

The Human Right to Water and the Responsibility to
Protect

THE HUMAN RIGHT TO WATER AND THE RESPONSIBILITY TO PROTECT

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ABSTRACT

In this thesis I argue that it is an implication of the acceptance of the human right to water and the Responsibility to Protect (R2P) that violations of the human right to water can invoke the Responsibility to Protect. Extreme violations of the right to water can invoke the responsibility to react, and ultimately the responsibility to prevent and rebuild. Although this is the case, I argue that the human right to water is unlikely to invoke R2P on its own. Instead, water issues are more likely to compound with issues of poverty, weak political institutions, poor leadership and social tension to create situations that have the potential for mass atrocity. Furthermore, I provide an analysis of the actions that will need to be taken before, during and after an intervention to fulfill the responsibilities to prevent, react and rebuild and the actors that can and/or should take such action.

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Introduction

It is expected that by 2030 global fresh water requirements will reach 6 900 billion cubic metres per year if current consumption patterns continue. This level of water demand will be 40% above sustainable supply.¹ With this increased demand comes an increased potential for conflict over scarce water resources. The majority of this increased demand comes from developing nations, many of which are already experiencing conditions of water stress. With this growing demand and an expected water resources deficit in the near future, there is a growing body of literature which discusses the potential for conflict between nations over water resources. Although some of this literature states that, due to historical considerations, nations are more likely to cooperate to secure their long term water interests,² we face new challenges that, when paired with other social and political issues, have the potential to create conditions of conflict and unrest within and between nations. At this stage it seems improbable that states will wage war to claim or secure water resources. It is more likely that water issues will compound with other stressors such as poverty, weak political institutions, poor leadership and social tension to increase levels of international conflict, create social unrest, and that water will be used as a weapon or as leverage.³

In 2010, the United Nations General Assembly passed Resolution 64/292 officially recognizing “the right to safe and clean drinking water and sanitation as a

¹ Office of the Director of National Intelligence, “Global Water Security: Intelligence Community Assessment,” 1.

² Undala Z. Alam, 2002; Bencala, Karin R., Dabelko Geoffrey D., 2008;

³ Office of the Director of National Intelligence, “Global Water Security: Intelligence Community Assessment,” 1.

human right that is essential for the full enjoyment of life and all human rights.” Since water is typically a transboundary resource it requires that states cooperate and do not intentionally or unintentionally violate the rights of citizens within other states. With the ascension of such a right to universal status come implications in many other areas of international law, most notably in considerations of intervention in the affairs of another state. In 2001, the International Commission on Intervention and State Sovereignty released a report entitled “The Responsibility to Protect.” This report outlined a set of rules and guidelines for how states can intervene, as well as specific criterion that must be met to determine when a state can intervene. *This thesis attempts to determine if the use of preventive, reactive and rebuilding measures within the Responsibility to Protect upon violations of the human right to water is one of the logical implications of the adoption of the human right to water and the Responsibility to Protect as they are currently found in their respective United Nations documents, and what this means in terms of state action to uphold the human right to water.*

This thesis will begin with an explanation of the water crisis and the trouble that the world finds itself in. The first chapter aims to clarify the current condition of water resources in our world as well as the content of the human right to water. Following this, chapter two will argue that we can merge this new human right into the framework of the Responsibility to Protect. Beginning with the definitions of mass atrocities as accepted by the United Nations, this chapter will determine if the human right to water can invoke the responsibility to react, rebuild and prevent as found within the Responsibility to Protect (R2P). Chapter three aims to determine the types of responses that a successful

application of each of the responsibilities within R2P would include in order to combat such violations of the human right to water. Finally, chapter four will determine how and to whom we ought to assign responsibility and who ought to intervene.

Ultimately, this thesis will argue that the human right to water can allow us to invoke the obligations within the Responsibility to Protect, and therefore R2P can be one mechanism to uphold the human right to water. However, the situations in which this can be invoked and done successfully are limited. Although this thesis discusses the human right to water and not aspects of sanitation also found within the right, the arguments and connections made within this thesis may be extended to the right to sanitation. Therefore, it may be the case that the conclusions found concerning the right to water may apply to the right to sanitation as well.

Chapter 1

The Human Right to Water

Water is a basic necessity of life and in order to enjoy every other aspect of our lives we require a basic level of water access of a quantity and quality that is not detrimental to our health. With this in mind the human right to water seems like a logical step in the right direction, however political and hydrological realities may make the right difficult to uphold. The world is entering a water crisis and many regions are expected to experience increased levels of water stress in the near future.

In 2010, member nations of the United Nations General Assembly voted in favour of recognition of “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”⁴ Shortly after, the Human Rights Council passed resolution 15/9 reaffirming the human right to water and sanitation’s existence in international law.⁵ This right recognizes the needs of all peoples for a basic amount of water and acts as a foundation of action for issues of water access. Although the right has been accepted by the international community, more research needs to be done to determine and analyze the implications of this right’s rise to international status in the context of states, institutions, local and regional actors as well as other pieces of international law. In this chapter, I will first provide and analyse information concerning the water crisis and in doing so I aim to give background

⁴ United Nations General Assembly. *64/292. The Human Right to Water and Sanitation*. July 2010. Section 1.

⁵ United Nations Human Rights Council. *15/9. Human rights and access to safe drinking water and sanitation*. October 2010.

information relevant to my overall argument. Second, I will discuss the definition of a human right, with a specific focus on the human right to water. In this section I will outline the context of the human right to water and analyse its tenets. Finally, I will discuss international humanitarian intervention and state sovereignty.

1.1 The Water Crisis: Today's Troubles

As we can see in the figure on the next page, a large majority of the earth's surface is water. With this in mind, it may shock you to hear that the global community is facing a water crisis at a scale that we have never faced before. Only 2.5% of the planet's total water resources are fresh water with the majority of that fresh water stored in the form of glaciers, out of reach for many of those who need it. The majority of what remains is stored in groundwater, while only a fraction of a percent is considered surface water.⁶ Currently, 780 million people around the world are without an improved source of drinking water and 2.5 billion are without proper sanitation services.⁷ There are four main sectors that use water: agriculture, domestic, industry, and energy production. Within these sectors water can be used in two ways: consumptive and non-consumptive. Consumptive use is that in which water taken cannot be used elsewhere, as is the case with irrigation.⁸ Non-consumptive use is that which uses water, however that water can

⁶ Office of the Director of National Intelligence, "Global Water Security: Intelligence Community Assessment," ii.

⁷ United Nations Water. "Global Analysis and Assessment of Sanitation and Drinking Water," 2012. II.

⁸ This is an example of consumptive use since water used for irrigation is taken and used in a specific area, therefore it is unavailable for use in other areas. Hydroelectric power, on the other hand, is an example of non-consumptive use since once it is used to generate power it can be used for other purposes. This is because this type of power generation does not contaminate or relocate the water.

be used elsewhere in the water basin, as is the case with the production of hydroelectric power.⁹

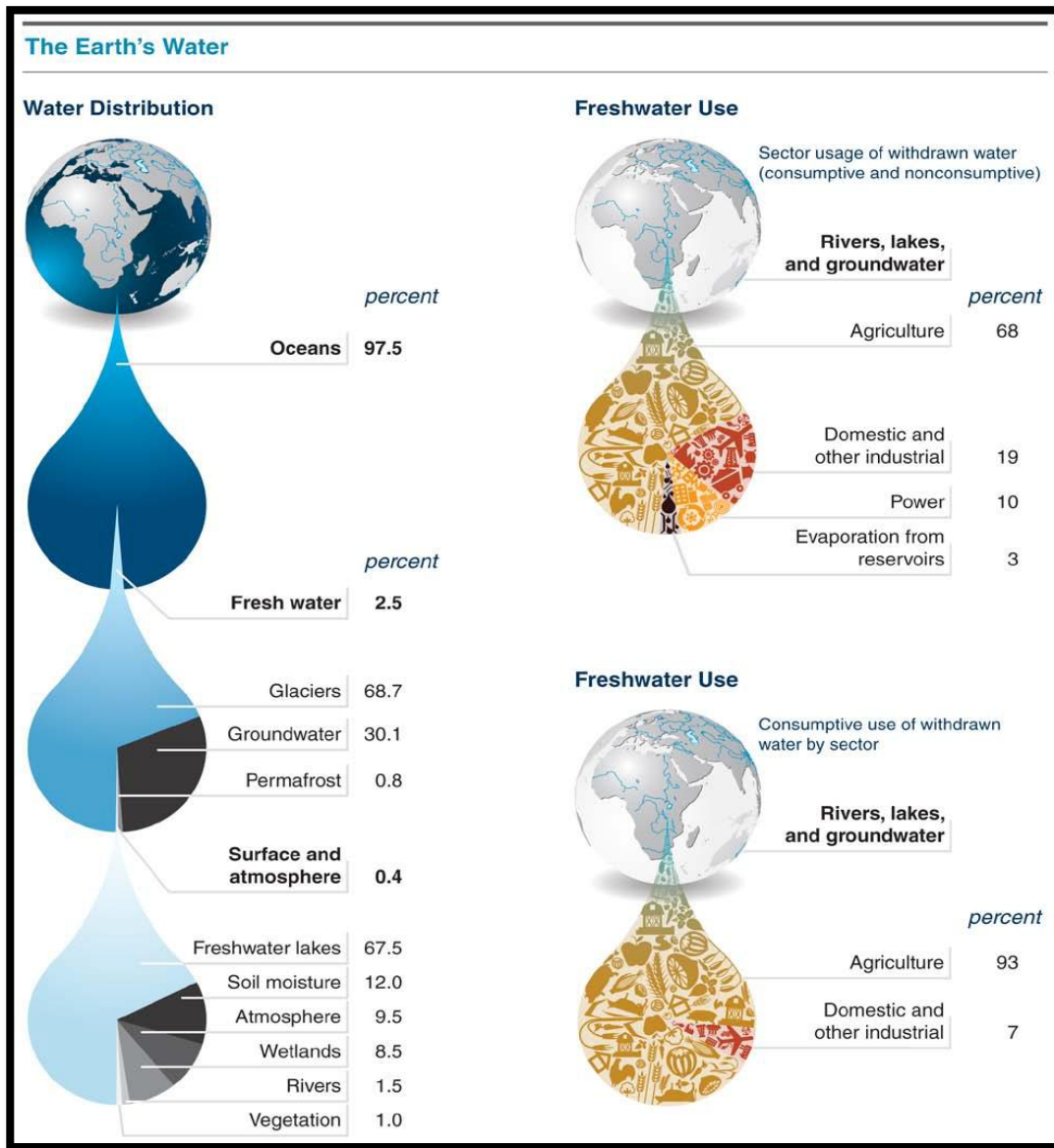


Figure 1: The distribution of the earth's water divided by source and use.¹⁰

⁹ Office of the Director of National Intelligence, "Global Water Security: Intelligence Community Assessment," ii.

¹⁰ Ibid.

1.1.1 Water Usage and Population Growth

Water is used in every aspect of our society, and many of these uses are heavily intertwined with other aspects of local and global communities. As we can see in Figure 1, the agricultural sector is by far the largest consumer of the world's fresh water resources, however industry and power production also make up a large part of our water footprint. The category of domestic use is one of the most important for individuals as it encompasses our everyday use for basic survival as well as hygiene. Surprisingly, it accounts for one of the lowest levels of water withdrawal.¹¹ With the global population set to increase, we can expect that domestic water use will also increase. The global population is expected to increase from its current level at approximately 7 billion to 9.1 billion by 2050 with the majority of this growth expected in urban areas. During this time period urban populations of the world are expected to increase by 2.9 billion, from 3.4 to 6.3 billion.¹² By 2030, urban areas of the developing world are expected to have a population of 3.9 billion while urban areas in developed nations will only have a population of 1 billion.¹³ Unfortunately, the areas that will receive the majority of growth and urbanization are also the areas that are currently experiencing issues of housing, infrastructure and water stress. Therefore, such a drastic and rapid expansion in population has the potential to exacerbate these issues as well.

¹¹ Ibid., ii.

¹² United Nations Education, Scientific and Cultural Organization. *United Nations World Water Development Report 4: Managing Water Under Uncertainty and Risk, Vol. 1.* (Luxembourg: UNESCO Publishing, 2012). 64.

¹³ Ibid., 65.

1.1.2 Levels of Access

With populations set to grow, it is likely that we will see issues of water access, quantity and quality grow as well. Currently, 87% of the global population receives their water from an improved source,¹⁴ with those in developing regions at a comparable level of 84%.¹⁵ Global levels of access are also high at 94% in urban areas and 74% in rural communities; however these statistics are misleading since they do not take all factors into consideration. They ignore service quality or affordability for users and lack information on those who live in marginalized communities.¹⁶ In order to correct these levels of access and quality we will need to increase capacity and repair existing infrastructure.

1.1.3 Infrastructure, Health and Social Problems

Many of the water supply systems across the world are in need of repair and, because of this, the quality and quantity of water that these systems deliver is at risk. The American Society for Civil Engineers predict that a \$108.6 billion US funding gap will exist over a period of five years for drinking and waste water infrastructure improvements within the USA. An earlier study of 19 American cities stated that “pollution and deteriorating, out of date plumbing are sometimes delivering drinking water that might

¹⁴ An improved source is one that is protected from contamination through its construction. Example: A well that has been constructed so as to minimize contamination risk.

¹⁵ United Nations Education, Scientific and Cultural Organization. *United Nations World Water Development Report 4: Managing Water Under Uncertainty and Risk, Vol. 1*. (Luxembourg: UNESCO Publishing, 2012). 65.

¹⁶ Ibid.

pose health risks to some residents.”¹⁷ The situation in developing countries is much worse where poor construction practices and maintenance, a lack of record keeping and operation of the water system at higher than recommended capacity has compounded infrastructure problems. Water utilities in these areas operate at 60% coverage but many have a high rate of “unaccounted-for-water”, around 40-60%. This means that of all the water put into the supply system, 40-60% is lost due to leaks and cracks or stolen through illegal connections.¹⁸ There is also an informal supply of water for those who live in poor areas that lack access to these utilities making the full level of water access difficult to monitor. Unfortunately, those who live in these areas typically pay the highest rates for low quality water, many of whom buy water from private and informal suppliers. For example, it has been found that 55% of household water samples in the slums of Jakarta, Indonesia were contaminated with fecal matter creating a health risk for those who depend upon this water.¹⁹

Many of the ways in which we use water can create health risks, and poor treatment as well as infrastructure can lead to an increased prevalence of water borne disease typically related to pathogenic organisms and toxic chemicals. Waterborne diseases due to contamination and untreated wastewater are typically seen in developing nations where they have devastating impacts. Diarrhoea is commonly caused by fecal bacteria in water and is prevalent across the world; however it is most common in Sub-Saharan Africa where there are 2 million diarrhoea related deaths each year, 1.5 million

¹⁷ Ibid., 68.

¹⁸ Ibid.

¹⁹ Ibid.

of which are children under the age of five. The death rate for those cases of diarrhoea in Sub-Saharan Africa is second only to pneumonia and is higher than HIV/AIDS, measles and malaria combined.²⁰ Other waterborne diseases include typhoid, cholera and hepatitis A. Although they cause fewer deaths, cases of these diseases are widespread with 17 million cases of typhoid annually. This high level of infection burdens already stressed local healthcare systems with cases of preventable disease.²¹ The negative health effects caused by these waterborne diseases take an effect on the social and economic fabric of society. It is estimated that if the number of those who experience these diseases is cut in half²² that 322 million working days per year would be regained, valued at approximately \$750 million US, and an annual health care savings of \$7 billion US.²³

Low levels of water access and quality can also create social conditions that put women and children at a disadvantage since they are typically the member of the family given the responsibility to collect water for them and their families. A survey of 45 developing countries conducted by the World Health Organization and UNICEF in 2010 stated that almost 2/3^{rds} of households have women collect the water. In 12% of households, children are the ones who carry this responsibility with girls under fifteen being twice as likely to do this as boys of the same age.²⁴ With this added responsibility women are put at a disadvantage in their society. The amount of time spent fetching water

²⁰ United Nations Education, Scientific and Cultural Organization. *United Nations World Water Development Report 4: Managing Water Under Uncertainty and Risk, Vol. 1.* (Luxembourg: UNESCO Publishing, 2012). 409.

²¹ Ibid.

²² Halving the amount of waterborne disease cases is one of the Millennium Development Goals.

²³ Ibid., 416.

²⁴ Ibid., 744.

means a decrease in the time spent for education, employment, social activities or participating in decision making, greatly decreasing the opportunities that they have. With the interconnections of water for life and the social conditions in which we live, we can see the necessity and usefulness of a guarantee of water of a certain quality and quantity.

1.2 The Human Right to Water

1.2.1 Human Rights: Characteristics and Functions

The discourse of human rights has had a large impact on our views of global justice as well as our obligations to others at local and international levels. In order to fully understand the human right to water I must first define what a right is and discuss their basic characteristics. Human rights are a subcategory of a larger set of rights with the following four elements: a condition of possession, scope, addressees, and weight.²⁵ The first element of a right, the condition of possession, is the part of the right that identifies who has the right.²⁶ For example, the right to life found in the International Declaration of Human Rights contains a condition of possession which states that “everyone is entitled to all the rights and freedoms set forth in this Declaration.”²⁷ Second, the scope of a right consists of the content it specifies to as well as when this content comes into effect, its conditions of operability.²⁸ Rights within the Universal Declaration have varying content from the right to life to the right to freedom of peaceful

²⁵ Nickel, James. *Making Sense of Human Rights*. (Los Angeles: University of California Press, 1987). 13-14.

²⁶ *Ibid.*, 13.

²⁷ United Nations. "Universal Declaration of Human Rights." Article 2.

²⁸ Nickel, James. *Making Sense of Human Rights*. (Los Angeles: University of California Press, 1987). 13.

assembly. This is the content of these rights, and due to their universal nature their condition of operability is always active. There will not be a time when you lose these rights.²⁹ Third, rights must also have addressees. Addressees are the group or individual that must act in order to make the benefit or freedom found within the scope of the right available to the right holder.³⁰ The addressees in the Universal Declaration are both individuals and states, however they are required to uphold the rights of others in different ways. Finally, rights must have weight and this refers to the rank they hold in relation to other norms.³¹ The rights of the Universal Declaration are high priority norms that rank much higher than other rights. From these elements, James Nickel determines five functions of rights. First, rights “provide a normative category that is binding, high priority and definite.” Second and third, they “confer and protect a sphere of authority” as well as benefits or goods. Fourth, they provide a normative vocabulary that allows the right holder to make claims on others³² and fifth, they provide a focus for different normative positions.³³

As a sub-category of rights, human rights are those important norms which are universal, independent of their recognition and imply duties and minimal standards.³⁴ As rights, it is suggested that human rights are “high priority norms” that allow for a

²⁹ Some of these rights can be taken from the right holder if the right holder does something to warrant such a response. For example, we wouldn't say that a murderer who is captured and put in prison is having their right to liberty violated when we imprison them.

³⁰ Ibid., 14.

³¹ Ibid.

³² Ibid., 24

³³ Ibid., 23.

³⁴ Ibid., 4.

minimally decent life.³⁵ Human rights are able to apply in multiple cultures and economic settings since they place a minimal standard upon the rights addressees.³⁶ The right to water, as a right that provides a basic level of water and water access fits this definition as we shall see in the next section.

