. As discussed its provisions must be within the criteria of existing general international law. R2P does not exist outside of the Security Council or the General Assembly. It is restricted by the principles and purposes of the Charter of the United Nations and the Statute of the International Court of Justice. It must comply with the Vienna Convention on the Laws of Treaties and the Geneva Convention on the rules of war. It also must be framed within the Genocide Convention for crimes against humanity or the Genocide Convention for ethnic cleansing. Lastly it is restricted by the ICCPR where states may derogate from civil and political rights normally protected under the human rights framework. If the situation does not sit within these frameworks then it would be considered as being outside of the legal frameworks provided for a legal intervention to take place.

If the derogations under the ICCPR are implemented correctly by the state and it does not commit genocide or war crimes then the Security Council and the General Assembly would have very little legal standing in a court of law to defend intervention in that country. This is because the state still has jurisdiction within its own territory and the laws still apply to territorial integrity and the right of the state not to have interference in its internal affairs. If the state is not protecting its citizens from genocide, then customary law clearly identifies that the Security Council and the General Assembly have legal standing to intervene to avoid or reduce a threat to international peace and security. This also applies to war crimes under the Geneva Conventions.

This research then identifies that R2P has severe limitations within the parameters of international law. To include crimes against humanity and ethnic cleansing as separate identifiable areas of law to justify intervention on behalf of the citizens would be considered a stretch of customary international norms. In this sense intervention under R2P does not comply with international customary law in relation to crimes against humanity and ethnic cleansing unless it can be proven that these are additional crimes to war crimes or genocide. The state within the ICCPR has the right to repeal or derogate from some of the most basic human rights available to man during a state of emergency, however during civil peace the state on the other hand must protect these rights under their obligations and responsibilities in international law. The responsibility remains with the state first and foremost and secondly with the United Nations to ensure that these rights are being protected. Beyond this R2P is limited to war crimes and genocide and intervention in a state that is breaching other non-integrated customary norms and laws is not justified in international law.

## DISCUSSION - WHERE DO WE GO FROM HERE

This thesis has shown that R2P is grounded in international law, however it is only grounded within a limited framework. Paragraph 138 of the 2005 World Summit outcome document says that each individual member state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This paragraph is correct in international law. Firstly, each state is responsible for protecting their citizens from genocide and war crimes. Second, legally speaking ethnic cleansing and crimes against humanity are identifiable within the war crimes and genocide and therefore do not add any special meaning to the responsibility of the state.

Paragraph 138 of the 2005 World Summit outcome document declares that responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. This paragraph can also be found within existing international customary law. The responsibility of the state as explored throughout this thesis has shown that the state with its contractual relationships with other states, by its signatory commitment *pacta sunt servada* is obliged to incorporate the provisions of each signed treaty, covenant, statute into its local jurisdiction and in some cases such as the Geneva Conventions and the ICCPR into their local education and military programmes. The state is responsible not only for implementing the provisions within local jurisdiction, education and military programmes but it also has the responsibility to enforce these provisions through the local courts and also through the political system by not inciting hatred or other discriminatory practices into their speeches or programmes for the public.

The prevention aspect of responsibility is clear. The application and the implementation of international law that is applicable to the state must be reinforced by the state's duty to comply. Its responsibilities include duties and obligations in international law that are enforceable through the international system and by other states if they do not comply with the obligations to which they are committed. Therefore the prevention of these crimes requires enforcement, through local courts, local police, military, education and other state programmes to the extent that is appropriate and necessary for the prevention of such crimes.

Thirdly, Paragraph 138 of the 2005 World Summit outcome document states that the governments accept this responsibility and will act in accordance with it. This statement is not an added responsibility; it adds nothing new to international law. The state is already bound by their duties in international law to prevent and protect their citizens from genocide and war crimes and therefore crimes against humanity and ethnic cleansing in international law.

Fourthly, the international community should as appropriate, encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning system. Other than bringing the violators of breaches of international binding treaties to the attention of the ICJ, the states themselves cannot interfere in the territorial integrity or internal affairs of another state. States must request help to receive help. Each state of the United Nations however has a duty to work within the principles and purposes of the Charter in order to refrain from using force for the purpose of international peace and security; they have the responsibility to support the United Nations and the Security Council in the maintenance of the peace. The United Nations' individual organisations have separate responsibilities entailed in their philosophies and constitutions that provide the framework for early warning systems. These systems are in place and the United Nations therefore has the responsibility to ensure that the information is provided to the states and the Security Council in a timely manner so that decisions can be made. In light of this no additional responsibility can be added to the existing international laws already in place.

Fifthly, paragraph 139 of the 2005 World Summit outcome document says the international community, through the United Nations, also has the responsibility to use as appropriate diplomatic humanitarian and other peaceful means in accordance with Chapters VI and VIII of the Charter to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, again reinforcing already existing international laws in the Charter.

Sixthly, paragraph 139 of the 2005 World Summit outcome document states that each member of the United Nations is prepared to take collective action, in a timely and decisive manner, through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis and in co-operation with relevant

regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This paragraph shows that the international community is legally bound by their duties in international law to comply with existing international law in supporting the Security Council with the means necessary to implement its decisions when there is a threat to international peace and security and action must be taken. It reinforces the state's duties to support the Security Council in its decisions. As discussed earlier the Security Council is dependent on the states to supply them with the necessary means to carry out its resolutions in the maintenance of international peace and security. If the state refrains from supplying the Security Council with the necessary means to implement its decisions, it could cost lives, lives that could be saved by the state's duty to provide the Security Council with what is necessary, in a 'timely and decisive' manner. The collective responsibility is the duty of all states that are a party to the Charter when they have chosen *pacta sunt servada* to be part of the United Nations. They have chosen to agree to supply the means necessary to the Security Council through signing the Charter of the United Nations. This responsibility has been in existence since 1945.

Paragraph 139 of the 2005 World Summit outcome document stresses the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. Once again this statement directly reflects the obligations that the states already have in international law. It does not add anything new to international law or to the states responsibilities that already exist. It reminds state's that they do in fact have duties, responsibilities and obligations in international law that apply to war crimes, and genocide and therefore crimes against humanity and ethnic cleansing, and these duties provide legal standing for the Responsibility to Protect in international law.

Lastly paragraph 139 of the 2005 World Summit outcome document states that the members of the United Nations also intend to commit as necessary, to helping states build the capacity to protect their populations. Finally this statement adds something new, in that each state has a duty to protect its citizens from harm; it has a duty to work with other states by peaceful means and it has the responsibility not to intervene in the affairs of others except through the approval of the Security Council. It has

duties to implement and enforce these duties through local jurisdiction, education and military programmes, however it does not have a duty to build the capacity of other states. This duty cannot be clarified in international customary law.

As previously discussed the state is responsible for its own actions in international law; these actions include omissions and the omission to act. States are responsible only for the duties that they have assumed, duties that they have chosen to adopt, to implement, to ratify, to sign and to agree. Beyond these, the duties of the states are limited by international norms and customary laws that apply to all states and are recognized by the international community as custom and upheld by courts as legally binding contracts. R2P reinforces and outlines these duties but it does not add to them. It cannot be used to enforce the duties in international law; it only declares them in a way that states can be reminded that their duty is to protect their citizens in international law. Beyond this the duty to protect remains in the hands of the Security Council and the United Nations to ensure that the maintenance of international peace and security is being enforced. Only through the Security Council can enforcement resolutions be written and only through the states can they be implemented. Therefore the duty to prevent and protect remains with both the state and the Security Council.

## FURTHER CONSIDERATIONS

One question that remains to be answered is whether the ICCPR is an outdated Covenant that breaches the terms of the Vienna Convention on the Law of Treaties. The Vienna Convention on the Law of Treaties (1969) states that a treaty is void if it conflicts with a peremptory norm of general international law.<sup>362</sup> If it could be proven that the ICCPR does conflict with an international customary norm of international law the whole Convention could be repealed and civilian rights would be restored.<sup>363</sup>

## QUESTIONS ON THE LEGALITY OF BAHRAIN IN 2011

The problem of Bahrain in 2011 requires further research as military machinery including tanks and military corps with arms were used against civilians to restore the

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<sup>362</sup> Article 53, Vienna convention on the law of treaties

<sup>363</sup> I have chosen to leave this question for further research, as it deserves a lot more space than can be given in this thesis.



peace. It would appear that there were two parties to the conflict one being the Sunnis and the other Shiite Muslims. Once the conflict escalated into a two party conflict one against the other, arms visible, it clearly came under the protection of the Geneva Convention. Kuwait and Bahrain are a party to the ICCPR as well as parties to the Rome Statute, however the other states are not. The foreign troops that made up the six nation Gulf Co-operation included Bahrain, Saudi Arabia, Oman, Kuwait, Qatar and the United Arab Emirates. Many questions could be explored in relation to this case.

#### QUESTIONS ON THE LEGALITY OF THE INTERVENTION INTO LIBYA

The obvious problems with the intervention into Libya are that firstly the situation did not constitute war crimes because it did not come within the framework of the Geneva Convention as an organised two party group freely carrying arms. It started as a political uprising against the state. The civilians and the state were not two separate parties to a conflict at this point in time. Secondly the situation did not constitute genocide, as it could not be said that there was evidence at the time that showed genocide had been committed. And thirdly even though the members of the General Assembly had unanimously agreed to R2P in 2005 they had agreed to further consider it in terms of not implementing it into international customary law. The norm at this point did not constitute a general norm in international law, therefore it could not constitute a legal intervention. If the situation constitutes a threat to international peace and security, then under what framework? How was this framed except by notions of responsibility to protect civilians from harm, and slight nuisances towards the notion of crimes against humanity and war crimes that were not yet identified?

It is clear that after the intervention had started the parties began to resemble an organized group, carrying arms freely and openly with flags displayed as the new Libya party. At that point the political unrest became a conflict and only then did it come under the provisions of the Geneva Convention. These questions and problems are of a serious nature and need further research.

## IS R2P NECESSARY AT ALL?

After researching R2P for the past year I believe that R2P does not add anything new to the already existing laws that are in place for the protection of civilians. The responsibility of states to protect their citizens from harm is strongly grounded in international law. States are still bound by these duties in international law to prevent and protect. They are also bound to the Charter that stops states interfering in the internal affairs of other states. The Security Council is still the only international body that can determine whether a situation constitutes a threat so serious that it jeopardises international peace and security. The states still determine whether they wish to give military assistance, military capacity and air force assistance to the Security Council in the event of a threat to international peace and security. States can still derogate from international civil and political rights during a state of emergency effectively over-riding any claim to human rights that the civilians had during civil disorder.

States can still use civilian uprisings as a reason for the state of emergency; they can frame the civilians as being a terrorist threat in a state of siege or threatening a civil war and therefore take away rights to free association, free assembly and freedom of media. The state effectively still controls the citizens' right to freedom to choose or elect a new government in a state of emergency situation. Unfortunately R2P adds nothing new to help civilians during a state of emergency in a political uprising. It clarifies and declares the duties of states but it cannot and does not have the ability to enforce. This clarifies the fact that R2P is not necessary. The obligations of states are already well defined.

## CONCLUSION

At first glance R2P appeared to be the declaration that the world had been waiting for. It gave hope to political activists, politicians and academics alike and yet this research has shown that R2P is deficient in adding any new aspects to international law.

Chapter 1 showed that all states were bound to international law and other states through their commitment to the United Nations. The Charter provided us with the grounding for the rules on threats to the peace and the use of aggression. The Charter gave precedence to international law and justice as supreme tenets and each member agreed to act in accordance with these rules. In 2005 each member declared that certain rules in international law were *jus cogens*. They asserted that certain customary international rules including war crimes and genocide were prohibited in international law. They agreed that these rules were customary. They declared that they were prepared to take collective action in accordance with Charter (1945) chapters VI and VIII in accordance with the Security Council reinforcing once again their duties already inherent in international law to supply the Security Council in a timely manner with the means necessary to maintain international peace and security. This showed that R2P did not add anything new to the maintenance of international peace and security. It did not give rights to states to intervene in any situation that involved war crimes, genocide, crimes against humanity or ethnic cleansing. R2P reinforced the duties that were already inherent in international law.

