

WHAT HAPPENED TO THE INTERNATIONAL COMMUNITY? R2P AND THE CONFLICTS IN SOUTH SUDAN AND THE CENTRAL AFRICAN REPUBLIC

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Since the beginning of ethnic and religious conflicts in South Sudan and the Central African Republic in early 2014, it has been clear that crimes against humanity have been committed in both nations by all parties. This intra-state violence has resulted in the loss of thousands of lives, many thousands of injuries, grave human rights abuses and humanitarian crises of dramatic proportions. Pursuant to the new political doctrine of ‘the responsibility to protect’, the two states’ failure to assume responsibility for the protection of the human rights of their peoples might have been expected to trigger the international community’s broader responsibility to intervene to prevent the further commission of mass atrocities. While the United Nations Security Council expressed its grave concern, however, such preventive actions as it took were too little and too late to stem the human catastrophes that unfolded. This article describes and analyses both conflicts, examines the international community’s responses through the UN and associated regional organisations and seeks to explain why, at least in the first year of the conflict, the implementation of the responsibility to protect was again, after Libya and Syria, found wanting.

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I INTRODUCTION

How bad does it have to get before we act? Have we not learned by now from other conflicts that the longer they are ignored or neglected, the harder and costlier they become to solve? The Central African Republic is like some poor orphan right now, but in fact what it needs more than anything is to be adopted; for an authority to take on the role of leading international efforts to restore it to good order.

...

How is it possible for an entire country to become forgotten? That is the question I heard time and again from people living in mortal fear ... How did the world forget about us?¹

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In December 2013, violent internal conflicts broke out in two Central African countries: South Sudan and the Central African Republic ('CAR'). Within weeks it was clear that crimes against humanity and war crimes were being committed with impunity by all sides, in both places. Thousands were killed within a month. The significant majority of these were innocent civilians. The United Nations had peacekeeping and monitoring missions in South Sudan and CAR but neither had predicted an outbreak of violence and the commission of mass atrocities on the scale that occurred so precipitately. Both were completely overwhelmed, being reduced almost instantly to undertaking a residual, albeit critical, role in protecting civilians by housing and shielding them in UN facilities. All the preconditions for the international community, through the Security Council ('the Council'), to take action to halt the violence in accordance with the 'responsibility to protect' ('R2P') doctrine were present. And yet, 12 months later, fighting continued to spiral out of control and international crimes continued unabated. This article seeks to explain how and why the community of nations failed in its sincere but flawed endeavours to stop the criminal violence. In doing so, it is hoped that valuable lessons — conceptual and practical — may be learned, to strengthen strategies for atrocity prevention in the future.²

II SOUTH SUDAN

The world's newest nation, South Sudan, fell apart in a week in December 2013. In the preceding month, existing tensions between the principal factions in the ruling administration, the Sudan People's Liberation Movement ('SPLM'), had increased dramatically.³ In early December, the former Vice-President, Riek Machar, had publicly accused the President, Salva Kiir, of acting unilaterally and dictatorially. Kiir loyalists responded immediately accusing Machar of having made baseless allegations. They warned against any actions that might be seen as incitement to rebellion. The SPLM's governing body, the National Liberation Council, met on 14 December to confirm the administration's constitution and manifesto. Machar's faction rejected the proposed documents and took no further part in the deliberations on 15 December.⁴

Fighting broke out between contending elements of the National Guard that evening, in the vicinity of the National Council meeting. The next day the

¹ Kristalina Georgieva, 'We Must Not Ignore the Plight of the Central African Republic', *The Guardian* (London), 30 July 2013.

² I was assisted in the preparation of this article by conducting more than 20 interviews with senior UN officials, ambassadors to permanent missions to the UN in New York and the leaders of significant New York-based non-governmental human rights organisations. I express my deep and sincere thanks to all of these interviewees, whose insights and experiences have been invaluable.

³ As to the background, see Human Rights Watch, 'They Are Killing Us: Abuses against Civilians in South Sudan's Pibor County' (Report, 13 September 2013) <<http://www.hrw.org/reports/2013/09/12/they-are-killing-us>>.

⁴ 'Two Elephants Trample the Grass', *The Economist* (online), 21 December 2013 <<http://www.economist.com/news/middle-east-and-africa/21591896-factional-violence-new-country-may-be-getting-out-control-two-elephants>>; D H, 'South Sudan: The Descent into Civil War' on *The Economist, Baobab Africa* (27 December 2013) <<http://www.economist.com/blogs/baobab/2013/12/south-sudan>>; D H, 'Two Tribes' on *The Economist, Baobab Africa* (24 January 2014) <<http://www.economist.com/blogs/baobab/2014/01/debate-over-origins-south-sudanese-infighting>>.

conflict broke from the boundaries of the military barracks into neighbouring suburbs of the capital, Juba. Machar and Kiir supporters engaged in violence, street by street. Kiir held a press conference in which he accused Machar and his supporters of having engaged in an attempted coup. Machar denied the charge categorically. While heated political accusations were exchanged, hundreds of people were killed and injured.⁵ The killings took place on political and ethnic lines, Kiir being from the Dinka tribe, and Machar from the Nuer. Nuers were herded into a police station, guns put through the windows, and internees were shot and killed indiscriminately.⁶

As the fighting continued, atrocities were committed by all sides.⁷ Thousands of civilians fled the fighting and sought refuge in UN bases in the city. The UN Mission to South Sudan ('UNMISS'), was besieged. The UN Under-Secretary-General of Peacekeeping Operations, Hervé Ladsous, briefed the Security Council on 17 December. He reported that the fighting seemed to be along Dinka–Nuer ethnic lines. He estimated that in just two days, 400–500 people had been killed and 600–800 injured. Eighteen thousand civilians had sought refuge at bases set up in the city by UNMISS. Soon, fighting had spread through many different regions of the country, sparking revenge attacks and copycat atrocities. By 23 December, the number of people killed had swelled to more than a thousand.⁸

With UN and African Union ('AU') support, a delegation of the multi-national Intergovernmental Authority on Development Council of Ministers ('IGAD') was quickly dispatched to attempt to mediate between the factions. An extraordinary summit of IGAD member states was convened on 27 December in Nairobi. A formal negotiation process commenced on 4 January. On 23 January these negotiations appeared to bear fruit as the contending political parties signed an agreement to cease hostilities.⁹ The SPLM Government and the opposing Machar forces (Sudan People's Liberation Movement/Army in Opposition ('SPLM/A-IO')) undertook to cease all military operations, to ensure that all armed forces under their control observed the

⁵ Alex Vines, 'Failure in South Sudan: The World's Youngest State is Heading Towards Civil War, but There's Little that Outsiders Can Do', *The Guardian*, (London), 27 December 2013, 49.

⁶ Human Rights Watch, 'South Sudan: Ethnic Targeting, Widespread Killings' (Press Release, 16 January 2014) <<http://www.hrw.org/news/2014/01/16/south-sudan-ethnic-targeting-widespread-killings>>.

⁷ See United Nations Mission to South Sudan, 'Interim Report on Human Rights: Crisis in South Sudan' (Report, 21 February 2014) 6 ('*UNMISS Interim Report*').

⁸ Security Council, 'Security Council Press Statement on South Sudan' (Press Release, SC/11221, 17 December 2013) <<http://www.un.org/press/en/2013/sc11221.doc.htm>>; UN Security Council, 'Monthly Forecast' (Report, January 2014) 6 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2014_01_forecast.pdf>.

⁹ Intergovernmental Authority on Development, *Agreement on Cessation of Hostilities between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (in Opposition) (SPLM/A in Opposition)*, signed 23 January 2014 (entered into force 24 January 2014). See also United Nations Security Council, 'Security Council Press Statement on Cessation of Hostilities Agreement in South Sudan' (Press Statement, SC/11261, 23 January 2014); O A, 'South Sudanese Factions Agree a Ceasefire: If Only', *The Economist* (online), (24 January 2014) <<http://www.economist.com/blogs/baobab/2014/01/south-sudanese-factions-agree-ceasefire>>.

agreement, to withdraw their forces from theatres of operation, and to stop the dissemination of hate propaganda, particularly that which fanned ethnic hatred in the media. The parties agreed to refrain from attacks on the civilian population and from any acts of rape, sexual abuse, torture, and violence against children. By the time the agreement was signed, the UN Office for the Coordination of Humanitarian Affairs estimated that 900 000 people had been displaced.¹⁰

The Security Council had kept a watching brief on developments in South Sudan. It adopted *Resolution 2132* on 24 December 2013.¹¹ *Resolution 2132* increased the number of troops to be deployed with UNMISS from 7000 to 12 500 and the number of police from 900 to 1323. By the time that the 23 January ceasefire was signed, three police units (approximately 440 officers), 350 military personnel, two military helicopters and one transport plane had been transferred to UNMISS from UN establishments in nearby countries.

At the same time, however, human rights abuses became ever more grave.¹² On 17 January, the Assistant Secretary-General for Human Rights, Ivan Šimonović, observed that the conflict had taken on the dimensions of a civil war. He said that he had received reports of mass killings, extrajudicial killings, arbitrary detention, enforced disappearances, sexual violence and large-scale property destruction. He argued that an independent human rights fact-finding mission should be sent urgently to South Sudan and praised the role of UNMISS in taking in large numbers of civilians for protection from the conflict. 'One month of conflict has set South Sudan back a decade', he added.¹³

UNMISS released an interim report on human rights violations on 21 February.¹⁴ The report stated that many thousands of people had been killed in the fighting. The Sudan People's Liberation Army ('SPLA'), an offshoot of SPLM, had engaged in deliberate targeting of Nuer civilians. Armed opposition groups associated with the SPLM/A-IO and aligned youth militia had targeted Dinka civilians similarly. Both parties had been responsible for mass atrocities. The report found that incidents of rape, torture, enforced disappearances, looting, property destruction, and the recruitment of child soldiers had become commonplace. The White Army, a unit under Machar's command, for instance, consisted substantially of teenage children.

The military surge capacity, authorised in *Resolution 2132*, was established as quickly as possible but slowly nevertheless. By the end of March 2014, UNMISS expected a Nepalese battalion of 350 soldiers, 300 Ghanaian troops and a

¹⁰ United Nations Office for the Coordination of Humanitarian Affairs, 'South Sudan: US \$1.27 Billion Appeal to Save Lives, Alleviate Suffering, and Preposition Aid before the Rains' (Press Release, 4 February 2014) <<http://reliefweb.int/report/south-sudan/south-sudan-us127-billion-appeal-save-lives-alleviate-suffering-and-preposition>>.

¹¹ SC Res 2132, UN SCOR, 68th sess, 7091st mtg, UN Doc S/RES/2132 (24 December 2013).

¹² See 'Destroying Itself from within', *The Economist* (online), 2 January 2014 <<http://www.economist.com/news/middle-east-and-africa/21592637-despite-desperate-peacemaking-efforts-outlook-south-sudan>>.

¹³ United Nations Office of the High Commissioner for Human Rights, 'South Sudan: "What I Saw Was a Horror," Says Top Human Rights Official' (Press Release, 17 January 2014) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14177&LangID=E>>.

¹⁴ *UNMISS Interim Report*, above n 7.