1.2.2 Adoption by the General Assembly

The human right to water has been developing since the late 1970's when it was first mentioned at the UN Water Conference in Mar Del Plata, Argentina in which it was stated that "all peoples have the right to have access to drinking water in quantities and of a quality equal to their basic needs."³⁷ Since then, the human right to water has appeared in multiple documents however the basic contents remain the same, that all peoples should have a level of access to water of a quantity and quality that meets their basic needs. In 1989, the human right to water was included within the Convention on the Rights of the Child. This convention included a right for children to "adequate, nutritious foods and clean drinking water" for the purpose of health.³⁸ Although this right is limited to children under the age of eighteen,³⁹ it is a fundamental step in the process towards a much broader and universal version of the human right to water. Over the next decade the

³⁵ Ibid., 51.

³⁶ This is how James Nickel defines human rights, and a similar definition is given by other scholars. It is interesting to note that human rights are those rights that provide a "minimally decent life". In doing so, there are some accepted rights that would not fit into this category, such as the human right to vacation with pay.

³⁷ Fallenmark, Malin. "UN Water Conference: Agreement on Goals and Action Plan." *Ambio* 6, no. 4 (1977). 225.

³⁸ United Nations Office of the High Commissioner for Human Rights. *Convention on the Rights of the Child*. 1990. Article 24.2.

³⁹ Ibid., Article 1.

right would be mentioned in a series of documents and conferences before it became a universal human right.

Finally, in 2010 the United Nations General Assembly passed Resolution 64/292 with 124 members voting in favour, none against and 41 abstentions, thus creating the human right to water within international law.⁴⁰ Those countries who abstained from the vote included Canada⁴¹, the United Kingdom, Sweden, Japan, and the Netherlands, each citing similar concerns that “consensus was lacking, that the declaration was premature and in the wrong forum, and that the meaning of such a right in international law was uncertain.”⁴² Since the resolution was passed by the General Assembly it was considered non-binding and stated few details, but refers back to “all previous resolutions of the Human Rights Council” which includes General Comment No. 15 and others.⁴³ It states that “the right to safe and clean drinking water is a human right that is essential for the full enjoyment of life and all human rights.”⁴⁴ Many countries have since incorporated the human right to water within their own constitutions and national legislation. Some had done so even before the right received recognition from the General Assembly. For example, South Africa has had the right to water explicitly recognized within its

⁴⁰ Bigas, H. *The Global Water Crisis: Addressing an Urgent Security Issue*. (Hamilton, Canada: UNU-INWEH, 2012). 130.

⁴¹ Canada has since recognized the right to water and sanitation stating that the Canadian government understands that “this right is an essential component of the right to an adequate standard of living” (United Nations Conference on Sustainable Development, *Letter dated 22 June 2012 from the Permanent Representative of Canada to the United Nations addressed to the Secretary-General of the United Nations Conference on Sustainable Development*).

⁴² Pardy, Bruce. “The Dark Irony of International Water Rights.” *Pace Environmental Law Review* (2011): 907.

⁴³ United Nations, General Assembly. *64/292 The Human Right to Water and Sanitation*. (A/RES/64/292). 2010.

⁴⁴ Bigas, H. *The Global Water Crisis: Addressing an Urgent Security Issue*. (Hamilton, Canada: UNU-INWEH, 2012). 130.

constitution since 1996. Countries such as the Dominican Republic and Kenya enacted new constitutions in 2010 and Morocco in 2011 that recognise the human right to water. In total, aspects of the human right to water can be found within the constitutions of eighteen states worldwide.⁴⁵ Thus far, the right has had a profound effect even in nations without explicit constitutional recognition of the right to water. Belgium, Nepal, Pakistan, Colombia and Israel⁴⁶ do not explicitly include the human right to water within national legislation; however courts within these countries have upheld the right to water due to the connection between an adequate and safe source of water and the enjoyment of all other human rights, such as the right to life.⁴⁷ The human right to water has been upheld by the courts in many of these nations both before and after its United Nations recognition. In January of 2011, the Botswana Court of Appeal used the General Assembly resolution in a ruling which stated that the rights of the Bushmen of the Kalahari were violated by their government when they were denied access to a water source within a wildlife reserve in which they lived.⁴⁸ An Argentinean court has ordered different levels of government to uphold individual's right to water through the construction of treatment facilities, environmental remediation and medical treatment of waterborne diseases. Specifically, the Argentine community of Chacras de la Merced won a court case against an upstream municipality and the province ordering them to upgrade the wastewater treatment plant upstream after its water had been contaminated due to

⁴⁵ Ibid., 131.

⁴⁶ The full list includes: Argentina, Belgium, Brazil, Costa Rica, Colombia, India, Indonesia, Israel, Nepal and Pakistan (Bigas, 132).

⁴⁷ Ibid., 132.

⁴⁸ Ibid., 131.

poor waste management, which created detrimental effects for downstream communities.⁴⁹

1.2.3 Conditions of Possession and Addressees of the Human Right to Water

The human right to water within the Declaration of the Rights of the Child grants its condition of possession only to those under the age of eighteen; however with the human right to water's new status as a universal human right, all of humanity is included within its condition of possession. This means that everyone has the ability to make claims, but the claims can only be made on those who are the addressees. The human right to water assigns obligations to governments, but also to individuals and corporations, making each of them addressees. The rights documents state that third parties, including individuals and corporations, are not to interfere with the enjoyment of the right. Ultimately, this must be enforced by governments, making them the primary addressee. This gives the state the primary obligation to uphold the human right to water and provide water services. Even in situations in which a corporation provides water services, the state is obligated to ensure that the corporation does not violate their obligations under the human right to water.⁵⁰

1.3 Scope of the Right to Water

1.3.1 Primary Obligations

⁴⁹Ibid., 132.

⁵⁰United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water* (E/C.12/2002/11). Section III.

The human right to water stipulates nine core responsibilities which can be categorized into three types of obligation: to 1) respect, 2) to protect, and 3) to fulfill.⁵¹ Together these three primary obligations outline the basic scope of the human right to water. First, the obligation to respect requires that states do not interfere with the water rights of their citizens. The obligation to protect requires that states prevent other individuals, corporations, groups, etc. from interfering in the enjoyment of the human right to water through measures, such as legislation, that limit or take away the ability of others to interfere.⁵² The obligation to fulfill is further divided into three parts: to facilitate, promote and provide. State parties must facilitate the right by taking action in order to assist citizens in enjoying the right, promote beneficial practises such as water source protection and conservation, and fulfill the right to water in situations where groups, due to circumstances that are out of their own control, cannot meet their needs.⁵³

These obligations within the human right to water have aspects that are both positive and negative in nature. Negative rights are those that we are able to uphold through adopting a policy of non-interference, while positive rights are those that require the obligated party take action to uphold the rights of others. Since positive rights require you to act in order to uphold them for others they are considered to be more demanding than negative rights. The obligation to respect is a negative right since it does not require that states act in order to uphold this aspect of the right. In order to uphold their obligation to respect the right to water states must simply leave their citizens alone so that they can

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., Section 3.25.

continue to meet their own needs, if they can already do so. The obligation to protect is a positive aspect of this right since in order to uphold it the addressees are required to act. In order to protect the right, states must enact legislation, as well as create laws and institutions to uphold such laws so as to protect a citizen's right to water from other actors. The obligation to fulfill with its sub-obligations to promote, provide and facilitate are also positive since they too require that states act in order to meet their obligations. Even with these positive and negative aspects of the human right to water overall the right is a positive one due to the order in which these obligations must be enacted. The negative obligation to respect can only be met when an individual's right has been fulfilled and protected, both positive aspects. Until that moment when the individual right is fulfilled the right is positive, and afterwards some aspects of the right can be negative. Due to the nature of the obligations there will always be a positive aspect of the right since the provision of water requires maintenance and the expansion of water infrastructure.

1.3.2 State Obligations

From these primary obligations the human right to water assigns the following nine core obligations to states. States ought to:

1. "Ensure access to a minimal essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease",
2. Ensure access to water and water facilities and services in a way that is non-discriminatory,

3. Ensure physical access to water facilities and services that provide “sufficient, safe and regular water” without excessive wait times and distance from where the water is needed,
4. Ensure that those collecting water are physically safe when doing so,
5. Ensure an equal distribution of water services and facilities,
6. Adopt and implement a national water strategy that addresses the entire population,⁵⁴
7. Monitor the progress of the realization of the right to water,
8. Adopt low cost water programmes for the poor and vulnerable,
9. And take preventive measures to decrease the occurrence of water born diseases, especially through measures of adequate sanitation.⁵⁵

These nine core obligations do not provide us with all of the necessary information required in order to uphold or violate them and because of this further discussion will be required to determine the details of each obligation. Although there are many gaps within the wording of the right, the most important one for my argument is the use of terms such as “minimal”, “sufficient”, and “safe”, which suggest a level of water access of a specific quality and quantity. In order to fully understand the right to water I will need to determine what levels of quantity and quality it requires.

There are two different types of water requirements that we can use: those for survival and those for “life.”⁵⁶ For basic survival there are a few levels of water access that have been used. For example, Peter Gleick states that based upon bodily need an

⁵⁴ It seems that this obligation is a recommended strategy to achieve the goals of the right, not a right in itself. Canada does not have a national water strategy, but I would not say that Canada is violating the human right to water without one.

⁵⁵ United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water* (E/C.12/2002/11). Section 3,37.

⁵⁶ Water requirements for survival are based upon the water intake required to maintain the water balance within a human body (Gleick, 84). Water requirements for “life” are based upon averages and take into consideration cultural uses, hygiene, food preparation, climate, health etc. when determining water usage.

individual would require five litres of water per day in order to survive.⁵⁷ If we are to take other considerations into account, such as the need to prepare food, then this number will increase to 7.5 litres per day,⁵⁸ per person.⁵⁹ The issue with a level of access that allows for mere survival is that it leaves a high level of risk for other health concerns, especially for those who have elevated levels of need, such as pregnant women. As levels of quantity continue to increase the risk of related health concerns decreases. Due to this, some authors suggest that a recommended level of 50 litres per person, per day is required which takes basic sanitation, drinking water, hygiene and food preparation into consideration,⁶⁰ whereas others give a range between 25 and 100 litres of water per day.⁶¹

The obligations within the human right to water also state that the water must be “safe for personal and domestic uses to prevent disease”⁶² and this suggests a certain level of quality that is required in order to fulfill the right. A report outlining the content of the human right to water defines safe water as that which is “free from substances constituting a threat to a person’s health.”⁶³ In order to eliminate the threat to a person’s

⁵⁷ Gleick, Peter. "Basic Water Requirements for Human Activities: Meeting Basic Needs." *Water International* (1996): 84.

⁵⁸ It is important to note that this is an average amount of water per person, per day. This number is dependent on a multitude of factors including the amount of physical activity, cultural practises concerning water, climate, etc.

⁵⁹ Howard, Guy, and Jamie Bartram. “Domestic Water Quantity, Service Level and Health.” *World Health Organization* (WHO/SDE/WSH/03.02). 2003. 9.

⁶⁰ Gleick, Peter. "Basic Water Requirements for Human Activities: Meeting Basic Needs." *Water International* (1996): 83.

⁶¹ United Nations Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments* (A/HRC/6/3) 11.

⁶² United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water* (E/C.12/2002/11). Section 3.37.

⁶³ United Nations Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments* (A/HRC/6/3). 12.

health, water must be “free of microbial pathogens, chemical and radiological substances.”⁶⁴

1.3.3 International Obligations

States have limited international obligations to assist in upholding the right to water for citizens of other countries. General Comment No. 15 states that parties “recognize” that international cooperation can assist states in meeting the rights of their own citizens but the specifics of this clause seem to be determined at a state level.⁶⁵ States are obligated to recognize that citizens of other nations have the right to water, and this limits actions that they can take when using a water source that spans international boundaries. For example, one state cannot dam a river in such a way that it disrupts the supply of water for the citizens of a neighbouring state since this would violate the right of the citizens within their riparian neighbour.⁶⁶ States and their citizens must refrain from imposing trade restrictions on other states that limit the supply of water, or that limit the means of access to water. This includes restrictions on products and technology that clean water, making it safe to drink.⁶⁷ “Dependent on the availability of resources, states should facilitate realization of the right to water in other countries” and this can be done through

⁶⁴ Ibid.

⁶⁵ United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water* (E/C.12/2002/11). Section 3,29.

⁶⁶ Typically there are agreements between riparian neighbours to allow for dam construction on transboundary rivers. Without an agreement it could be a clear violation of the rights of those within the lower riparian, however if such an agreement does exist then the violation of the right and assignment of responsibility for that violation is less clear. Dams that are constructed within the limits of a treaty still have the potential to violate the rights of those downstream, however the responsibility to remediate may be with the lower riparian where the rights violation occurs and not with the upper riparian who built the dam. Alternatively, both states may be responsible for the violation of rights since both upper riparian and lower riparian agreed to the construction of the dam.

⁶⁷ Ibid., Section III, 32-33.

the donation of water resources, financial or technological assistance and the provision of “necessary aid when required.”⁶⁸

1.3.4 Violations

Violations of the human right to water can occur through acts of omission or acts of commission. An act of commission constitutes the doing of an act, whereas an act of omission is the failure to commit an act. A violation of the human right to water through an act of commission would involve an individual, a group of individuals, a state, or other group violating its core obligation to others through direct action. A violation through an act of omission would involve a violation of core obligations through an indirect action, or negligence.⁶⁹ For example, a state or an individual could violate the right directly through an act of commission in which they intentionally shut off a water tap that acts as a community’s primary source of water. Violations due to acts of omission could arise when corporate legislation lacks strength, and therefore a private water services company has the ability to increase the price of water and water services to levels that are unattainable to the poor, thus eliminating their access to a safe water source. A violation through omission could also come in the form of negligence; for example, if a waterborne disease begins to affect a community and the government does not assist then this would violate the right. In each of these cases of omission, it is not their intent to violate the right; however as a consequence of their actions the right has been violated.

⁶⁸ Ibid., Section III, 34.

⁶⁹ Ibid., Section IV, 42-43.

When considering violations of the human right to water it is important to note that we cannot hold states accountable for all violations of the human right since we must take the ability of each nation to uphold this right into consideration. General Comment No. 15 obligates states to “take the necessary steps to the maximum of its available resources.”⁷⁰ Therefore, we can conclude that states that do not use the maximum amount of water and financial resources available to them to uphold and realize the human right to water violate this right; however not all violations are considered such if the state does not have the appropriate resources. This stipulation complicates violations of the right since we do not receive clarification on what a “maximum amount of resources” includes. Although what this means is unclear, I believe that we can determine what is above and below the line of available resources, however determining the position of the exact cut off for what would and would not be considered a violation due to varying state expenditure will be very difficult to determine. In order to discuss this, I will discuss instances of state negligence. If a state were to violate the human right to water due to neglect and claim that they cannot fulfill the right due to economic considerations then we cannot consider this to be a violation if fulfilling the right would require a resource investment that would eliminate services that uphold the human right to water or other rights for other citizens. For example, if a state government were to fulfill the right to water to a group of its citizens but in order to do so they would have to drastically cut healthcare spending, eliminating access to healthcare and therefore violating a right of a large portion of the population then it is clear that the state is using the maximum

⁷⁰ Ibid., Section IV, 41.

available amount of its resources. If correcting the violation would not put stress on the ability of a government to fulfill its other obligations to its citizens then inaction could be considered a violation. For example, if provision of water services to the group mentioned in the previous example would not require the government to forego the fulfillment of other rights for other citizens, and it still chose not to fulfill the right then this could be considered a violation.

1.3.5 Weight of the Right

When discussing the weight of the human right to water we must discuss the priority of its goals in relation to other rights. The weight of a right is that which tells us the relation of this norm to other norms, especially when the scope of this right can be counted as secondary or primary to others. In terms of the human right to water the rights documents make this uncertain, however its status as a derivative right may provide us with some clarity on the issue.

The human right to water has been said to allow us to uphold all other human rights.⁷¹ If we do not have an adequate amount of safe water to drink then our enjoyment of other rights such as the right to life is unquestionably hindered. With this in mind we can describe the human right to water as a derivative right, and therefore some of the weight of its parent rights can be transferred to the right to water. A derivative right is one that is justified through a claim to another generally accepted right. It is claimed that the human right to water is necessary for the enjoyment of the “right to life and all other

⁷¹ Bigas, H. *The Global Water Crisis: Addressing an Urgent Security Issue*. (Hamilton, Canada: UNU-INWEH, 2012). 132.

rights” and therefore can be derived from them.⁷² However, it is problematic to derive the right to water from the right to life since it does not allow us to account for the right to water’s guarantee of a level of water that includes a quantity of water high enough to achieve the “highest attainable standard of health.”⁷³ As we have seen in this chapter, the amount of water in order to maintain levels of survival are much lower than the levels needed to attain this level of health. With this in mind the right to water can also be considered a derivative of the right to health which “requires the assurance of environmental hygiene.”⁷⁴ In doing so, a higher level of water must be provided to the right holders, allowing us to derive a level of access that is higher than that for mere survival including water for drinking and hygiene to prevent disease.

With its status as a derivative right of the right to life and the right to health it could be suggested that the weight of the right is equal to the weight of the rights it is derived from, since in order to uphold these rights it is necessary to uphold the human right to water. However, it seems that this is not always the case. The human right to life, being one of the most basic guarantees, holds a lot of weight in relation to other high priority norms. When water sources are in abundance and of a good quality then the human right to water would seem to have less weight than the human right to life since upholding it is not equal to life in the sense that the level of water access can decrease without risking lives. However, as the level of quantity or quality of water decreases the

⁷² United Nations, General Assembly. *64/292 The Human Right to Water and Sanitation*. (A/RES/64/292). 2010. Section 1.

⁷³ Bluemel, Erik B. "The Implications of Formulating the Human Right to Water." *Ecology Law Quarterly* 31.957 (2005): 968

⁷⁴ *Ibid.*, 969.

connection between this level of water and life increases and therefore the weight of the right to life translates to the right to water. For example, when individuals are able to meet the minimum daily need of 25 liters it is unlikely that a slight decrease in this level of access will create a situation where a violation of the right to life is possible, although there are health risks associated with low levels of access. When the level of water access is decreased so as to equate life and access to quality water then the right to water and the right to life would have equal weight since they are upholding the same thing.⁷⁵

1.3.6 Critique of the Right

With the deep connection between the human right to water and the right to life, it ought to be generally accepted by the international community; however many have taken issue with it. The international academic community has outlined both positive and negative aspects of the human right to water. Some view it as a tool for further action whereas others see it as a meaningless declaration that does not solve the real source of the water access issues. Those who support the right, state that it has the potential for initiating the creation of water law and policy, prioritizing the allocation of scarce water resources and investment of funds, providing a means for government accountability concerning water access as well as a means for those who have had their right violated, giving them an avenue to correct it.⁷⁶ However, the right is also seen to have a negligible impact on issues of water access for multiple reasons. First, declaring a human right to

⁷⁵ This minimal level of access, where the right to life and the right to water are equal in weight, will become important when invoking the responsibility to react to due to violations of the right to water.

⁷⁶ Bigas, H. *The Global Water Crisis: Addressing an Urgent Security Issue*. (Hamilton, Canada: UNU-INWEH, 2012). 129.

water does not increase the overall amount of water resources and therefore does not allow countries who do not have enough resources to fulfill such a right. Second, due to the vague wording of the right it may allow for those who possess the right to claim free water even though the distribution and delivery of water is costly.⁷⁷ Third, a human right to water is not a guarantee that it can be enforced, and fourth, such a human right does not address the real problems of the water crisis including “depletion, corruption, financing, monopoly, conflict of interest and mismanagement.”⁷⁸

1.4 Conclusion

The world finds itself in a situation where water resources are becoming scarce. Limited water resources, an increasing population, increasing pollution and climate change create a situation where future conflict over water and increasing tension in other areas due to water scarcity is a real possibility. We can see a sign of progress as the human right to water has already been successful within the legislation of some nations; however with the missing regulatory framework the right will not be as successful as it could be. In the following chapter, I will analyse whether or not violations of the human right to water can invoke and justify intervention under the Responsibility to Protect. I will do so while working within a framework of sovereignty that is representative of that which is used in practice. This connection may act as a mechanism to uphold the claims and obligations within the human right to water, making the right more effective.