The historical perspective showed that the responsibilities of states were grounded in the discussions of the United Nations and the International Law Commission's proposals on state responsibility. It also showed that the duties and responsibilities of states were deeply rooted in both philosophy and jurisprudence of international law, reaching back into the 1700s and beyond showing us that R2P is neither a new idea nor a new concept and it has developed over centuries not over a few years. This was further emphasized by the Draft declaration on the Rights and Duties of States (1949) whereby the principles entailed reference to refraining from the use of force against the territorial integrity or political independence of any state. Article 14 also reinforced these duties by declaring that every state has the duty to conduct its relations with other states in accordance with international law and with the principle

of sovereignty that each state is the subject to the supremacy of international law. This indicated that the duties and responsibilities of states were a concern of the United Nations very early on in their debates on international law. Garcia Amador's work further emphasized the duties and responsibilities of states. It marked the start of a 70-year process of customary integration of international laws and norms into rules on intervention, international rights, breaches and non-performance, international responsibility and the failure of states to exercise due diligence to prevent and enforce penalties on individuals who violated international law, showing that critical questions were being raised and argued during this time. This added to the broad canopy of responsibilities that were inherent in the duties of states to prevent and protect certain inalienable rights and fundamental freedoms.

Chapter 2 on the Rights, Duties and Responsibilities of States argued that certain rules applied to the state in relation to the acts or omissions of the state in international law. This detailed research explained that it was a violation to refuse or fulfill treaty obligations in international law.<sup>364</sup> The research also showed that some concerns were universal in scope,<sup>365</sup> and that every state by virtue of its membership had a legal interest in the protection of certain basic rights and the fulfillment of essential obligations. These included the outlawing of aggression, genocide, racial discrimination and basic rights to the human person.<sup>366</sup> Any breach of these international obligations could be attributable to the state.

The failure to act was also shown as a violation in certain circumstances.<sup>367</sup> The research showed that a state cannot use internal law as a defence of an international obligation under Article 27 of the Vienna Convention (1969). It also showed that each state is responsible for its organs, its officials and the actions of those who are acting in accordance with the state.<sup>368</sup> Furthermore if a person was acting or exercising elements of governmental authority the state was also found to be responsible. The *Caire case* is an example where the officers were acting contrary or *ultra vires* to

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<sup>364</sup> See Bulgaria, Hungary and Romania, second phase, Advisory opinion, ICJ Reports (1950) page 221 and Rainbow Warrior case, *New Zealand v. France*, (1987), (1990),

<sup>365</sup> See Barcelona traction case *Belgium v. Spain*, (1970) ICJ Reports 3, pages 323-4, 438-9

<sup>366</sup> See Barcelona case above

<sup>367</sup> See *The Tehran case*, the *Rainbow Warrior case* and the German settlers in Poland, Advisory opinion (1923)

<sup>368</sup> See *The LaGrand case*

instructions but nevertheless acting as officers of the state they used the means placed at their disposal to violate international law. Such conduct could be attributable to two or more states when the orders and control of a situation were spread between states. The message was clear, international courts would not tolerate violations or breaches of international law, if the violation and breaches of these in any manner or form could be attributable to the state. If a violation or breach of an international treaty, statute or convention had taken place the attribution of the state would be in question. This emphasized that states have duties to prevent violations and breaches of international law, showing once again that R2P did not contribute any new elements to the existing frameworks of international law within the Courts.

The Rule of Law in Chapter 3 further emphasized the responsibilities, duties and obligations of the state. Firstly it showed that the Charter of the United Nations and the International Court of Justice Statute reinforced these duties. Secondly, they were binding on all states that were a party to them. It also showed they were truly universal in scope. Each state that had signed these treaties was under an obligation to perform these duties in good faith. In this light it showed that in any conflict that arose between the Charter and any other agreement in international law, the Charter prevailed. The Vienna Convention (1969) showed that all treaties were binding on states that were a party to them. It also showed that certain treaties, statutes and conventions were considered customary law and these documents were non-derogable in international law. Non-limitations were shown to include war crimes and crimes against the peace under the Nuremberg Charter and the Hague Conventions (1949) and genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (1948).

Lastly Chapter 3 defined ethnic cleansing, genocide, war crimes and crimes against humanity. Ethnic cleansing was found under the Rome Statute of the International Criminal Court (2002), under the crimes of apartheid, war crimes and genocide. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) broadly defined the protection of an ethnic, racial or religious group. The International Convention on the Elimination of all Forms of Racial discrimination (1966) further provided support for non-discrimination on the grounds of race, colour or national or ethnic origin. The last showed how states were responsible for the speedy elimination of racial discrimination in all its forms and manifestations. Each

state is bound to ensure that local legislation is changed, amended and or reviewed to nullify any laws that endorse racial discrimination of any kind. This extended to being responsible for the implementation of its provisions into local education as well as educating the citizens on the Charter of the United Nations, the Universal Declaration of Human Rights and the United Nations declaration on the Elimination of all forms of Racial Discrimination. This indicated that the responsibility of each state went further than acknowledging or signing a treaty in international law.

The International Covenant on Economic, Social and Cultural Rights (1966) further emphasized the responsibilities of states without discrimination as to race, colour, sex, language, religion, political or other opinions including national or social origin. This protection extended into the work place, the home and the social and economic circumstances including the right to minimum wages, equal opportunity and special privileges to women and children. This Covenant emphasized the responsibility of the state to ensure that the underlying causes of conflict were prevented. The duties of the state were to ensure that economic problems were resolved quickly so that economic production and food distribution did not create future grievances. This went beyond grave crimes and it showed how covenants could be used as prevention tools to prevent individual grievances turning into collective grievances.

The crime of genocide was well grounded in several international frameworks. These included the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951) showing that the Genocide Convention was binding on all states even without any conventional obligation. The *legality of the threat of Use of the Nuclear Weapons case* also pointed out that the Genocide Convention would be applicable if recourse to nuclear weapons entailed the element of intent to destroy members of a group. This reinforced the responsibility of each state to protect its civilians from genocide under the World Summit outcome document (2005) paragraph 138. The Rome Statute again reinforced these provisions.

War crimes were shown to have the most comprehensive provisions for the protection of civilians, wounded soldiers, women and children during a time of conflict either in a non-international or international conflict. The Geneva Conventions explored the responsibilities of the state in relation to humanitarian law. Crimes against humanity

were found to be a part of war crimes even though there were references to crimes against humanity. The research showed that the Nuremberg and Tokyo Trials had failed to prosecute crimes against humanity on their own. The Secretary-General on setting up the Tribunals of Rwanda and the former Yugoslavia could not distinguish crimes against humanity from war crimes or genocide. The United Nations at the time avoided adding crimes against humanity as a reason for setting up the Tribunals. This research showed that crimes against humanity on its own could not be used for an intervention but must be additional to war crimes and or genocide to be included in international customary law.

Chapter 4 identified that certain rights could be derogated from under the state of emergency and the International Covenant of Civil and Political Rights (1966). Detailed research was undertaken in this area to assess the provisions and the extent to which rights could be derogated from. This research showed the principal reason why a state derogated from rights was because of a terrorist threat or a public uprising against the state. It also showed that states regularly breached or violated the provisions associated with the Covenant placing civilians at further risk of abuse.

It also has shown that the international community is not legally entitled to intervene in a state that is abusing these rights unless the abuses constituted a war crime and or genocide. This showed that some rights could be abused legally in international law so long as the exigencies of the situation persisted and the government was under threat. The research clarified that under certain provisions civil and political rights can be derogated from and this was exceptional to all other internationally binding treaties on the protection of civilian rights during a time of civil peace. R2P was found to be outside of these derogations in a state of emergency, civilian rights were found to be non-existent and unprotected even by the international community unless it could be proved that the state was in fact in a conflict with another party. The party had to be clearly identified. This raised many other questions.

Finally the entire thesis showed that R2P is not a new idea nor does it contribute new material to already existing international laws and norms. The idea has been at the heart of the United Nations General Assembly discussions since its second meeting in 1945, each state agreed to refrain from aggression and interference into other states internal affairs.

R2P does not constitute international law, therefore it does not have legal standing on its own except within international customary norms and laws that already exist. It does not enforce the duties of states to prevent and protect other state civilians from harm and R2P is not a new customary norm. It is based on a collection of well-recognized and globally accepted treaties, statutes and conventions that have been put in place to prevent and to protect. It does not give extra meaning nor add any further responsibilities on states. It does not change international law; states are still bound to duties that enforce the Charter of the United Nations to refrain from using force and interfering into another state's internal affairs. It does not add duties to states to supply the Security Council with the means necessary to enforce international peace and security in a timely manner. It repeats these international agreements as a declaration of the states to remind each other that their duties are well grounded in international law. The declaration reminds states of these duties, it does nothing to enforce them.

R2P does not contribute to the maintenance of international peace and security. The Security Council still has the last say, each state still has to comply with the rules and the people are still subject to the whims of the state under a state of emergency. In effect nothing has changed and everything remains the same. R2P is just a declaration. Its provisions however are firmly grounded in international law.



## BIBLIOGRAPHY (PRIMARY RESOURCES)

- International Commission on Intervention and State Sovereignty. (2001). *The Responsibility to Protect*. Canada: International Development Research Centre.
- International Court of Justice. (1951). *The Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*.
- International Law Commission. (2001). *Draft Articles on the Responsibilities of States for internationally wrongful Acts with commentaries A/56.10*. United Nations .
- International Law Commission. (1970). *Yearbook 1970, volume ii, page 306 A/8010/REV.1 para 66*. International Law Commission .
- International Law Commission. (1947). *Yearbook of the International Law Commission (Vol. 1)*.
- International Law Commission. (1973). *Yearbook 1973, volume ii, A/9010/REV.1 REV. paras 36-57*. International Law Commission.
- League of Nations. (1926). *Committee of Experts for the Codification of Law*. League of Nations .
- League of Nations. (1930). *Conference for the Codification of International Law*. Hague: League of Nations.
- The Council for Security Cooperation in the Asia Pacific. (2011). *Study group on the Responsibility to Protect*. CSCAP.
- United Nations. (2005). *2005 World Summit Outcome*. General Assembly. United Nations.
- United Nations. (2009). *General Assembly Sixty-third session, 100th plenary meeting*. New York: United Nations.
- United Nations. (2009). *General Assembly Sixty-third session, 101st plenary meeting*. New York: United Nations.
- United Nations. (2009). *General Assembly sixty-third session, 96th plenary meeting: AGENDA ITEMS 44 AND 107*. New York. United Nations .
- United Nations. (2009). *General Assembly sixty-third session, 98th plenary meeting*. New York: United Nations.
- United Nations. *General Assembly sixty-third session, 99th plenary meeting*. New York: United Nations.
- United Nations. (2001). *International Law Commission volume ii, Part Two, Corrected Document A/56/49 (vol i) Correction 4*. United Nations.
- United Nations. (1993). *Report of the Secretary-General pursuant to paragraph 2 of the Security Council Resolution 808*. United Nations.

## BIBLIOGRAPHY (PRIMARY RESOURCES)

- United Nations. (2010). *Report of the Secretary-General: Early warning, assessment and the Responsibility to protect*. United Nations.
- United Nations. (2009). *Report of the Secretary-General: Implementing the Responsibility to Protect*. United Nations.
- United Nations. (1963). *Resolution 1902 (xviii)*. United Nations.
- United Nations. (1948). *Secretary-General memorandum; Preparatory study concerning a draft declaration on the rights and duties of states*. United Nations.
- United Nations. (2009). *Sixty-fourth session Third Committee, Agenda item 69 (b) Protecting and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*.
- United Nations. (1977). *The Additional Protocol to the Geneva Conventions of the 12th August 1949 and relating to the Protection of victims of International Armed Conflicts*. New York: United Nations.
- United Nations. (1945). *The Charter of the United Nations*. San Francisco: United Nations.
- United Nations. (1949). *The Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked members of the Armed Forces at Sea*. United Nations.
- United Nations. (1949). *The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva: United Nations.
- United Nations. (1949). *The Geneva Convention relative to the Treatment of Prisoners of War*. United Nations.
- United Nations. (1966). *The International Covenant on Economic, Social and Cultural Rights*. New York: United Nations.
- United Nations. (1966). *The International Covenant on Civil and Political Rights*. New York: United Nations.
- United Nations. (1966). *The International Convention on the Elimination of all forms of Racial Discrimination*. United Nations.
- United Nations. (1949). *United Nations General Assembly Resolution 375 (iv)*. United Nations.
- United Nations. (1953). *United Nations General Assembly Resolution 799*. New York: United Nations.