Rwandan battalion of 850 to have been deployed.¹⁵ These 1500 additional military personnel were welcome but initially would be capable only of shoring up the protection of civilians seeking safe haven in UN bases.

In his March report to the Security Council, the Secretary-General summarised the situation grimly:

The damage done in such a short time is staggering. Not only has the conflict caused massive loss of innocent life but major towns ... have been completely destroyed and close to 1 million people have been displaced or have sought refuge abroad. Livelihoods have been lost, markets destroyed and, most critically, lack of freedom is preventing people in rural areas in the most affected states from hunting, fishing and planting crops, which means the already increasing food insecurity could spiral into famine.¹⁶

The January 2014 ceasefire agreement broke down almost as soon as it had been concluded. According to rebel sources, SPLA forces were responsible for an attack on the rebel leader, Machar's, house on 1 February.¹⁷ One thousand huts were burnt during that assault. Two weeks later, a major battle commenced for control of the city of Malakal, a city of significant strategic importance as the sole remaining active source of oil production in the country. As a consequence, fighting erupted once again in many other regional centres.¹⁸

The Government regained control of most of the strategically important Unity State and took parts of Jonglei, while the SPLM/A-IO made significant gains in Upper Nile. Large-scale human rights abuse continued. External attacks on UN bases became more common and intra-communal violence within them presented UNMISS with formidable security problems. Peacekeepers were sucked away from conflict prevention in favour of providing security for UN officials and the 75 000 desperate occupants of their compounds. The Security Council issued a press statement on 13 February that deplored violations of the January ceasefire, condemned widespread abuses of human rights and humanitarian law, condemned interference with humanitarian aid, and demanded an end to attacks on UNMISS facilities.¹⁹

By mid-April, the conflict in South Sudan had taken on all the attributes of a civil war. Fighting raged in battles to take state capitals and oil producing facilities.

The state capital, Bentiu, changed hands three times between March and May. In a shocking attack upon Bentiu in mid-April, the SPLM/A-IO targeted and

¹⁵ *Report of the Secretary-General on South Sudan*, 69th sess, UN Doc S/2014/158 (6 March 2014) 13–14 [58] ('*Secretary-General Report 6 March*').

¹⁶ *Ibid* 18 [75]. See UN SCOR, 69th sess, 7141st mtg, UN Doc S/PV.7141 (18 March 2014).

¹⁷ 'Conflict in South Sudan: Back with a Vengeance', *The Economist* (online), 27 February 2014 <<http://www.economist.com/news/middle-east-and-africa/21597944-young-country-descending-war-again-back-vengeance>>.

¹⁸ Human Rights Watch, *South Sudan: War Crimes by Both Sides* (27 February 2014) <<http://www.hrw.org/news/2014/02/26/south-sudan-war-crimes-both-sides>>.

¹⁹ See United Nations Security Council, 'Security Council Press Statement on South Sudan' (Press Statement, SC/11278-AFR/2816, 13 February 2014). See also Human Rights Council, *Situation of Human Rights in South Sudan*, 25th sess, Agenda Item 1, UN Doc A/HRC/25/L.34 (24 March 2014).

killed hundreds of civilians based on their ethnicity.²⁰ By the end of April, 923 000 people had been displaced, more than 300 000 had escaped to adjacent countries and attacks upon civilians remained rife.²¹

In a particularly horrendous incident, several hundred internally displaced people were gathered in Bentiu's main mosque. After one visit from a forward party of opposition fighters, the people inside locked the mosque doors. A second group of fighters came to the mosque two hours later. They extorted money and other belongings from the citizens and then opened fire on those inside. That evening, some 200 bodies were loaded into military trucks and taken away. In subsequent days, UNMISS human rights officials discovered many more corpses, bloodstains, and bullet marks at the mosque and in surrounding areas. Another 150 bodies were found at a major hospital nearby, where others seeking refuge had gathered. The Opposition acknowledged that the killings had occurred but claimed that those who died had been government combatants.²²

A detailed human rights report released by UNMISS in May 2014 cited numerous instances of crimes against humanity committed by both sides in many areas across the country.²³ These crimes included systematically targeted attacks against civilians, violence aimed at spreading terror amongst the populations, ethnic persecution, torture, imprisonment, rape, enforced disappearances, attacks on peacekeepers and civilians in UNMISS camps, and attacks on hospitals, medical units and personnel. Tellingly, the report concluded that:

In line with its obligations under international humanitarian law, the law of state responsibility, and the responsibility to protect, the international community must support domestic accountability efforts or complement them with other measures in situations where the state concerned is not willing or able to fulfil its international obligations in this regard.²⁴

The additional troops recommended by the Secretary-General and endorsed by the Security Council in December were still far from their authorised number. Even at their full complement, given the scale of the humanitarian catastrophe, it was clear that they would have the capacity to play only a residual and defensive role.²⁵

²⁰ See United Nations Security Council, 'Security Council Press Statement on South Sudan' (Press Release, SC/11363-AFR/2870, 24 April 2014) <<http://www.un.org/press/en/2014/sc11363.doc.htm>>; James Copnall, 'South Sudan: Bentiu Atrocity Will Not Be the Last unless Pleas for Help Are Heard', *The Guardian* (online), 23 April 2014 <<http://www.theguardian.com/global-development/2014/apr/23/south-sudan-bentiu-massacre-humanitarian-workers>>; 'A New Depth of Horror', *The Economist* (online), 24 April 2014 <<http://www.economist.com/news/middle-east-and-africa/21601244-civil-wars-worst-massacre-ensures-war-will-get-still-bloodier-new>>.

²¹ United Nations Office for the Coordination of Humanitarian Affairs, 'South Sudan Crisis: Situation Report as of 25 April 2014' (Report No 33, 25 April 2014) 1–2.

²² D H, 'Fighting in South Sudan: A New Low', *The Economist* (online), 22 April 2014 <<http://www.economist.com/blogs/baobab/2014/04/fighting-south-sudan>>; Javier Blas, 'Hundreds Dead in South Sudan Massacre', *Financial Times* (online), 21 April 2014 <<http://www.ft.com/cms/s/0/57ef107c-c96e-11e3-99cc-00144feabdc0.html#axzz3YBtQeHsR>>.

²³ United Nations Mission in the Republic of South Sudan, 'Conflict in South Sudan: A Human Rights Report' (Report, 8 May 2014) 55–6 [287]–[288].

²⁴ *Ibid* 57 [295].

²⁵ See generally UN SCOR, 69th sess, 7172nd mtg, UN Doc S/PV.7172 (12 May 2014) 2 ('Secretary-General Report 12 May 2014').

Throughout April and early May 2014, IGAD, with the support of the UN, auspiced a new round of peace negotiations. It announced that teams responsible for verifying the January ceasefire had begun work. On 28 April, IGAD-led peace talks resumed in Addis Ababa, following scant progress in the intervening months. The United States Secretary of State, John Kerry, visited the country on 1 May and warned of the prospect of genocide should the conflict continue.²⁶ Ban Ki-moon met with President Kiir, and spoke with the leader of the Opposition, Machar, on 6 May to facilitate the negotiations. Then, in an apparent breakthrough, Kiir and Machar met face-to-face on 9 May. They reached an agreement for the immediate cessation of hostilities and the establishment of a government of national unity to oversee comprehensive constitutional revision and guide the country towards democratic elections in 2015.²⁷ They agreed to reopen humanitarian corridors, in accordance with the January ceasefire agreement. They directed their representatives to the IGAD peace process to negotiate the terms of the transitional government of national unity. They determined to open the negotiations to all relevant South Sudanese stakeholders to ensure broad ownership of agreed outcomes.²⁸

In a rare, albeit momentary, atmosphere of optimism the Secretary-General briefed the Security Council on his visit and the subsequent developments. He welcomed the new ceasefire agreement but spoke with some anguish about the savage deterioration in conditions on the ground. Many thousands of people had been killed, he said, and many atrocities had been committed by all sides. More than one million people had been displaced and nearly five million required humanitarian assistance. The Secretary-General predicted that '[i]f the conflict continues, half of South Sudan's 12 million people will either become internally displaced, refugees abroad, starving or dead by the year's end'.²⁹

The May ceasefire took only three days to unravel. Sporadic conflicts broke out in several regions of the country and negotiations towards a transitional governing authority collapsed. Both sides accused each other of violations.³⁰ The Defence Minister claimed that Machar was no longer in control of his troops.³¹ The White Army, he said, were armed civilians. They did not know about the ceasefire. They attacked because they thought the war was still going on. The opposition asserted similarly that the command structure under Kiir was broken and blamed governmentally aligned militia for counterattacks. Both sides took

²⁶ David Smith, 'John Kerry Warns of Possible Genocide in South Sudan', *The Guardian* (London), 1 May 2014.

²⁷ Intergovernmental Authority on Development, *Agreement to Resolve the Crisis in South Sudan*, signed 9 May 2014 (entered into force 9 May 2014); Katrina Manson, 'Warring South Sudan Leaders Agree Truce', *Financial Times* (online), 9 May 2014 <<http://www.ft.com/intl/cms/s/0/89694160-d781-11e3-a47c-00144feabdc0.html#axzz3dan9Bq7X>>.

²⁸ See Manson, above n 27; 'South Sudan Signs Ceasefire with Rebels', *The Guardian* (online), 10 May 2014 <<http://www.theguardian.com/world/2014/may/10/south-sudan-signs-ceasefire-with-rebels>>.

²⁹ *Secretary-General Report 12 May 2014*, UN Doc S/PV.7172, 2.

³⁰ Waakhe Simon Wudu, 'S Sudan Ceasefire Broken and Rebels and Army Battle', *Agence France-Presse* (Paris), 12 May 2014; Benno Muchler, 'South Sudan Cease-Fire Proves to Be Short-Lived', *The New York Times* (New York), 14 May 2014.

³¹ 'South Sudan Fighting Resumes as Ceasefire Hopes Dashed', *The Guardian* (online), 12 May 2014 <<http://www.theguardian.com/world/2014/may/12/south-sudan-fighting-ceasefire-kiir-machar>>.

advantage of the brief pause to amass weapons, train new recruits, mobilise their existing forces, and undermine humanitarian operations.

On the political front, the IGAD mediation team proposed a matrix of measures to implement the May ceasefire and to establish a national unity government. The Government, however, refused to commit to several specifics of the transitional arrangements and the Opposition refused to sign the matrix until the transitional arrangements were agreed. The deadlock appeared to be broken in mid-June 2014, following firm representations from IGAD negotiators and a visit from 14 eminent African figures, including 11 former Heads of State. In the third attempt to broker peace, Kiir and Machar agreed to finalise transitional governmental negotiations within 60 days from 10 June.³² Six days later, however, the negotiations were suspended. The Government questioned the neutrality of IGAD. It asserted that it had been wrong and unfair for both sides to be uniformly blamed for continuing violations, referring to the IGAD communiqué in which both parties had been accused of failing to honour their commitments and engage meaningfully in political negotiations. The Opposition rejected IGAD's recommendation that representatives of several different interest groups should be invited to participate in the negotiations. It believed that only the two major parties should be involved.³³

Meanwhile, the civil war continued. The ethnic dimension of the conflict had generated anger and a desire for perpetual revenge in both communities. The civilian consequences were grave.³⁴ In late June it was estimated that four million Sudanese were in a state of food insecurity, more than 1.5 million people had been displaced and almost 100 000 people had sought refuge within UN compounds.³⁵ The Secretary-General remarked that even with the eventual arrival of 5500 additional troops, UNMISS would be at the very limits of its resources and capabilities. As of early June, only an estimated 850 of the 5000 surge military forces authorised in December had been deployed. The UN had received just US\$739 million of the US\$1.8 billion it needed to cope with the destruction the civil war had unleashed.³⁶

In these dire circumstances, the Security Council convened in late May to reconsider UNMISS' mandate. *Resolution 2155* expressed deep alarm at the rapid deterioration of the political, security and humanitarian crisis in South

³² Intergovernmental Authority on Development, 'Communiqué of the 26th Extraordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan' (Meeting Report, 10 June 2014) [3].