⁷⁷ Ibid., 137-140.

⁷⁸ Ibid., 140.

Chapter 2

Invoking the Responsibility to Protect Through Violations of the Human Right to Water

The human right to water has been internationally recognized as fundamental to upholding and realizing all other rights. As seen in the previous chapter, the global community is heading towards a situation that we have never seen before. Soon global water demand will outgrow global supply, while at the same time we are obligated to ensure access to a minimal level of water for all of humanity due to the creation of the human right to water. Without access to a reasonable amount of water that is affordable and of a standard that is not detrimental to one's health, how can an individual enjoy the right to life, the right to education, the right to health, and all other rights that are enshrined within the Universal Declaration of Human Rights? The United Nations documents outlining the human right to water state that the primary duty to uphold the right lies with the state and this is common amongst many other rights. It is also commonly thought, although not often practiced, that when the rights of many are violated in another state, the international community has reason and therefore can intervene. There are many states that do not have the economic ability to uphold the rights of their citizens due to the positive nature of the rights in question. Provision of water and water services is costly and in many cases requires investments in infrastructure and maintenance. Unfortunately, it is possible to imagine a state that would refuse to uphold the right to water by eliminating access to a water source for a specific group or segment of its population with or without intent to do so. What are we to do in these situations?

Does the new human right to water allow us to intervene when there are instances of mass violation? In some instances when a state violates the human rights of its citizens, the state in question no longer possesses some of the rights attributed to it through sovereignty and, in an effort to uphold human rights, the international community can move to intervene in that state's affairs.

Within this chapter I will argue that we can have just cause to intervene in extreme cases of violations of the human right to water and subsequently rebuild after such intervention. Due to the connection between the responsibility to react and prevent, I will then determine if this allows us to prevent such mass atrocities before they occur. Within this chapter, humanitarian intervention includes an action conducted by the international community, whether this group consists of states from within or outside of the region where the mass atrocity occurs, that affect the conditions within the borders of another state with the intention of reacting to or preventing human rights violations. This could include a variety of activities ranging from economic sanctions, diplomatic pressure, forms of aid, and direct military action. First, I will outline the general approach to intervention and discuss state sovereignty. Second, I will outline the Responsibility to Protect (R2P) doctrine and the responsibilities found within it. Finally, I will analyse how the human right to water can invoke the three responsibilities within R2P: the responsibility to react, rebuild and prevent. In order to do this, first I will analyse the crimes (defined as acts of commission or omission) that provide just cause for military intervention and discuss if violations of the human right to water can fit within the accepted definitions of mass atrocity crimes (i.e., crimes against humanity, ethnic

cleansing, war crimes and genocide). This can therefore provide us with just cause for military intervention and, due to its connection to the responsibility to react, invoke the responsibility to rebuild. Second, due to its connection to the responsibility to react I will discuss how this then allows us to invoke the responsibility to prevent such instances of mass atrocity.

2.1 The General Approach to Intervention and State Sovereignty

2.1.1 The General Approach to Humanitarian Intervention

When a humanitarian crisis occurs somewhere in the world the international community may, in some cases, be morally and legally obligated to intervene, but what provides reason to do so and who within the international community determines this? To answer this question I will describe the current, general approach to intervention and describe the roles of different UN organizations within the decision-making process of intervention such as the Security Council, the General Assembly and those outside of the United Nations including regional alliances such as NATO, the Arab League, and the African Union.

According to the Charter of the United Nations “all members shall settle their international disputes by peaceful means” however when a threat to international peace and security surfaces the responsibility to make a decision to act falls first and foremost to the United Nations Security Council.⁷⁹ The Security Council, a select group of five

⁷⁹ United Nations Department of Public Information. *Charter of the United Nations*. (New York: UN Department of Public Information, 1986). Article 2, Section 3.

permanent members⁸⁰ and ten members elected by the General Assembly for two year terms, is given the responsibility to uphold and maintain international peace and security.⁸¹ Issues of international peace and security can be brought to the attention of the Security Council in two ways; first, by the Secretary General, and second by the General Assembly. The Secretary General can do so by placing items on the Security Council agenda which is accepted at the beginning of each Security Council meeting.⁸² When an issue with the potential to disrupt international peace and security is brought to its attention, the Security Council has the ability to make legally binding decisions requiring action from the members of the United Nations. If nations do not act upon these decisions then the Security Council has the ability to enforce its decision through non-military and military actions. This includes enacting sanctions, severing diplomatic relations, interruption of travel routes and communications into that country, embargoes and other means to create consequences for disobeying or incentives to follow their ruling.⁸³ These sanctions tend to target specific abilities of that nation such as trade, weapons imports, or financial restrictions,⁸⁴ however if these methods are unsuccessful the Security Council has the ability to approve military action in order to uphold their decisions.⁸⁵ It is important that we do not forget that the members of the Security Council, both permanent

⁸⁰ The five permanent members include: the United Kingdom, France, China, Russia and the United States.

⁸¹ United Nations Department of Public Information. *Basic Facts about the United Nations*. (New York: UN Department of Public Information, 2011). Pg.7.

⁸² United Nations Department of Public Information. *Charter of the United Nations*. (New York: UN Department of Public Information, 1986). Article, 99.

⁸³ *Ibid.*, Article, 40-41.

⁸⁴ Sanctions can sometimes hurt the people of the nation that they are applied to. To combat this the use of “smart sanctions” is becoming a common practice in which sanctions specifically target the leadership of the nation. Sanctions will be discussed in Chapter 3.

⁸⁵ *Ibid.*, Article 42.

and rotating, do not act out of selflessness. Rather, each member state represents their national and international interests, and this has occasionally manifested itself in the use of veto power by the five permanent members. Permanent members of the Security Council each possess a veto power in which they can veto any vote that takes place at the council. This can cause a stalemate when one of the permanent members does so and has led to inaction in the past. If the Security Council is unable to act then a decision on this issue may be given to the General Assembly which has a secondary, although seldom used, role within the maintenance of international peace and security.

Although their decisions are non-binding, the General Assembly can also play a role in the maintenance of international peace and security. According to the General Assembly Resolution 377, *Uniting For Peace*, the General Assembly, composed of one representative of each member nation, has the power to decide on issues of peace and security if and only if the Security Council cannot act because its decision lacks unanimity within the five permanent members,⁸⁶ or if the Security Council fails to act on an issue that the General Assembly deems to be a threat to international peace and security.⁸⁷ In this situation the General Assembly can decide to take any action necessary including sanctions and even military action, however since their resolutions are non-binding they do not have the legal power to force countries to take action.⁸⁸ Since there is no veto power within the General Assembly a positive decision is more likely. Typically,

⁸⁶ In this situation one of the five permanent members would be using their veto power, thus limiting the success of a Security Council resolution.

⁸⁷ United Nations General Assembly. *Uniting for Peace*. (A/RES/377(V)[A-C]). 1950. Section A1.

⁸⁸ United Nations Department of Public Information. *Basic Facts about the United Nations*. (New York: UN Department of Public Information, 2011). 6.

decisions within the General Assembly require a simple majority vote, however when voting upon an issue of international peace and security a two-thirds majority is required.⁸⁹ In most cases, authorization for intervention comes from these two bodies, the Security Council or the General Assembly; however this structure does not exclude regional partnerships such as NATO, the Arab League, or the African Union. In the case of a threat to international peace and security, they are encouraged to settle these disputes within these regional partnerships. However it must be noted that even with the existence of these regional partnerships, the Security Council retains the authority to decide upon and approve the path of action.⁹⁰

2.1.2 State Sovereignty

When one state declares that it is sovereign it is saying that it has the right to run its own affairs, free of intervention from other states. However, sovereignty is also protection for states. Sovereignty acts as a line of defence for nations, sometimes the only defence that they have, allowing them to determine their own direction and destiny.⁹¹ It also acts as recognition of the equality between states. All states are equally sovereign; therefore this places them on equal ground.⁹² When a state is sovereign, it is recognized as having two responsibilities from this sovereignty, one external and another internal. Externally the state must respect the sovereignty of other nations and not infringe upon it.

⁸⁹ Ibid., 5.

⁹⁰ United Nations Department of Public Information. *Charter of the United Nations*. (New York: UN Department of Public Information, 1986). Article, 52.

⁹¹ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 7.

⁹² Ibid.

Internally states must respect the rights of those within their own sovereign borders.⁹³

When humanitarian intervention occurs and the international community intervenes in the affairs of another state then the intervening state or states has authority to violate its external responsibility, to respect the sovereignty of other states, in order to rectify injustices that state has caused which violate that state's internal responsibility, to respect the rights of its' citizens. The violation of the external responsibility of sovereignty committed by the intervening state is typically given authority through an international body such as the Security Council.

According to a functional account of sovereignty⁹⁴ if a country is to be sovereign and free of foreign intervention then it must conduct its requisite functions at a level of competence, and not at a level of perfection.⁹⁵ In order to explain this Christopher Wellman describes two other rights that are functional in this sense, driving and parenting.⁹⁶ If you have a license and are able to drive then we do not require that you are a perfect driver. There are many drivers on the road who are not perfect drivers; however as a society we do not have a right to take away their license if they make a simple mistake. You are only required to follow the rules and drive safely. If you do not do so then society has justification to intervene and revoke your license. The same applies to parenting. Society does not require that a parent performs their duties at a level of perfection but only at a level of competence. No parent is perfect and parents learn many

⁹³ Ibid., 8.

⁹⁴ This is one of many accounts of sovereignty. I chose to use this account since it is one of the dominant conceptions adopted by political philosophy as well as the Responsibility to Protect.

⁹⁵ Wellman, Christopher. "Debate: Taking Human Rights Seriously." *The Journal of Political Philosophy* (2012). 120.

⁹⁶ Ibid., 121.

things as they perform the job, however we do not feel that we ought to take children away from parents who are imperfect. Instead, we allow parents to make some mistakes during parenting and only intervene when the situation escalates and they pass below a level of competence. Even when intervention does occur it is limited to the functions that were violated. If a driver does not drive at a level of competence it is justifiable for the state to revoke their license, but not to take away their children.

We can reason in a similar way when it comes to political legitimacy and state sovereignty. A country is not required to achieve a level of perfection in completion of its requisite functions. Instead, it must only meet a threshold of competence. The requisite functions of a state include, but are not limited to, ensuring justice within its territory and through this a respect of human rights.⁹⁷ States that are unable to perform one of the requisite functions at a level of competence lose their sovereignty over that function, but do not lose sovereignty over all of their functions. Due to this, Wellman believes that we can “unbundle” sovereignty rights from each other.⁹⁸ This unbundling means that a state that does not pass the threshold of competence in one area but does so in others will only lose its right to sovereignty over the institution or area in which it does not meet the threshold of competence. For example, a state that does not provide an appropriate system of justice will lose its sovereign rights to govern its justice system, but not its ability to govern its own tax system or health care. Thus, when the responsibilities included within sovereignty are ignored, such as upholding basic human rights, a state loses one aspect of

⁹⁷ Ibid., 120.

⁹⁸ Ibid.

sovereignty and the international community has reason to take on that responsibility in its place through intervention.

Prior to the introduction of the guidelines within the Responsibility to Protect, the discussions surrounding intervention used the term “humanitarian intervention.” Humanitarian intervention and the Responsibility to Protect use different language concerning state sovereignty, and through this they portray different messages concerning intervention. Prior to R2P, the dominant conception of humanitarian intervention stated that outside powers have the “right” to intervene in the affairs of other countries in order to protect their populations from mass atrocities. In the case of humanitarian intervention, intervention was typically thought of in military terms in which one nation would create the necessary conditions in another country through the use of force.⁹⁹ Within this framework sovereignty is seen as control over one’s own affairs and peoples.¹⁰⁰ This conception of humanitarian intervention is unhelpful for three reasons: First, humanitarian intervention focuses attention on the claims of the intervening state and not the citizens who would benefit from this intervention. Second, humanitarian intervention does not take into account the need for prevention prior to conflict, as well as rebuilding after conflict and third, humanitarian intervention creates an “atmosphere of intervention”

⁹⁹ Gierczyk, Dorota. "From Humanitarian Intervention (HI) to Responsibility to Protect (R2P)." *Criminal Justice Ethics* (2010): 111.

¹⁰⁰ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 13.

since it labels any dissent as anti-humanitarian.¹⁰¹ In order to counteract these issues the general guidelines of R2P were created.

In 2001, the International Commission on Intervention and State Sovereignty (ICISS), funded by the Canadian government, created a report¹⁰² outlining the Responsibility to Protect, an expansion of the framework of sovereignty and intervention found in the conventional understanding of humanitarian intervention. Typically, if one state violates the sovereignty of another and invades or attacks then the state that is attacked has the right to defend itself, but within this framework sovereignty is no longer considered solely to be control over one's territory and people. The Responsibility to Protect reframes sovereignty as responsibility. Therefore, such an intrusion on state sovereignty can be justified if the state in question is not achieving the level of competence that is required, and therefore is not upholding the human rights of its citizens. This switch, from sovereignty as a right to sovereignty as a responsibility, implies three things: first, that states are responsible for the welfare of their citizens, second, that national political figures are responsible to their citizens and the international community through the United Nations, and third, that agents of states are responsible for their own actions.¹⁰³ The structure implies that the original duty to assist individuals lies with the state in which they live. However, if and only if that state is unable to assist, unwilling to assist, or is itself the perpetrator may the international community intervene

¹⁰¹ Ibid., 16

¹⁰² International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001).

¹⁰³ Ibid., 13.

and even when these situations are satisfied R2P outlines strict criterion that must be met before this intervention can include the use of military force.

2.2 The Responsibility to Protect (R2P)

The 1990's and 2000's saw multiple cases of humanitarian intervention. During this period the world witnessed the failure of the United Nations in 1994 when hundreds of thousands of Rwandans were killed in genocide and in Kosovo in 1999 when the Security Council was frozen due to disagreement, eventually leading to NATO involvement without the approval of the Security Council. These two instances of failed intervention led to the discussions that eventually created the Responsibility to Protect. Through this report, the International Commission on Intervention and State Sovereignty hoped to introduce a single definition of intervention that we could appeal to when humanitarian crises arise. By outlining the principles of the Responsibility to Protect, ICISS hoped to shed light on the practice of intervention, make clear which situations are of concern for intervention and determine how we ought to intervene in an attempt to ensure that genocide was never allowed to continue due to inaction.

The Responsibility to Protect is defined as a framework of intervention in which the state does not have a right to intervene, but instead has a responsibility to protect its citizens. This responsibility first lies with the state, however if the state fails to protect its citizens then this responsibility falls secondarily to the international community through the United Nations.¹⁰⁴ By acknowledging that the primary responsibility falls with the

¹⁰⁴ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 13

state in which the violation occurs, the concept of R2P bridges the gap between sovereignty and intervention.¹⁰⁵ Thus, the enjoyment of sovereignty rights is linked to the fulfillment of the responsibilities of the state.¹⁰⁶ With the expansion of the humanitarian intervention framework, R2P has received full endorsement by the United Nations body both in the General Assembly and the Security Council, however in a diluted form.¹⁰⁷ The international community has accepted a limited version of the concept of the Responsibility to Protect in comparison to the ICISS report. In 2005, the United Nations General Assembly adopted a text of R2P that accepts the responsibility of the state and the secondary responsibility of the international community to protect populations from the four mass atrocity crimes. It also acknowledges that this responsibility involves measures to prevent these mass atrocities through capacity building, “diplomatic, humanitarian and other peaceful means.”¹⁰⁸ This version of R2P lacks the detail of the ICISS document and does not discuss a responsibility to rebuild after military intervention. Due to this lack of detail, the ICISS version of R2P allows for military intervention in situations beyond the four mass atrocity crimes. R2P provides us with specific instances in which it can be applied and limits itself to cases of mass atrocity, specifically genocide, war crimes, ethnic cleansing and crimes against humanity.¹⁰⁹ When instances of these mass atrocity crimes are about to happen, are happening, or have been

¹⁰⁵ Ibid., 17.

¹⁰⁶ Note the similarities between the language of R2P and the functional account of sovereignty described earlier.

¹⁰⁷ Gierczyk, Dorota. "From Humanitarian Intervention (HI) to Responsibility to Protect (R2P)." *Criminal Justice Ethics* (2010): 114.

¹⁰⁸ United Nations General Assembly. *World Summit Outcome Document*. (A/60/L.1*). 2005. Article 138-140.

¹⁰⁹ Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*. (Washington D.C.: The Brookings Institution Press, 2008). 11.

resolved through intervention there are three responsibilities that countries have that fall under the umbrella of R2P: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild.

2.2.1 The Responsibility to React

When a humanitarian crisis occurs the international community, through the United Nations, has justification to react since, according to a functional account of sovereignty, the state in question is not passing the threshold of competence and therefore does not maintain sovereignty over that aspect of its society. Within the responsibility to react there are two actions that can be taken: first, strong political, economic and military sanctions and second, direct military intervention. Sanctions can include actions such as targeting foreign economic assets, embargoes, ceasing military cooperation, trade restrictions, limiting access to resources such as fuel for military vehicles, restricting diplomatic representation, expulsion from international groups and refusal to admit them to such groups.¹¹⁰ These sanctions are the primary tool of the responsibility to react and only after all other solutions have been exhausted will R2P permit the use of military action. R2P does not outline criteria that must be met in order for sanctions to be justified, however it does state that the “barrier can be set lower” compared to the restrictions on military intervention.¹¹¹ Once sanctions have been exhausted there remains a high threshold in which military force can be used, and even after this threshold is met military

¹¹⁰ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 30-31.

¹¹¹ Although the ICISS document does not outline such criteria it may be wise to consider the criteria of military intervention prior to enacting sanctions since the international community ought not to enact sanctions on a whim. Although it is beyond the scope of this thesis, it may be the case that to enact such sanctions the international community should meet some of the criteria for military intervention but not necessarily all of them.

intervention must be of a specific kind.¹¹² Justification for military intervention can be found when the following six criteria¹¹³ are met: just cause, right intention, last resort as well as proportional means, reasonable prospects and right authority.¹¹⁴

Just cause can be found for military intervention in two cases: 1) in a situation in which there is a “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation”, or 2) in a situation in which there is “large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”¹¹⁵ If either or both of these cases are satisfied then there is just cause for military intervention. Right intention can be found when the purpose of the intervention is to stop the suffering that is occurring, and there are no alternative motives.¹¹⁶ The military intervention must be a last resort and this is achieved upon the exploration of every other non-military option prior to the commencement of military action.¹¹⁷ The means, including the duration, intensity and scale of the intervention, must be proportional to the crisis in which you are intervening and there must be reasonable chance of success to correct these violations.¹¹⁸ Finally there must be right authority. Typically this authority belongs to the Security Council, however, under article ten and eleven of the UN Charter, the General Assembly has a general responsibility over all issues of UN concern and

¹¹² Ibid., 29.

¹¹³ Note that these six criteria correlate with the six criteria for just war, *jus ad bellum*.

¹¹⁴ Ibid., 32.

¹¹⁵ Ibid., 32.

¹¹⁶ Ibid., 35.

¹¹⁷ Ibid., 36.