## BIBLIOGRAPHY (PRIMARY RESOURCES)

- United Nations. (1994). *United Nations Security Council 3453rd plenary meeting on 8th November 1994 (S/RES/955)*. United Nations.
- United Nations. (1969). *Vienna Convention on the Law of Treaties*. Vienna: United Nations.
- United Nations Economic and Social Council. (1985). *Siracusa Principles on the Limitation and Derogation provisions in the Covenant on Civil and Political Rights (E/CN.4/1985/4)*. United Nations.
- United Nations. (2009). *General Assembly, sixty-third session 97th plenary meeting*. United Nations.
- United Nations. (1967, January 31). Protocol relating to the Status of Refugees. New York.
- United Nations. *Resolution 1686 (xvi)*.
- United Nations Security Council. (2011). *Resolution 1970 (2011) Adopted by the Security Council at its 6491st meeting on 26th February 2011*. New York : United Nations.
- United Nations Security Council. (2011). *Resolution 1973 (2011) Adopted by the Security Council at its 6498th meeting, on 17th March 2011*. New York : United Nations.
- United Nations Security Council. (2011). *Security Council 6472nd meeting, 21st January 2011 at 10.00 am*. New York: United Nations.
- United Nations Security Council. (2011). *Security Council 6479th meeting 11th February 2011 at 10.00 am*. New York: United Nations.
- United Nations Security Council. (2011). *Security Council 6479th meeting, 11th February 2011, The Situation in Libya*. New York: United Nations.
- United Nations Security Council. (2011). *Security Council 6505th meeting, 24th March, 2011, The Situation in Libya*. New York: United Nations.
- United Nations Security Council. (2011). *Security Council Sixty-sixth year, 6509th meeting, The Situation in Libya*. New York: United Nations.
- United Nations Security Council. (2011). *Security Council 6498th meeting, March 17th 2011, The Situation in Libya* . New York: United Nations .
- United Nations. (1948). *The Convention on the Prevention and Punishment of the Crime of Genocide*. New York: United Nations.
- United Nations. (2002). *The Rome Statute of the International Criminal Court*. United Nations.

## BIBLIOGRAPHY (SECONDARY RESOURCES)

- Amador, G. (1956). *International Responsibility*. International Law Commission.
- Annan, K. (1999). *Annual Report of the Secretary-General to the General Assembly*. United Nations.
- Annan, K. (1999, September 18). Two concepts of Sovereignty. *The Economist*.
- Arbour, L. (2008). The Responsibility to Protect as a Duty of Care in International Law and Practice. *Review of International Studies* (38).
- Axworthy, L., Evans, G., & Thakur, R. (2005). Responsibility to Protect. *MacArthur Newsletter*, p. 1.
- Ayoob, M. (2004). Third World Perspectives on Humanitarian Intervention and International Administration. *Global Governance*, 10 (1), 99-118.
- Bannon, A. L. (2006). The Responsibility to Protect: The UN World Summit and the Question of Unilateralism. *The Yale Law Journal*, 115, 1158.
- Barnes, S. H. (2001). The Contribution of Democracy to Rebuilding Post conflict Societies. *The American Journal of International Law*, 95 (1), 86-101.
- Bellamy, A. (2011). *Global Politics and the Responsibility to Protect: From words to deeds*. Routledge.
- Bellamy, A. (2009). *Responsibility to Protect*. Polity Press.
- Bellamy, A. Responsibility to Protect: Trojan Horse: The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics and International Affairs* (19), 31-34.
- Bellamy, A. (2006). Whither the responsibility to Protect? Humanitarian Intervention and the 2005 World Summit. *Ethics and International Affairs*, 20 (2).
- Bogliolo. (2009). From Humanitarian Intervention to the Responsibility to Protect: The changing face of conflict. *Human Security*, 8 (Spring), 20-34.
- Boutwell, J. (10-11th December 1999). *Report of the Pugwash study group on intervention, Sovereignty and International Security meeting*. Venice, Italy.
- Brunnee, J., & Toope, S. J. (2011). The Responsibility to Protect and the Use of Force: Building Legality? In A. J. Bellamy, S. E. Davies, & L. Glanville (Eds.), *The Responsibility to Protect and International Law* (p. 224). Boston: Martinus Nijhoff Publishers.
- Byers, M. (2005, September 18). High Ground Lost on UN's Responsibility to Protect. p. 3.
- Byers, M. (2003). Preemptive self defence: Hegemony, equality and strategies of Legal change. *Journal of Political Philosophy*, 11 (2), 182.

## BIBLIOGRAPHY (SECONDARY RESOURCES)

- Carsten, S. (2007). Responsibility to Protect: Political Rhetoric or Emerging Legal Norm. *American Journal of International Law* (101/1), 99-120.
- Chandler, D. (2002). *From Kosovo to Kabul: Human Rights and international intervention*. London: Pluto.
- Chandler, D. (2004). The Responsibility to Protect? Imposing the Liberal Peace. *International Peacekeeping* (11/1).
- Chesterman. (2003). *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press.
- Cohen, R., & Deng, F. M. (1998). *Masses in Flight: The Global Crisis of Internal Displacement*. Washington, DC: The Brookings Institute.
- Conte, A. (2006). *An Introduction to International Law*. Lexis Nexis.
- Cunliffe, P. (2010). *Critical Perspectives on the Responsibility to Protect*. London: Routledge.
- de Vattel, E. (1916). *Le Droit des gens ou principes de la loi naturelle appliquee 'a la conduite et aux affaires des nations et des souverains. I*. Carnegie Institution of Washington.
- Deng, F. M., Kimaro, S., Lyons, T., Rothchild, D., & Zartman, W. (1996). *Sovereignty as Responsibility: Conflict Management in Africa*. Washington , DC: The Brookings Institute.
- Deng, F. (2004). The impact on state failure on migration. *Mediterranean Quarterly* (Fall), 18.
- Evans. (2008). *The Responsibility to Protect: Ending Mass Atrocities once and for all*. Washington DC : Brookings Institution.
- Gierycz, D. (2010). The Responsibility to Protect: A Legal and Rights-based Perspective. *Global Responsibility to Protect*, 250-266.
- Glanville, L. (2009). Is Genocide still a powerful Word? *Journal of Genocide Research* (11/4).
- Glanville, L. (2010). The International Community's Responsibility to Protect. *Global Responsibility to Protect* (2), 287-306.
- Ki Moon, B. (2009). Implementing the Responsibility to Protect. *Report of the Secretary General (A/63/677)* . United Nations.
- Ki Moon, B. (2004). *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*. United Nations.
- Ki-moon, B. (2005, September 18). *Statement at the General debate of the 60th session of the United Nations National Assembly*. Retrieved February 28, 2011, from [www.un.org](http://www.un.org)

## BIBLIOGRAPHY (SECONDARY RESOURCES)

- Larrinaga, D., & Doucet. (2008). Sovereign Power and the Biopolitics of Human Security. *Security Dialogue*, 39, 517.
- Lauterpacht, E. (1950). *International Law and Human Rights*. London: Stevens & Sons.
- Levine, D. (2010). Rule of Law, Power distribution and the problem of faction in Conflict Interventions. In M. Sellers, & T. Tomazewski, *The Rule of Law in Comparative Perspective, Jus gentium: Comparative perspectives on Law and Justice* (p. 147).
- Luck, E. C. (2008). *The Responsible Sovereign and the Responsibility to Protect: Annual Review of United Nations Affairs 2006/2007* (Vol. 1). New York : Oxford University Press.
- Patterson, J. (2010). *Humanitarian Intervention and the Responsibility to Protect: Who should Intervene?* Oxford.
- Prins, G. (2000). The Politics on Intervention. *Pugwash Occasional Papers* (p. 8). Pugwash.
- Proukaki, E. K. (2011). *The Problem with enforcement in Interantional Law: Countermeasures, the non-injured state and the idea of international community*. Routledge.
- Roht-Arriaza, N. (2005). *The Pinochet Effect: Transnational Justice in the Age of Human Rights*. Philadelphia: University of Pennsylvania Press.
- Rokeach, M. (1973). *The Nature of Human Values* (Vol. 5).
- Rosenberg, S. P. (2009). Responsibility to Protect: A Framework for Prevention. *Global Responsibility to Protect* (1/4), 442-477.
- Spiller, P. (2001). *Butterworths New Zealand Law Dictionary* (Vol. 5). Wellington, New Zealand: Butterworths.
- Stoll, T. (2008). Responsibility to Protect. *Human Security Journal* , 15.
- Strauss, E. (2009). A Bird in one hand is worth two in the bush - On the assumed legal nature of the Responsibility to Protect. *Global Responsibility to Protect* (1/3), 291-323.
- Tams, C. (2005). *Enforcing Obligations Erga omnes in International Law*. Cambridge: Cambridge University Press.
- Thakur, R. (2003). No more Rwandas: Intervention sovereignty and the Responsibility to protect. *Humanitarian Exchange*. London.

## TABLE OF LEGAL CASES

All cases can be found on the International Court of Justice website under Contentious Cases or under Advisory Proceedings.<sup>369</sup> Cases are either cited in main chapters or in footnotes.

*Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v. Russian Federation) [2008] ICJ Reports

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)) [1993] ICJ Reports 3

*Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda) [2005] ICJ Reports 1

*Arrest Warrant of 11<sup>th</sup> April 2000* (Democratic Republic of the Congo v. Belgium) (Judgement) [2002] ICJ Reports 3

*Barcelona Traction Light and Power Company Case* (Belgium v. Spain) [1970] ICJ Reports 3

*Claire Claim* [1929] 5 RIAA 516

*Case of the SS Lotus* (France v. Turkey) [1927] PCIJ Reports, Series A, no 10

*Chandler v. United States* [1949] 171 F2d

*Continental Shelf Case* (Libyan Arab Jamahiriya v. Malta) [1985] ICJ Reports 46

*Continental Shelf Case* (Tunisia v Libyan Arab Jamahiriya) [1982] ICJ Reports 18

*Cofu Channel Case* (UK v. Albania) [1949] ICJ Reports 4

*Gabcikovo-Nagymaros Project* (Hungary v. Slovakia) (Judgement) [1997] ICJ Reports 7

*I'm Alone case* (Canada v. United States) [1935] 3 RIAA 1609

*Legality of the Threat or Use of Nuclear Weapons, Advisory opinion* [1996] ICJ Reports 226

*Legality of Use of Force* (Serbia and Montenegro v. Belgium) (Provisional Measures) [1999] ICJ Reports 916

---

<sup>369</sup> Link <http://www.icj-cij.org/docket/index.php?p1=3&p2=3> lastly accessed on 11<sup>th</sup> may 2011

*Table of Legal Cases continued ...*

*R v. Bow Street Metropolitan Stipendiary Magistrate and Others: Ex parte Pinochet Ugarte* (No.1)  
3, W.L.R. 1456 [1998]

*R v. Bow Street Metropolitan Stipendiary Magistrate Ex parte Pinochet Ugarte* (No.2) [1999]  
UKHL 52

*R v. Bow Street Metropolitan Stipendiary Magistrate Ex parte Pinochet Ugarte* Amnesty  
International and Others Intervening) (No.3) [2000] 1 AC 147

*Rainbow Warrior Arbitration* [1987] 81 AJIL 325

*Rainbow Warrior* (New Zealand v. France) (No.2) [1990] 82 ILR 499

*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* Advisory  
opinion, 28<sup>th</sup> May 1951 [1951] ICJ Reports 15

*Territorial Dispute* (Libyan Arab Jamahiriya v. Chad) (Judgement) [1994] ICJ Reports 6

*Texaco Overseas Petroleum Company v. Libya* [1977] 53 ILR 389

*Trail Smelter Case* (United States v. Canada) [1949] 3 RIAA 1905

*United States Diplomatic and Consular Staff in the Tehran Case* (United States v. Iran) [1980]  
ICJ Reports 3



## **MULTILATERAL TREATIES, AND OTHER DOCUMENTS**<sup>370</sup>

### **(SIGNATORIES AND PARTIES)**<sup>371</sup>

#### **RULE OF LAW**

1. Rome Statute of the International Criminal Court, Rome 17<sup>th</sup> July 1998, (139 Signatories, 114 Parties)
2. Agreement on the Privileges and Immunities of the International Criminal Court, New York, 9<sup>th</sup> September 2002 (62 Signatories, 66 Parties)
3. The Rule of Law at the national and international levels A/RES/62/70,
4. The Rule of Law at the National and International levels A/RES/61/39
5. Security Council Resolution 1674 - S/RES/1674 (2006)
6. Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies – S/2004/616
7. Adherence to Rule of Law GA/L/3390