³³ *Report of the Secretary-General on South Sudan*, 69th sess, UN Doc S/2014/537 (25 July 2014) 2 [6] ('*Secretary-General Report 25 July 2014*').

³⁴ See Sam Jones, 'South Sudan Crisis among Gravest in History says UN', *The Guardian* (online), 16 May 2014 <<http://www.theguardian.com/global-development/2014/may/16/south-sudan-crisis-gravest-un-food-shortages-famine>>; Editorial Board, 'South Sudan in Peril', *New York Times* (New York), 19 May 2014, 8.

³⁵ *Secretary-General Report 25 July 2014*, UN Doc S/2014/537, 8 [35], 16 [77], 17 [80].

³⁶ 'Catastrophe Looms', *The Economist* (online), 22 May 2014 <<http://www.economist.com/news/middle-east-and-africa/21602750-if-civil-war-persists-grave-famine-may-be-inevitable-catastrophe-looms>>; Sam Jones, Achilleas Galatsidas and Mark Anderson, 'South Sudan Crisis Threatens Loss of a Generation of Children and Youth', *The Guardian* (online) 17 June 2014 <<http://www.theguardian.com/global-development/2014/jun/16/south-sudan-crisis-loss-generation-children-and-youth>>.

Sudan.³⁷ It stated, more formulaically than realistically, that the Government of South Sudan bore the principal responsibility to protect its country's civilians from war crimes and crimes against humanity. It then altered the mandate. The mission's core priorities from this point would be to protect civilians, to monitor and investigate human rights violations, and to create the conditions for the effective delivery of humanitarian assistance. These priorities were essentially defensive. The mission's capacity building work was to be abandoned. Its military engagement would focus on the protection of civilians in UN facilities, with only limited patrols beyond their boundaries to discourage continuing inter-ethnic violence. Human rights violations would be monitored and investigated rather than stopped. UNMISS' core objective would change from conflict prevention to humanitarian assistance.

Only days after the 10 June ceasefire agreement,³⁸ SPLM and SPLM/A-IO forces clashed in Upper Nile State. IGAD mediators, UNMISS and the Chair of an African Union inquiry into human rights abuses joined to condemn the breach of all three ceasefire agreements. The Head of UNMISS, Hilde Johnson, stepped down from her position in early July. Upon departing she referred to the three 'diseases' afflicting the country: rule by a self-serving elite; the rule of the gun rather than the law; and widespread corruption.³⁹ The fundamental problem was apparent. Neither the Government nor the SPLM/A-IO believed that political negotiation provided an effective path to peace. Each calculated that their best chance of prevailing still lay in military victory.

The 60-day deadline set in May for the completion of political negotiations towards the formation of a national unity government passed without significant concessions from either side. However, new IGAD-sponsored talks were held in Arusha on 25 August 2014. Their aim was to procure an agreement upon a matrix document setting down the measures required to implement a permanent ceasefire, to determine which parties should be represented at the negotiations, and to forge an agreement between the two leaders as to the formula for power sharing in the transitional government.⁴⁰ None of these objectives was achieved. The talks disintegrated in a welter of political hostility and stinging personal blame.

The next round of IGAD talks took place on 22 September. While limited agreement was reached on some important procedural issues, Kiir and Machar failed again to concur on a power sharing formula for the transitional administration and on the essential institutional parameters for a future system of unity government. The 45-day deadline set down at the negotiations on 25 August passed on 9 October without further resolution. At the end of September,

³⁷ SC Res 2155, UN SCOR, 7182nd mtg, UN Doc S/RES/2155 (27 May 2014) Preamble para 4 ('*Resolution 2155*').

³⁸ David Smith, 'South Sudan President and Rebel Leader Agree to Form Unity Government', *The Guardian* (online), 11 June 2014 <<http://www.theguardian.com/world/2014/jun/11/south-sudan-rival-form-unity-government>>.

³⁹ Hilde F Johnson, 'Press Conference Statement by Hilde F Johnson — 8 July 2014' (Press Release, 8 July 2014) <<http://reliefweb.int/report/south-sudan/press-conference-statement-hilde-f-johnson-8-july-2014>>.

⁴⁰ See Intergovernmental Authority on Development, *Protocol on Agreed Principles on Transitional Arrangements towards Resolution of the Crisis in South Sudan*, signed 25 August 2014 (entered into force 9 October 2014).

the Secretary-General estimated that 1.3 million people were displaced in South Sudan and a further 450 000 had fled to other countries. Ninety-six thousand people clung to safety in UNMISS bases.⁴¹

Another IGAD summit was convened from 6–8 November 2014. This focused yet again on effecting an agreement between Kiir and Machar. Finally, the two leaders agreed upon the text of an implementation matrix and a monitoring and verification process for the January, May and June ceasefire agreements.⁴² Two days later, the SPLM/A-IO accused SPLM of transgressing this agreement by re-engaging in military hostilities in three states of the Upper Nile region. Eleven months into the conflict, negotiations were stalled.

Throughout this period, the situation on the ground became ever more horrific. According to another report by the Secretary-General, by 11 November 2014, 1.9 million people had been forced to flee their homes, 1.4 million were internally displaced, and another 465 815 had escaped to neighbouring countries. UNMISS now fed and protected 100 000 people in its bases and encampments. Almost four million citizens faced significant food insecurity, that is, one third of the country's total population. Inter-ethnic fighting continued to escalate.⁴³

The increase in sexual violence was of particular concern. Reporting her findings from a visit to South Sudan in October, Zainab Bangura, the Special Representative of the Secretary-General on Sexual Violence in Conflict, said that:

[S]exual violence in South Sudan is widespread, including acts of rape, gang rape, abductions, forced marriage and sexual slavery, and mutilation of sexual organs ... sexual violence attacks have reached an alarming level, expressed in a vicious cycle of retribution and revenge.⁴⁴

The new head of UNMISS, Ellen Løj, observed during the same Security Council briefing that 'I have been shocked by the complete disregard for human life. Those responsible for committing atrocities and human rights violations must be held to account'.⁴⁵ Militarily, politically and legally, the situation in South Sudan was out of control.

Summing up the dreadful situation in his November report to the Security Council the Secretary-General wrote:

The international community has grown impatient with the situation in South Sudan and with the failure of the political leadership to stop the fighting and reach an agreement that responds to the greater interests of the people of South Sudan. ... As I have stressed repeatedly, the primary responsibility for resolving the problems of South Sudan rests squarely with its leaders. The international community can support these efforts, but it cannot deliver a solution from outside.⁴⁶

⁴¹ *Report of the Secretary-General on South Sudan*, 69th sess, UN Doc S/2014/708 (30 September 2014) 6 [24].

⁴² *Report of the Secretary-General on South Sudan*, 69th sess, UN Doc S/2014/821 (18 November 2014) 14 [59]–[61] ('*Report on South Sudan 18 Nov 2014*').

⁴³ *Ibid* 6–7 [23]–[28].

⁴⁴ UN SCOR, 69th sess, 7282nd mtg, UN Doc S/PV.7282 (22 October 2014) 4.

⁴⁵ *Ibid* 3.

⁴⁶ *Report on South Sudan 18 Nov 2014*, UN Doc S/2014/821, 17 [74]–[75].

If that is the right conclusion, it may legitimately be asked what, if anything, remains of the idea that the international community has a responsibility to protect innocent populations from the actuality of mass atrocity crimes? I return to that question shortly.

III CENTRAL AFRICAN REPUBLIC

In March 2013 Séléka, a coalition of rebel groups, captured the capital of CAR, Bangui. It deposed the President, François Bozizé, and took power under its leader, Michael Djotodia. The ostensible reason for the coup was the Séléka allegation that the President had failed to observe the terms of the peace agreement signed between the two parties in Libreville on 11 January 2013. Djotodia suspended the constitution, dissolved the Government of National Unity that had been established in Libreville, dismantled the National Assembly and Constitutional Court and commenced rule by decree. On 25 March the UN Security Council condemned the coup. The African Union Peace and Security Council followed suit on April 16.

As in South Sudan, the conflict in CAR had begun as a contest between two rival political leaders for power and the spoils of office. Corruption was endemic, and, consequently, those who held the reigns of political power were placed perfectly to benefit from office, not least because the Government attracted substantial revenues from CAR's diamond mining operations. Six months after the March 2013 takeover, however, the conflict took an ugly turn for the worse when it metamorphosed catastrophically into an inter-religious conflict between the largely Muslim Séléka and opposing Christian militia known as the anti-balaka.⁴⁷

In its recent history, CAR had been ruled principally by leaders associated with the majority Christian population, of which Bozizé had been one. The March coup, therefore, came as a shock. It was the first time in years that the Government had fallen into the hands of the established Muslim Opposition. In September, the Christian anti-balaka, placed on the back foot since the March takeover, launched a frightful fightback. Anti-balaka militia began attacking Muslim communities, slitting the throats of Muslim women and children and engaging in widespread human rights abuses. The Séléka militias responded, stepping up their violent reprisals, and the situation right across the country descended rapidly into a violent, inter-religious war.⁴⁸

⁴⁷ See generally *Report of the Secretary-General on the Central African Republic Submitted Pursuant to Paragraph 22 of Security Council Resolution 2121 (2013)*, 68th sess, UN Doc S/2013/677 (15 November 2013) 2 [6]; Adama Dieng, 'The Statement of the Under-Secretary-General/Special Adviser on the Prevention of Genocide, Mr Adama Dieng on the Human Rights and Humanitarian Situation in the Central African Republic' (Press Statement, 1 November 2013) <<http://www.un.org/en/preventgenocide/adviser/>>; 'The Central African Republic: A Catastrophe in the Making?', *The Economist* (online), 21 November 2013 <<http://www.economist.com/news/middle-east-and-africa/21590584-rebels-are-rampage-and-their-foes-are-fighting-back-catastrophe>>.

⁴⁸ See generally David Smith, 'Unspeakable Horrors in a Country on the Verge of Genocide', *The Guardian* (online), 22 November 2013 <<http://www.theguardian.com/world/2013/nov/22/central-african-republic-verge-of-genocide>>; Phillippe Boloipon, 'Averting Genocide in the Central African Republic', *The Washington Post* (online), 28 November 2013 <http://www.washingtonpost.com/opinions/averting-genocide-in-the-central-african-republic/2013/11/28/8faa6446-57bb-11e3-8304-caf30787c0a9_story.html>.