¹¹⁸ Ibid., 37.

therefore can act as a source of authority to decide on cases of intervention when the Security Council cannot make a decision.¹¹⁹

2.2.2 The Responsibility to Rebuild

The goal of any military intervention must be to maintain a long lasting peace within and between states.¹²⁰ In order to maintain the success of any military intervention there ought to be a phase of rebuilding that requires sufficient resources and funding in order to be successful. This phase of rebuilding is to be conducted only after military intervention under the responsibility to react has taken place.¹²¹ This is not solely a rebuilding of structures, but a rebuilding of the state itself, including its institutions and communities with the goal of ensuring that the conditions that necessitated military intervention do not happen again. Any phase of rebuilding must be multi-faceted and take into consideration the security, justice and development of the state.¹²²

2.2.3 The Responsibility to Prevent

The responsibility to prevent takes a pre-emptive stance in which the international community attempts to address the root cause or causes of conflict in order to prevent mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. Although the primary responsibility falls to the state, the international community takes on this preventive duty in situations in which they believe that, without

¹¹⁹ Ibid., 48.

¹²⁰ Ibid., 39.

¹²¹ I find it problematic that the responsibility to rebuild is to occur only after military intervention has occurred. According to the ICISS R2P Report, there is no responsibility to rebuild if the responsibility to react is discharged through sanctions. The purpose of the responsibility to rebuild is to create a society in which it is unlikely that a mass atrocity would reoccur, but to only have a responsibility to do so after military intervention and not after any kind of intervention. This seems undesirable and inconsistent.

¹²² Ibid., 41-42.

assistance from the international community, the situation would escalate to a mass atrocity and therefore justifies a stronger response through the responsibility to react. The actions permitted within the responsibility to prevent can be broken down into four categories: “political/diplomatic, economic, legal and military.”¹²³ These actions can come in the form of development assistance, advances in practices of good governance, mediation, the promotion of dialogue, etc.¹²⁴ Since these solutions attempt to solve the root cause before the problem escalates to mass atrocity status they require an intimate knowledge of the situation on the ground as well as available measures, however the key to prevention is the willingness of the international community to implement these measures before the situation escalates, without this action is impossible.¹²⁵

Actions within the responsibility to prevent can be divided into root cause or direct prevention methods. Root cause solutions are those that aim to fix the source of the issue, whereas methods of direct prevention are those that prevent but do not resolve the issue at its source. Root cause prevention aims towards a solution to the source of the problem such as poverty, repression and unfair resource distribution schemes that can lead to a violent and unstable society and increase the likelihood of mass atrocity crimes.¹²⁶ Methods for this may include development aid, increasing the strength of legal and political protections as well as military reform. On the other hand, direct prevention attempts to prevent the issue in situations where a root cause solution is not viable due to

¹²³ Ibid., 23.

¹²⁴ Ibid., 19.

¹²⁵ Ibid., 20.

¹²⁶ Ibid., 22.

time restrictions.¹²⁷ Direct prevention is divided into the same four categories as root cause prevention, but includes measures that are stronger in comparison to those found in root cause prevention. The methods of direct prevention include political sanctions, the initiation of fact finding missions in order to gather intelligence concerning the situation “on the ground”, the deployment of monitors, positive and negative economic sanctions,¹²⁸ withdrawal of aid, offering of services such as mediation and negotiation, or the threat of tribunal before the International Criminal Court or International War Crimes Tribunal.¹²⁹ Direct prevention can include military actions, however its use is in a limited sense. Preventive military measures within the responsibility to prevent include reconnaissance missions or the deployment of a preventive force, as was done in Macedonia in 2001 when a joint military force was sent to oversee a ceasefire agreement.¹³⁰ These forces did not participate in military action, however they attempted to maintain peace and order as was agreed to by both sides of the conflict. Another way that military force can be used in a preventive manner is through a buildup of military forces in a region. If conditions are worsening in one state then it may prove useful to move forces to the area in order to act as a deterrent to further escalation of violence.

¹²⁷ Ibid., 23.

¹²⁸ Positive sanctions act as an incentive and if action is taken by the violating state to rectify the situation that state will receive the incentive. Negative sanctions tend to limit their economy or ability to act in some way.

¹²⁹ Ibid., 24.

¹³⁰ Ibid., 25.

2.3 Can Violations of the Human Right to Water Invoke the Responsibility to Protect?

Given that R2P greatly limits the situations in which it can be applied, we may find it more difficult to place the human right to water within the framework of R2P. However, in this section, I will argue that violations of the human right to water can invoke R2P. In the following paragraphs I will show that we can claim that violations of the human right to water can allow us to invoke the R2P framework's responsibilities to prevent, react and rebuild while still allowing for such a framework to maintain its original structure within accepted United Nations documents. I will first argue that violations of the human right to water can invoke the responsibility to react, the responsibility to rebuild and then the responsibility to prevent. I follow this order due to the connection between the responsibility to react and the responsibility to prevent. Preventive measures are used to prevent the need to react, and we are not obligated to prevent these cases unless we perceive the situation to be one that could escalate into a mass atrocity.¹³¹ Therefore, if we can demonstrate that such violations invoke military action under the responsibility to react then it can also be easily demonstrated that these violations can invoke less severe actions under the responsibility to react, the subsequent responsibility to rebuild and ultimately the responsibility to prevent. Many R2P theorists fear for the expansion of the guidelines of R2P since they believe that it will lead to its

¹³¹ Preventive actions could be taken without such a possibility, however these actions are beyond the scope of R2P.

application in many different scenarios.¹³² This has the potential to decrease support for the document by the international community and therefore erode its effectiveness. With this risk in mind I will begin my argument with the accepted framework of R2P and discuss the four mass atrocity crimes as they relate to water. I will then go beyond the accepted framework of R2P and discuss the responsibility to react in relation to just cause, as well as the responsibility to rebuild. I will then work from the ICISS R2P document in order to discuss the responsibility to prevent. Inclusion of violations of the human right to water does not require that we expand or change the tenets of R2P due to the close connection between water and life.

2.3.1 The Responsibility to React and the Responsibility to Rebuild

The Responsibility to React: The Four Mass Atrocity Crimes

The responsibility to react includes the use of coercive measures such as sanctions and the use of military force in extreme cases. Although the responsibility to react includes these two different sets of responses I will focus on military intervention. In order to use coercive measures short of military intervention there are no official requirements, however the ICISS R2P document states that such requirements ought to be lower than those set for military intervention.¹³³ In order to intervene militarily, there are six criteria that, when satisfied, provide reason for the use of military force. As stated before these are right authority, just cause, right intention, last resort, proportional means

¹³² Evans, Gareth. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*. (Washington D.C.: The Brookings Institution Press, 2008). 64.

¹³³ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 29.

and reasonable prospects.¹³⁴ When we are considering military intervention the most limiting condition is just cause. This clause gives two conditions and one or both of them must be met in order to provide just cause for such intervention. In 2005, at the United Nations World Summit, the heads of state adopted a text of R2P that applies to four kinds of situations: genocide, war crimes, crimes against humanity and ethnic cleansing.¹³⁵ In this section, I will argue that in specific situations violations of the human right to water can fit within the accepted definitions of these crimes¹³⁶ and therefore provide us with just cause. I will focus solely on just cause and will not discuss the other five criteria since just cause is the only criterion that is based upon the situation in the violating state. This is due to the fact that the characteristics of the violation and nothing else will determine if the criterion of just cause has been met. The criterion of right intention, last resort, proportionality, and right authority are all based upon the actors that will intervene and the prior actions that have been taken. The criterion of reasonable success is dependent on both the situation within the state but also on the capabilities of the international community. Therefore, in order to determine if violations of the human right to water can allow us to invoke R2P through the responsibility to react we must start with just cause. I will not discuss the definition of ethnic cleansing since the characteristics of ethnic cleansing fall within the definitions of the other three terms under discussion. Although the responsibility to react includes coercive measures other than military intervention the

¹³⁴ Ibid., 32.

¹³⁵ United Nations General Assembly. *2005 World Summit Outcome (A/60/L.1*)*. Paragraphs 138-139.

¹³⁶ The definitions that I use are accepted in the fact that they have received recognition from the United Nations and other bodies within international law. These definitions may not, and likely are not, entirely acceptable to the academic community.

criteria that must be met prior to the use of military intervention is much more rigorous than the criteria to use these other actions. If we can meet the requirements for military intervention then we can easily meet the lower requirements for the use of coercive measures such as economic, political and military sanctions within the responsibility to react.

The criterion of just cause can be satisfied when one or both of the following situations occurs: first, in a situation in which there is a “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation”, and second, in a situation in which there is “large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”¹³⁷ Given these characteristics just cause can be found in the four mass atrocity crimes. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group, b) causing serious bodily or mental harm to members of the group, c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, d) imposing measures intended to prevent births from a group, or e) forcibly transferring children of the group to another group.”¹³⁸ The most relevant aspect of this definition is the inclusion of “deliberately inflicting on the group conditions of life calculated to bring

¹³⁷ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 32.

¹³⁸ United Nations General Assembly. *Convention on the Prevention and Punishment of the Crime of Genocide (A/RES/260(II)[A-C])*. 1948. Article 2.

about its physical destruction.”¹³⁹ The Rome Statute of the International Criminal Court defines war crimes as “grave breaches of the Geneva Convention”¹⁴⁰ and also other “serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.”¹⁴¹ These serious violations include actions of rape and sexual slavery as a war tactic, and directing attacks against civilian populations who are not a part of hostilities.¹⁴² Like the definition of genocide, “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Convention” is also included within the list of “serious violations.”¹⁴³ Finally, we turn to crimes against humanity. A crime against humanity is defined in such a way as to include acts such as murder, extermination, enslavement, and forcible deportation. Like the definition of war crimes, it also includes the intentional deprivation of materials that lead to conditions of life that have been “calculated to bring about the destruction of part of a population.”¹⁴⁴ Within the definition of crimes against humanity these actions must be undertaken within a “widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹⁴⁵

¹³⁹ Ibid.

¹⁴⁰ The Geneva Convention discusses a wide range of issues concerning the treatment of prisoners of war, which I will not get into here.

¹⁴¹ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. *Rome Statute of the International Criminal Court*. (A/CONF.183). 1998. Article 8, Section 1-2.

¹⁴² Ibid., Article 8, 2b, xxii.

¹⁴³ Ibid., Article 8, 2b, xxv.

¹⁴⁴ Ibid., Article 7, 2, b.

¹⁴⁵ Ibid., Article 7, 1.

Violations of the human right to water are likely to more easily fit into the definition of crimes against humanity, however they can also act as a tool of ethnic cleansing and genocide. Although difficult to prove, it could also be considered a war crime. As we can see, each of these definitions incorporates the deprivation of water or food used as a weapon, a clear violation of the human right to water. With the basic guarantee of “access to a minimal essential amount of water that is sufficient and safe for personal and domestic use to prevent disease” within the right, a situation in which it is deprived, intentionally or unintentionally, is a clear violation of the human right to water, however it is not always enough to invoke the responsibility to react. The human right to water guarantees a level of water to prevent disease and, as seen in chapter one, this is approximately 25 to 100 litres per day, per person dependent on the individual, culture and climate. However, even at levels slightly lower than 25 liters per day the right holder would not be placed in conditions that would lead to their death. Only in extreme cases of water deprivation would death occur and due to this we can only invoke the responsibility to react for violations of the human right to water in such extreme cases. These extreme cases would only involve those deprivations of water that fall below the requirements for survival. The absolute minimum requirement of water per person, per day is 5-7.5 litres. This allows for survival but leaves a high risk of disease due to a lack of water for hygiene. Although this risk of disease does not seem strong enough to invoke this responsibility, it may be enough to do so if this risk turns into reality. Levels below the required 5-7.5 litres per day lead to death and, if done intentionally, would fit within the definition of mass atrocity crimes and therefore provide us with just cause.

Although it is not a deprivation of water there is also the potential to invoke the responsibility to react due to the quality of water as well.¹⁴⁶ If the quality of water is to be intentionally lowered to a level in which it can cause a large scale loss of life then it would also violate the right to water and satisfy the definitions of mass atrocity crimes, however the scale of such a pandemic would need to be extraordinary. With water's close connection to life, issues of quality could inflict conditions that would induce the end of life. These previous examples are unlikely to occur as a single act of genocide, war crime, or mass atrocity; however there is the possibility that such an act would be one of the crimes within a larger campaign against a select group.

The Responsibility to React: Beyond the Four Mass Atrocity Crimes

These four crimes from the 2005 UN World Summit are insufficient to encompass all of the possible situations that the criterion of just cause allows for. Although the United Nations has not agreed to the original wording of the ICISS report on the Responsibility to Protect, we can justify military intervention in situations beyond the four mass atrocity crimes if we consider the wording found within it. The first criterion of just cause states that just cause can be found in mass atrocities due to state neglect or the inability to act, with or without intent.¹⁴⁷ Genocide, war crimes and crimes against humanity each involve intentional acts, but the ICISS R2P document allows us to achieve just cause without such intentions on behalf of the violator. Thus, it is also possible for us

¹⁴⁶ Water quality can be affected by acts of terror as well, however whether this would invoke R2P is beyond the scope of this discussion. Although it is possible that these terrorist acts could occur, they are unlikely to occur in many western nations due to current water quality practices (Gleick, *Water and Terrorism*).

¹⁴⁷ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 32.

to have just cause for intervention in situations where states are incapable or neglectful of their populations. Therefore, the international community can have reason to intervene militarily when there is a large scale loss of life due to state neglect or incapability, however without intent this would not fall under the four mass atrocity crimes. For example, according to the ICISS R2P doctrine, the international community could intervene if there was a large scale loss of life caused by a lack of water due to a government's inability to provide such services even though the state did not intend to create such conditions. The state in question loses that aspect of its sovereignty since it does not have the ability to function at a level of competence. The conditions that allow for such intervention may not be caused by the state, however if the state is unable to remedy the situation then intervention can be justified. For example, if an earthquake destroys the water infrastructure of a country and that country does not have the capacity to assist those in need or to repair the infrastructure needed to supply water to its people then the international community could intervene if the situation has led to a large loss of life, therefore providing us with just cause.

Just cause may also be found when a third party violates the right to water on a mass scale leading to a large scale loss of life, intentionally or unintentionally and the state either cannot or will not intervene on behalf of its citizens. For example, if the water system is privatized in a country with poor corporate regulation then it is likely that the corporation has large control over the distribution of water. If this corporate third party was to eliminate access to a large segment of the population or create conditions in which citizens are unable to access water then it is possible that they would create conditions

that can lead to the end of life on a large scale and therefore provide the international community with just cause for intervention.

The Responsibility to Rebuild

Since we are able to find just cause within violations of the human right to water then, upon meeting the other five requirements, military intervention can be justified. Given that the other five criteria are dependent on the intervening agents and the previous action to stop such mass atrocity it is possible that we will be able to satisfy all six criteria given the right conditions. After acting upon the responsibility to react then we are also responsible to rebuild. This responsibility to rebuild is directly linked to military intervention within the responsibility to react, and thus any military action that takes place during the fulfillment of the responsibility to react obligates the international community to make a commitment to rebuild the physical structures and society in which the intervention took place.

The violations of the human right to water that allow us to invoke the responsibility to react, and therefore the responsibility to rebuild, are extreme in nature. As such, they are likely a rare occurrence; however I hold that it is still possible to invoke this responsibility with violations of the human right to water. These situations are unlikely to occur on their own as a single tactic of genocide, however as earlier stated they are likely to occur within a larger campaign of mass atrocity. Given this, it may be the case that we will never need to invoke the responsibility to react due to violations of the right to water alone, however it is still a possibility.

2.3.2 The Responsibility to Prevent

Now that we have determined that violations of the human right to water can invoke the responsibility to react, it is logical that they would also invoke the responsibility to prevent since the responsibility to prevent aims to prevent the occurrence of such mass atrocities. Although preventive actions¹⁴⁸ could be conducted in situations without the possibility of escalation to mass atrocity, these actions would be beyond the scope of R2P. I turn now to discuss the other obligations that are a part of the human right to water. The human right to water assigns eight other core obligations including equal distribution that is fair and equitable, ensuring physical safety during water collection, as well as ensuring access without excessive wait times and distance.¹⁴⁹ On their own violations of this kind are unlikely to cause an instance of a mass atrocity, however violating or ignoring these obligations¹⁵⁰ may lead to conditions within the state that create the potential for an instance of mass atrocity, and therefore fall under the responsibility to prevent. Alone these conditions are unlikely to have the potential to incite a mass atrocity, however when paired with other issues within a state they can allow things to escalate further, especially since water use is pervasive within almost every aspect of life and society. For example, the conflict in Darfur can be traced back to the 1970s where a large period of drought compounded with a Sudanese government policy that decreased the strength of institutions that were once used to mitigate conflicts

¹⁴⁸ Preventive action goes beyond the accepted version of R2P as outlined in the 2005 World Summit Outcome document; however the Security Council has acknowledged the need to take preventive action in order to prevent armed conflict (United Nations Security Council, Resolution 1625).

¹⁴⁹ United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water* (E/C.12/2002/11) 2003. Section 3, 37.

¹⁵⁰ For a complete list of these obligations refer to chapter 1, pg 18-19.

over resources in this area. When the drought of the 1970s occurred, the groups within this region had no mechanism with which to settle these disputes and this led to tension between both parties that, as time went on and other issues arose, eventually led to conflict in 2003.¹⁵¹

At the stage of prevention it is possible that states that do not or cannot fulfill the obligations of the human right to water are still fulfilling their requisite functions at a level of competence, and therefore fulfilling the requirements needed to maintain their sovereignty rights. For example, if a country meets the requirement of the human right for a large majority of its citizens, but is unable to do so for select groups such as the extremely poor, then it is unclear whether the international community could intervene or even assist without the explicit permission of the violating state. This is because the violation of the right to water for a small group does not constitute a mass atrocity. Although the state is not performing its duties perfectly the state is meeting the threshold of competence required to maintain its sovereignty. Even though this is the case I do not see this as problematic. If we are to respect sovereignty then states ought not to have the ability to intervene in the affairs of another except in extreme cases.¹⁵²

2.4 Problem: Transboundary Violations of the Right to Water

Although it is the case that we can prevent mass atrocities from occurring and intervene when they do occur, we will face problems when attempting to prevent or

¹⁵¹ Hehir, Aidan. *Humanitarian Intervention: An Introduction*. (New York: Palgrave MacMillan, 2010). 242.

¹⁵² Further discussion on this will be provided in chapter 3 where I discuss the appropriate responses and actions since it will prove very difficult to work in a nation where assistance is unwanted.

intervene in violations of the right to water that are transboundary in nature. It is likely that as water scarcity increases, lower riparian neighbours will have fewer water resources due to use upstream.¹⁵³ This could unintentionally violate the human right to water for lower riparian neighbours. When an upper riparian violates the rights of those within the lower riparian through excessive use, the upper riparian is likely fulfilling the requisite functions of the state, however it is making it impossible to do so downstream by the lower riparian. Rights violations that occur across borders are difficult to solve through R2P since our conception of sovereignty limits cross border actions. We cannot intervene in the affairs of the upper riparian if they are competently meeting their requisite functions as a state unless we have their permission to do so. We could intervene in the lower riparian since they are unable to fulfill the requisite state functions, however this is due to no fault of their own. Although we are unable to intervene in the affairs of the upper riparian, the international community could take preventive measures since these conditions could lead to mass atrocities, however such measures would require the consent of the upper riparian.