#### **CHARTER OF THE UNITED NATIONS AND STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

1. Charter of the United Nations, San Francisco, 26<sup>th</sup> June 1945 (49 Parties, 192 Members)
2. Declarations of acceptance of the obligations contained in the Charter of the United Nations (142 members)
3. Statute of the International Court of Justice
  - a. ICJ Rules of the Court (1978)
  - b. Practical Directions (2001) amended (2009)
4. Declarations recognizing as compulsory the jurisdiction of the International Court of Justice under Article 36 paragraph 2 of the Statute of the Court (66 Parties)

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<sup>370</sup> Most of these documents can be found at the united nations treaty collection, lastly accessed on 12<sup>th</sup> May 2011 <http://treaties.un.org/home.aspx?lang=en>

<sup>371</sup> These were correct as of 12<sup>th</sup> May 2011

## UNITED NATIONS GENERAL ASSEMBLY DOCUMENTS

1. United Nations Millennium Development Goals (2010)
2. United Nations GA A/HRC/12/48 Human Rights in Palestine and other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Strip (2009) (Later known as the Goldstone Report)
3. United Nations GA A/C.3/64/L.38/Rev.1 Promotion and Protection of Human Rights, 17<sup>th</sup> November (2009)
4. United Nations GA, A/63/PV.96 Responsibility to Protect Debate 21<sup>st</sup> July (2009)
5. United Nations GA, A/63/PV.97, R2P Debate, 23<sup>rd</sup> July (2009)
6. United Nations GA, A/63/PV.98, R2P Debate, 24<sup>th</sup> July (2009) 10.00 am
7. United Nations GA, A/63/PV.99, R2P Debate 24<sup>th</sup> July (2009) 3.00pm
8. United Nations GA A/63/PV.100 Universal Jurisdiction 28<sup>th</sup> July (2009) 10.00am
9. United Nations GA A/63/PV.101, Universal Jurisdiction, 28<sup>th</sup> July (2009) 3.00pm
10. United Nations A/63/L.80/Rev.1/Add.1 Responsibility to Protect (2009)
11. United Nations A/RES/63/308 Reaffirming R2P (2009)

## UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

1. Resolution 1296 – S/RES/1296(2000) Protection of civilians<sup>372</sup>
2. Resolution 1674 - S/RES/1674(2006) Protection of civilians in armed conflict
3. Resolution 1706 – S/RES/1706(2006) Sudan and R2P

---

<sup>372</sup> Accessed from <http://www.un.org/docs/sc/> last accessed 12<sup>th</sup> May 2011

4. Resolution 1894 - S/RES/1894 (2009) Protection of civilians in armed conflict
5. Resolution 1955 - S/RES/1955 (2010) ICTR Genocide
6. Resolution 1966 - S/RES/1966/ (2010) Rwanda and former Yugoslavia  
Tribunals for the prosecution of Persons Responsible for serious violations of  
International Humanitarian Law (and) Genocide
7. Resolution 1970 - S/RES/1970 (2011) Peace and Security in Africa/Libya
8. Resolution 1973 S/RES/1973 (2011) The situation in Libya

#### LAW OF TREATIES

1. Vienna Convention on the Law of Treaties, Vienna, 23<sup>rd</sup> May 1969 (45  
Signatories, 111 Parties)
2. Vienna Convention on succession of States in respect to Treaties, Vienna, 23<sup>rd</sup>  
August 1978 (19 Signatories, 22 Parties)
3. Vienna Convention on the Law of Treaties between States and International  
Organisations or between International Organisations, Vienna, 21<sup>st</sup> March  
1986 (39 Signatories, 41 Parties)

#### PRIVILEGES AND IMMUNITIES, DIPLOMATIC AND CONSULAR RELATIONS

1. Convention on the Privileges and Immunities of the United Nations, New  
York, 13<sup>th</sup> February 1946 (157 Parties)
2. Convention on the Privileges and Immunities of the Specialised Agencies, New  
York, 21<sup>st</sup> November 1947 (116 Parties)
3. Vienna Convention on Diplomatic Relations, Vienna 18<sup>th</sup> April 1961 (60  
Signatories, 187 Parties)
4. Vienna Convention on Consular Relations, Vienna 24<sup>th</sup> April 1963 (48  
Signatories, 173 Parties)
5. Vienna Convention on the Representation of States in their Relations with  
International Organisations of a Universal Character, Vienna, 14<sup>th</sup> March  
1975 (Signatories 20, Parties 34)
6. United Nations Convention on Jurisdictional Immunities of States and their  
Property, New York, 2<sup>nd</sup> December 2004 (28 Signatories, 11 Parties)

## HUMAN RIGHTS

1. Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9<sup>th</sup> December 1948 (41 Signatories, 141 Parties)
2. International Convention on the Elimination of All Forms of Discrimination, New York, 7<sup>th</sup> March 1966 (Signatories 85, Parties 174)
3. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, New York, 26<sup>th</sup> November 1968 (9 Signatories, 54 Parties, (2011))

## REFUGEES AND STATELESS PERSONS

1. Convention relating to the Status of Refugees, Geneva, 28<sup>th</sup> July 1951 (19 Signatories, 144 Parties)
2. Convention relating to the status of Stateless Persons, New York, 28<sup>th</sup> September 1954 (23 Signatories, 65 Parties)

## DISARMAMENT

1. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III) Geneva, 10<sup>th</sup> October 1980 (50 Signatories, 114 Parties)
2. Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons) Vienna, 13<sup>th</sup> October 1995 (Parties 100)
3. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3rd May 1996 (Protocol II as amended on 3rd May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. Geneva, 3<sup>rd</sup> May 1996. (Parties 97)
4. Amendment to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively

Injurious or to have Indiscriminate Effects. Geneva, 21 December 2001.  
(75 Parties)

5. Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V) Geneva, 28<sup>th</sup> November 2003. (72 Parties)
6. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Geneva, 3<sup>rd</sup> September 1992. (165 Signatories, 188 Parties) Israel and Myanmar were two States identified as not being a party to this Convention.
7. Comprehensive Nuclear-Test-Ban Treaty, New York, 10<sup>th</sup> September 1996 (181 Signatories, 153 Parties)
8. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo, 18<sup>th</sup> September 1997. (133 Signatories, 156 Parties)
9. Convention on Cluster Munitions, Dublin, 30<sup>th</sup> May 2008. (108 Signatories, 57 Parties)

## APPENDIX

### **DIGITAL ONLINE DATABASE ON ARMED CONFLICT**

#### YALE LAW SCHOOL

##### UNITED NATIONS

The Charter of the United Nations June 26<sup>th</sup> 1945

[http://avalon.law.yale.edu/20th\\_century/unchart.asp](http://avalon.law.yale.edu/20th_century/unchart.asp)

Statute of the International Court of Justice June 26<sup>th</sup> 1945

[http://avalon.law.yale.edu/20th\\_century/decad026.asp](http://avalon.law.yale.edu/20th_century/decad026.asp)

Universal Declaration of Human Rights (1948)

[http://avalon.law.yale.edu/20th\\_century/unrights.asp](http://avalon.law.yale.edu/20th_century/unrights.asp)

##### WAR & ARMED CONFLICT

The Laws of War [http://avalon.law.yale.edu/subject\\_menus/lawwar.asp](http://avalon.law.yale.edu/subject_menus/lawwar.asp)

Nuremberg Trial Proceedings Volume 1, Charter of the International Military

Tribunal <http://avalon.law.yale.edu/imt/imtconst.asp>

The International Military Tribunal for Germany

[http://avalon.law.yale.edu/subject\\_menus/imt.asp](http://avalon.law.yale.edu/subject_menus/imt.asp)

NATO Treaty [http://avalon.law.yale.edu/20th\\_century/nato.asp](http://avalon.law.yale.edu/20th_century/nato.asp)

War Powers Resolution U.S.A.

[http://avalon.law.yale.edu/20th\\_century/warpower.asp](http://avalon.law.yale.edu/20th_century/warpower.asp)

##### HAGUE CONFERENCE 1899

[http://avalon.law.yale.edu/subject\\_menus/haguemen.asp](http://avalon.law.yale.edu/subject_menus/haguemen.asp)

Hague I - Pacific Settlement of International Disputes: 29<sup>th</sup> July 1899

[http://avalon.law.yale.edu/19th\\_century/hague01.asp](http://avalon.law.yale.edu/19th_century/hague01.asp)

Hague II - Laws and Customs of War on Land: 29<sup>th</sup> July 1899

[http://avalon.law.yale.edu/19th\\_century/hague02.asp](http://avalon.law.yale.edu/19th_century/hague02.asp)

Hague III – Adaptation to Maritime Warfare of Principles of Geneva Convention of 1864: July 29 1899 [http://avalon.law.yale.edu/19th\\_century/hague993.asp](http://avalon.law.yale.edu/19th_century/hague993.asp)

Hague IV – Prohibiting Launching Projectiles and Explosives from Balloons: 29 July 1899 [http://avalon.law.yale.edu/19th\\_century/hague994.asp](http://avalon.law.yale.edu/19th_century/hague994.asp)

#### HAGUE CONFERENCE 1907

Hague I – Pacific Settlement of International Disputes: 18 October 1907  
[http://avalon.law.yale.edu/20th\\_century/pacific.asp](http://avalon.law.yale.edu/20th_century/pacific.asp)

Hague II - Limitation of Employment of Force for Recovery of Contract Debts: October 18, 1907 [http://avalon.law.yale.edu/20th\\_century/pacific.asp](http://avalon.law.yale.edu/20th_century/pacific.asp)

Hague III – Opening of Hostilities: 18 October 1907  
[http://avalon.law.yale.edu/20th\\_century/hague03.asp](http://avalon.law.yale.edu/20th_century/hague03.asp)

Hague IV - Laws and Customs of War on Land: 18 October 1907  
[http://avalon.law.yale.edu/20th\\_century/hague04.asp](http://avalon.law.yale.edu/20th_century/hague04.asp)

Hague V - Rights and Duties of Neutral Powers and Persons in Case of War on Land: 18 October 1907 [http://avalon.law.yale.edu/20th\\_century/hague05.asp](http://avalon.law.yale.edu/20th_century/hague05.asp)

#### GENEVA CONVENTIONS

1864 – Amelioration of the Condition of the Wounded on the Field of Battle: August 22 1864 [http://avalon.law.yale.edu/19th\\_century/geneva04.asp](http://avalon.law.yale.edu/19th_century/geneva04.asp)

1928 - Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Gas and for Bacteriological Methods of Warfare: February 8 1928  
[http://avalon.law.yale.edu/20th\\_century/geneva01.asp](http://avalon.law.yale.edu/20th_century/geneva01.asp)

1929 - Convention Between the United States of America and Other Powers, Relating to Prisoners of War, July 27 1929  
[http://avalon.law.yale.edu/20th\\_century/geneva02.asp](http://avalon.law.yale.edu/20th_century/geneva02.asp)

1949 - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12 1949  
[http://avalon.law.yale.edu/20th\\_century/geneva05.asp](http://avalon.law.yale.edu/20th_century/geneva05.asp)

1949 - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12 1949

[http://avalon.law.yale.edu/20th\\_century/geneva06.asp](http://avalon.law.yale.edu/20th_century/geneva06.asp)

1949 - Convention (III) Relative to the Treatment of Prisoners of War, August 12

[http://avalon.law.yale.edu/20th\\_century/geneva03.asp](http://avalon.law.yale.edu/20th_century/geneva03.asp)

1949 - Convention (IV) Relative to the Protection of Civilian Persons in Time of War, August 12 [http://avalon.law.yale.edu/20th\\_century/geneva07.asp](http://avalon.law.yale.edu/20th_century/geneva07.asp)

1975 - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, March 26 1972 [http://avalon.law.yale.edu/20th\\_century/bact.asp](http://avalon.law.yale.edu/20th_century/bact.asp)

Convention on the Prevention and Punishment of the Crime of Genocide, December 9<sup>th</sup> 1948 [http://avalon.law.yale.edu/20th\\_century/genocide.asp](http://avalon.law.yale.edu/20th_century/genocide.asp)

Convention on the Rights of a Child; November 20 1989

[http://avalon.law.yale.edu/20th\\_century/child.asp](http://avalon.law.yale.edu/20th_century/child.asp)

## KOSOVO

Kosovo – United Nations Security Council Resolution 1160, March 31 1998

[http://avalon.law.yale.edu/20th\\_century/un1160.asp](http://avalon.law.yale.edu/20th_century/un1160.asp)

Kosovo - United Nations Security Council Resolution 1199, September 23, 1998

[http://avalon.law.yale.edu/20th\\_century/un1199.asp](http://avalon.law.yale.edu/20th_century/un1199.asp)