Prior to the Séléka takeover, government troops under Bozizé had engaged in widespread human rights abuse, in particular in persecuting members of the Séléka opposition. Upon its assumption of power, Séléka militia continued to commit serious human rights violations in a cycle of retaliation and revenge. These included summary executions and extrajudicial killings, enforced disappearances, arbitrary arrest and detention, torture, sexual violence, and the killing and maiming of children.⁴⁹ In her report to the Human Rights Council in September 2013, the UN High Commissioner for Human Rights recommended that the international community should mobilise to restore and maintain stability in CAR and ensure that any peace support mission to be deployed in CAR would have a strong mandate to protect civilians and to restore security and public order.⁵⁰

As the situation deteriorated substantially between September and December 2013, the Security Council adopted *Resolution 2127* which authorised an African Union led International Support Mission to the Central African Republic ('MISCA') and a French-backed peacekeeping force ('Operation Sangaris') to quell the violence.⁵¹ *Resolution 2127* also imposed an arms embargo on the sale and supply of arms to CAR, established a sanctions committee, and a panel of experts to assist the committee. It requested the Secretary-General to establish an independent commission of inquiry into human rights abuses in CAR from 1 January 2014. *Resolution 2127* foreshadowed a future transformation of MISCA into a UN peacekeeping operation. It was of interest and concern that the US, at that time, was opposed to the establishment of a UN-sponsored peacekeeping operation. Russia too wished to ensure that the language of *Resolution 2127* was not such as to suggest that a decision on a peacekeeping force had already been made. Nevertheless, most members of the Council remained in favour of the peacekeeping operation.

Despite the deployment of MISCA forces, the spread and intensity of the violence was far greater than could be managed by their numbers and capabilities. In December 2013, the Secretary-General reported that some 640 000 people had been displaced. This was three times the number estimated in March of that year. Two hundred and fourteen thousand people had been displaced around Bangui alone. A further 232 697 people had fled CAR for refuge in Cameroon, Chad, the Congo and the Democratic Republic of the Congo. Two million people were in need of food, shelter and protection.⁵² In the

⁴⁹ Human Rights Council, *Situation of Human Rights in the Central African Republic: Report of the United Nations High Commissioner for Human Rights*, 24th sess, Agenda Items 2 and 10, UN Doc A/HRC/24/59 (12 September 2013) ('*Commission Report*').

⁵⁰ *Ibid* 18–19 [95].

⁵¹ See SC Res 2127, UN SCOR, 68th sess, 7072nd mtg, UN Doc S/RES/2127 (5 December 2013) 7 [28], 9 [50]; Kim Willsher and Andrew Sparrow, 'French Troops Sent into Central African Republic in Effort to Stop Bloodshed', *The Guardian* (online), 6 December 2013 <<http://www.theguardian.com/world/2013/dec/06/france-troops-central-african-republic-hollande-bangui>>; Somini Sengupta, 'Stopping Bloodshed in the Central African Republic amid Ghosts of Rwanda and Bosnia', *The New York Times* (New York), 9 December 2013; Philippe Bolopion, *The Central African Republic Facing Its R2P Moment of Truth* (20 December 2013) Human Rights Watch <<http://www.hrw.org/news/2013/12/20/central-african-republic-facing-its-r2p-moment-truth>>.

⁵² *Report of the Secretary-General on the Situation in the Central African Republic*, 68th sess, UN Doc S/2013/787 (31 December 2013) 12–13 [57].

face of a crisis on this scale, the MISCA force of approximately 6000 peacekeepers and the Operation Sangaris force of almost 1600 would plainly be overcome.

From mid-December 2013 onwards, the inter-religious fighting intensified. Anti-balaka attacks with heavy weapons on Séléka forces in Bangui and Bossangoa resulted in hundreds of deaths and unleashed savage Séléka reprisals.⁵³ The conflict spread from the militarised combatants to the civilian population. On 3 March, in a report to the Security Council, the Secretary-General advised that a multitude of international crimes appeared to have been committed by Christians and Muslims, militia and civilians, alike.⁵⁴ These included the summary execution of civilians, indiscriminate firing on civilians, killing and maiming, rape, sexual violation, arbitrary detention, and deliberate crimes against children, including their recruitment and use in warfare. Ethnic cleansing of Muslim populations in southern cities had commenced with more than 15 000 civilians seeking protection under the wings of MISCA and Operation Sangaris forces. The deteriorating social environment had become marked by hatred, impunity, fear and economic deprivation. The Secretary-General stated that:

Killings are reported daily in Bangui. Violence in the capital has reached gruesome levels of cruelty: corpses are mutilated in public and dismemberments and beheadings take place with total impunity ... The vast majority of the Muslim population of Bangui has fled and those Muslims who remain live under international protection.⁵⁵

On 9 January 2014, under pressure from the Economic Community of Central African States ('ECASS'), Djotodia had resigned as leader of the Séléka, and fled to Benin. Two weeks later, Catherine Samba-Panza was elected by the interim National Council as interim President.⁵⁶ She came from a business and legal background, had been mayor of Bangui and like her new Prime Minister, André Nzapayeke, was Christian. She formed a transitional government on January 27. It consisted of 20 members, three ex-Séléka representatives and one anti-balaka representative. The formation of the new government created the conditions for more concerted action towards constructive political transition. However it provoked Séléka and anti-balaka dissension and there was a spike of violence in Bangui.

Samba-Panza's rule did not begin well. On 5 February, at a military ceremony at which Samba-Panza had addressed her troops, congratulating them for reconstituting a national army, uniformed soldiers accused a man in the crowd of having belonged to the Séléka. They then attacked the man with machetes, crushed his skull with rocks and set him alight in the middle of an adjacent street

⁵³ Amnesty International, 'Ethnic Cleansing and Sectarian Killings in the Central African Republic' (Report No AFR19/XXX/2014, 12 February 2014) 5.

⁵⁴ *Report of the Secretary-General on the Central African Republic Submitted Pursuant to Paragraph 48 of Security Council Resolution 2127 (2013)*, 69th sess, UN Doc S/2014/142 (3 March 2014) 1 [3] ('Secretary-General Report on the CAR').

⁵⁵ *Ibid* 2 [7].

⁵⁶ G P 'Central African Republic under New Management: Africa's Third Female President', *The Economist* (online), (28 January 2014) <<http://www.economist.com/blogs/baobab/2014/01/central-african-republic-under-new-management>>.

in full view of journalists and citizens. Soon after, the former Minister for Health in the Séléka administration was assassinated.

By early March, large scale ethnic cleansing of Muslim civilians had begun.⁵⁷ The UN High Commissioner for Human Rights, Navi Pillay, visited CAR during that month. She gave a chilling account of the massacres that had continued to occur. Inter-communal hatred, she said, remained at a terrifying level. Rape and sexual violence had increased, especially in camps for the internally displaced. Fifteen thousand Muslim civilians were trapped in Bangui and other areas, north and south, protected principally by international forces. The anti-balaka had been transformed into criminal gangs, roaming the country seeking out their Muslim victims. The economy had collapsed, the health and education systems had ceased to function. The CAR's leadership had frankly admitted that there was 'no [s]tate, no coherent army, no police and no justice system'. Pillay concluded by remarking that:

I am deeply concerned by the slow response of the international community. The vital humanitarian aid effort is deplorably under-funded, with only 20 per cent of requirements met so far ... I urge States to respond quickly to the Secretary-General's appeal for a fully equipped force of 10,000 international peacekeepers and 2,000 police ... Civil society organizations told me they rang the alarm bells long before the crisis turned into a calamity, but nobody listened ... I cannot help thinking that if the Central African Republic were not a poor country hidden away in the heart of Africa, the terrible events that have taken place — and continue to take place — would have stimulated a far stronger and more dynamic reaction by the outside world. How many more children have to be decapitated, how many more women and girls will be raped, how many more acts of cannibalism must there be, before we really sit up and pay attention?⁵⁸

A week earlier, nine leading international and African human rights organisations had written to the member states of the Security Council pleading with them to take concerted action to deal with the chaos in CAR.⁵⁹ They urged the Council to deploy immediately a strong peacekeeping contingent. The bloodshed, they observed, had been continuing for a year, and a preventive force should have been authorised months before. What was required was a strong UN peacekeeping mission with the military resources and civilian capability to improve the protection of civilians, monitor human rights violations, and create the conditions for the safe delivery of humanitarian aid. It was not yet in sight.

The Security Council, however, had not been inactive in the period from January to March. On 28 January, it adopted *Resolution 2134* that called for an

⁵⁷ Human Rights Watch, *Central African Republic: Siege on Capital's Muslims* (28 March 2014) <<http://www.hrw.org/news/2014/03/27/central-african-republic-siege-capital-s-muslims>>.

⁵⁸ United Nations Office of the High Commissioner for Human Rights, 'Opening Remarks by UN High Commissioner for Human Rights Navi Pillay at a Press Conference during Her Mission to the Central African Republic' (Press Release, 20 March 2014) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14411&LangID=E>>.

⁵⁹ The groups were Amnesty International, the Central African League for Human Rights, the Central African Observatory for Human Rights, Enough Project, the Global Centre for the Responsibility to Protect, Human Rights Watch, Humanity United and International Federation for Human Rights and Invisible Children.

immediate end to the fighting.⁶⁰ In *Resolution 2134*, the Council expressed its alarm regarding the vicious cycle of violence and retaliation which had descended into a countrywide religious and ethnic divide. It was deeply concerned that the conflict had the potential to spiral out of control with the multiplication of crimes against humanity and war crimes potentially inciting further violence regionally. *Resolution 2134* renewed the United Nations Integrated Peacebuilding Office in the Central African Republic's ('BINUCA') mandate for a further 12 months. The mission's mandate was updated to provide support for the nascent transitional process; to facilitate conflict prevention and humanitarian assistance; to support the stabilisation of the security situation by advising on security sector governance; to monitor and investigate human rights abuses; and to establish appropriate coordination between BINUCA, MISCA and Operation Sangaris.⁶¹ All these measures, however, were advisory, facilitative or exhortatory. Apart from authorising the deployment of a small European troop contingent, *Resolution 2134* set nothing concrete in place on the ground.

The Council continued to discuss the situation in CAR on 6 March but differences of opinion emerged in relation to the formation of a UN peacekeeping force. African Union members, Russia and the USA favoured the deferral of any such force, in the hope that MISCA, Operation Sangaris, and the upcoming European contingent might successfully stabilise the situation. France, the only country with its troops on the battlefield, believed strongly that a much larger UN peacekeeping force was essential if the terrifying violence were to be stemmed.⁶² Cost provided another barrier. The Council's primary concentration at the time was upon the deteriorating situation in South Sudan. Even there, new peacekeepers had to be redeployed from UN peacekeeping operations in nearby African countries, rather than being funded through budget increases. So, political divisions and budgetary constraints combined to disincline the Council to embark on a major new commitment of peacekeepers in CAR to pacify its troubles, however grave they might be.

By early April, however, it had become even more clearly apparent that the existing MISCA and Sangaris forces had been overwhelmed by the severity and mayhem of the conflict. There had been a slight reduction in the numbers of Muslims and Christians being killed, but sexual violence, the abuse of children, torture, arbitrary detention and the ethnic cleansing of Islamic communities continued unabated. Disagreements among the Security Council's membership collapsed in the face of these continuing, terrible events.