2.5 Conclusion

The Responsibility to Protect consists of three responsibilities: to prevent, react and rebuild. With the connection between the right to water and the right to life we can connect violations of the right to water to the four mass atrocity crimes. In doing so, the international community can have reason to intervene in the affairs of another given mass,

¹⁵³ It is interesting to note that this could occur if an upper riparian is successful in fulfilling the requirements of the human right to water for all of its citizens. This makes it difficult for states to fulfill the human right to water since full provision of water may mean that others have less.

severe violations of the right to water. With the connection between such violations and military intervention we can also justify non-military, yet coercive actions within the responsibility to react. The ability to conduct such acts provides reason for the responsibility to rebuild after military intervention occurs. Due to the ability of violations of the right to water to constitute a mass atrocity crime, the international community is also obligated to prevent such crimes when they are foreseeable. Many of these violations are likely to occur due to transboundary water use, however intervening in these cases proves to be problematic. Given our current understanding of sovereignty, R2P is limited when it comes to intervention in these conditions due to their cross-border nature. The solutions and actions that must be taken when preventing, reacting, and rebuilding are yet unclear; however this will be discussed in the next chapter.

Chapter 3

Responding to Crisis

In previous chapters we have seen the effects of the global water crisis and have determined that there are situations in which the human right to water, as a derivative right of the right to life and health, can invoke the Responsibility to Protect. Due to water's intrinsic connection to life, violations of the human right to water can be seen as one of the four mass atrocity crimes and ultimately, if conditions are right, provide us with just cause for intervention. Subsequently, this can provide justification to provoke the responsibility to prevent and the responsibility to rebuild. Within this chapter I aim to explore what types of actions ought to be taken at each stage of R2P when we are faced with conditions that could lead to a mass atrocity, a current mass atrocity, or the aftermath of an intervention when such situations involve or are based upon a violation of the human right to water. When dealing with such cases, the response that is required will differ when compared to those of a typical mass atrocity crime. With a focus on the human right to water, we need to ensure that actions at each stage of R2P protect or provide access to water and never hinder it. However, the usual strategies will continue to be a part of the overall methods to combat mass atrocity since violations of the human right to water are unlikely to be the sole cause of such mass atrocities.

The task of this chapter is not to give an exhaustive list of solutions that these three responsibilities could include, but only to give some possible actions that can be taken when R2P is invoked by violations of the human right to water. In previous

chapters, I have claimed that although direct conflict over water resources is possible I do not believe that it is very likely, and so these violations are unlikely to be a sole action of mass atrocity. Instead, violations of the right to water are likely to be one of the many causes of such mass atrocities. With this in mind, the actions that I suggest will allow us to combat water based mass atrocities and also mass atrocities that are the result of multiple causes. First, I will discuss the contribution that the human right to water makes to the Responsibility to Protect. Second, I will discuss the actions required within the responsibility to prevent, to react and to rebuild. I will outline the actions required for each responsibility within the ICISS document, and then discuss how these responses can be altered in order to meet these water related challenges. Throughout this chapter I will discuss the major challenges and obstacles to the fulfillment of each responsibility. Examples will be used to illustrate the responses and actions within each responsibility.

3.1 Multiple Causal Mechanisms

It is highly unlikely that we will see mass atrocities that consist solely of the deprivation of water and other water related crimes. Mass atrocities not only have multiple causes, but multiple causal mechanisms. These causal mechanisms are “distinct combinations of conditions and events that are necessary to lead to the outcome.”¹⁵⁴

When we are combating disease, most of the causes of such diseases are “neither necessary nor sufficient to produce such disease,” however removal of the cause is still

¹⁵⁴ Woocher, Lawrence. "The Responsibility to Prevent: Toward a Strategy." In *The Routledge Handbook of the Responsibility to Protect*, edited by Andy Knight and Frazer Egerton. (New York: Routledge) 31.

likely to prevent the disease even though the cause may not be necessary or sufficient to cause the disease. For example, smoking is neither necessary nor sufficient to cause cancer, however if someone is to stop smoking they will significantly reduce the risk of getting lung cancer. The same can be said for mass atrocities. There are many causal mechanisms and by blocking one of them it is possible that we can significantly reduce the risk of such mass atrocities occurring.

Since mass atrocities have multiple causal mechanisms, the responses that we will see in each of the three responsibilities must tackle such conflict through a varied response that matches these causal mechanisms. With water as one potential causal mechanism for mass atrocity we must alter our tactics to appropriately respond. The methods and techniques discussed in this chapter aim to suggest options for tuning our response to the fact that water access, and the lack there of, can act as a source of conflict.

3.2 The Role of the Human Right to Water within the Responsibility to Protect

Given our discussion thus far, it appears that the human right to water is not contributing to the theoretical support of R2P and intervention in cases of the human right to water. R2P provides justification for intervention, however as a derivative right of the right to life, the role of the human right to water is not to provide a theoretical backing to R2P but to provide further detail as to the appropriate actions within the responses to such a violation.

Recalling the role of rights, as discussed in Chapter 1, human rights “provide a normative category that is binding, high priority and definite,” and allows those who

possess the right to make claims upon others.¹⁵⁵ The right to life creates one such normative claim that all humans can make upon others, and the Responsibility to Protect is one mechanism that can allow us to correct violations of the right. With its concentration on the four mass atrocity crimes, R2P focuses on the right to life and creates a framework in which it is the state's responsibility to uphold such rights. For example, the act of genocide involves acts such as murder, bodily or mental harm, inflicting conditions that will end life, etc. with intent to destroy a group or part of a group.¹⁵⁶ The remaining three mass atrocity crimes also include actions related to the violation of the right to life. With the responsibility of the state to uphold such a right there is a clear connection between violations of the right to life and the Responsibility to Protect.

With water's intrinsic connection to life and its status as a derivative right of the right to life I have been able to show that there is a connection between the human right to water and just cause within R2P. When we see a violation of the right to water that can invoke R2P this is ultimately a violation of the right it is derived from, the right to life. The connection between water and life means that a violation of the right to water can be a violation of the right to life, and when a violation of the right to water invokes military intervention within the responsibility to react it is only in cases where a violation of the right to water is so severe that it equals a violation of the right to life. This occurs in

¹⁵⁵ Nickel, James. *Making Sense of Human Rights*. (Los Angeles: University of California Press, 1987). 23.

¹⁵⁶ United Nations General Assembly. *Convention on the Prevention and Punishment of the Crime of Genocide* (A/RES/260(II)[A-C]). 1948. Article II.

situations where a lack of water or poor quality water leads to the end of life. Such violations require that we change the tactics and techniques that interventions use in order to prevent or react to such instances of mass atrocity. If direct military action were to occur then it may take the same form (direct military intervention with the aim of ceasing hostilities) as those interventions that aim to correct violations of mass atrocities in terms of violations of the right to life, but instead there would be a change of focus towards correcting the deprivation so that citizens can meet their water needs.

3.3 The Responsibility to Prevent

3.3.1 Actions within the Responsibility to Prevent

The actions within the responsibility to prevent are designed so as to prevent conflict and local conditions from escalating to a level that would require the international community to intervene. Within the ICISS document, these actions are divided into two separate categories which attempt to prevent mass atrocities at different stages of development: root cause prevention and direct prevention. Root cause prevention is that which targets the underlying causes of conflict such as “poverty, political repression, and uneven distribution of resources.”¹⁵⁷ Given enough time and warning concerning the possibility of mass atrocity, root cause prevention addresses issues such as “political needs and deficiencies”, economic deprivation, legal reform and military or security reform.¹⁵⁸ In order to combat the root causes of conflict the international community can

¹⁵⁷ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 22.

¹⁵⁸ *Ibid.*, 23.

take actions ranging from capacity building, development assistance, economic reform policies, promotion of accountability in the legal system, education programs and military training.¹⁵⁹ These methods require a detailed understanding of the situation and cooperation from the state and the international community.¹⁶⁰ They also require the direct permission of the state in question. Without such permission taking these actions violates the sovereignty of states since, at this stage, as long as they are performing their requisite functions at a level of competence we cannot intervene. Direct prevention addresses the four areas found in root cause prevention but differs in the actions that are taken. Direct prevention attempts to reform economic, political, legal and military sectors, however the actions within these areas reflect the severity of the situation and the short amount of time before the situation could escalate if left alone to become a mass atrocity.¹⁶¹ The actions within direct prevention take this into account and range from fact finding missions, initiation of dialogue between parties, threats of economic sanctions, withdrawal of investment or aid, offering legal arbitration, legal sanctions¹⁶², reconnaissance missions, preventive military buildup and even the threat of military action.¹⁶³ These actions do not require the international community to violate the sovereignty of the state and instead act from outside of state borders, and therefore they do not require the permission of the violating state. Through these actions, the

¹⁵⁹ Ibid.

¹⁶⁰ Ibid., 23.

¹⁶¹ Ibid.

¹⁶² Legal sanctions are a relatively new tactic and have evolved alongside the creation of the International Criminal Court as well as the Geneva Convention. These new legal methods act as a deterrent to those committing the crimes and offer real consequences.

¹⁶³ Ibid., 24-25.

international community hopes to make it unnecessary for any reactionary measures to be taken.

3.3.2 Prevention of Mass Atrocities in the Context of Water

The actions listed as preventive measures in the ICISS R2P document will act as a starting point for the creation of methods to combat violations of the human right to water, but in order to prevent a mass atrocity due to water deprivation we must alter these policies and practices. Methods found in root cause and direct prevention will remain a pillar of preventive measures since mass atrocities that involve acts of water deprivation alone will be rare. Instead, future mass atrocities are more likely to involve instances of water deprivations as part of a larger collection of rights violations and because of this we need to maintain these preventive measures that attempt to create a more equitable society. With this in mind, we also need to take a multifaceted approach and add water related actions and policies into the list of root cause and direct prevention methods.

Root Cause Prevention

In order to conduct successful root cause prevention, we require accurate, up to date and detailed information concerning the situation on the ground. In order to identify hotspots for potential conflict, we need a detailed analysis of water access and supply at a national and regional level. This allows us to see disparity in access between states as well as between different regions within a state, thus giving us a glimpse of potential conflict at these two levels. There are few studies and reports that provide us with this kind of information, however there are a few programs that can act as a foundation for the

type of analysis we require. For example, the Global Analysis and Assessment of Sanitation and Drinking Water (GLAAS) Report details the levels of aid and where this aid is going, but it does not provide us with detailed analysis of water access itself. However, this report is useful since it allows countries to determine where aid and programming are coming from and allows donor nations to determine where and in what sectors their aid would be most effective.¹⁶⁴ The World Water Development Report (WWDR) is another example of such an analysis. The WWDR outlines various challenges and regional concerns to providing water services.¹⁶⁵ The Water Country Briefs project is a promising project in this area as well. This pilot project aims to create country profiles which will include a “national snapshot” of a country’s water supply and the challenges they face. The pilot project is expected to launch in 2013 with 10-15 different country briefs.¹⁶⁶

Once we have a detailed analysis of the potential for conflict within different regions we can then begin to conduct preventive actions. I propose, due to available water resources today and in the future, that both a positive and negative approach should be taken in which the response focuses on both increasing and managing the supply, while simultaneously decreasing demand.¹⁶⁷ In order to manage our supply there are multiple methods that can be taken, however most recently the Integrated Water Resource Management Approach (IWRM) has gained international attention. IWRM is “a process

¹⁶⁴ United Nations Water. “*UN Water Global Analysis and Assessment of Sanitation and Drinking Water*”, 2012.

¹⁶⁵ United Nations Education, Scientific and Cultural Organization. *United Nations World Water Development Report 4: Volume 1-3* (Luxembourg: UNESCO Publishing, 2012).

¹⁶⁶ United Nations Water. “*Water Country Briefs Project*.”

¹⁶⁷ Swain, Ashok. “Water Wars: Fact or Fiction?” *Futures* (2001): 776.

which promotes the coordinated development and management of water, land and related resources in order to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems.”¹⁶⁸ In order to do this, we must create water strategies, legislation and regulation at a national level, and create organizations and institutions that allow for local, national and international cooperation and dialogue concerning the management of shared water resources. These institutions allow for cooperation between riparian neighbours as well as the streamlining of development and water projects along shared rivers. For example, the Nile Basin Initiative was created in 1999 and includes all countries within the Nile Basin, except Eritrea.¹⁶⁹ Through the coordination of projects within the basin, this group hopes to “achieve sustainable socio-economic development through the equitable utilization of and benefit from, the common Nile Basin water resources.”¹⁷⁰ Through the creation of these institutions and managing our supply we can fulfill one part of water management, but we must also limit demand. Without limiting demand our efforts to manage the supply and use it to its fullest potential will be hindered. Demand can be limited through efficient pricing that provides an incentive to conserve, technology that decreases the amount of water use in all sectors, trade techniques such as the incorporation of virtual water into economic, agricultural and industrial policies, and more.¹⁷¹

¹⁶⁸ Global Water Partnership. “*IWRM At A Glance.*”

¹⁶⁹ Swain, Ashok. "The Nile Basin Initiative: Too Many Cooks, Too Little Broth." *SAIS Review* (2002): 302.

¹⁷⁰ *Ibid.*

¹⁷¹ Virtual water is another tactic that could be used within preventive methods since it decreases the strain on local water resources. Virtual water, that which is found within traded products, promotes the import of water intensive goods from nations with large amounts of water resources.

Direct Prevention Methods

The methods within direct prevention will not experience much change, however the international community needs to ensure that direct prevention methods do not hinder water collection, purification, or accessibility in any way. The majority of methods within direct prevention do not hinder access to water since they do not damage the functioning of the state. For example, such techniques either involve a threat to action, a buildup of forces outside of the state, reconnaissance or initiating dialogue. However, the withdrawal of aid and funding can hinder access to water within those countries. If at all possible, the withdrawal of aid and funding should be selective in order not to harm the citizens of the country and their livelihood. The withdrawal of aid must be selective so as to ensure that services and projects that citizens depend upon are able to continue. For example, in 1995 the United Nations Security Council passed Resolution 986 outlining a new set of sanctions which allowed nations to import Iraqi oil in exchange for much needed food, medicine and supplies. This allowed the international community to assist the citizens of Iraq, diminishing the hardship felt by the isolation that the international community had placed on the state, while limiting the capabilities of the Iraqi military.¹⁷² Although the program was highly criticized for being corrupt, this remains an excellent example of how preventive measures can target certain facets of a country with minimal harm to its people.¹⁷³

¹⁷² United Nations Security Council. *Iraq*. (S/RES/986). 1995.

¹⁷³ "Annan Wants Iraq Oil-For-Food Probe." *Al Jazeera*, March 21, 2004.

3.3.3 The Main Challenge: Sovereignty

The actions discussed above involve methods to deter and resolve conflicts as they arise. They do this by providing equitable access and by alleviating the root causes of conflict. However, these actions face a major hurdle due to our current understanding of state sovereignty. If we return to the functional account of sovereignty, as outlined in chapter two, we remember that states maintain their sovereignty rights so long as they meet a level of competence, not perfection.¹⁷⁴ Like state intervention in parenting or licensed drivers, we cannot intervene in the affairs of another state so long as they are performing the requisite functions of a state at a minimum level of competency. This is problematic for issues of root cause prevention since the situation in these states has not reached a level of mass atrocity, and because of this it is unlikely that their sovereignty rights will be eroded to a point where a state can intrude upon the sovereignty of another state.

As we have seen in this section, the responsibility to prevent allows for a variety of actions, not all of which require action within the borders of the violating country and this is problematic for root cause prevention, but not necessarily for direct prevention. With the goal of root cause prevention being to create conditions that are beneficial for society to ensure that mass atrocities do not occur in the future, there must be complete cooperation between the international community and the state in question. When a state is performing its functions at a level of competence the international community is unable

¹⁷⁴Wellman, Christopher Heath. "Debate: Taking Human Rights Seriously." *The Journal of Political Philosophy* (2012): 120.

to take root cause preventive action without explicit permission and cooperation from the state. Although this is problematic for root cause prevention, such an instance seems unlikely to occur. It is more likely that these states will accept the offers of help from the international community in order to better fulfill the needs of their citizens and better their nations at a root cause level. For example, after years of sanctions and negotiations over Libya's affiliations with terrorist groups and the sponsorship of the Lockerbie bombing in September, 2003 the United States continued to have concerns over Libya's pursuit of weapons of mass destruction. Four months later, a surprise announcement came from Libya stating that it would be willing to cancel its nuclear and chemical weapons program and the United States and the United Kingdom stated that they would respond positively as this was implemented.¹⁷⁵ With each step towards disarmament taken by the Libyan government, a package of positive gestures was provided by the governments of the US and UK. The first phase involved permission to use American passports for travel to Libya, allowing oil companies that once worked in Libya to return. As disarmament continued, a second package was introduced which included the termination of sanctions under the Iran- Libya Sanctions Act as well as the general authorization for American business to return to Libya.¹⁷⁶ As disarmament neared completion, a third package was provided in which frozen Libyan assets were released, programs to encourage American business in Libya were initiated and further sanctions were repealed. Finally, in 2006, the US rescinded Libya's designation as a state sponsor of terrorism.¹⁷⁷ Although sovereignty

¹⁷⁵ Schwartz, Jonathon B. "Dealing with a 'Rogue State': The Libya Precedent." *The American Journal of International Law* (July 2007): 573.

¹⁷⁶ *Ibid.*, 575.

¹⁷⁷ *Ibid.*, 576.

can potentially limit the actions that we can take to prevent the root causes of conflict, we are able to act before a mass atrocity occurs, even without state cooperation since there are many methods of prevention that do not infringe upon the sovereignty of another state. Many of the actions within direct prevention including military buildup, threat of sanctions and military action, as well as the withdrawal of investment and aid do not require the infringement of a state's sovereignty since they can be done from outside of the state. This can be done with or without permission of the state involved. This response is not ideal since they are only permitted to be used when a mass atrocity is about to occur within the foreseeable future. Although direct prevention methods can be taken with or without state permission they are not ideal since if they are unsuccessful it is likely that conditions will worsen to a mass atrocity.

3.3.4 Example: Darfur

The region of Darfur, in South Sudan, had previously been gripped by conflict for nearly three decades. In the 1970s, a series of droughts forced nomadic herders from the northern regions of Sudan into the south, as they searched for water and food for their herds.¹⁷⁸ This was not an unusual occurrence; however with the colonisation of Sudan by the British, leadership changed. Local leaders that once managed the conflicts between groups of herders were replaced by leaders favoured by the British. These leaders lacked the negotiations skills to continue this practice.¹⁷⁹ As the population increased, so did the level of livestock and with this the pressure on the environment. Other nomadic groups

¹⁷⁸ Natsios, Andrew S., and Zachary Scott. "Darfur, Sudan." In *The Responsibility to Protect: The Promise of Ending Mass Atrocity in Our Time*, edited by Jared Genser and Irwin Cotler. (New York: Oxford University Press, 2012), 236.

¹⁷⁹ Ibid.

began to move to the area, and in the mid 80's a drought spread across the Darfur region resulting in famine.¹⁸⁰ The Sudanese government failed to respond adequately to the famine, and conflict escalated, leading to civil war in 1987.

Although preventive action did not take place in Darfur, we can speculate how the situation would have occurred had we reacted to it sooner. The issues that began in Darfur were ultimately issues of water scarcity and conflict over these scarce resources. First, the international community would have required detailed information about the situation in Darfur. With this information, a set of actions could have been conducted that may have prevented the situation from escalating to a mass atrocity. For example, funding for programs that ensured access to water resources could have been completed, or arbitration could have been offered to the interested parties allowing them to negotiate a solution between tribes. Given political will and permission from the Sudanese government, the international community may have been able to provide assistance during the famine. Each of these actions could have assisted in ensuring that these localized conflicts did not escalate to a level of mass atrocity, however if the situation escalates further then the international community could place pressure on local authorities through methods of direct prevention. The international community could build up a military force in neighbouring Uganda, or withdraw aid from Sudan in order to pressure it to act. The international community must be careful when withdrawing aid and ensure that local water projects that work with these nomadic groups are not affected.