## MIDDLE EAST DOCUMENTS FROM 1916 -2001

[http://avalon.law.yale.edu/subject\\_menus/mideast.asp](http://avalon.law.yale.edu/subject_menus/mideast.asp)

The Palestine Mandate [http://avalon.law.yale.edu/20th\\_century/palmanda.asp](http://avalon.law.yale.edu/20th_century/palmanda.asp)

The Palestinian Nations Charter: Resolutions of the Palestine Nations Council July 1-17 1968 [http://avalon.law.yale.edu/20th\\_century/plocov.asp](http://avalon.law.yale.edu/20th_century/plocov.asp)

The question on future Government of Palestine UN GA Resolution 181, November 29 (1947) [http://avalon.law.yale.edu/20th\\_century/res181.asp](http://avalon.law.yale.edu/20th_century/res181.asp)



## UNIVERSITY OF MINNESOTA

United Nations, Economic, and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN. DOC. E/CN.4/1985/4 ANNEX (1985)

<http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>

Human Rights Library <http://www1.umn.edu/humanrts/>

## GENEVA ACADEMY OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS

[http://www.adh-geneva.ch/RULAC/international\\_humanitarian\\_law.php](http://www.adh-geneva.ch/RULAC/international_humanitarian_law.php)

International Human Rights Law

[http://www.adh-geneva.ch/RULAC/international\\_human\\_rights\\_law.php](http://www.adh-geneva.ch/RULAC/international_human_rights_law.php)

Derogations from Human Rights Treaties in Situations of Emergency

[http://www.adhgeneva.ch/RULAC/derogation\\_from\\_human\\_rights\\_treaties\\_in\\_situations\\_of\\_emergency.php](http://www.adhgeneva.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php)

## INTERNATIONAL COMMITTEE OF THE RED CROSS

Website <http://www.icrc.org/> English <http://www.icrc.org/eng/>

The Geneva Conventions <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>

Protected persons <http://www.icrc.org/eng/war-and-law/protected-persons/index.jsp>

War Crimes [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter44](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44)

## UNITED STATES LIBRARY OF CONGRESS

LAW LIBRARY <http://www.loc.gov/law/>

## INTERNATIONAL MULTINATIONAL LEGAL DATABASES

<http://www.loc.gov/law/help/guide/international.php>

EGYPT <http://www.loc.gov/law/help/guide/nations/egypt.php>

TREATIES <http://www.loc.gov/law/help/guide/treaties.php>

THE GLOBAL LEGAL INFORMATION NETWORK

<http://www.glin.gov/search.action>

GEORGETOWN UNIVERSITY - CONSTITUTIONS OF THE AMERICAS

<http://pdba.georgetown.edu/constitutions/constudies.html>

INTERNATIONAL NETWORK TO PROMOTE THE RULE OF LAW

<http://www.inprol.org/visitorhome>

WORLD LEGAL INFORMATION INSTITUTE

<http://www.worldlii.org/>

HUMAN RIGHTS WATCH

<http://www.hrw.org/home>

## INTERNATIONAL COURTS

### INTERNATIONAL COURT OF JUSTICE

<http://www.icj-cij.org/homepage/index.php>

### CONTENTIOUS CASES

<http://www.icj-cij.org/docket/index.php?p1=3&p2=3>

### ADVISORY PROCEEDINGS

<http://www.icj-cij.org/docket/index.php?p1=3&p2=4>

## INTERNATIONAL CRIMINAL COURT

<http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/>

### ICC DATABASE LEGAL TOOLS

<http://www.legal-tools.org/en/go-to-database/>

### OFFICIAL JOURNAL

<http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/>

### ROME STATUTE

[http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf)

## INTER-AMERICAN COURT OF HUMAN RIGHTS

### DATABASE

<http://www.worldlii.org/int/cases/IACHR/>

### AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS

<http://www.african-court.org/en/>

### EUROPEAN COURT OF HUMAN RIGHTS

Website [http://www.echr.coe.int/ECHR/Homepage\\_En](http://www.echr.coe.int/ECHR/Homepage_En)

## INTERNATIONAL LAW COMMISSION

Website <http://www.un.org/law/ilc/index.htm>

Publications <http://untreaty.un.org/ilc/publications/publications.htm>

Yearbooks <http://untreaty.un.org/ilc/publications/yearbooks/yearbooks.htm>

First Session 1949 on the Rights and Duties of States

[http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC\\_1949\\_v1\\_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1949_v1_e.pdf)

1950 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1950.htm>

1951 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1951.htm>

1952 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1952.htm>

1953 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1953.htm>

1954 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1954.htm>

1955 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1955.htm>

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1959 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1959.htm>

1960 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1960.htm>

1961 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1961.htm>

1962 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1962.htm>

1963 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1963.htm>

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1965 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1965.htm>

1966 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1966.htm>

INTERNATIONAL LAW COMMISSION YEAR BOOKS (1967-1988)

- 1967 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1967.htm>
- 1968 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1968.htm>
- 1969 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1969.htm>
- 1970 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1970.htm>
- 1971 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1971.htm>
- 1972 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1972.htm>
- 1973 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1973.htm>
- 1974 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1974.htm>
- 1975 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1975.htm>
- 1976 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1976.htm>
- 1977 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1977.htm>
- 1978 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1978.htm>
- 1979 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1979.htm>
- 1980 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1980.htm>
- 1981 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1981.htm>
- 1982 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1982.htm>
- 1983 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1983.htm>
- 1984 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1984.htm>
- 1985 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1985.htm>
- 1986 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1986.htm>
- 1987 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1987.htm>
- 1988 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1988.htm>

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1989 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1989.htm>

1990 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1990.htm>

1991 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1991.htm>

1992 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1992.htm>

1993 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1993.htm>

1994 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1994.htm>

1995 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1995.htm>

1996 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1996.htm>

1997 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1997.htm>

1998 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/1998.htm>

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2001 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/2001.htm>

2002 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/2002.htm>

2003 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/2003.htm>

2004 Volumes 1 & 2 <http://untreaty.un.org/ilc/publications/yearbooks/2004.htm>

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UNITED NATIONS RULE OF LAW WEBSITE <http://www.unrol.org/>

THE ADMINISTRATION OF JUSTICE DURING A STATE OF EMERGENCY  
<http://www.unrol.org/files/training9chapter16en.pdf>

UNITED NATIONS TREATY COLLECTION

<http://treaties.un.org/Home.aspx?lang=en>

STATUS OF TREATIES <http://treaties.un.org/pages/ParticipationStatus.aspx>

CERTIFIED TRUE COPIES <http://treaties.un.org/pages/CTCs.aspx>

TREATY HANDBOOK – Treaty Section of the Office of Legal Affairs

<http://treaties.un.org/doc/source/publications/THB/English.pdf>

[http://treaties.un.org/Pages/Publications.aspx?pathpub=Publication/TH/Page1\\_en.xml](http://treaties.un.org/Pages/Publications.aspx?pathpub=Publication/TH/Page1_en.xml)

UNILATERAL DECLARATIONS (A/61/10) 2006

[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_9\\_2006.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf)

DRAFT ARTICLES ON THE RESPONSIBILITY OF STATES FOR  
INTERNATIONALLY WRONGFUL ACTS WITH COMMENTARIES (2001)

[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

## TREATIES, STATUTES AND CONVENTIONS

VIENNA CONVENTION ON THE LAW OF TREATIES, VIENNA (1969)

[http://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch\\_XXIII\\_01p.pdf](http://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01p.pdf)

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL  
FORMS OF RACIAL DISCRIMINATION, NEW YORK, 7 MARCH (1966)

STATUS

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)

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[http://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch\\_IV\\_2p.pdf](http://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf)

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS, NEW YORK, 16 DECEMBER (1966)

STATUS

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

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[http://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](http://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1967)

STATUS

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

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[http://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](http://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf)



CONVENTION ON THE NON-APPLICABILITY OF STATUTORY  
LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY,  
NEW YORK, 26<sup>TH</sup> NOVEMBER (1968)

STATUS

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-6&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en)

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[http://treaties.un.org/doc/Treaties/1970/11/19701111%202-40%20AM/Ch\\_IV\\_6p.pdf](http://treaties.un.org/doc/Treaties/1970/11/19701111%202-40%20AM/Ch_IV_6p.pdf)

INTERNATIONAL CONVENTION ON THE SUPPRESSION AND  
PUNISHMENT OF THE CRIME OF APARTHEID, NEW YORK, 30  
NOVEMBER (1973)

STATUS

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-7&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-7&chapter=4&lang=en)

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SECURITY COUNCIL RESOLUTIONS BY YEAR (1946-1967)

1946 <http://www.un.org/documents/sc/res/1946/scres46.htm>

1947 <http://www.un.org/documents/sc/res/1947/scres47.htm>

1948 <http://www.un.org/documents/sc/res/1948/scres48.htm>

1949 <http://www.un.org/documents/sc/res/1949/scres49.htm>

1950 <http://www.un.org/documents/sc/res/1950/scres50.htm>

1951 <http://www.un.org/documents/sc/res/1951/scres51.htm>

1952 <http://www.un.org/documents/sc/res/1952/scres52.htm>

1953 <http://www.un.org/documents/sc/res/1953/scres53.htm>

1954 <http://www.un.org/documents/sc/res/1954/scres54.htm>

1955 <http://www.un.org/documents/sc/res/1955/scres55.htm>

1956 <http://www.un.org/documents/sc/res/1956/scres56.htm>

1957 <http://www.un.org/documents/sc/res/1957/scres57.htm>

1958 <http://www.un.org/documents/sc/res/1958/scres58.htm>

1959 <http://www.un.org/documents/sc/res/1959/scres59.htm>

1960 <http://www.un.org/documents/sc/res/1960/scres60.htm>

1961 <http://www.un.org/documents/sc/res/1961/scres61.htm>

1962 <http://www.un.org/documents/sc/res/1962/scres62.htm>

1963 <http://www.un.org/documents/sc/res/1963/scres63.htm>

1964 <http://www.un.org/documents/sc/res/1964/scres64.htm>

1965 <http://www.un.org/documents/sc/res/1965/scres65.htm>

1966 <http://www.un.org/documents/sc/res/1966/scres66.htm>

1967 <http://www.un.org/documents/sc/res/1967/scres67.htm>

SECURITY COUNCIL RESOLUTIONS BY YEAR (1968- 1989)

1968 <http://www.un.org/documents/sc/res/1968/scres68.htm>

1969 <http://www.un.org/documents/sc/res/1969/scres69.htm>

1970 <http://www.un.org/documents/sc/res/1970/scres70.htm>

1971 <http://www.un.org/documents/sc/res/1971/scres71.htm>

1972 <http://www.un.org/documents/sc/res/1972/scres72.htm>

1973 <http://www.un.org/documents/sc/res/1973/scres73.htm>

1974 <http://www.un.org/documents/sc/res/1974/scres74.htm>

1975 <http://www.un.org/documents/sc/res/1975/scres75.htm>

1976 <http://www.un.org/documents/sc/res/1976/scres76.htm>

1977 <http://www.un.org/documents/sc/res/1977/scres77.htm>

1978 <http://www.un.org/documents/sc/res/1978/scres78.htm>

1979 <http://www.un.org/Docs/scres/1979/scres79.htm>

1980 <http://www.un.org/documents/sc/res/1980/scres80.htm>

1981 <http://www.un.org/Docs/scres/1981/scres81.htm>

1982 <http://www.un.org/documents/sc/res/1982/scres82.htm>

1983 <http://www.un.org/Docs/scres/1983/scres83.htm>

1984 <http://www.un.org/documents/sc/res/1984/scres84.htm>

1985 <http://www.un.org/Docs/scres/1985/scres85.htm>

1986 <http://www.un.org/Docs/scres/1986/scres86.htm>

1987 <http://www.un.org/Docs/scres/1987/scres87.htm>

1988 <http://www.un.org/Docs/scres/1988/scres88.htm>

1989 <http://www.un.org/Docs/scres/1989/scres89.htm>

SECURITY COUNCIL RESOLUTIONS BY YEAR (1990-2011)