On 10 April, therefore, the Council authorised a substantial increase of peacekeepers in an amalgamated military force.⁶³ *Resolution 2149* provided for the establishment of the United Nations Multidimensional Integrated Stabilization Mission in Central African Republic ('MINUSCA').⁶⁴ MINUSCA

⁶⁰ SC Res 2134, UN SCOR, 69th sess, 7103rd mtg, UN Doc S/RES/2134 (2014) (28 January 2014).

⁶¹ See UN SCOR, 69th sess, 7114th mtg, UN Doc S/PV.7114 (20 February 2014) 2–4.

⁶² UN SCOR, 69th sess, 7128th mtg, UN Doc S/PV.7128 (6 March 2014) 2–4.

⁶³ See Somini Sengupta, 'UN to Send Peacekeepers to Central African Republic', *The New York Times* (New York), 10 April 2014, A11.

⁶⁴ SC Res 2149, UN SCOR, 69th sess, 7153rd mtg, UN Doc S/RES/2149 (2014) (10 April 2014) ('*Resolution 2149*'). See also UN SCOR, 69th sess, 7153rd mtg, UN Doc S/PV.7153 (10 April 2014).

would combine BINUCA with MISCA and comprise up to 10 000 military personnel, including 240 military observers and 1800 police. The Council called on member states to provide troops and police with adequate capabilities and equipment to strengthen the capacity of MINUSCA to discharge its responsibilities effectively. The transfer of responsibility from MISCA to MINUSCA was to take place on 15 September 2014, a very long five months from *Resolution 2149*'s date.

Within that five month window, crimes against humanity, war crimes and ethnic cleansing continued without cease. Between March and August 2014, thousands more civilians were killed, adding to the 10 000 deaths in the year before.⁶⁵ Defenceless civilians remained the targets of sectarian violence. Serious violations of human rights persisted. These included the recruitment of children by armed groups, assassinations, summary executions, arbitrary detention, torture and forced displacement, particularly of the Muslim populations, more than 80 per cent of whom had fled abroad or to the north of the country where greater safety could be obtained.⁶⁶ The situation of women and children was particularly grave. The sexual violation of women and girls was being committed by both sides to the conflict in the context of the sectarian violence. These crimes included rape, gang rape, forced marriage, sexual slavery and genital mutilation. The Government estimated that 44 per cent of the female population had suffered sexual violence. In mid-August, 2.5 million people, half the population of CAR, were in need of humanitarian assistance.⁶⁷

The Special Representative of the Secretary-General and Head of MINUSCA, Babacar Gaye, had noted in June in consultations with the Security Council that MINUSCA was unlikely to fill its allotted troop level by 15 September and that the transitional political process was stagnant.⁶⁸ When briefing the Security Council at the same meeting, Phumbzile Mlambo-Ngcuka, Executive Director of the UN Entity for Gender Equality and the Empowerment of Women, told its members that:

What we heard and what we saw was terrifying. In displacement camps all over the country, including the one we visited, people seek shelter under plastic covers or even pieces of cloth in inhumane conditions, surrounded by puddles of stagnant water and garbage, vulnerable to water-borne diseases. The international community has received numerous reports of rape, sexual slavery and other violations perpetrated by armed actors ... That violence has taken place in house-to-house searches, unauthorized roadblocks and military camps and as part of sectarian violence ... Neighbouring countries are struggling to provide adequate support for tens of thousands of refugees ... It is important to highlight those alarming and distressing facts because, as of today, the international community has funded less than one third of the humanitarian appeal.⁶⁹

⁶⁵ See *Report of the Secretary-General on the Situation in the Central African Republic*, 69th sess, UN Doc S/2014/562 (1 August 2014); International Crisis Group, 'The Central African Crisis: From Predation to Stabilisation' (Report No 219, 17 June 2014).

⁶⁶ See *Report of the Secretary-General on the Situation in the Central African Republic*, 69th sess, UN Doc S/2014/562 (1 August 2014).

⁶⁷ UN SCOR, 69th sess, 7246th mtg, UN Doc S/PV.7246 (19 August 2014) 3.

⁶⁸ UN SCOR, 69th sess, 7206th mtg, UN Doc S/PV.7206 (24 June 2014) 3–4.

⁶⁹ *Ibid* 4–5.

In August 2014, 18 months after the murderous, sectarian conflict in CAR began, members of the surge UN peacekeeping force began arriving to deal with what remained a catastrophic, warlike situation.⁷⁰ Too late for the tens of thousands of dead, defiled, damaged and displaced.

IV THE RESPONSIBILITY TO PROTECT

The 2005 UN World Summit in New York marked the first occasion on which the doctrine of the ‘responsibility to protect’ achieved its first formal, political recognition.⁷¹ Its broad parameters were spelt out in paras 138 and 139 of the *World Summit Outcome Resolution*:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it ...

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VII of the *Charter*, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the *Charter*, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁷²

The doctrine’s practical implementation in the years following the World Summit has been halting and divisive. In the case of Libya, for example, the doctrine provided the rationale and political cover for a Security Council authorised North Atlantic Treaty Organization (‘NATO’) military intervention. The intervention was designed to avert the imminent massacre of rebels and residents of the eastern city of Benghazi after murderous threats made against them by the country’s then leader, Colonel Gaddafi. Brazil, Russia, India, China and South Africa (‘BRICS’), however, experienced buyers’ regret in relation to the intervention because they perceived the military action then undertaken as

⁷⁰ See Human Rights Watch, *Central African Republic: Civilians in Danger* (15 September 2014) <<http://www.hrw.org/news/2014/09/15/central-african-republic-civilians-danger>>; David Smith, ‘UN Takes over Peacekeeping in Central African Republic’, *The Guardian* (online), 17 September 2014 <<http://www.theguardian.com/global-development/2014/sep/16/un-peacekeeping-central-african-republic>>.

⁷¹ For the background and development of the ‘responsibility to protect’ at the UN, see Mindia Vashakmadze, ‘Responsibility to Protect’ in Bruno Simma et al (eds), *The Charter of the United Nations* (Oxford University Press, 3rd ed, 2012) vol 1, 1201; Spencer Zifcak, ‘The Responsibility to Protect’ in Malcolm D Evans (ed), *International Law* (Oxford University Press, 4th ed, 2014) 509.

⁷² *2005 World Summit Outcome*, GA Res 60/1, UN GAOR, 60th sess, 8th plen mtg, Agenda Items 46 and 120, Supp No 49, UN Doc A/RES/60/1 (24 October 2005) 30 [138]–[139].

having exceeded the mandate the Security Council had agreed upon.⁷³ In significant part because of reservations about the Libyan incursion, the BRICS nations have since remained firm in their opposition to military intervention. So, attempts within the Council to agree upon a joint military and humanitarian strategy to halt and alleviate the effects of the mass atrocities committed in Syria failed abjectly. There, the Council fell into tragic paralysis. From that point onwards, the future of assertive international action in accordance with pillar three (coercive intervention) of R2P was profoundly uncertain.⁷⁴

As the civil war in Syria raged and Libya began to unravel, in December 2013 the ethnic and sectarian conflicts in South Sudan and CAR intensified dramatically. These two conflicts, however, appeared to be ideal candidates for the application of R2P. There were three reasons for this. First, early in each conflict, it became clear that mass atrocities were occurring. Moreover, state authorities were manifestly failing to exercise their responsibility to protect their own citizens. Pursuant to the doctrine, therefore, the international community, in accordance with the *World Summit Outcome Resolution*, assumed a responsibility to take decisive, collective action to protect these peoples from war crimes and crimes against humanity. Secondly, in distinction from Libya and Syria, neither in South Sudan nor CAR was a dangerous proxy war amongst regional rivals likely to develop. The two conflicts were relatively self-contained. Similarly, unlike the Libyan and Syrian cases, no significant Security Council actors had substantial strategic interests in the outcomes of these faraway African conflicts. It was far less likely that the veto would be used. It was distinctly possible, therefore, that the Security Council might coalesce behind firm preventive action. Thirdly, both countries were poor. They had neither the military nor civil institutions or resources to resist any substantial, external, protective intervention, whether economic or military. The traffic lights were green.

Even given these positive indicators, however, the international community did not manage to prevent a dramatic escalation in the commission of mass atrocity crimes throughout 2014 in either country. Security Council action, such as it was, came too little and too late. In the remainder of this article, I seek to explain why.

A *The Africa Factor*

The tyranny of distance played a significant part in the failure to attract international diplomatic and political attention to the unfolding crises in Central Africa. Even in the corridors of UN headquarters in New York, informed diplomats had paid very little attention to developments in CAR prior to 2014. This was not surprising. Many other hotspots in regions of significant strategic interest preoccupied them. Terrorism related events in the Democratic Republic of Congo ('DRC'), Kenya, Mali and Nigeria ranked more highly. By

⁷³ See Simon Chesterman, "'Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya' (2011) 25 *Ethics & International Affairs* 279; Simon Adams, 'Libya and the Responsibility to Protect' (Paper No 3, Global Centre for the Responsibility to Protect, October 2012).

⁷⁴ See Spencer Zifcak, 'The Responsibility to Protect after Libya and Syria' (2012) 13 *Melbourne Journal of International Law* 59, 88.

comparison, CAR was a low priority. What happened there was of little, serious diplomatic concern:

Almost no one could place CAR on a map. Who cared about the country? The general impression is that it is a hopeless kind of place. The Security Council's initial reaction to it was that it was a bit of a mess, but not worth taking any significant action about. Slowly, however, it became more apparent that its civilian population might need international protection.⁷⁵

The situation was somewhat different with South Sudan. It was the world's newest independent state. Its independence followed a protracted, violent civil war with its northern neighbour Sudan. The US in particular had played a significant role in effecting its separation from Sudan. Once the new nation was formed, however, global attention turned elsewhere. The country's inexperienced, former military leaders were left to their own political devices in establishing the political and institutional foundations for a more or less democratic state. They were not equal to the task.

In both South Sudan and CAR, the lack of any established, effective, political, economic and legal institutions meant that once conflicts broke out, governance rapidly disintegrated into rule by military might, religious or ethnic affiliation, and/or charismatic leadership. The Security Council's members, having witnessed similar institutional breakdowns in the DRC and Somalia, were disinclined to plunge into two more. That is, until the rising death toll and the gravity of international crimes being committed eventually attracted their attention. And there was another problem. Media and communications systems in South Sudan and CAR were in only a fledgling state of development. Consequently, information about the worsening situation in both places was slow to trickle out into the wider world. Even had the UN and influential national governments wished to know more in the early stages of the inter-communal violence, the haphazard news that emanated from inside the countries was seriously deficient and substantially partisan.

One of the first casualties of the violence in both nations was the rule of law. By any account, their legal, judicial and criminal justice systems were already fragile at best. This meant that as crimes against humanity and war crimes became more prevalent, neither country had the institutional means to bring perpetrators to account. Atrocities could be committed with impunity. Nor were state institutions sufficiently strong or resilient to be capable of imposing any political or legal authority upon the warring parties. The state collapsed and, with it, the rule of law dissolved.