¹⁸⁰ Ibid.

3.4 The Responsibility to React

3.4.1 Actions within the Responsibility to React

As the situation escalates to the level of mass atrocity, the level of response that can be justified escalates as well. With this in mind, the justified actions increase in severity. Within the responsibility to react we see two types of actions: one which aims to intervene from outside of the state, and one which intervenes directly within the state. Those actions that intervene from outside of the state include arms embargoes, financial and economic sanctions, as well as political sanctions and restrictions. Each of these actions violates the sovereignty of the rogue state either directly or indirectly. Arms embargoes and sanctions alter the capabilities of the opposing force, therefore hindering its ability to govern itself the way it wishes. If a situation escalates to the level of mass atrocity then the state is no longer meeting the standard of competency and the international community is justified in taking these actions which intend to interfere in order to change the situation within the state.

If the situation has reached a level of mass atrocity and the international community finds it necessary, it may intervene militarily so long as it has discharged its responsibility to prevent and the less intrusive measures within the responsibility to react. Military intervention aims to forcefully correct the violation of rights, and thus violates sovereignty directly; however it is limited by two criteria: last resort and proportionality. Military actions within the responsibility to react are limited in the sense that they must be a last resort. Such military actions cannot be conducted without having exhausted all preventive measures including all preventive non-military, diplomatic and preventive

military action as well as non-military actions within the responsibility to react, including a variety of sanctions. Once these have been exhausted without success then the international community may commence military intervention. Proportional means requires that “the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective.”¹⁸¹ With this in mind, the military solutions and actions taken by the international community must be adequate to end the humanitarian crisis, but do not exceed this level. If, for example, a rebel group was committing acts of genocide within a country and the international community was to intervene with the intent of ending the genocide then the scale, duration and intensity that they use must be enough to end the genocide and no more. If the international community were to conduct military operations over an entire country when the humanitarian crisis was localised, continue operations after the objective had been achieved, or use tactics that are drastically greater in intensity than those necessary to achieve the objective, then these actions would no longer be justified. For example, in January, 2013 French troops intervened in Mali in order to stop a militant Islamist group’s advance towards the capital, Bamako. In order to do this French troops used a variety of tactics, and deployed their soldiers in strategic positions to halt the advance and protect the capital.¹⁸² Their troops did not occupy the entire state, only those regions that were necessary to their goal, to end

¹⁸¹ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 37.

¹⁸² Onuoha, Freedom C., and Alex Thurston. "Franco-African Military Intervention in the Mali Crisis and Evolving Security Concerns." *Al Jazeera Center for Studies* (2013). 5.

the advance of the militant group in the north. The actions that they took were appropriate in scale, intent¹⁸³ and duration.

3.4.2 Reacting to Violations of the Human Right to Water

With the severity of the situation in mind, and the overall objective to end the humanitarian crisis the actions within the responsibility to react will not see drastic changes or additions due to the nature of a genocide based on actions of water deprivation. However, if such a mass atrocity is to occur then we need to take the nature of the situation and the basic needs of those affected into consideration. If sanctions or military action are to be used then we must ensure that they do not hinder either the state's capability to provide services or the individual's ability to meet their water needs. In countries and areas where water services are provided through government or corporate agencies caution needs to be taken to ensure that these services are operational and available to those who use them.

What this means is that sanctions and military intervention should not incorporate tactics that decrease the availability of these services, cut off these services, or in any way target these services. When the international community places sanctions on a state they must ensure that these sanctions will not hinder the provision of water through state infrastructure or the collection of water by citizens. We must also ensure that sanctions do not hinder access to the necessities of water collection and filtration. This requires that flows of water technology, products and services into a state are not hindered. For example, if a foreign company supplies the water infrastructure of a state with necessary

¹⁸³ It is possible that the French government conducted such intervention in order to protect their interests in West Africa. If this was their motive they still *intended* to end the advance of militant forces.

supplies we must ensure that the transfer of goods can continue unhindered and that this company is allowed to continue its business with the service provider within the state.

If military intervention occurs then military forces ought to take precautions in order to allow continued access to water for citizens within the state. In order to ensure that these sources remain available, we need to ensure that a steady stream of energy is available for these sources to operate. This means that interventions ought to keep energy infrastructure intact so that these systems can continue to supply water for those who depend on it. The source of water these systems require cannot be blocked, disrupted or destroyed. Infrastructure that moves water from the source to where it is needed must remain intact and ought not to be targeted. For example, military intervention ought to attempt to minimize damage to water infrastructure including pipes, pumping stations, wells and bore holes. In doing so, the intervening force ensures that those within the state are able to realize the right. If these water systems are in some way compromised, the intervening force ought to provide short term water resources to the affected areas in order to minimize the effects until the functions of these systems are restored. In regions where these services are not provided by governments, military intervention needs to ensure that it does not hinder the collection of water and allows for safe physical access to a safe source of water.¹⁸⁴ This can be done by the provision of security forces within the area, or through the provision of resources if security cannot be ensured.

¹⁸⁴ Note that I make a similar recommendation in the upcoming section on the responsibility to rebuild. During intervention and rebuilding action ought to be taken in order to ensure safe and secure access to a clean water source. The actions within the responsibility to react and rebuild will connect and overlap.

If direct military intervention takes place then the intervening force must conduct operations in order to eliminate the factors causing the mass atrocities, but they must also provide short-term resources to those affected. If the genocide is based upon or consists of actions that deprive groups of water, then once they are able to do so they should deliver supplies in order to end such deprivation. Without this response, the mass atrocity will continue even though those who perpetrated the crime may have left or have been removed. These resources ought to be provided in the short term until access to a local source is restored, and does not need to be continued beyond the length of the mission, however restoring and creating water services will occur within the rebuilding phase.

3.4.3 Example: The Sri Lankan Civil War

In order to illustrate this I will discuss the example of the Sri Lankan civil war. In 2009, the Sri Lankan army launched a military operation within their borders in order to end a long term conflict with the separatist group Liberation Tigers of Tamil Eelam, also known as the Tamil Tigers, in northern Sri Lanka.¹⁸⁵ The war had claimed the lives of over 100 000 people, with up to 40 000 deaths during the final weeks of the war. At the end of the conflict over 250 000 Tamils were held captive in internment camps where they faced poor access to food, water and healthcare, resulting in an average of 200 deaths per day.¹⁸⁶

¹⁸⁵ Kingsbury, Damien. "Sri Lanka." In *The Responsibility to Protect: The Promise of Ending Mass Atrocity in Our Time*, edited by Jared Genser and Irwin Cotler. (New York: Oxford University Press, 2012). 298.

¹⁸⁶ Ibid.

If we recall the definition of war crimes and genocide each includes the deprivation of the materials necessary for life.¹⁸⁷ In order for these actions to be considered either a war crime or genocide they require intent. Although it is unclear whether these deaths were intentional or not, let us assume for the purpose of this example that the deprivations felt by these prisoners were intentional. Given these conditions, the international community ought to intervene, but given the nature of these war crimes, the fact that they are based upon a deprivation of the materials necessary for life, caution needs to be taken. Sanctions need to ensure that they do not worsen the state of those within the internment camp. If military intervention were to take place with the goal of correcting the conditions found in the camps, resources must be provided to immediately raise the Tamil's level of access to both food and water.

3.5 The Responsibility to Rebuild

3.5.1 Actions within the Responsibility to Rebuild

The responsibility to rebuild must follow the responsibility to react after every instance of military intervention; however when faced with issues of water security this responsibility must take a multifaceted approach. The responsibility to rebuild includes actions in three areas: security, justice and reconciliation, and development. Actions within these three areas are done with the intention of creating conditions within the state so that a mass atrocity does not occur again. In terms of security, the international community has the responsibility to create conditions that provide physical security for

¹⁸⁷ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. *Rome Statute of the International Criminal Court*. (A/CONF.183/9) 1998. Article 1c and 8bxxv.

those within the state. This can be done through the creation or training of a police and/or military force, as well as “the disarmament, demobilization and reintegration of local security forces.”¹⁸⁸ The international community is responsible for ensuring that a proper system of justice and law is functioning in states where one exists, and is created in states where one does not. Finally, development must take place in order to restart the state’s economy. Although this is the responsibility of the international community, projects within these three areas must be passed on to local authorities as quickly as possible.¹⁸⁹ The three areas of focus within the responsibility to rebuild are important after an intervention in a water based mass atrocity, however in order to be fully effective we must take a broader definition of security into consideration.

3.5.2 Rebuilding After a Water Atrocity

Within the responsibility to rebuild, we see a definition of security that encompasses physical, economic and legal security.¹⁹⁰ When intervention is conducted to correct a mass atrocity that involved some form of water deprivation we must use a broader definition of security and incorporate basic levels of resource security into this phase, especially water security. Water security is defined as “the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human well-being and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving

¹⁸⁸ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 41.

¹⁸⁹ Ibid, 42-43.

¹⁹⁰ Ibid, 40-42.

ecosystems in a climate of peace and political stability.”¹⁹¹ During a mass atrocity, access to water for a portion of the society may have been eliminated or severely limited. Citizens within these states may have their water directly pumped to their home or they may need to collect water at a nearby source. In order to achieve a reasonable level of water access, a basic infrastructure needs to be rebuilt and repaired, and if no infrastructure was available prior to the intervention and the majority of citizens collected water from a nearby source then the international community must ensure the ability to continue to collect such water and ensure that those who do are physically secure while they do so. This can be done through the actions within the responsibility to rebuild, however the focus must be broadened from basic physical security to incorporate water security. In states where water access was limited prior to military intervention infrastructure may need to be built but we must also build capacity. In order to ensure that the rights of those within the state can be fulfilled, the international community may need to conduct projects to increase the state capacity to provide water for various uses. For example, in Afghanistan, the Canadian International Development Agency is creating new capacity in the water sector in Kandahar province through the reconstruction of the Dahla Dam. Through this project it is estimated that approximately 80% of citizens within the region will have access to a secure water supply that they can then use for their own needs and agriculture.¹⁹² In order to create and sustain these new capacities new

¹⁹¹ United Nations Water. “*Water Security & the Global Water Agenda: A UN-Water Analytical Brief.*” 2013. 1.

¹⁹² “Signature Project: Dahla Dam and Irrigation System.” Canadian International Development Agency.

organizations or governmental institutions will need to be created in order to manage them.

3.5.3 Example: Rebuilding after the Sri Lankan Intervention

In the hypothetical example of intervention in Sri Lanka, we saw the international community intervene in order to stop war crimes and genocide being conducted by the Sri Lankan army. After this intervention is complete, the international community is obligated to rebuild communities, infrastructure and society in Sri Lanka to ensure that this does not reoccur. In order to do this, there would need to be negotiations and reconciliation between the two opposing sides, but in order to ensure that the kind of mass atrocity that occurred does not reoccur, the international community needs to ensure that the Tamil people are able to meet their basic needs wherever they choose to settle, especially their access to food, water and healthcare.

3.6 Criticism: What if the state is has limited water resources?

Some of the solutions that are suggested in this chapter revolve around the assumption that there are enough water resources to fulfill the needs of the people within the state. However, in countries where this is not the case it will be very difficult for us to uphold the human right to water through the solutions above.¹⁹³ If an agent were to attempt to prevent a mass atrocity through the methods available to them in prevention

¹⁹³ Some may say that this sentence presents a circular fallacy. If it is difficult for a state to uphold the human right to water due to minimal water resources then they should not be held responsible, and R2P should not be invoked. In response to this I would argue that, although this is the case, it would invoke the ICISS version of R2P since these conditions were created due to state inability, however other requirements for military intervention would not be fulfilled. Military intervention would not be considered proportional means to the situation. Invoking the responsibility to prevent would allow the international community to assist in the situation.

then we would not be able to fulfill the right for everyone, however through these actions we would attempt to fulfill the right for a majority of people, or lessen the violation. If the situation were to escalate and an intervention were to occur then resources could be provided, however any rebuilding phase will have difficulty creating a system that is able to supply the resources required. For example, we could look to the in-flow of water from transboundary water resources, however this too poses a problem as upstream and downstream neighbours each have an interest in the flow of water and any solution will require negotiation and compromise. Although it is not impossible to do so, extra resources and care will be needed. In order to counter this, I advocate for a positive approach to water management in which we increase water supply, appropriately manage water, as well as limit demand.¹⁹⁴

3.7 Conclusion

The actions that we must take in order to uphold the human right to water or correct mass violations of it are different within the responsibility to prevent, react and rebuild. Within the responsibility to prevent we must ensure access to a safe and sustainable supply of drinking water for all. This can be done through a variety of projects but also through management of supply and limiting demand. Within the responsibility to react we must ensure that sanctions do not hinder the ability of an individual to meet their water needs and if military action occurs we must take into consideration the basic water needs of citizens and ensure that their access is not limited due to the tactics used by intervening forces. When such military intervention ends we must ensure that society is

¹⁹⁴ Swain, Ashok. "Water Wars: Fact or Fiction?" *Futures* (2001): 776.

rebuilt in order to ensure that such mass atrocities do not reoccur. Rebuilding will require the rebuilding of physical infrastructure and capacity but also the creation of institutions and practices that allow these programs to continue when intervening forces leave.

Chapter 4

Who Can and Who Should Help?

Thus far this thesis has drawn a connection between serious violations of the human right to water and the three responsibilities within the Responsibility to Protect: the responsibility to prevent, react and rebuild. In the previous chapter, I outlined the various actions and precautions that ought to be taken when conducting such intervention and found that prevention, reaction and rebuilding must go beyond their usual response and ought to incorporate actions that promote the realisation of the human right to water. This chapter aims to determine who can and should help when we invoke the Responsibility to Protect due to a violation of the human right to water and at which stages action from each of these agents is appropriate. Given the varying responsibilities and stages within R2P there will be a wider variety of agents due to its focus on prevention and rebuilding in comparison to a framework of intervention that consists solely of military intervention.

Within this chapter I aim first, to introduce principles to guide institutional practice when assigning remedial responsibility for humanitarian efforts and second, show that there are many different agents that can assist with the responsibilities within R2P. R2P provides us with reason to intervene, however through the introduction of these principles I will show that there is reason to provide legitimacy to some agents over others. I will first determine how an agent ought to be selected when intervening. In order to do so I will analyse two theories: James Pattison's effectiveness theory and David

Miller's pluralist approach, also known as connection theory. Each approach assigns remedial responsibility based on a set of criteria. Remedial responsibility is the responsibility assigned to an agent to correct the situation. Although these approaches differ, I will argue that by combining them we can create a more satisfactory account that does not have the problems found in each theory when separate. This section will focus heavily on military intervention and how to assign remedial responsibility to intervene militarily. It should be noted that this is a reflection of the literature on the subject and not a reflection of the importance of military intervention in R2P. Third, this argument will be extended to the three responsibilities within R2P and I will extrapolate in order to determine which agents can and/or should act at each stage of responsibility. From this I will conclude that, although a remedial responsibility can be assigned in the reaction and rebuilding phase, it cannot be assigned at the level of prevention. Although there is not a remedial responsibility to prevent such mass atrocities it will be in the best interest of reactionary agents to prevent such mass atrocities in the first place. Furthermore, when assigning remedial responsibility to agents it is beneficial to assign such responsibility to multilateral agents instead of unilateral agents.

4.1 Who Should Help: Choosing an Agent to Intervene

When the state fails to respect the human rights of their citizens, the international community is obliged to take on that responsibility in its stead, sometimes even infringing upon the violating state's sovereignty in order to uphold these rights. When discussing military intervention we are confronted with the question: who ought to intervene? R2P does not identify a specific agent that is responsible for intervening, however it places a

fallback responsibility on a set of agents, the international community. Responsibility for upholding the human rights of citizens typically falls to the state in which those citizens reside; however upon failure to uphold this responsibility, the international community's fallback responsibility is activated.¹⁹⁵ Since this does not place responsibility on a specific agent, James Pattison claims that such a duty will remain imperfect in the sense that "it cannot be morally demanded of any particular state."¹⁹⁶ In order to create a perfect duty we must determine a condition that identifies a particular agent so that we can place this demand on that agent. When using the term "agent" I am referring to either a unilateral agent, such as Spain, or a multilateral agent, such as NATO, the African Union or other collaborations.

I will argue that a capable agent ought to intervene. A capable agent is one that is effective and can bring about the necessary changes at a low cost to them. However, it is often the case that we are faced with situations in which there are multiple capable agents and thus the duty remains imperfect. In situations in which there is more than one capable agent we ought to take a pluralist approach and consider moral responsibility, causal responsibility and communal connections in order to determine which capable agent ought to intervene.

4.1.1 James Pattison: Effectiveness Theory

¹⁹⁵ Ibid., 17.

¹⁹⁶ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 264.

In order to overcome the problem of imperfect duties Pattison, assigns remedial responsibility to an effective agent. An agent is effective when it is expected that they would be able to end such mass atrocities in the state in which they occur. This criterion is mirrored in the ICISS report since any military intervention must have a reasonable chance of success or else such actions cannot be justified.¹⁹⁷ James Pattison identifies five characteristics that determine the effectiveness of an agent when we are discussing military intervention: military resources, non-military resources, a realistic strategy, the ability to respond on time and perceived legitimacy. Although we will take each of these into consideration when determining which agent will be most effective, circumstance will ultimately dictate which characteristics ought to be emphasized over others.¹⁹⁸

1) *Military Resources*

First, an effective agent must have appropriate military resources. Without appropriate military resources the agent will be unable to stop the mass atrocities that are occurring since these resources are required in order to be successful.¹⁹⁹ In order to intervene successfully, a state requires not only a number of well trained personnel, but also military equipment, effective transport capability, and logistical support. Although in some circumstances, a few of these military capabilities will not be needed, in the majority of cases those who intervene will require all four of these resources.²⁰⁰ If a state

¹⁹⁷ ICISS. *The Responsibility to Protect*. Ottawa: International Development Research Centre, 2001.

¹⁹⁸ Some or all of these criteria will apply when we are discussing preventive and rebuilding action as well.

¹⁹⁹ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 266.

²⁰⁰ Ibid.

does not have the military resources needed to end the atrocities then they cannot be held responsible for correcting them, however it is important to note that even though one state may not have the military resources to end the atrocity they may pass such a threshold if they were to collaborate with other states and combine their limited resources. For example, in order to intervene in Mali French forces required a variety of military resources, one of them being air transport. At the request of the French government the Canadian government was able to send an RCAF-C17 military transport plane in a non-combat role. The plane, used for transporting supplies for French troops, successfully increased the military capacity of French forces in Mali allowing the fighting force, comprised of personnel and equipment from multiple countries, to be more effective.²⁰¹

2) *Non-Military Resources*

In order to intervene successfully an agent also needs non-military resources. This includes the economic ability and political will to support such an intervention. These non-military resources aim to ensure ongoing political and economic support throughout the duration of the intervention. Once again, if a single state does not meet this requirement then multiple states can collaborate in order to fulfill this requirement. For example, it may be the case that a single agent has the military resources required for intervention in another state but does not have the ability to fund an intervention or the political power to support it. Alternatively, another state could provide financial resources without contributing militarily.

²⁰¹ "Canada Sending C-17 Transport Plane to Help Allies in Mali." *CBC News*, January 14, 2013.