- 1990 <http://www.un.org/Docs/scres/1990/scres90.htm>
- 1991 <http://www.un.org/Docs/scres/1991/scres91.htm>
- 1992 <http://www.un.org/documents/sc/res/1992/scres92.htm>
- 1993 <http://www.un.org/Docs/scres/1993/scres93.htm>
- 1994 <http://www.un.org/Docs/scres/1994/scres94.htm>
- 1995 <http://www.un.org/Docs/scres/1995/scres95.htm>
- 1996 <http://www.un.org/Docs/scres/1996/scres96.htm>
- 1997 <http://www.un.org/Docs/scres/1997/scres97.htm>
- 1998 <http://www.un.org/Docs/scres/1998/scres98.htm>
- 1999 <http://www.un.org/Docs/scres/1999/sc99.htm>
- 2000 <http://www.un.org/Docs/scres/2000/sc2000.htm>
- 2001 <http://www.un.org/Docs/scres/2001/sc2001.htm>
- 2002 <http://www.un.org/Docs/scres/2002/sc2002.htm>
- 2003 [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)
- 2004 [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)
- 2005 [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)
- 2006 [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)
- 2007 [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)
- 2008 [http://www.un.org/Docs/sc/unsc\\_resolutions08.htm](http://www.un.org/Docs/sc/unsc_resolutions08.htm)
- 2009 [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)
- 2010 [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)
- 2011 [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

## SECURITY COUNCIL RESOLUTIONS - ARMED CONFLICT

Note: If it does not open on the link provided cut and copy into browser, or go to year link then search Resolution number

### ARMED CONFLICT – CIVILIANS

United Nations Security Council Resolution 1296 (2000) 19th April on the protection of Civilians in Armed Conflict <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/399/03/PDF/N0039903.pdf?OpenElement>  
2000 <http://www.un.org/Docs/scres/2000/sc2000.htm>

UNSC Resolution 1674 (2006) 28th April on the protection of Civilians during Armed Conflict <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/331/99/PDF/N0633199.pdf?OpenElement>

UNSC Resolution 1738 (2006) 23rd December on the Protection of Civilians in Armed Conflict [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

United Nations Security Council (UNSC) Resolution 1265 (1999) 17th September on the protection of civilians during Armed Conflict <http://www.un.org/Docs/scres/1999/sc99.htm>

UNSC Resolution 1894 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

### ARMED CONFLICT – CHILDREN

United Nations Security Council (UNSC) Resolution 1261 (1999) 25th August on the protection of children in Armed Conflict <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/248/59/PDF/N9924859.pdf?OpenElement>  
1999 <http://www.un.org/Docs/scres/1999/sc99.htm>

UNSC Resolution 1314 (2000) 11th August on the protection of Children in Armed Conflict <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/604/03/PDF/N0060403.pdf?OpenElement>

UNSC Resolution 1379 (2001) 20th November on Children and Armed Conflict

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/651/10/PDF/N0165110.pdf?OpenElement>

2001 <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1460 (2003) 30th January on Children in Armed Conflict

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/231/16/PDF/N0323116.pdf?OpenElement>

2003 [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1539 (2004) 22nd April on Children and Armed Conflict

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/318/63/PDF/N0431863.pdf?OpenElement>

2004 [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

UNSC Resolution 1998 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1882 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

#### ARMED CONFLICT – WOMEN

UNSC Resolution 1325 (2000) <http://www.un.org/Docs/scres/2000/sc2000.htm>

UNSC Resolution 1889 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1888 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1960 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

#### ARMED CONFLICT – CO-OPERATION

UNSC Resolution 1353 (2001) 13th June on strengthening co-operation with troop-contributing countries <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/409/44/PDF/N0140944.pdf?OpenElement>

2001 <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1631 (2005) 17th October on Cooperation of Regional Organisations and the United Nations in maintaining international Peace and Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/556/42/PDF/N0555642.pdf?OpenElement>

2005 [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

ARMED CONFLICT –Role of the Security Council and Threats to International Peace and Security

United Nations Security Council Resolution 1269 (1999) 19th October on the Responsibility of the Security Council in the maintenance of Peace and Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/303/92/PDF/N9930392.pdf?OpenElement>

1999 <http://www.un.org/Docs/scres/1999/sc99.htm>

UNSC Resolution 1366 (2001) 30th August on the Role of the Security Council in the prevention of Armed Conflict <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/524/48/PDF/N0152448.pdf?OpenElement>

2001 <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1624 (2005) 14th September -Threats to International Peace and Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf?OpenElement>

UNSC Resolution 1625 (2005) 14th September Threats to International Peace and Security <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/510/64/PDF/N0551064.pdf?OpenElement>

2005 [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

## ARMED CONFLICT – SANCTIONS

UNSC Resolution 1699 (2006) 8th August Issues on Sanctions <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/458/62/PDF/N0645862.pdf?OpenElement>

UNSC Resolution 1730 (2006) 19th December General Issues relating to Sanctions <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/671/31/PDF/N0667131.pdf?OpenElement>

UNSC Resolution 1732 (2006) 21st December General issues relating to sanctions <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/677/80/PDF/N0667780.pdf?OpenElement>

2006 [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

## THREATS TO INTERNATIONAL PEACE AND SECURITY BY TERRORIST ACTS

UNSC Resolution 1989 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1988 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1963 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1904 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## NON- PROLIFERATION

UNSC Resolution 1984 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1977 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1929 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)



## MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

UNSC Resolution 1983 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1887 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## POST CONFLICT PEACE BUILDING

UNSC Resolution 1947 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

## SECURITY COUNCIL RESOLUTIONS BY COUNTRY & YEAR

### **UNFINISHED – Ongoing Project**

#### **AFGHANISTAN**

UNSC Resolution 1974 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1943 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1917 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1890 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1868 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

#### **AFRICA**

UNSC Resolution 1970 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1907 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1862 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

**BOSNIA AND HERZEGOVINA** - Please note access is limited on the Security Council website if individual links do not work click on the year link.

1993

UNSC Resolution 816 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 819 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 820 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 824 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 836 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 838 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 844 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 846 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 859 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

1994

UNSC resolution 913 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 914 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 941 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 942 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 943 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 947 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 959 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

1995

UNSC Resolution 982 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 990 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 994 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 998 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1004 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1009 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1010 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1016 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1021 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1023 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1025 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1026 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1031 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1035 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

1996

UNSC Resolution 1088 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

1997

UNSC Resolution 1103 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1107 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1112 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

1998

UNSC Resolution 1168 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1174 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1184 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

1999

UNSC Resolution 1247 (1999) <http://www.un.org/Docs/scres/1999/sc99.htm>

UNSC Resolution 1256 (1999) <http://www.un.org/Docs/scres/1999/sc99.htm>

2000

UNSC Resolution 1305 (2000) <http://www.un.org/Docs/scres/2000/sc2000.htm>

2001

UNSC Resolution 1357 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

2002

UNSC Resolution 1396 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1418 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1420 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1421 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1423 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

2003

UNSC Resolution 1491 (2003) [http://www.un.org/Docs/sc/unscl\\_resolutions03.html](http://www.un.org/Docs/sc/unscl_resolutions03.html)

2004

UNSC Resolution 1551 (2004) [http://www.un.org/Docs/sc/unscl\\_resolutions04.html](http://www.un.org/Docs/sc/unscl_resolutions04.html)

UNSC Resolution 1575 (2004) [http://www.un.org/Docs/sc/unscl\\_resolutions04.html](http://www.un.org/Docs/sc/unscl_resolutions04.html)

2005

UNSC Resolution 1639 (2005) [http://www.un.org/Docs/sc/unscl\\_resolutions05.htm](http://www.un.org/Docs/sc/unscl_resolutions05.htm)

2006

UNSC Resolution 1722 (2006) [http://www.un.org/Docs/sc/unscl\\_resolutions06.htm](http://www.un.org/Docs/sc/unscl_resolutions06.htm)

2007

UNSC Resolution 1764 (2007) [http://www.un.org/Docs/sc/unscl\\_resolutions07.htm](http://www.un.org/Docs/sc/unscl_resolutions07.htm)

UNSC Resolution 1785 (2007) [http://www.un.org/Docs/sc/unscl\\_resolutions07.htm](http://www.un.org/Docs/sc/unscl_resolutions07.htm)

2009

UNSC Resolution 1895 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1869 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

2010

UNSC Resolution 1948 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

## **BURUNDI**

UNSC Resolution 1959 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1902 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **CHAD**

UNSC Resolution 1923 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1922 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1913 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1861 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **Cote d'Ivoire**

2011

UNSC Resolution 2000 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1992 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1981 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1980 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1975 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1968 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1967 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

2010

UNSC Resolution 1962 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1951 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1946 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1942 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1933 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1924 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1911 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2009

UNSC Resolution 1893 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1880 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1865 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **CYPRUS**

2011

UNSC Resolution 1986 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

2010

UNSC Resolution 1953 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1930 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2009

UNSC Resolution 1898 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1873 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)



## **DEMOCRATIC PEOPLES REPUBLIC OF KOREA**

2011

UNSC Resolution 1985 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

2010

UNSC Resolution 1928 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2009

UNSC Resolution 1874 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **DEMOCRATIC REPUBLIC OF THE CONGO**

2011

UNSC Resolution 1991 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

2010

UNSC Resolution 1952 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1925 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2009

UNSC Resolution 1906 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1896 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **GEORGIA**

UNSC Resolution 1866 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **GUINEA-BISSAU**

UNSC Resolution 1949 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1876 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **HAITI**

UNSC Resolution 1944 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1927 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1892 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## **IRAQ**

2011

UNSC Resolution 2001 (2011) <http://www.un.org/Docs/sc/unscl1.htm>

2010

UNSC Resolution 1958 (2010) <http://www.un.org/Docs/sc/unscl10.htm>

UNSC Resolution 1957 (2010) <http://www.un.org/Docs/sc/unscl10.htm>

UNSC Resolution 1956 (2010) <http://www.un.org/Docs/sc/unscl10.htm>

UNSC Resolution 1936 (2010) <http://www.un.org/Docs/sc/unscl10.htm>

2009

UNSC Resolution 1905 (2009) <http://www.un.org/Docs/sc/unscl09.htm>

UNSC Resolution 1883 (2009) <http://www.un.org/Docs/sc/unscl09.htm>

**KOSOVO** - Please note access is limited on the Security Council website if individual links do not work click on the year link.

1998

1998 <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1199 (1998) 23 September <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/279/96/PDF/N9827996.pdf?OpenElement>

UNSC Resolution 1203 (1998) 24 October <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/321/21/PDF/N9832121.pdf?OpenElement>

1999

1999 <http://www.un.org/Docs/scres/1999/sc99.htm>

UNSC Resolution 1244 (1999) 10 June <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

UNSC Resolution 1367 (2001) 10 September <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/532/69/PDF/N0153269.pdf?OpenElement>

## **LIBERIA**

2011

UNSC RESOLUTION 2008 (2011)

[http://www.un.org/Docs/sc/unscl\\_resolutions11.htm](http://www.un.org/Docs/sc/unscl_resolutions11.htm)

UNSC Resolution 1971 (2011) [http://www.un.org/Docs/sc/unscl\\_resolutions11.htm](http://www.un.org/Docs/sc/unscl_resolutions11.htm)

2010

UNSC Resolution 1961 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1938 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution

2009

UNSC 1885 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

**LIBYA** - Please note access is limited on the Security Council website if individual links do not work click on the year link.

1993

1993 <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 883 (1993) 11 November <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/626/78/PDF/N9362678.pdf?OpenElement>

1994

1994 <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 910 (1994) 14 April <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/180/73/PDF/N9418073.pdf?OpenElement>

UNSC Resolution 915 (1994) 4 May <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/205/16/PDF/N9420516.pdf?OpenElement>

2005

2005 <http://www.un.org/Docs/sc/unscreolutions05.htm>

UNSC Resolution 1506 (2003) 12 September <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/498/81/PDF/N0349881.pdf?OpenElement>

UNSC Resolution 2009 (2011) <http://www.un.org/Docs/sc/unscreolutions11.htm>

2011

UNSC Resolution 1973 (2011) <http://www.un.org/Docs/sc/unscreolutions11.htm>

## **MIDDLE EAST**

2011

UNSC Resolution 2004 (2011) [http://www.un.org/Docs/sc/unscl\\_resolutions11.htm](http://www.un.org/Docs/sc/unscl_resolutions11.htm)

UNSC Resolution 1994 (2011) [http://www.un.org/Docs/sc/unscl\\_resolutions11.htm](http://www.un.org/Docs/sc/unscl_resolutions11.htm)

2010

UNSC Resolution 1965 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1937 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1934 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

2009

UNSC Resolution 1884 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

UNSC Resolution 1875 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

UNSC Resolution 1860 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

**PALESTINE** -Please note access is limited on the Security Council website if individual links do not work click on the year link.