Part of the problem in CAR is that there is no institutional mechanism for the enforcement of any settlement of the conflict. There have been no arrests of the perpetrators, there are no prisons, there is an almost complete absence of state structures, there is no moderate middle class, there is no information, so that no one knows how many people have died, the people speak different tribal languages, allegations are no more than hearsay. There is a chronic lack of education which means that the people cannot express their concerns in political terms. The entire country operates on rumour and fear.⁷⁶

⁷⁵ Interview with European Ambassador to the United Nations (New York, May 2014).

⁷⁶ *Ibid.*

Given these conditions, for many diplomatic missions surrounding the UN the question was: why should we intervene given that the problems appear so intractable? The immediate thought that occurred naturally in response to the question was: this is an African problem, so it might be best if it were left to Africa to sort out.

In fact, the AU, IGAD and ECASS took considerable interest in the wars engulfing the two states. These organisations put considerable skill and effort into attempts to mediate between the warring disputants. The AU committed 6000 peacekeeping troops to CAR, alongside the French Operation Sangaris contingent. In South Sudan it stood behind IGAD's earnest endeavours to reach a peace agreement and threatened sanctions as the negotiations ran into the sand. ECASS was instrumental in effecting the resignation of Djotodia in CAR, as the precursor to the establishment of a transitional governing authority. It continued to place as much pressure on the parties as was possible to halt the carnage. The fact that these serious diplomatic ventures were unsuccessful had much more to do with the intensity of the cycles of violence and venom that had beset South Sudan and CAR internally than it did with the largely patient and constructive work of the relevant regional organisations.

These diplomatic efforts, however, also had a perverse effect. They meant that for many months the Security Council was able to defer consideration of concrete action by the wider international community, in the fond hope that the relevant regional organisations could effect peace settlements on their own. This was never, actually, a realistic possibility given that both conflicts had spread like wildfire across their countries and throughout every level of their communities — to such an extent that neither state, nor tribe, nor political leaders, let alone a regional political body, was any longer in a position to take charge of events. If control were to be reasserted, it would need to be enforced, in all probability, from outside.

Ironically, therefore, the extended delay before the Security Council began to consider decisive action seriously was owed, in part, to the sincere but ultimately unsuccessful attempts by its counterpart regional organisations to step into the breach.

The regional attempts to stem the conflicts went for a year and this in part explains why the UN response appeared so slow. There were plenty of warnings but the diplomacy was unsuccessful. Another part of the explanation was that the world was paying more attention to more pressing conflicts elsewhere — Mali, Syria, Ukraine and others; this sucked political will, energy and resources from the Central African effort.⁷⁷

B *Peacekeepers*

The next major retardant to timely and decisive international action to stop the commission of mass atrocities in Central Africa was the complexity and difficulty involved in the effective deployment of peacekeepers. To make a

⁷⁷ Interview with senior United Nations official (New York, May 2014).

decision to deploy peacekeepers is one thing. The politics and logistics of doing so quickly and effectively are quite another.⁷⁸

Developed nations, with the notable recent exception of France, have largely deserted the peacekeeping arena. Rich countries have become averse to the loss of life in foreign military ventures. This aversion is magnified when nations to which peacekeepers are to be sent seem of distant relevance to countries' domestic political concerns. The large-scale military interventions in Afghanistan and Iraq had burnt the US badly at home and abroad. European nations have since demonstrated a distinct reluctance to fill the very large void that the Americans have left.

Economic troubles also bore down on the West's willingness to make significant commitments to peacekeeping, not least in Central Africa. Most developed countries suffered significantly during, and in the aftermath of, the global financial crisis. Fiscal austerity had emptied treasuries. Until economic conditions improve domestically, rich nations are markedly disinclined to provide the resources necessary to send troops to meet the protection needs of far distant and poorly understood nations, however severe their conflicts may be. The provision of humanitarian financial assistance is different. The political and economic risks of providing humanitarian aid are far fewer than those attendant upon sending troops into situations of very considerable danger as part of peacekeeping operations. Further, raising money for South Sudan and CAR has proven a formidable task. Despite promises, targets have consistently been missed.

Western countries are unwilling to risk troop deaths. And they are reluctant in current economic circumstances to commit funds. The countries that are willing are those that are poorer. They will fight because they are paid. But their soldiers are less capable and less disciplined, so opening the way to problems such as corruption and sexual abuse.⁷⁹

With the flight of rich nations from peacekeeping duties, the burden of assuming them has fallen on poorer nations. These nations, even despite their economic and military disadvantages, have made an immense contribution to UN peacekeeping operations in the past decade. In South Sudan, surge peacekeepers have arrived from Bangladesh, Ethiopia, Ghana, Kenya, Nepal, Nigeria, Pakistan, Rwanda and Tanzania. In CAR, peacekeepers have been sourced from a very diverse range of countries including Bangladesh, Burundi, Cameroon, the DRC, Ghana, Indonesia, Kenya, Nepal, Pakistan and Paraguay.

Nevertheless, there is an inherent unfairness in these arrangements. Western countries, with highly effective, well-organised, well-armed, well-resourced, and battle-ready battalions, no longer provide them. Developing countries, with modestly effective, minimally armed, moderately trained, relatively inexperienced and substantially under-resourced battalions, are those that meet the call for peacekeeping operations. The situation is far from ideal.

⁷⁸ On responsibility to protect and peacekeeping, see Victoria K Holt and Tobias C Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (The Henry L Stimson Center, 2006); Ramesh Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics* (Routledge, 2011) ch 11.

⁷⁹ Interview with South East Asian Ambassador to the United Nations (New York, May 2014).

There have been promises that more peacekeeping troops will arrive. But even if they do, it is unclear that they will have the training, experience and capacity to keep the peace. The troops are due from India, Bangladesh, Sri Lanka, Nepal and Rwanda, none of which is a leading military nation with significant military resources. Of these the only ones we know that can fight effectively in our conditions are the Rwandans.⁸⁰

One serious consequence of this contributory imbalance is that it takes considerably longer to deploy troops for peacekeeping from developing nations than it does from developed ones. Developed nations, for the most part, have existing troop battalions that can be dispatched to international trouble spots quite rapidly and are prepared and trained to do so. The speedy deployment of French forces to Mali, and later to CAR, provides an illustrative example.

The task is harder when deployments are to be arranged from less ready and resourced countries. Because developing nations are less able to put large military contingents on the ground, it is usual for peacekeeping forces to be provided from many developing nations rather than a few. This presents significant problems of coordination, with consequent delays. Troop transfers must be organised from diverse geographical areas. The necessary air and sea transportation to get soldiers to their destinations may not be available from within the countries concerned and must, therefore, be procured and forwarded from elsewhere. That can take many weeks, if not months. Critically, none of this complex organisation can take place until the financial resources necessary to underpin it are obtained and allocated. By definition, developing countries are less able to finance peacekeeping operations and overcome their associated logistical difficulties than are developed ones. The perpetual search for funding also slows deployments substantially.

UN troop deployment is mighty complicated. One must gather together troops from very different countries; get together the monetary resources to ensure that troops are paid appropriately; and so on. France was able to deploy quickly because it is just one country and has divisions organised and ready. But the African countries are not so well placed — therefore they find it much more difficult to muster the requisite numbers. Then there is the problem of troop-contributing countries. The principal troop-contributing countries are Pakistan, India, Rwanda, Burundi, Nepal. The Europeans contribute no one, except a handful from Ukraine.⁸¹

The Security Council is responsible for authorising peacekeeping operations. Yet there are divisions within it as to the appropriate scope and rules of engagement that should be set down in the relevant mandates.⁸² Some member states of the Security Council have become seriously concerned about the passivity of peacekeepers in the face of attacks on civilians. For this reason, such Council members have argued that peacekeeping mandates should be framed

⁸⁰ Interview with member of South Sudan's National Transitional Assembly (Melbourne, October 2014).

⁸¹ Interview with senior United Nations official (New York, May 2014).

⁸² United Nations Office of Internal Oversight Services, *Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations*, UN GAOR, 68th sess, Provisional Agenda Item 142, UN Doc A/68/787 (7 March 2014) 13 [30]–[34] ('*Report of the Office of Internal Oversight Services*').

more assertively to authorise the use of force and more explicitly as to the circumstances in which armed force can be used to repel the attackers. So, for example, force might be authorised where there is an imminent threat or actual occurrence of serious physical violence perpetrated by armed groups upon civilian populations.

Other member states are more cautious about legitimising the use of force by peacekeepers. They express a preference for prevention and robust political negotiation as the more desirable course. The use of force, therefore, should be authorised solely for the protection of UN missions and civilians sheltering within UN facilities. The great weakness of this course is that it produces situations in which peacekeepers stand by as civilians to whom they have a clear responsibility are killed, maimed or violated.⁸³ This has been a particular problem in South Sudan. In February 2013, for example, an attack occurred on a civilian community in Wangar, Jonglei State, resulting in more than a hundred civilian deaths.⁸⁴ In July 2013, more than 300 people were killed in several locations in Pibor County, while peacekeepers refrained from forcible intervention.⁸⁵ Overall, UNMISS peacekeeping forces in South Sudan took immediate action to protect civilians under attack in only 10 per cent of cases.⁸⁶

The question therefore remains the same as it implicitly appeared after the Security Council adopted the first protection of civilians resolution in 1999: whether the United Nations, an [o]rganization founded for the fundamental purpose of promoting peace, will protect civilians only through peaceful means, or whether it is ready and willing to use violence, even on rare occasions and as a last resort, to come to their assistance?⁸⁷

Partly in response to such passivity, in 2013 the Security Council framed a new, more assertive resolution for the DRC specifically entitling peacekeepers there to use force to separate combatants and quell violence against innocent citizens.⁸⁸ In doing so, peacekeepers would take on the character of ‘intervention brigades’.⁸⁹ The Council authorised such ‘brigades’ to engage in targeted offensive operations against armed groups as one element of a comprehensive approach to addressing the root causes of the conflict. Nevertheless, other Council members have continued to express reservations about such an approach. Their view remains that peacekeepers should focus on prevention and pre-emption rather than extending their remit to enforcement.

Those who follow R2P debates will recognise the similarity of this divergence to that between members of the Security Council who, as a last resort, favour Chapter VII military interventions to end mass atrocity crimes and those who

⁸³ For an illuminating recent discussion of the dilemmas with the protection of civilians, see Ramesh Thakur, ‘Protection Gaps for Civilian Victims of Political Violence’ (2013) 20 *South African Journal of International Affairs* 321.

⁸⁴ *Report of the Office of Internal Oversight Services*, UN Doc A/68/787, 10.

⁸⁵ *Ibid* 10.

⁸⁶ *Ibid* 19.

⁸⁷ *Ibid* 20 [78].

⁸⁸ SC Res 2098, UN SCOR, 68th sess, 6943rd mtg, UN Doc S/RES/2098 (28 March 2013) 6 [9].