For humanitarian interventions that take place within the framework of the United Nations, financial support for peacekeeping operations is the responsibility of all members of the General Assembly. The United Nations General Assembly, through Resolution 55/235, created a system that provides financial assistance for member states participating in peacekeeping operations. Even though the financial burden for peacekeeping operations is the responsibility of all member states, states who participate in peacekeeping, those who possess fewer financial resources will receive the highest level of financial support.²⁰² With this system in place, economic capability is no longer problematic for states, since those that cannot shoulder such a burden can receive assistance from the international community.²⁰³

3) *A Realistic Strategy*

In order to use both military and non-military resources an effective agent must also have a realistic strategy. In order to create a realistic strategy the agent must accurately assess the situation and determine how it can intervene given available resources and limitations.²⁰⁴

4) *The Ability to Respond in a Timely Manner*

An effective agent must also be able to respond to the atrocity in a timely manner. In order to be able to do so they must be prepared and able to deploy their military and

²⁰² United Nations General Assembly. *Scale of assessments for the apportionment of the expenses of United Nations peacekeeping operations*. (A/RES/55/235). Section I & II

²⁰³ Even with this system in place, military capability is still required to be effective. Although financial assistance is available to less developed countries, if these countries do not already possess the appropriate military equipment prior to intervention. This financial assistance is meant to reimburse states for their efforts, not increase their military capability.

²⁰⁴ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 266.

non-military resources quickly.²⁰⁵ This can be achieved through economic and technical capability, or through geographical location. States that have higher technological abilities are able to transport their military resources quickly and easily over long distances. States that share a border or are within the same region as the atrocity may not have the technological ability to transport their military and non-military resources over long distances but, due to their geographical location, they can respond quickly. Multilateral agents may be able to do both, and therefore an agent that consists of a group of states may be able to meet this requirement more easily. For example, the African Union consists of members across the African continent. If a mass atrocity were to occur in Zimbabwe then neighbouring members may intervene quickly due to their geographic location. Other members may have the ability to transport their resources to where they are needed, and in doing so the African Union can respond quickly to mass atrocities across the continent.

5) *Legitimacy and Perceived Legitimacy*

In order to be effective, the agent needs to portray a sense of authority and legitimacy. Legitimacy is one of the criteria for military intervention within R2P²⁰⁶, and can be granted in multiple ways. The primary responsibility for lending legitimacy to intervention falls upon the United Nations Security Council. According to article 24 of the United Nations Charter, the primary responsibility for maintaining international peace

²⁰⁵ Ibid, 266.

²⁰⁶ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 32.

and security falls to the Security Council.²⁰⁷ With this responsibility comes the ability to lend legitimacy to intervening states, however the Security Council is not the only institution that can provide the legitimacy needed to intervene successfully. If the Security Council fails then the General Assembly can make recommendations on issues of international peace and security under article 11 of the UN Charter, however they are limited in when they are able to do so. The UN Charter also allows for regional organizations, such as the African Union or NATO, to play a role in the authorization of military intervention. Article 52 states that these organizations ought to “make every effort to achieve pacific settlement of local disputes.”²⁰⁸ However, these regional organizations do not have independent authority, as article 53 states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.”²⁰⁹

Although there are multiple pathways to receive legitimacy and authorization for military intervention, according to Pattison, states do not require actual legitimacy, but perceived legitimacy in order to be considered effective.²¹⁰ Each of the methods above is one path to legal legitimacy, and receiving such legitimacy from these international institutions ought to be priority, however there are instances when these institutions are frozen due to disagreement even though the situation on the ground meets all necessary criteria for intervention. If this is the case, then it may be possible to have the perception

²⁰⁷ United Nations Department of Public Information. *Charter of the United Nations and the International Court of Justice*. 1986. Article, 24.

²⁰⁸ United Nations Department of Public Information. *Charter of the United Nations and the International Court of Justice*. 1986. Article, 52.

²⁰⁹ *Ibid.*, Article 53.

²¹⁰ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 267.

of legitimacy if the actions conducted by the intervening state are in line with the opinions of the local population.²¹¹ Actions that align themselves with local opinions and desires will be perceived as legitimate to the local population and allow for some sense of perceived legitimacy from the local population and the international community even if legitimacy was not lent to the intervention through one of the international bodies mentioned above. Although achieving a level of perceived legitimacy without approval from a higher institution is possible, I recommend it only as a last resort. Receiving legitimacy from a higher institution acts as a safety measure to ensure that the conditions on the ground warrant intervention, and that the intervening states meet all necessary requirements. Without an impartial look at intervening states, these states may have alternative motives and intend to intervene for their own benefit. As states form larger collectives for intervention it becomes less likely that intervening states will have alternative motives.

Circumstance

Taking these criteria into consideration allows us to determine which agent will be most effective in order to stop mass atrocities; however the effectiveness of any agent is dependent on circumstance.²¹² Although one agent may be effective in certain conditions, it may not be as effective in another. Some interventions require different military capabilities, different kinds of non-military resources, alternate strategies and varying response times. Although each of these characteristics will be needed, the required levels

²¹¹ Ibid.

²¹² Ibid.

of each will vary dependent on circumstance. Given these varying circumstances some agents may be effective in some circumstances, but ineffective in others.

4.1.2 Effectiveness as First Principle

Humanitarian intervention, in a military sense, involves the use of force and has the potential²¹³ to create an increased amount of human suffering in comparison to non-intervention.²¹⁴ Pattison provides us with two reasons for why we ought to focus on effectiveness when assigning responsibility to intervene. First, when a mass atrocity occurs, the kind of suffering that is involved is one of “the greatest moral wrongs that can happen to an individual.”²¹⁵ Second, such humanitarian crises do not occur to single individuals, but on a mass scale. Therefore, we have the worst moral wrong occurring on a massive scale to multiple individuals.²¹⁶ This combination places great importance on ending mass atrocities quickly and in an effective manner. Not only are the actions involved within these atrocities the worst actions that one can commit towards another in a moral sense, but as a mass atrocity crime they are occurring on such a large scale that we ought to value ending these atrocities over all other options. Therefore, the agent who will have the greatest “beneficial impact” is chosen to act.²¹⁷ In order to have a reasonable chance of success the intervening agent must reach a level of effectiveness in which they will be able to end the mass atrocity. In order to do this, the agent will require an

²¹³ It could also be argued that all actions with the Responsibility to React have this potential. Sanctions can lead to further suffering of the citizens of the state if not done carefully. In chapter 3 I have given an outline of how we can limit the dangers of sanctions, however Pattison focuses solely on military intervention.

²¹⁴ Ibid, 265.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

appropriate mix of the five criteria of effectiveness: military resources, non-military resources, a realistic strategy, the ability to respond quickly, and perceived legitimacy. Although each criterion must be satisfied in the slightest, the amount of each resource will be dependent on circumstance.

Although we ought to choose an agent that is capable of ending such mass atrocities, the duty remains imperfect. We rarely find ourselves in a situation in which there is a single effective agent. Therefore, focusing solely on effectiveness does not solve the problem of imperfect duties since there are multiple effective agents and ineffective agents that can become effective when grouped together. Since there are multiple effective agents, assigning a particular duty on a single agent will be difficult, and therefore the duty remains imperfect. In order to correct this we require a second set of criteria. Through a second set of criteria we will be able to come closer to determining which singular agent from the group of effective agents ought to be chosen. As we will see, when selecting an effective agent that also meets this broader set of criteria we will be able to achieve a greater sense of legitimacy in cases that warrant military intervention.

4.1.3 David Miller's Connection Theory: A Pluralist Approach

David Miller identifies five methods of assigning remedial responsibility that can be used to determine which agent is responsible for correcting violations of human rights in other states, and through this assign a duty to one such agent. These methods of assigning responsibility are causal responsibility, moral responsibility, capacity, benefit and community. Each of these aims to assign remedial responsibility from agent to victim

by determining the connection, or connections, between the two. In this section I will discuss each criterion as well as the problems that David Miller identifies with each when we attempt to use a single criterion to determine which agent is responsible. Through this, Miller will show that, although a single criterion can create a connection between the victim and agent and therefore assign a remedial responsibility, there is no single criterion that will work in all situations. Each criterion will have instances in which it will either assign remedial responsibility in situations where we believe it should not be assigned, or fail to assign remedial responsibility in situations in which we believe it should be assigned. Through this analysis Miller aims to show that we must take a pluralist approach when assigning remedial responsibility.

1) Causal Responsibility

If an agent is causally responsible then they played a role in creating the present conditions within the state. Although this creates a clear connection between the agent and the victim, causal responsibility is problematic for three reasons. First, there are often cases in which there is no agent that can be identified as causally responsible. For example, if a drought were to occur in Pakistan, causing large portions of the population to lose access to a reliable supply of food and water, then we cannot assign a causal responsibility to a particular agent. In cases of natural disaster it is accepted that the international community should assist if the state is unable to do so; however there is no identifiable agent that caused this disaster, and therefore we cannot assign

responsibility.²¹⁸ Second, there are also instances in which we can assign moral or casual responsibility to multiple agents.²¹⁹ For example, if the government had privatized water services in a state with poor regulatory measures then a corporation may be able to increase the price of water so that water services are beyond the reach of the poor. The government is partially responsible since they created the weak regulatory practices that allowed for these high prices; however the corporation is also responsible since they enacted the policy that caused the price increase. If both can be held causally responsible then it becomes difficult to assign the responsibility to one particular agent. Finally, there are some situations in which we can identify an agent as responsible for the conditions faced by the victims but the agent's actions were justifiable, and therefore they do not hold responsibility to remediate the situation.²²⁰ For example, if agreements had been made that allow riparian neighbours to withdraw a specific amount of water from the river in order to fulfill the right to water of their citizens then they are permitted to do so. However, if water supplies vary and the agreement does not take this into consideration, then we cannot blame these riparian neighbours for extracting their allotted amount even if this leaves fewer water resources for those downstream. If we were to use causal responsibility as our sole criterion for determining responsibility then we would assign responsibility to some agents that ought not to be responsible and will be unable to assign responsibility to an agent in other situations.

2) *Moral Responsibility*

²¹⁸ Miller, David. "Distributing Responsibilities." *The Journal of Political Philosophy* (2001): 456.

²¹⁹ *Ibid.*, 458.

²²⁰ *Ibid.*

Connecting the agent and victim through moral responsibility requires that we analyse the agent's behaviour and in doing so we must ask whether or not the agent's actions are morally blameworthy.²²¹ This will require us to ask further questions concerning the agent's intent or if the outcome of the agent's actions were foreseeable. Using moral responsibility to determine remedial responsibility is problematic for two reasons. First, there are cases where agents are causally but not morally responsible for their actions.²²² For example, if riparian water user A is allotted X amount of water from the river, then it seems unfair to blame this water user for the impacts of such water withdrawal on downstream community B. Although we would say that A is causally responsible for any decrease in living standards downstream, we would not morally blame them. Second, it also fails to deal with actions that, although harmful, are justifiable.²²³ For example, if one community that was experiencing drought had to unlawfully divert water from another community with an excess of water in order to meet its basic needs then we would not morally blame the drought stricken community even though their actions may lower water levels in the water rich community. With these two cases in mind we can see that by focusing solely on moral responsibility we will fail to create a connection between agent and victim in situations in which there is causal but not moral responsibility, and in situations in which there are harmful actions that are justifiable.

3) *Capacity*

²²¹ Ibid., 455-6

²²² Ibid., 459

²²³ Ibid., 459.

If we were to determine responsibility based upon capacity²²⁴ then we must take two different factors into consideration: effectiveness and costs.²²⁵ If Sweden is experiencing a water based mass atrocity in which one group has decreased or eliminated access to water in order to intentionally end the lives of another group then the international community would be obligated to intervene. Let us assume that Norway, Finland and Denmark are the only effective agents in this case. If we are focusing solely on effectiveness then we would pick the most effective of the three, let us assume that this is Norway, and assign remedial responsibility to them. However, we must also consider the cost of intervention. Perhaps intervention would be overly costly to the Norwegians due to political connections in Sweden, or conducting such a military operation would detract from its much needed work elsewhere. In this case we may wish to choose Denmark or Finland to act since their overall capacity, their effectiveness minus cost, is greater. Focusing solely on capacity is problematic for three reasons. First, costs and effectiveness do not factor into a view of moral responsibility. If an upstream neighbour intentionally polluted the water to an extent that it became undrinkable downstream then we would believe that they ought to remediate the situation whether they are capable to do so or not. Second, by focusing on the present capacity of the agent we “neglect to ask how variations in capacity have arisen”.²²⁶ For example if two riparian communities are dependent on rain water collection to supplement their water supply for the upcoming dry season. Each community could have spent the rainy season collecting water in their

²²⁴ I understand James Pattison’s idea of effectiveness and James Miller’s use of the word capacity to be similar but not the same. This will be dealt with in an upcoming section in which I aim to determine if these two theories can be used together to create a more robust assignment of responsibility.

²²⁵ Ibid., 461

²²⁶ Ibid., 461.

storage tanks, however only community A did so. Community B simply chose not to and instead used all of its water for irrigation of crops. When the dry season comes community B does not have the necessary water resources to meet the basic needs of its people. In this situation it does not seem like community A is responsible for the conditions that community B finds itself in. However, if community B could not collect rainwater because their rain water collection system was damaged beyond repair in a storm, then we would say that they should assist them to meet their water needs. Finally, capacity may not be strong enough to determine a remedial responsibility without a stronger link from one of the other criteria. To return to our Scandinavian example, Norway, Denmark or Finland is chosen because of their capacity to act in relation to the cost of doing so, however it may be the case that the mere ability to intervene is not sufficient to create a moral responsibility, and therefore we need to defer to capacity after identifying agents that have another connection to the victim.²²⁷ With these three reasons a focus on capacity alone will not create a strong enough connection to assign a moral responsibility and ignores how capacities have developed over time.

4) *Benefit*

An agent can also be held remedially responsible if they have received benefit from the harm done.²²⁸ For example, we have communities A, B and C at a junction in a river located so that A is upstream from both B and C at the junction of the river, and B and C are downstream along separate branches of the river. For agricultural reasons,

²²⁷ Ibid., 461-62

²²⁸ Miller, David. *National Responsibility and Global Justice* (New York: Oxford University Press). 103.

community A diverts water from the branch of the river leading to community C and any unused water flows to community B. Although community B was well off before the diversion, the excess flow is used to generate power and increase crop production. However, due to the water diversion community C is suffering and no longer can meet their food, energy and water needs. Although B did not act immorally, a connection can still be made between both communities B and C since B is a beneficiary of C's now degraded condition. Being a beneficiary of such an action does not create a strong connection, and in many cases we would not hold an accidental beneficiary responsible. However, in cases in which the causal agent is now gone or unable to assist the agent that benefitted can be held responsible. Beyond the connection between B and C, it may also be the case that the beneficiary, community B, would be in a better position to help due to such benefits and therefore can be an effective agent at a minimal cost.²²⁹

5) *Community*

The final principle that Miller discusses is that of community. An agent is a part of another's moral community if a special tie exists between them. For example, one agent may be a family member, friend, have the same nationality, culture, etc.²³⁰ Similar to creating a connection through moral responsibility, causal responsibility, capacity and benefit, this too is problematic if we use it as our sole criterion. First, a focus on communal ties does not explain situations in which we have remedial responsibilities without such a communal connection. For example, if one person were to pollute the

²²⁹ Ibid.

²³⁰ Miller, David. "Distributing Responsibilities." *The Journal of Political Philosophy* (2001): 463.

water source of another then we would believe they have a remedial responsibility whether or not there is a communal connection. Second, an agent may be remedially responsible simply because they are the only one able to assist. For example, if a community in one Canadian province experiences an E. coli outbreak in their water supply then those within their community, typically the provincial government, federal government or local water institutions, would be responsible to remediate the situation. However, if there are no institutions or groups within the broader community that is capable of assisting, then an agent outside of that community will be assigned remedial responsibility. Finally, placing remedial responsibility on agents due to a communal connection does not tell us how responsibility ought to be distributed within communities.²³¹ In the case of the E. coli outbreak we could hold the provincial governments, federal governments, or even local water institutions responsible. Although we can assign a responsibility to one community or another there will be multiple agents within a community and multiple communal ties. By creating a connection between victim and agent through community we are unable to assign a duty to a particular agent.

The Pluralist Approach

David Miller successfully identifies five criteria that can be used to create a connection between the agent and the victim, and therefore assign remedial responsibility to them; however focusing on a single criterion will never give us a satisfactory method to assign such responsibility in all cases. In order to correct this, Miller advocates for a pluralist approach in which we see each of these five criteria as a way to connect the

²³¹ Ibid.

victim and agent in a sense that allows us to single out an agent as remedially responsible. When the situation calls for it we will assign responsibility to an agent that is causally responsible. In others we will assign remedial responsibility based upon moral responsibility, a communal connection, the benefit derived from such action or the capacity of the agent.²³² There is no specific order that these principles ought to be applied; however there may be circumstantial reasons to defer to one criterion before another.²³³ Although following a pluralist approach allows us to determine remedial responsibility in every situation it does not align with the values that we ought to uphold when conducting state intervention to end mass atrocity. When conducting state intervention we always ought to attempt to stop such mass atrocities and in order to do so we require an effective agent in every instance.

4.2 Giving Capability Priority within a Pluralist Approach

Thus far we have explored two theories that assign remedial responsibility to agents. First, we explored James Pattison's idea that effectiveness ought to be the sole criterion that is used to determine which unilateral or multilateral agent ought to intervene. However, this does not effectively solve the issues of imperfect duty since even if we assign responsibility to the most effective agent there are almost always multiple effective agents, and states can group together to become effective even if they are not effective on their own. Second, we explored David Miller's pluralist approach to assigning remedial responsibility. Although this allows us to assign a duty to an agent

²³² Ibid., 471.

²³³ Ibid., 470.

through the use of multiple factors, it does not assign such a responsibility to an agent that is capable of ending mass atrocities in every instance. The sole use of the pluralist approach may assign a remedial responsibility to agents that cannot stop such mass atrocities. Within this section I will combine these two approaches. In doing so I will attempt to solve the issue of imperfect duty and assign responsibility in a way that has the potential to create legitimacy in instances of humanitarian intervention. First, I will describe how Pattison's "effectiveness" and Miller's "capacity" can be combined to create what I call "capability". Second, I will describe how a pluralist approach that assigns responsibility through effectiveness first, and all other criteria second, will solve the issues that are present in each of these theories when used alone.

4.2.1 Defining Capability: Combining Effectiveness and Capacity

David Miller and James Pattison each identify criteria that can create a remedial responsibility in the agent. James Pattison's idea of effectiveness comes from the *jus ad bellum* criterion for justified military intervention, mainly that an agent must have a reasonable chance of success.²³⁴ So long as the agent is deemed to have a reasonable chance of success then they can be considered effective. On the other hand, David Miller uses a more robust idea of capacity, which he states is a combined version of effectiveness and cost.²³⁵ These two definitions are not antagonistic, and if we wish to be able to determine the most capable agent then we must take both the effectiveness and cost to that agent into consideration.

²³⁴ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 265.

²³⁵ Miller, David. "Distributing Responsibilities." *The Journal of Political Philosophy* (2001): 461.

When discussing capacity we are discussing the effectiveness as well as the costs that the agent must bear when taking such action. Although Pattison does not take costs into consideration, without consideration of the cost of intervention to an agent assigning remedial responsibility may be overly burdensome. For example, if a mass atrocity were to be committed in Syria then we may find Turkey to be an effective agent, however without consideration of the costs their true effectiveness cannot be determined. Perhaps it is the case that, although Turkish intervention would have a high level of success, Turkish forces would face high losses making this responsibility overly burdensome on Turkey. Cost is heavily dependent on circumstance and effectiveness. For example, cost is dependent on effectiveness since it may be the case that intervention in a Syrian mass atrocity could be conducted differently by an agent with different capabilities and therefore have a lower cost. For example, perhaps an American force could intervene in Syria given their greater military capabilities, or perhaps they could place a no-fly zone over the state at a low cost to themselves. Cost is also dependent on circumstance since such actions will only be appropriate if the circumstances allow such tactics to be successful. Therefore, effectiveness, cost and circumstance come together to be able to determine which agents are capable. I will refer to this combined definition of effectiveness, cost and circumstance as capability.