1994

UNSC Resolution 904 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

2000

UNSC Resolution 1322 (2000) <http://www.un.org/Docs/scres/2000/sc2000.htm>

2002

UNSC Resolution 1397 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1402 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1403 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1405 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1435 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

2003

UNSC Resolution 1515 (2003) [http://www.un.org/Docs/sc/unscl\\_resolutions03.html](http://www.un.org/Docs/sc/unscl_resolutions03.html)

2004

UNSC Resolution 1544 (2004) [http://www.un.org/Docs/sc/unscl\\_resolutions04.html](http://www.un.org/Docs/sc/unscl_resolutions04.html)

2009

UNSC Resolution 1860 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)



**RWANDA** – Please note access is limited on the Security Council website if individual links do not work click on the year link.

International Criminal Tribunal for Rwanda website <http://www.unicttr.org/>

1993

UNSC Resolution 872 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 812 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 891 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm> 1994

1994

UNSC Resolution 893 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 909 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 912 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 918 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 919 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 925 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 928 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 929 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 935 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 955 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 965 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

1995

UNSC Resolution 977 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 978 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 989 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 997 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1005 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1011 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1015 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1028 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1029 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

1996

UNSC Resolution 1050 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

UNSC Resolution 1053 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

1998

UNSC Resolution 1161 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1200 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

1999

UNSC Resolution 1241 (1999) <http://www.un.org/Docs/scres/1999/sc99.htm>

2001

UNSC Resolution 1347 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

2002

UNSC Resolution 1411 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1431 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

UNSC Resolution 1449 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

2003

UNSC Resolution 1477 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1482 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1505 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1512 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

2004

UNSC Resolution 1534 (2004) [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

2006

UNSC Resolution 1684 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1705 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1717 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

2007

UNSC Resolution 1749 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

UNSC Resolution 1774 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

2009

UNSC Resolution 1901 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1878 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

2010

UNSC Resolution 1966 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1955 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1932 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2011

UNSC Resolution 1995 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

## **SOMALIA**

2011

UNSC Resolution 2010 (2011) <http://www.un.org/Docs/sc/unscl1.htm>

UNSC Resolution 2002 (2011) <http://www.un.org/Docs/sc/unscl1.htm>

UNSC Resolution 1976 (2011) <http://www.un.org/Docs/sc/unscl1.htm>

UNSC Resolution 1972 (2011) <http://www.un.org/Docs/sc/unscl1.htm>

2010

UNSC Resolution 1950 (2010) <http://www.un.org/Docs/sc/unscl0.htm>

UNSC Resolution 1918 (2010) <http://www.un.org/Docs/sc/unscl0.htm>

UNSC Resolution 1916 (2010) <http://www.un.org/Docs/sc/unscl0.htm>

UNSC Resolution 1910 (2010) <http://www.un.org/Docs/sc/unscl0.htm>

2009

UNSC Resolution 1897 (2009) <http://www.un.org/Docs/sc/unscl09.htm>

UNSC Resolution 1872 (2009) <http://www.un.org/Docs/sc/unscl09.htm>

UNSC Resolution 1863 (2009) <http://www.un.org/Docs/sc/unscl09.htm>

**SIERRA LEONE**

2011

UNSC RESOLUTION 2005 (2011)

[http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

2010

UNSC Resolution 1941 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1940 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2009

UNSC Resolution 1886 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

**SUDAN** - Please note access is limited on the Security Council website if individual links do not work click on the year link.

2001

UNSC Resolution 1372 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

2004

UNSC Resolution 1547 (2004) [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

UNSC Resolution 1556 (2004) [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

UNSC Resolution 1564 (2004) [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

UNSC Resolution 1574 (2004) [http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

2005

UNSC Resolution 1585 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1588 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1590 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1591 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1593 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1627 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

UNSC Resolution 1651 (2005) [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)

2006

UNSC Resolution 1663 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1665 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1672 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1679 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1706 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1709 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1713 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

UNSC Resolution 1714 (2006) [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

2007

UNSC Resolution 1755 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

UNSC Resolution 1769 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

UNSC Resolution 1779 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

UNSC Resolution 1784 (2007) [http://www.un.org/Docs/sc/unsc\\_resolutions07.htm](http://www.un.org/Docs/sc/unsc_resolutions07.htm)

2009

UNSC Resolution 1891 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1881 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

UNSC Resolution 1870 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

2010

UNSC Resolution 1919 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1935 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1945 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

2011

UNSC Resolution 2003 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1997 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1996 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1990 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1982 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

**TIMOR LESTE**

UNSC Resolution 1912 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1867 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)



**YUGOSLAVIA** (former Yugoslavia) Please note access is limited on the Security Council website if individual links does not open click on the year link and search for the individual Resolution.

International Criminal Tribunal for the former Yugoslavia <http://www.icty.org/>

Report of the Secretary-General for the Legal Basis on establishment of the International Tribunal S/25704 (1983)

[http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_re808\\_1993\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf)

## RESOLUTIONS

1993

UNSC Resolution 821 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 827 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 842 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 843 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 845 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 847 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 855 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 857 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

UNSC Resolution 877 (1993) <http://www.un.org/Docs/scres/1993/scres93.htm>

1994

UNSC Resolution 908 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 936 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

UNSC Resolution 967 (1994) <http://www.un.org/Docs/scres/1994/scres94.htm>

1995

UNSC Resolution 970 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 983 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 987 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 988 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1003 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1015 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1019 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1022 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1027 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

UNSC Resolution 1034 (1995) <http://www.un.org/Docs/scres/1995/scres95.htm>

1996

UNSC Resolution 1046 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

UNSC Resolution 1047 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

UNSC Resolution 1058 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

UNSC Resolution 1074 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

UNSC Resolution 1082 (1996) <http://www.un.org/Docs/scres/1996/scres96.htm>

1997

UNSC Resolution 1104 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1105 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1110 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1126 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1140 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1142 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

UNSC Resolution 1144 (1997) <http://www.un.org/Docs/scres/1997/scres97.htm>

1998

UNSC Resolution 1165 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1166 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1186 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1191 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

UNSC Resolution 1207 (1998) <http://www.un.org/Docs/scres/1998/scres98.htm>

1999

UNSC Resolution 1259 (1999) <http://www.un.org/Docs/scres/1999/sc99.htm>

2000

UNSC Resolution 1329 (2000) <http://www.un.org/Docs/scres/2000/sc2000.htm>

2001

UNSC Resolution 1340 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1345 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1350 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

UNSC Resolution 1371 (2001) <http://www.un.org/Docs/scres/2001/sc2001.htm>

2002

UNSC Resolution 1411 (2002) <http://www.un.org/Docs/scres/2002/sc2002.htm>

2003

UNSC Resolution 1481 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1503 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

UNSC Resolution 1504 (2003) [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html)

2004

UNSC Resolution 1534 (2004) [http://www.un.org/Docs/sc/unscl\\_resolutions04.html](http://www.un.org/Docs/sc/unscl_resolutions04.html)

UNSC Resolution 1567 (2004) [http://www.un.org/Docs/sc/unscl\\_resolutions04.html](http://www.un.org/Docs/sc/unscl_resolutions04.html)

2005

UNSC Resolution 1581 (2005) [http://www.un.org/Docs/sc/unscl\\_resolutions05.htm](http://www.un.org/Docs/sc/unscl_resolutions05.htm)

UNSC Resolution 1597 (2005) [http://www.un.org/Docs/sc/unscl\\_resolutions05.htm](http://www.un.org/Docs/sc/unscl_resolutions05.htm)

UNSC Resolution 1613 (2005) [http://www.un.org/Docs/sc/unscl\\_resolutions05.htm](http://www.un.org/Docs/sc/unscl_resolutions05.htm)

UNSC Resolution 1629 (2005) [http://www.un.org/Docs/sc/unscl\\_resolutions05.htm](http://www.un.org/Docs/sc/unscl_resolutions05.htm)

2006

UNSC Resolution 1660 (2006) [http://www.un.org/Docs/sc/unscl\\_resolutions06.htm](http://www.un.org/Docs/sc/unscl_resolutions06.htm)

UNSC Resolution 1668 (2006) [http://www.un.org/Docs/sc/unscl\\_resolutions06.htm](http://www.un.org/Docs/sc/unscl_resolutions06.htm)

2007

UNSC Resolution 1775 (2007) [http://www.un.org/Docs/sc/unscl\\_resolutions07.htm](http://www.un.org/Docs/sc/unscl_resolutions07.htm)

UNSC Resolution 1786 (2007) [http://www.un.org/Docs/sc/unscl\\_resolutions07.htm](http://www.un.org/Docs/sc/unscl_resolutions07.htm)

2009

UNSC Resolution 1900 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

UNSC Resolution 1877 (2009) [http://www.un.org/Docs/sc/unscl\\_resolutions09.htm](http://www.un.org/Docs/sc/unscl_resolutions09.htm)

2010

UNSC Resolution 1966 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1954 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1931 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

UNSC Resolution 1915 (2010) [http://www.un.org/Docs/sc/unscl\\_resolutions10.htm](http://www.un.org/Docs/sc/unscl_resolutions10.htm)

2011

UNSC Resolution 2007 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

UNSC Resolution 1993 (2011) [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

### **WESTERN SAHARA**

UNSC Resolution 1920 (2010) [http://www.un.org/Docs/sc/unsc\\_resolutions10.htm](http://www.un.org/Docs/sc/unsc_resolutions10.htm)

UNSC Resolution 1871 (2009) [http://www.un.org/Docs/sc/unsc\\_resolutions09.htm](http://www.un.org/Docs/sc/unsc_resolutions09.htm)

## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START
ALGERIA	9.3		3 MONTHS	29.09.1991	19.06.1991
	12.1				
	17				
	19.2				
	21				
ALGERIA	9.3		9 YEARS	25.02.2011	13.02.1992
	12				
	17				
	21				
ARGENTINA	9			27.06.1989	07.06.1989
	21				
ARGENTINA	ANY	STATE OF SIEGE	30 DAYS	21.09.2001	19.09.2001
			10 DAYS	31.12.2001	23.12.2001
			EXTEND	18.01.2002	
AZERBAIJAN	9	NUMEROUS	2 YEARS	17.04.1995	02.08.1993
	12	TERRORIST ATTACKS			
	19	ESCALATING AGGRESSION			
	21	ATTEMPTS OF OVERTHROW			
	22	ATTEMPT COUP ETAT			1994
		VIOLENCE AGAINST CITIZENS			1995
		ATTEMPT COUP ETAT			1995
BAHRAIN	9	STATE OF NATIONAL SAFETY	3 MONTHS	08.05.2011	15.03.2011
	12	POLITICAL UPRISING			
	13	ARAB SPRING			
	17				
	21				
	22				
BOLIVIA		VARIOUS	10 YEARS	16.10.1995	18.09.1985
		HYPERINFLATION			
		POLITICAL DISRUPTION			
		SOCIAL DISTURBANCE			
		GENERAL STRIKE			
		REHABILITATION MINES			
		SUBVERSIVE ACTIVITIES			
		DRUG TRAFFICKING			
		MAFIA			20.08.1986
		ASSEMBLIES PEOPLE			10.04.1995
		MARTIAL LAW		2008	
		STATE OF SIEGE		10.08.1995	
9	STATE EMERGENCY	POST	22.11.2008	12.09.2008	
12		2 MTHS			
12.3	CRIMES AGAINST HUMANITY				
1	VIOLENT SEIZURE				
21.2	ROAD DAMAGE				
22	PUBLIC DISORDER				
	PUBLIC UNREST				
	INSECURITY				

FROM 1966 TO OCTOBER 2011

## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START
CHILE		STATE OF SIEGE PUBLIC ORDER EXTREMIST GROUPS OVER THROW GOVT	POST 5 MTHS	07.09.1976	11.04.1976
	9	TERRORIST AGGRESSION	POST	06.12.1986	08.09.1986
	12	STOCKPILES WEAPONS	3 MTHS		
	13	ATTACK ON PRESIDENT		1987	23.09.1986
	19				
	ALL	STATE OF DISASTER			27.02.2010
COLUMBIA		STATE OF EMERGENCY	6 YRS	1982	1976
		STATE OF SIEGE			30.03.1984
		ARMED GROUPS			
	12	ASSASSINATION	6 MTHS	23.11.1984	01.05.1984
	21				
	12	CARTELS EVADING JUSTICE			16.07.1992
	17	SERIOUS ASSAULTS			
	21	PRESERVE PUBLIC ORDER			
	22	DRUG TRAFFICKING			
	12	CONTINUATION	90 DAYS		08.11.1992
	17	STATE OF EMERGENCY			
	21	TERRORIST ACTIVITY			
	22				
	12	CONTINUATION	90 DAYS		05.02.1993
	17				
21					
22					
		ONGOING INVESTIGATIONS SOCIAL INSECURITY PUBLIC ANXIETY LACK OF TRUST CRIMINAL GORILLA WARFARE			06.05.1994
9.3	JUDICIAL EMERGENCY	21 DAYS	27.05.1994		
	INTERNAL DISTURBANCE VIOLENCE			03.11.1995	
	TERRORIST ACTIVITY				
17		6 YEARS	2002	21.03.1996	
9					
12					
ECUADOR	9.1	STATE OF EMERGENCY	POST	27.10.1982	20.10.1982
	9.2	SUBMITTED	7 DAYS	12.05.1983	
	12.1				
	12.3				
	17				
	19.2				
	21				
	12	STATE OF EMERGENCY	4 DAYS	18.03.1986	14.03.1986
21	UPRISING				
22					

## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START		
ECUADOR	9.1	STATE OF EMERGENCY STRIKES	1 DAY	29.10.1987	28.10.1987		
	9.2						
	12.1						
	12.2						
	19.2						
	21.1	STATE OF EMERGENCY STRIKES	2 DAYS	01.06.1988	31.05.1988		
	9.1						
	9.2						
	12.1						
	12.2						
	21	VARIOUS STATE EMERG			2005	01.06.1988	
	9.1					15.03.1999	
	9.2					22.03.1999	
	12.1					06.01.2000	
	12.2					07.05.2002	
	17.1	LAND TRANSPORT				17.07.2002	
	21.1	STATE OF EMERGENCY				12.01.1999	
	22					27.08.1999	
							09.12.1999
			CONFLICT				26.02.2002
			SEVERE STORM				22.03.2002
		INTERNAL UNREST				18.08.2005	
EGYPT		NO DECLARATIONS STATE OF EMERGENCY ONGOING IN CONSTANT VIOLATION IS A PARTY TO ICCPR		ONGOING	1967		
EL SAVADOR	ALL	SUSPENDED ALL			Oct-82		
	12						
	19						
	17						
	21	EXTENSION			1984		
	22						
		EXTENSION			1985		
	12	DECLARED MARTIAL LAW					
	17	PUBLIC ORDER					
	19.2						
	12	TERROR VIOLENCE			1989		
	17	FRANTE TARABUNDO MARTI					
	19	ONGOING					
	21						
	22	NO FURTHER CORRESP		ONGOING			
FRANCE		NO REASON OR ARTICLES CORRESPONDENCE	TERM	04.01.2006 12.01.2006	15.11.2005		

FROM 1966 TO OCTOBER 2011



## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START
GEORGIA		STATE OF EMERGENCY	16 DAYS	15.03.2006	28.02.2006
	17	KHELVACHAURI DISTRICT			
	21	OUTBREAK H5N1			
	22	STATE OF EMERGENCY			07.11.2007
	19	WHOLE REGION			
	21	COUP DE ETAT			
	22			ONGOING	
GUATEMALA		STATE OF EMERGENCY	30 DAYS		20.11.1998
		HURRICANE MITCH			
		EXTENSION	30 DAYS		26.07.2001
		EXTENSION	30 DAYS		14.10.2005
		STATE OF EMERGENCY			18.09.2006
		STATE OF EMERGENCY			28.08.2006
		STATE OF EMERGENCY	5 DAYS	12.05.2008	07.05.2008
				22.05.2008	
		STATE OF EMERGENCY	15 DAYS		22.06.2008
				24.05.2009	
		PUBLIC HEALTH H1N1	30 DAYS	20.05.2009	06.05.2009
	9	STATE OF EMERGENCY	15 DAYS		05.01.2010
	12				
	19				
	21				
	9	STATE OF EMERGENCY			22.12.2009
	12				
	19				
	21				
		EXTENSION			18.12.2006
21	STATE OF EMERGENCY			14.10.2008	
12	VARIOUS DEROGATIONS				
19	UNDER CONSTITUTION				
	EXTENSION	15 DAYS		18.03.2010	
2	EXTENSION			28.06.2010	
12					
19					
21					
9	STATE OF SIEGE	30 DAYS		19.12.2010	
12	EXTENSION	30 DAYS		28.01.2011	
21					
	STATE OF EMERGENCY	30 DAYS		16.05.2011	
	EXTENSION	30 DAYS		14.06.2011	
	EXTENSION	30 DAYS		14.07.2011	
	EXTENSION	30 DAYS		25.08.2011	
	ENDED	3 MTHS	17.08.2011		
ISRAEL	9	STATE OF EMERGENCY		ONGOING	1948
		CONSTANT THREAT OF ATTACK DEFENCE OF STATE	POST		03.10.1991

FROM 1966 TO OCTOBER 2011

## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCIES	TIME	END	START
JAMAICA		STATE OF EMERGENCY	30 DAYS		28.09.2004
	12	EXTENSION			22.10.2004
	19	NO REASONS GIVEN			
	21				
	22(2)	TERMINATED	29 DAYS	27.10.2004	
		STATE OF EMERGENCY	3 DAYS	27.10.2004	24.08.2007
		NO REASONS GIVEN			
	12	STATE OF EMERGENCY			01.06.2010
	19	FROM 23RD MAY 2010			
	21	THREAT TO PUBLIC			
	19	EXTENSION			23.05.2010
12					
17	EXPECT DEROGATIONS				
21					
NAMIBIA	9 (2)	STATE OF EMERGENCY			06.08.1999
	9 (3)	PUBLIC EMERGENCY			
		THREAT TO NATION			
	CONSTITUTIONAL ORDER				
	TERMINATED	34 DAYS	14.09.1999		
NEPAL	17	STATE OF EMERGENCY	POST		08.03.2002
	9	TERRORIST ATTACKS			
	12	FROM 21 NOV 2001			
	22	DEROG CONSTITUTION			
	21				
	19	EXTENSION			31.05.2002
			5 MTHS	20.08.2002	
	18	STATE OF EMERGENCY	POST		16.02.2005
	21	FROM 1ST FEB 2005			
	22	ARTICLE 15 NEPAL			
12	CONSTITUTION				
19	12(1) 12 (2)				
17	TERMINATED	3 MTHS	05.05.2005		
NICARAGUA	8 (3)	STATE OF EMERGENCY			11.11.1985
	9	FOREIGN AGGRESSION			
	10	BY U.S.A.			
	12(2)				
	12(4)				
	14				
	17				
	19				
	21				
	22				
	2(3)	STATE OF EMERGENCY			30.01.1987
	12	AGGRESSION U.S.A.			
	14(3)C		22		
	17				
19					
21					

## DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START
NICARAGUA		STATE OF EMERGENCY			13.05.1987
		2,9,12,14,17, 19 (1)(2)			
		TERMINATED	11 MTHS	08.02.1988	
		STATE OF EMERGENCY			20.05.1993
		ARMED ATTACKS RESTORING LAW ORDER			
2(1) 2(3)abc 9(3)		9(1),(2),(3),5, 17	28 DAYS	17.06.1993	
		STATE OF EMERGENCY			01.06.2005
		ECONOMIC CRISIS			
		POLITICAL CRISIS			
		FROM 30TH MAY TERMINATION	2 DAYS	03.06.2005	
PANAMA		STATE OF EMERGENCY			09.06.1987
		DEMONSTRATORS DEFENCE FORCE CLASHES			
		RESTORE LAW ORDER	21 DAYS	30.06.1987	
PARAGUAY		STATE OF EMERGENCY NOT TERMINATED OPEN OR ONGOING?	30 DAYS		24.04.2010
PERU		NUMEROUS OVER 50 DEROGATIONS FROM 03.1983 - 12.2010 9,12,17,21 FROM 30 TO 60 DAYS MANY EXTENSIONS NO REASONS GIVEN EXCEPT 21.05.2010 PUBLIC ORDER DISTURBED			
POLAND		MARTIAL LAW			01.02.1982
		EXIGENCIES SITUATION			
		9,12,14,19,21,22 NATIONAL INTERESTS AVERTING CIVIL WAR			
		EXTENSION			18.12.1982
		9,12(1),21,22 FROM 22.12.1982 EXTENSION 15(5) 19(2) TERMINATION	1YR6MTH	25.07.1983	
RUSSIA FED		STATE OF EMERGENCY DECLARED 18.10.1988	POST		21.09.1988
		AZERBAYDZHAM STATE OF EMERGENCY AZERBAIJAN ORISSA			15.01.1990

FROM 1966 TO OCTOBER 2011

# DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START	
RUSSIA FED		STATE OF EMERGENCY BAKU			15.01.1990	
		STATE OF EMERGENCY DUSHANBE			12.02.1990	
		STATE OF EMERGENCY NORTH OSSETIAN			02.11.1992	
		STATE OF EMERGENCY INGUSH NAZRAN			05.11.1992	
		STATE OF EMERGENCY			28.10.1993	
		STATE OF EMERGENCY			29.12.1993	
		STATE OF EMERGENCY			25.04.1994	
		STATE OF EMERGENCY			23.05.1994	
		STATE OF EMERGENCY			21.06.1994	
		STATE OF EMERGENCY			12.08.1994	
		STATE OF EMERGENCY			05.01.1995	
		STATE OF EMERGENCY PRE DECLARED 13.08.1993			30.09.1993	
		PRE PLANNED				
		STATE OF EMERGENCY MOSCOW	POST		03.10.1993	
		MOSCOW			09.10.1993	
		PUBLIC ORDER USE OF WEAPONS EXTREMIST GROUPS MASS DISTURBANCE RESTORE PUBLIC ORD				
		9,9(2),12(1),12(2),13 19,19(2),21,22,22(1) 22(2)				
	SERBIA MONTENEGRO		STATE OF EMERGENCY 9,12,14,17,19,21,22 FROM 12.03.2003	11 DAYS	23.04.2003	13.03.2003
	SUDAN		STATE OF EMERGENCY FROM 30.06.1989	POST		21.08.1991
			REVOLUTION 2,22(1)			
		CHAOTIC WAR				
		EXTENSION			17.08.2001	
		EXTENSION			20.12.2001	
		EXTENSION TO ONGOING	ONGOING		01.12.2002	
	NO FURTHER CORRESPONDENCE					
THAILAND		SEVERE EMERGENCY 12,19,21			14.04.2010	
		TERMINATED	8 MTHS	22.12.2010		
		CORRESPONDENCE 09.02.2011				

FROM 1966 TO OCTOBER 2011

# DEROGATIONS OF STATES UNDER ICCPR 1966

COUNTRY	ART	EMERGENCY	TIME	END	START
TRINIDAD TOBAGO		STATE OF EMERGENCY	POST		15.08.1990
		LETTER 06.11.1990 9,12,21,14(3) EXPECTED 90 DAYS			
		STATE OF EMERGENCY			10.08.1995
		SPAIN PUBLIC SAFETY 9,12,14(3),21			
U.K GB NTHN IRELAND		DEROGATING			17.05.1976
		TERRORISM			
		EXIGENCIES SITUAT			
		9,10(2),10(3), 12(1) 14,17,19(2),21,22			
		TERMINATED	8 YRS	22.08.1984	
		CONTINUED		ONGOING	23.12.1988
		ADDED 9(3)			
		TERRORISM			
		EXTENSION			18.12.1989
		ONGOING			
	TERMINATED 9(3)	3 YRS	26.02.2001		
	CONTINUED SOME				
	BAILIWICK JERSEY		ONGOING		
	BAILIWICK GUERNSEY		ONGOING		
	ISLE OF MAN		ONGOING		
	NO FURTHER COMM				
	PUBLIC EMERGENCY				18.12.2001
	NY 911 ATTACKS				
	THREAT TO INT SECUR				
	TERRORIST THREAT				
	SC RES 1373 (2001)				
	DEROGATIONS (ALL)				
	WITHDRAWN	3YR3MT	15.03.2005		
	ANTI-TERROR ACT				
	CEASED TO OPERATE				
	14.03.2005				
VENEZUELA BOLIVIAN REP		STATE OF EMERGENCY		SECURITY	12.04.1989
		STATE OF EMERGENCY		ATTP ASSASS	05.02.1992
		STATE OF EMERGENCY		CIVIL CONFLICT	02.12.1992
		STATE OF EMERGENCY		CIVIL CONFLICT	01.09.1995
		STATE OF EMERGENCY		FINC CRISIS	29.06.1994
		STATE OF EMERGENCY		BREACH PEACE	07.07.1994
		9,12,17,19,21		ONGOING?	