⁸⁹ See David Smith, ‘Congolese Dare to Hope for Peace as M23 Rebels Surrender after Brutal War’, *The Guardian* (online), 6 November 2013 <<http://www.theguardian.com/world/2013/nov/05/congo-rebels-surrender-hopes-peace>>.

believe that the line between protective measures, and the use of military might, ought never to be crossed. As long as the Council remains divided on these questions, the negotiation of peacekeeping mandates is likely to be protracted. Because of that, many lives may be lost as deadly conflicts burn out of control pending the outcome of the Council's politically complex and contentious deliberations.⁹⁰

It is also important to note that such divisions at the macro level can and do have significant adverse ramifications for peacekeeping on the ground. Where mandates' wording reflects competition and compromise between the Security Council's members — thereby finessing political differences, utilising generalisations and crafting ambiguities — considerable room is left for UN missions, troop contributing countries and force commanders to interpret that wording in different ways. Where and when these diverge, rules of engagement can become unclear and the resultant confusion may prejudice peacekeeping's effectiveness.

In this broad context, it is comprehensible why, on 10 April 2014, the Secretary-General announced a substantial surge in the numbers of military and police personnel to be deployed to protect civilians in CAR from the atrocities that continued to be committed daily against its civilians. But, he added, the additional peacekeeping contingent could not be fully deployed for a further five months, until 15 September.⁹¹ In the event, even that target date was not met. The extended delay is understandable but no less unacceptable for that.

C Regional Considerations

In a recent interview, the former UN Secretary-General, Kofi Annan, remarked that regional factors often played forcefully into conflicts whose character initially had been entirely domestic.⁹² Neighbouring countries, adjacent to a conflict, often take advantage of the chaos to advance their own strategic, political and economic interests. Their involvement, in turn, complicates decisions as to whether, and in what way, either the regional or international communities might intervene to facilitate a ceasefire and subsequent political negotiations towards a lasting settlement of internecine warfare.

D South Sudan

Regional proxy warfare did not play a major part in shaping the conflicts in South Sudan or CAR but that does not mean that proxy warfare was absent. In South Sudan, several countries had clear interests in determining the civil war's outcome. Of the relevant actors, Uganda and Sudan are clearly the most significant. Uganda entered the conflict very early. It linked up with the SPLA as part of a regional campaign to rid the immediate locale of the Lord's Resistance

⁹⁰ See generally *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, 68th sess, UN Doc S/2013/689 (22 November 2013); UN SCOR, 68th sess, 7019th mtg, UN Doc S/PV.7019 (19 August 2013).

⁹¹ See *Secretary-General Report on the CAR*, UN Doc S/2014/142, 20 [93]; *Resolution 2149*, UN Doc S/RES/2149, 7–8 [20].

⁹² Sam Jones, 'Kofi Annan: Syrians Pay with Their Lives while Regional Powers Stage Proxy Wars', *The Guardian* (online), 23 May 2014 <<http://www.theguardian.com/global-development/2014/may/23/kofi-annan-syrians-regional-proxy-wars>>.

Army. Since that time it has retained a residual military presence in the north of South Sudan. That deployment has not been without its controversies. Ugandan troops have been criticised for joining governmental forces to overcome opposition fighters in northern cities of strategic importance. They have been accused of bombing a peace meeting between Dinka and Nuer groups in Jonglei. The army's use of cluster bombs has also been the subject of sharp criticism. Uganda's military intervention has contravened AU, UN and IGAD calls for a ceasefire.

Sudan has significant strategic and economic interests in its southern neighbour. These interests centre upon oil. When the two countries were joined, Khartoum enjoyed control over Juba's substantial revenues from oil exploration. With the split, the north lost that control but retained significant interests in oil through taxes levied on the transport of oil through its pipeline facilities. Disagreements have broken out, however, between Kampala and Khartoum as to the location and direction of new oil pipelines. For economic reasons, each wants the pipelines to traverse their territory rather than that of their antagonist. For the time being, both Uganda and Sudan back the South Sudanese Government under Kiir. There are suspicions, however, that Khartoum may overtly support Kiir while hedging its bets with Machar. This makes it possible that should the fighting favour Kampala, Khartoum may intervene militarily in South Sudan to assert its political and economic ascendancy.

Ethiopia and Kenya have traditionally supported the SPLM/A-IO, the former militarily, the latter politically. Ethiopia's connection has been fostered by its own difficulties with inter-ethnic strife between its Nuer and Andyuak populations. A South Sudanese peace settlement is crucial so as not to inflame Nuer sentiment within Ethiopia's own borders. Ethiopia, therefore, has taken the lead in facilitating the IGAD peace negotiations. It is also concerned about the role that Eritrea, an active regional opponent, might choose to play in the South Sudanese conflict. Ethiopia's fear is that Eritrea might provide support to the SPLM/A-IO in an effort to derail Ethiopia's role in fostering the IGAD negotiations. There are suggestions that Eritrea already has a small advance military contingent in southern South Sudan. Since the outbreak of the current inter-ethnic violence, Kenya has remained largely neutral, providing peacekeeping forces to UNMISS.

While not yet a fully-fledged proxy war, this regional, political positioning may, depending on which way the civil war turns, either advance negotiations towards a peaceful solution or extend and exacerbate the fighting between South Sudan's combatants in the service of neighbouring countries' strategic agendas.

E *Central African Republic*

Matters are not so complex in CAR. There, the principal involvement of central African neighbours has been in the reception of large numbers of refugees. Almost 400 000 civilians from CAR have sought safety in Cameroon, Chad, the DRC and the Republic of Congo.⁹³ Cameroon alone supports more

⁹³ Human Rights Council, *Preliminary Report of the Independent Expert on the Situation of Human Rights in the Central African Republic*, Marie-Thérèse Keita Bocoum, 26th sess, Agenda Item 10, UN Doc A/HRC/26/53 (30 May 2014) 7 [17].

than 100 000 people, of whom 84 per cent are women and children who arrive from CAR traumatised, exhausted and sick after days of difficult travel.

The AU has played a very constructive role by providing some 6000 soldiers to protect UN staff, facilities and local civilians from the worst of the fighting. In this it has been aided by France, which in the early days of the conflict, agreed to provide up to 2000 troops to bolster peacekeeping operations. The European Union has added another 1000 peacekeepers. At the same time, the AU has strongly supported the efforts of its companion sub-regional organisation, ECASS, to effect a cessation of hostilities and to resolve the conflict through political dialogue.

The most visible regional problems for CAR are twofold. First, it is surrounded by countries in conflict and is therefore perpetually at risk of cross-border military or militia incursions. Boko Haram fighters from Darfur and other regions are said to have crossed into CAR periodically.⁹⁴ Alternatively its own inter-communal violence could spill over into its neighbours, thereby inviting reprisals. CAR is surrounded by Cameroon, Chad, the DRC, the Republic of the Congo, Sudan, South Sudan. As one senior North American diplomat put it, 'a major problem for CAR is that it has horrible neighbours'.⁹⁵

The second complication is Chad. Chad, in contrast to CAR, is militarily a strong country. Consequently, it has periodically exercised substantial political influence in its smaller neighbour. It is thought, for example, to have been instrumental in persuading the former leader of the Séléka to stand down in January 2014. Djotodia resigned immediately after peace negotiations in January 2014, chaired by Chad, in Chad. Chad then provided political and financial backing to Séléka in CAR's political and inter-religious conflict, until the anti-balaka began to regain the upper hand and the transitional government was formed.

Until recently Chad had provided 5500 of the AU peacekeeping contingent of 6000. As a former colony it retains strong links with France. These had proven significant in quelling the adjacent African conflict in Mali. At the same time, Chad, as a non-permanent member of the Security Council, had argued against the establishment of a UN peacekeeping force in 2014 to take over from the AU–French operation. It calculated that the new arrangement might diminish its own influence in the CAR conflict. There are oil wells in southern Chad and northern CAR. Chad naturally keeps a wary eye on any disturbance that might impede its access to oil production along its 1000 kilometre border with CAR and is not inclined to favour any unpredictable external interference with its economic interests there. Further, Chad and Sudan are not friendly. Chad, therefore, is keen to ensure that CAR remains within its political and military orbit as a means of defending its southern border from possible Sudanese inroads.

F *International Considerations*

None of the major global powers have significant strategic interests in either South Sudan or CAR. This does not mean, however, that they are uninterested in

⁹⁴ See *Secretary-General Report on the CAR*, UN Doc S/2014/142, 9 [41].

⁹⁵ Interview with North American Ambassador to the United Nations (New York, May 2014).

the question of what role, if any, the international community should play in the resolution of their wars. China and France are exceptions, however. In recent years China has invested heavily in oil in South Sudan. It has been very concerned, therefore, to protect its economic interests there. In June it provided more than 1000 tonnes of small arms and munitions, principally to government forces.⁹⁶ In August it sent 850 soldiers to the country, principally to protect its oilfields and associated production and distribution facilities.⁹⁷ France has played a highly constructive military role in quelling conflict in Central and West Africa, most notably in Mali and Côte d'Ivoire. Similarly, as the former colonial power, it took the early initiative in sending more than 1000 peacekeeping troops to CAR.⁹⁸

As for the wider international community, generally speaking, the member states of the Security Council have converged as to their perspectives and actions with respect to the South Sudanese and CAR conflicts. Security Council resolutions have been adopted without dissent and members across the board have expressed continuous frustration with the disingenuous and erratic behaviour of the political leaderships. Nevertheless, obvious cleavages remain. As noted before, Council members have been divided about the appropriateness of the use of force by peacekeepers. Russia and China have insisted that peacekeeping be conducted defensively. That is, peacekeeping contingents in both countries should confine themselves to the protection of civilians, to providing corridors for the receipt and distribution of humanitarian aid and to monitoring and reporting on human rights abuse. North American and European member states have been far more inclined, in certain specified circumstances, to authorise the use of force by peacekeepers, so as to deter and repel attacks by government and opposition forces upon civilian encampments, in particular those established by the UN itself.

The same dividing line has appeared more recently as to what action, if any, should be taken against political and military leaders. Targeted sanctions against identified political and military leaders in South Sudan have been discussed but not yet imposed because Russia and China have signalled their opposition. Western nations have been more inclined to support stronger action in this regard. The same division has opened up as to whether arms embargoes should be instituted. So too, there have been suggestions that the leaders of South Sudan should be referred to the International Criminal Court to determine whether a case exists for their prosecution for crimes against humanity. This would send a strong message to Kiir and Machar that a continuation of inter-communal violence is unacceptable and that they might be brought to judicial account for their actions in fanning it. Again, China, Russia and a handful of other Security Council members have indicated that they do not favour such a referral.

It is most unfortunate, finally, that these regionally significant deliberations have had to take place under the shadow of the serious political and military

⁹⁶ See Amnesty International, *UN: South Sudan Arms Embargo Crucial after Massive Chinese Weapons Transfer* (17 July 2014) <<http://www.amnesty.org.au/news/comments/35059/>>.

⁹⁷ Ibid.

⁹⁸ Kim Willsher and Andrew Sparrow, 'French Troops Sent into Central African Republic in Effort to Stop Bloodshed', *The Guardian* (online), 7 December 2013 <<http://www.theguardian.com/world/2013/dec/06/france-troops-central-african-republic-hollande-bangui>>.

upheavals in Ukraine. The conflict there has hardened the contending positions of Russia and the US/European alliance in relation to a host of contentious global issues. That fallout has been felt as far as Central Africa, where the means and methods of international intervention to halt mass atrocity crimes have fallen for discussion. Consequently, the two sides there have been far less inclined to compromise on any issues that divide them, including the three just delineated, so reducing significantly the range of measures that might be taken by the international community to halt the commission of extensive and grave international crimes.