4.2.2 Assigning Responsibility using Capability as First Principle

In cases of mass atrocity we ought to take capability to be the first principle that we consider when dealing with such mass atrocities. Although I agree that it is problematic if we use capability as a sole criterion, using a pluralist approach that gives

priority to capability takes this into consideration while also recognising the severity of mass atrocity and the priority of remediating such atrocities. As Pattison states, these atrocities are “perhaps the greatest moral wrong that can happen to an individual”.²³⁶ Not only are they the worst imaginable crimes but they are also occurring on a large scale to multiple individuals. As such, in assigning responsibility we ought to choose an agent that will be the most effective in ending these atrocities.²³⁷ With this in mind it does not make sense for any other principle other than capability to begin the selection process since our main priority ought to be the immediate remediation of the conditions faced by victims of mass atrocity.

For example, let us consider the Rwandan genocide. If we were to begin the process of selection by choosing the agent that has a communal tie with the Rwandan people then we may choose a neighbouring state such as Uganda. However, it may be the case that Uganda does not have a force with a level of capability high enough in order to be able to stop the atrocities that are occurring, and therefore assigning responsibility to intervene in this situation will not correct these violations. Starting with causal or moral responsibility has the potential to face the same issue. Although an actor may have a causal or moral link to the conditions faced by the victims or may have even benefited by these mass atrocities, assigning responsibility to these agents does not necessarily align with the goal of such interventions and may even allow such atrocities to persist in spite of intervention if the causally or morally responsible agent does not have the capability to

²³⁶ Pattison, James. "Whose Responsibility to Protect? The Duties of Humanitarian Intervention." *Journal of Military Ethics* (2008): 265

²³⁷ *Ibid.*, 265.

intervene successfully. Assigning responsibility to an agent that has benefitted from the atrocity may also assign such responsibility to an incapable agent, even though such benefits may provide what is needed to intervene. By giving priority to any one of these principles we risk choosing an agent that is incapable of remediating the situation due to circumstance, a lack of effectiveness or excessive cost. Although these agents can play a role within such an intervention, they cannot be assigned the sole responsibility to remediate if they are deemed incapable.

If we are to assign remedial responsibility based upon the principle of capability prior to the use of causal responsibility, moral responsibility, benefit and communal ties then we would choose an agent that has the ability to end these atrocities in every instance. However, even if we use capability as our main criterion to assign remedial responsibility, the reality is that we have a variety of agents that are capable of ending such mass atrocities and therefore the duty to intervene would remain imperfect. When this occurs the other principles within the pluralist approach must be taken into consideration so that we can narrow the field of potential agents and assign the duty to intervene. Once we determine which group is capable of intervening we can then determine who is morally or causally responsible, has a communal tie to the state or victims within the state or who has benefitted from such crimes. When we find capable agents with multiple connections to the victims of mass atrocity we are able to increase the legitimacy of such actions in comparison to those that are conducted by an agent that meets the requirements of capability alone. For example, in 2012 French forces intervened in Mali. The French forces were capable agents; however it is difficult for us

to assign remedial responsibility to France through the other factors within the pluralist approach.²³⁸ French intervention may be considered legitimate, however if the African Union were to intervene²³⁹ they would have multiple connections and could be seen as more legitimate both by the international community, state of Mali and its citizens.

We should note that responsibility can also be assigned to multiple unilateral agents at once to form multilateral agents. For example, the African Union is a collection of African states that claims to have the right “to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances” such as war crimes, genocide and crimes against humanity.²⁴⁰ Although one of the states within the African Union may not possess the capability to intervene successfully, together they can pass this threshold of capability and become eligible to be a responsible agent. Assigning remedial responsibility to a multilateral agent may be beneficial since they are able to combine their resources to become more effective in a variety of circumstances while sharing the cost. Since they may fit multiple criteria for assigning responsibility more easily than a unilateral agent, they may be considered a more legitimate agent in comparison.

Even though we are able to narrow the field of responsible agents, it is possible that we will still be unable to determine a single agent or set of agents that will be

²³⁸ Some have claimed that the French state would benefit from the stability of Mali due to its location in East Africa. Due to economic connections between East Africa and France it is possible that they would benefit, however this is not the connection that Miller has in mind through the term “benefit”. The French state may benefit from a stable East Africa, however they did not benefit from the crimes that were occurring within Mali. The second such connection can create remedial responsibility and the first connection creates a self interest in such intervention.

²³⁹ French forces were able to intervene more quickly than African Union forces, however the African Union assisted after intervention had begun.

²⁴⁰ African Union . “Constitutive Act of the African Union.” Article 4, Section h.

remedially responsible. In most cases one of the principles that I have discussed will allow one agent to be assigned remedial responsibility over other agents, however we may find situations in which we cannot do this and are left with two or more agents. Although this is the case, I do not see this as problematic. If this is the case then institutional arrangements or agreements could be put in place to determine which of those agents ought to intervene or those agents may agree to share the responsibility and coordinate their actions to share the burden.

4.3 Who Can and/or Should Act to Prevent, React and Rebuild?

Now that we have determined a method to assign remedial responsibility to agents I will discuss who we ought to assign this responsibility to within each of the areas of the Responsibility to Protect. Through the five criteria that I have discussed we can assign remedial responsibility to agents in the responsibility to react and rebuild, however we cannot assign a responsibility to prevent. Within this section I will determine what a capable agent looks like at each stage of responsibility within R2P and determine what kinds of agents can meet these criteria and be deemed capable.

4.3.1 The Responsibility to Prevent

Defining Capability for Prevention

In order to be considered a capable agent when intervening militarily, you require military resources, non-military resources, a realistic strategy, the ability to respond promptly, the possession of legitimacy and must be able to intervene at a reasonable cost. Although these criteria work well for military intervention, they do not fully translate when assigning responsibility for prevention.

When prioritising capability in the responsibility to prevent we will place less emphasis on military resources, and more on non-military resources. In order to prevent mass atrocities at their root cause, military capabilities are not necessarily required. Instead, an effective preventive agent at this level will require appropriate non-military resources. This will include economic, political and technological resources. In order to organize, manage and operate successful programs and implement change financial and political influence as well as cooperation are required, however groups that implement preventive measures require a certain technological level and the ability to introduce these technologies successfully.²⁴¹ Even if one agent does not have these capabilities, preventive agents too can collaborate with others to meet these thresholds. Although these agents do not require authorization from an international organization in order to conduct such projects, it is recommended that they achieve a standard of legitimacy by listening to the opinions of the local population and incorporating their requests into the projects they conduct. Without local support for these projects they may be ineffective and unsuccessful.

As mass atrocities become more likely the actions within the responsibility to prevent change as well. With this change from root cause to direct prevention the need for military resources also increases. The threats of sanctions and military action within direct prevention require the capability to follow through should such actions become necessary. If a state that does not have the capability to intervene militarily threatens such

²⁴¹ I am not trying to argue that a technological solution is required. I believe that we already possess the technology required to solve our water crisis; however these groups and institutions require knowledge and access to certain technologies.

intervention in an attempt to end human rights violations before they escalate to a mass atrocity then it is unlikely that the violating group would heed their warning since there will be no effective deterrent to do so.

Which Agents Can and/or Should Prevent?

Although primary responsibility for the livelihood of their citizens lies with the state, there are many non-state agents that can assist when working to prevent mass atrocity. These agents are capable of enacting preventive measures, however their actions are not obligated by R2P. Both root cause and direct prevention require the international community to take different actions, and this will require multiple kinds of agents at these different stages. R2P assigns responsibility to states and although current practices claim that states have an obligation to intervene, preventive agents can assist without possessing such an obligation.

In order to effectively implement root cause or direct prevention, we require detailed information of the situation on the ground. This can be done through a variety of organizations including states, Non Governmental Organizations (NGOs) such as Human Rights Watch or the International Crisis Group, and United Nations institutions such as UN Water, the Human Rights Council, or a special rapporteur assigned to various tasks. With these agents collecting information and providing an early warning mechanism we can determine where such intervention ought to take place. Once these areas have been identified then preventive measures can begin.

Root cause prevention targets the underlying roots of conflict such as “poverty, political repression, and uneven distribution of resources.”²⁴² Although R2P assigns primary responsibility to states, NGOs and other interest groups, states and state sponsored agencies, as well as UN institutions and other unilateral agencies, may be capable to assist in initiating projects which make the necessary changes so as to avoid conflict. NGOs have the ability to implement projects on their own in areas where they are needed, however they may be limited due to the resources available to them. It is not possible for many NGOs to conduct projects on a national scale, but when these local projects are initiated, managed and coordinated properly with other groups within the state they can have a great national affect. States are more likely to be able to organize larger projects in comparison to NGOs due to the funding and diplomatic connections available to them that are not always available to NGOs. We must not forget that states may fund NGOs if they wish to support their work. For example, created in 1996 the Global Water Partnership (GWP) is an international organization comprised of 2500 partner organizations in 161 countries. These organizations are part of thirteen regional partnerships and 80 national partnerships.²⁴³ GWP works with its partner organizations to coordinate their actions at a national, local and regional level to promote sustainable development and water management at all levels.²⁴⁴ Funded by multiple government partners, the GWP links their project partners to the funding and information required for

²⁴² International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001) 22.

²⁴³ Global Water Partnership “*What is GWP?*.” Pg 11.

²⁴⁴ *Ibid.*, 2.

success, while coordinating nationally and internationally to ensure these projects are consistent with others in the region.

Direct prevention methods will typically be state based, however some international institutions will be able to assist with such preventive measures. Direct prevention aims to deter the escalation of conflict to a level of mass atrocity through reforms to economic, political, legal and military sectors. These reforms are completed through threats of military action, sanctions, withdrawal of aid, reconnaissance missions, and other actions that deter the state or groups within the state from further action within a short period of time.²⁴⁵ Although NGOs are capable of withdrawing from their projects within the state, it is unlikely that doing so would have enough force to produce the necessary changes in time to stop a mass atrocity. States, however, have the ability to withdraw large amounts of funding and support, and are able to conduct other actions within direct prevention. States have the ability to send military resources to nearby states in an attempt to deter further escalation, threaten economic or diplomatic sanctions, create economic incentives for compliance, and to do so at a low cost to them. Unlike smaller organizations, states have the ability to implement these preventive measures and bring them to their conclusion, giving states a sense of authority in these matters that other groups cannot achieve. With growing legal authority unilateral institutions such as the International Criminal Court can take part in direct prevention.²⁴⁶ The threatened use of these institutions can cause perpetrators of crimes to consider the consequences before

²⁴⁵International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 23.

²⁴⁶The legal authority of such agents is beginning to come into question, however as these institutions develop they may continue to assist in these situations.

they act.²⁴⁷ For example, in 2005, the Ugandan government referred a situation to the court involving the Lord's Resistance Army (LRA) and their leader Joseph Kony. It had been observed that the LRA had committed crimes against children including "murder, enslavement, sexual enslavement, rape and seriously bodily injury" and that these mounted to crimes against humanity.²⁴⁸ Whether or not this has created change in the LRA is questionable, however the perpetrators of such atrocities may take this into consideration before committing further crimes. Direct prevention can be conducted by multilateral agents as well. For example, the African Union, the European Union, and NATO have the ability to implement preventive root cause measures as well as direct preventive measures. These multilateral agents may have more legitimacy when conducting such preventive measures than if a single state were to do so.

Although there does not appear to be an obligation on states to prevent such conflict, it may be in their best interests since states are those agents that are capable of intervention and are able to circumvent legitimacy concerns. Since states shoulder the responsibility to intervene in an instance of mass atrocity, it may be in their best interest to prevent these conflicts before they arise. Military operations have many costs: economically, politically and through the loss of life. These costs can be decreased and other benefits gained from preventing conflict before it happens, rather than waiting until it is too late.

4.3.2 The Responsibility to React

²⁴⁷ Ibid., 24.

²⁴⁸ Wilson, Tamfuh. "The International Criminal Court: Creation, Competence and Impact in Africa." *African Journal of Criminology and Justice Studies* (July 2008): 109.

Defining Capability for the Responsibility to React

Within the responsibility to react an agent is capable when they are able to effectively remediate the situation at a low cost to themselves, given the circumstances of the atrocity. If an agent has military resources, non-military resources, a realistic strategy, the ability to respond in a timely manner and perceived legitimacy, then they have what is needed to successfully intervene. Although these criteria must be met in order to intervene militarily, there are actions within the responsibility to react that do not require direct military action. For example, agents can implement sanctions with the intent of limiting the ability to continue mass atrocity crimes. Implementing such sanctions does not require military force; however they do require non-military resources that can place pressure on the violating group or state. Although certain actions may require military force, such as an enforced embargo, they may not require the same military resources as a military operation to end atrocity crimes would. As such, effectiveness in the responsibility to react is heavily dependent on the stage of intervention and the actions required within that stage.

Which Agents Can or Should React?

Within the Responsibility to React we see a range of actions from sanctions to direct military intervention. These actions must be conducted by states or groups of states since they are the only agents that have the capability to enact such measures while simultaneously achieving legitimacy standards. For example, although a very wealthy individual could hire others to fight and strategise for them, purchase the technology

required to conduct military operations and respond in a timely manner, it is unlikely that this force would ever be perceived as legitimate. When an agent is capable and can be connected to the victims of mass atrocity through one of the methods I have discussed it provides the international community with reason to lend their legitimacy to that agent. Lending legitimacy to individuals is unlikely to fulfill the requirements within R2P since these agents are more likely than states to have alternative motives.

4.3.3 The Responsibility to Rebuild

Defining Capability for Rebuilding

After a mass atrocity, we still require effective agents to assist. The goal of this stage of intervention is to create a society in which a mass atrocity does not reoccur. In order to do so, we need effective agents that have the capabilities to create such a society and will need to meet similar criterion as root cause and direct prevention. Military resources are required to provide for short-term security needs and to train the local population to provide for their security needs on their own. Although military resources are necessary in a limited sense, there will be a greater focus on non-military resources and strategy. Non-military resources are required in order to rebuild both physical structures and institutions. This requires both expertise and funding, but also political support to gather assistance in the rebuilding effort. The most important aspect during this phase is a realistic strategy. Without such a strategy any attempt at rebuilding will fail at its ultimate goal: to create a society that will ensure that such mass atrocities do not occur again. In order to create a realistic strategy of cooperation amongst the international

community as well as partner organizations, UN institutions and funding sources are required since each project needs to be working towards this ultimate goal.

Which Agents Can and/or Should Rebuild?

The responsibility to rebuild includes actions that aim to restore or create conditions that make mass atrocities unlikely to occur. When we enter into this stage of responsibility there is a larger variety of actions that can be taken in the areas of security, justice and reconciliation as well as development.²⁴⁹ NGOs and UN organizations can assist by organizing and conducting projects within the state in these three areas, however the action of these NGOs does not seem to be obligatory. States are the primary agent of reaction and since they have created some of the physical damage within the state they may be required to correct it. It is also likely that large amounts of funding will be necessary in order to restore stability to the nation. This need for funding and support requires that states are involved in this process since they are the only agent capable of providing such funding.

4.4 Conclusion

The ICISS document of the Responsibility to Protect assigns the responsibility to prevent, react and rebuild to states and the international community, however it does not provide us with guidelines to assign these obligations to specific unilateral or multilateral agents. In this chapter, I have analysed two theories and have shown that when combined

²⁴⁹ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. (Ottawa: International Development Research Centre, 2001). 41.

they become complementary. James Pattison's effectiveness theory assigns responsibility to intervene based on the criteria of military and non-military resources, a realistic strategy, the ability to respond in a timely manner, and a perceived sense of legitimacy. Although this appears to assign responsibility to an effective agent it is almost never the case that we will have only one effective agent, and therefore the assigned duty remains imperfect. David Miller's pluralist approach assigns remedial responsibility through considerations of moral and causal responsibility, capacity, benefit and community. Although these criteria are more rigorous in creating a connection between agent and victim, a method that does not prioritise capability has the potential to allow mass atrocities to continue. When we combine these theories into a pluralist approach that uses capability as its first principle we can manage both of these considerations creating a more robust theory that assigns responsibility to a more specific agent and guarantees that the agent assigned responsibility has the ability to create change. With this combined theory I then applied it to the responsibilities within R2P to determine who can and should or who simply can act. In order to fulfill each responsibility within R2P different actions are required and this requires different agents at each stage. Although there is room for NGOs and other non-state agents to work within the R2P framework, their actions are not obligatory in the way that state action on mass atrocity is obligated by the international community.

Conclusion

In this thesis I have argued that the Responsibility to Protect can be invoked by violations of the human right to water. The world is entering a new era in which water resources are becoming scarce. In the near future many parts of the world will experience water stress, many of which will see current levels of water stress increase. In this thesis, I have argued that it is a logical implication of the tenets of the human right to water and the Responsibility to Protect that violations of the one can invoke the other. The right to water, as a derivative right of the right to life and health has a deep connection to life itself. Through this we can connect the mass atrocities that the Responsibility to Protect aims to prevent and react to, however only in extreme cases. With this connection to the responsibility to react, we can ultimately invoke the responsibility to rebuild after military intervention in such atrocities. Although we can invoke R2P in these extreme cases there are instances where R2P will be unhelpful or where it will be limited. Due to its connection to sovereignty R2P will be unable to resolve transboundary violations of the human right to water, however it can provide assistance until a resolution can be found. We will also find difficulty in intervening in water based mass atrocities in states that do not have adequate levels of water resources.

Although it is possible to invoke R2P in a hypothetical situation, I argue that the human right to water is unlikely to invoke R2P by itself since these mass atrocities are likely to consist of multiple causes. Water is likely to compound with issues such as poverty, weak political institutions, poor leadership and social tension to increase

international tension, create social unrest, and when these issues compound with water issues they have the potential to create or transform into mass atrocities. Following this, I described a variety of actions that would be required to enact such responsibilities. With varying sets of actions and responses within R2P and a focus on the human right to water, I offered possible actions and solutions that can be conducted at each phase of responsibility: the responsibility to prevent, react and rebuild. At each stage of responsibility we ought to protect the basic water needs of those involved and ensure that our actions do not harm or hinder the water access of citizens. Based upon the violations of the human right to water these actions prevent further violations and ensure that such violations are not exacerbated due to reactionary or preventive tactics. Furthermore, I discussed which agents ought to conduct such actions and how we ought to determine which agents should intervene. Focussing on the capacity of each agent, I concluded that a capable agent, one that can act effectively at a low cost to them, ought to act, however our definition of a capable agent changes when we are discussing the responsibility to prevent and rebuild. Due to the nature of activities within prevention and rebuilding, the list of agents that can act is expanded to include NGOs, UN organizations and other non-state agents, however only states possess the capability to intervene while simultaneously overcoming legitimacy concerns. Identifying a connection between the human right to water and the Responsibility to Protect allows for a variety of actions that can bring much needed support and preventive action in the water sector. With this response, interventions can lessen the suffering of victims and ensure that their rights are protected even during military operations. Upon rebuilding, the state will be better equipped to deal

with resource inequality due to scarcity, lessening tension over water resources and ensuring that these atrocities to not reoccur.

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