V R2P: MISSING IN ACTION?

In the course of its excellent and extensive report on the failures of UN peacekeeping in Sri Lanka, the Petrie Commission had this to say concerning R2P:

The concept of a “Responsibility to Protect” was raised occasionally during the final stages of the conflict, but to no useful result. Differing perceptions among Member States and the Secretariat of the concept’s meaning and use had become so contentious as to nullify its potential value. Indeed, making references to the Responsibility to Protect was seen as more likely to weaken than strengthen UN action.⁹⁹

Throughout post-World Summit debates and dialogues on R2P, UN member states have been divided about the doctrine’s interpretation. The most significant source of disagreement has related to the question of whether and when, as a last resort, coercive military intervention should be authorised in order to cease the commission of mass atrocities within countries beset by inter-communal violence or civil war.

This debate was conducted in the abstract until 2011, when the Security Council authorised NATO military action in Libya. The Council believed that military action was justified, although a number of its most important members abstained from the vote. Deep divisions amongst the Council membership then appeared, however, as the intervention progressed and seemed to embrace wider aims than had originally been contemplated. The most severe criticism of the Libyan case related to ‘mission creep’. Those members of the Security Council who abstained from the vote on *Resolution 1973*,¹⁰⁰ which authorised the intervention, attacked forcefully what they saw as the abuse of the Council’s mandate.¹⁰¹ In their view there was no way in which the relevant resolution could have permitted the transformation of the mission from the protection of civilians to the objective of regime change. Consequently, reservations were expressed as to the legality of the transformation. Here, the argument was that *Resolution 1973* could not be stretched to cover actions such as intervention in a

⁹⁹ Charles Petrie, ‘Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka’ (Report, United Nations, November 2012) 26 [74] <http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf> (‘Petrie Report’).

¹⁰⁰ SC Res 1973, UN SCOR, 66th sess, 6498th mtg, UN Doc S/RES/1973 (17 March 2011).

¹⁰¹ UN SCOR, 66th sess, 6498th mtg, UN Doc S/PV.6498 (17 March 2011).

civil war, the assassination of a government's leadership and the overthrow of the regime.¹⁰²

Security Council endorsement was critical to underpin the legality of the intervention but the actions of the coalition forces were said by the BRICS countries to take the intervention beyond *Resolution 1973*'s terms and, therefore, possibly beyond what the *Charter of the United Nations* could be interpreted to allow. Further, Brazil, China, India, and Russia all objected strongly to the alteration of NATO's military stance from the relative neutrality of civilian protection to evident partiality in taking the rebel side.¹⁰³ It was partly owing to such reservations that three draft resolutions recommending various degrees of condemnation and action in response to the Syrian crisis were vetoed subsequently by Russia and China.¹⁰⁴

R2P has never quite recovered from these wounds.¹⁰⁵ As one North American diplomat put it to me: 'Libya was a political killer. The Russians felt themselves to have been politically duped. Russia's "never again" has become Libya "never again"'.¹⁰⁶

It will have become noticeable that although R2P appears in the title to this article, it has been referred to relatively infrequently. That is because the doctrine has drifted from attention at the UN, in the Security Council and in the permanent missions to it. The drift has also been reflected in international political discussion of the situations in South Sudan and CAR. Remarkably, for example, in his extensive reports to the Security Council on the conflicts in South Sudan and CAR, at the very time that one might have expected an R2P framework for incremental and progressive intervention to have been utilised — ie three months into the conflicts — in neither report did the Secretary-General mention R2P at all.¹⁰⁷

¹⁰² UN SCOR, 66th sess, 6566th mtg, UN Doc S/PV.6566 (27 June 2011) 4.

¹⁰³ UN SCOR, 66th sess, 6528th mtg, UN Doc S/PV.6528 (4 May 2011) 9, 10.

¹⁰⁴ *Draft Resolution — France, Germany, Portugal and United Kingdom of Great Britain and Northern Ireland*, 66th sess, UN Doc S/2011/612 (4 October 2011); *Draft Resolution — Bahrain, Colombia, Egypt, France, Germany, Jordan, Kuwait, Libya, Morocco, Oman, Portugal, Qatar, Saudi Arabia, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America*, 67th sess, UN Doc S/2012/77 (4 February 2012); *Draft Resolution — France, Germany, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America*, 67th sess, UN Doc S/2012/538 (19 July 2012).

¹⁰⁵ See generally Paul R Williams, J Trevor Ulbrick and Jonathan Worboys, 'Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis' (2012) 45 *Case Western Reserve Journal of International Law* 473; Jones, above n 92; Gareth Evans, *R2P Down but Not Out after Libya and Syria* (9 September 2013) openDemocracy <<https://www.opendemocracy.net/openglobalrights/gareth-evans/r2p-down-but-not-out-after-libya-and-syria>>; Ralph Janik, 'China, Russia and the Failure of the Responsibility to Protect in Syria: Does the Fear of Regime Change Offer a Serviceable Explanation?' (2013) 58(1) *Studia Europaea* 63; Ramesh Thakur, 'R2P after Libya and Syria: Engaging Emerging Powers' (2013) 36(2) *Washington Quarterly* 61; Spencer Zifcak, 'Is the Responsibility to Protect Dead? The Doctrine's Standing in the Wake of the Syrian Massacre' in Vasilka Sancin and Masa Kovic-Dine (eds), *The Responsibility to Protect in Theory and Practice* (GV Založba, 2013) 253.

¹⁰⁶ Interview with North American Ambassador to the United Nations (New York, May 2014).

¹⁰⁷ *Secretary-General Report 6 March*, UN Doc S/2014/158; *Secretary-General Report on the CAR*, UN Doc S/2014/142.

As to South Sudan, the Security Council outlined five priority tasks for an expanded military presence.¹⁰⁸ These were the protection of civilians; the creation of conditions for the safe delivery of humanitarian assistance; supporting human rights investigations and reporting; providing support to the IGAD led political negotiations; and the protection of UN personnel.¹⁰⁹ The approach in CAR was almost identical.¹¹⁰ There, the Security Council set down a new mandate for an enlarged peacekeeping mission focusing upon the protection of civilians; the protection of UN personnel; support for an interactive political process; the creation of conditions conducive to the delivery of humanitarian assistance; the promotion and protection of human rights; and for the disarmament of former armed elements and their reintegration into the national military forces.¹¹¹ The initiatives, for both countries, while broadly consistent with pillar two of the R2P framework, were never presented as such, and are all familiar from prior peacekeeping operations stretching back more than two decades.

In other words, except for the persistent advocacy of the doctrine at the UN by Australia,¹¹² the Netherlands and Rwanda, R2P has gone missing not only from the UN's diplomatic lexicon but also from its role in framing the international community's response to mass atrocity crime. Rather than providing an agreed upon set of principles upon which to build a coherent response to the commission of crimes against humanity and war crimes, R2P has become, since Libya and Syria, a lightning rod for Security Council dissension. This is so, irrespective of the context in which it is sought to apply.

R2P's practical relevance is now limited. The non-aligned countries are sceptical. This is linked to the growth of the use of force by Western powers. It is seen as a pretext for humanitarian intervention ... It remains as part of preambular statements in Security Council resolutions but there has barely been a mention of it in relation to South Sudan and CAR. Countries do not want to feel as if it constitutes some form of legal obligation to take action, not even in relation to genocide. The political difficulties are too great. The Dutch, Australians and Rwandans are still keen ... But for me, I've given up on this. The continuing disagreements about it are unproductive. They generate into ideological arguments about Libya for instance ... R2P has become a red flag, and no one wants to wave it.¹¹³

VI CONCLUSION

On any interpretation, international intervention to prevent mass atrocity crimes has thus far been a failure in both South Sudan and CAR. At the time of writing, crimes against humanity and war crimes continue to be committed extensively in both countries.

¹⁰⁸ *Resolution 2155*, UN Doc S/RES/2155, para 4.

¹⁰⁹ *Ibid.*

¹¹⁰ *Resolution 2149*, UN Doc S/RES/2149, para 30.

¹¹¹ *Ibid.*

¹¹² Gary Quinlan, 'Threats to International Peace and Security: Prevention and Fight against Genocide' (Statement delivered at the UN General Assembly Debate, New York, 16 April 2014) <<https://australia-uns.org.au/2014/04/threats-to-international-peace-and-security-prevention-and-fight-against-genocide/>>.

¹¹³ Interview with European Ambassador to the United Nations (New York, April 2014).

My purpose in this article has not been principally to condemn but to attempt to explain how and why the failure occurred. There are several interlinked reasons:

- Despite the gravity of the atrocities committed in South Sudan and CAR, their catastrophes existed only at the margins of international concern. Consequently, concentrated international attention to them, and international action to alleviate them, were deferred for too long. If mass atrocities are to be prevented in Africa, the international community needs to pay far more attention to African nations and make a concerted effort to understand their diverse politics, economics, ethnicities and cultures.
- When attention finally focused upon the African continent, the South Sudan and CAR crises stood in a queue. They fell in behind the DRC, Mali and Nigeria. The Security Council found it very difficult to focus upon several African calamities at the same time.
- This was not solely a problem with Africa. During 2014, the world's attention was captured by an outbreak of Russian imperialism and its associated secessionist ambitions in Ukraine. As this conflict had far greater strategic significance for the major powers, Central Africa slipped ever further into the background of international attention.
- The political and institutional structures in both South Sudan and CAR had broken down completely. There was, in effect, no governance. That made it immensely difficult for the Security Council and others to determine how best to effect either a political or a military solution. That was because, first, political disputation is dispersed and fighting is disaggregated through every hierarchical and geographical level. Secondly, even if a clear path to ceasefire and peace negotiations could have been identified, no state-based command structure existed with the authority to implement and insist upon the process.
- The establishment of peacekeeping operations was painfully slow. This was owed in part to the Security Council coming late to the conflicts and, in part, to the complexity of the logistics associated with arranging for large numbers of military and police personnel from many different, developing countries to get their feet on the ground at their allocated destinations.
- The negotiation of relevant UN mandates also took time. Splits on the Council occurred, and are still occurring, as to the extent and limits to be applied to the peacekeeping operations. These cleavages are most intense when coercive measures are considered, whether as a component of peacekeeping or more broadly as in the imposition of sanctions. Assertive international military intervention is presently off the table. This is despite the fact that its early utilisation might well have been the most effective means to prevent the mass atrocity crimes in South Sudan and Central African Republic from occurring.
- By the time that the Security Council had decided to act, the scale of the conflict in the two countries had become far larger than any UN

peacekeeping mission could possibly cope with. The earlier deployment of substantial numbers of peacekeepers may have proven more successful. In the event, peacekeeping missions in both countries were, by force of circumstance, reduced to a primary concern with the protection of civilians and UN staff, mostly in UN facilities and with the facilitation of humanitarian assistance. Given this, little if anything could practically be done to stop the fighting.

- The existence or prospect of regional proxy wars complicates matters for the international community even further. The mass exodus of peoples fleeing persecution and death across common national borders may readily inflame tension with neighbouring countries. Further, in South Sudan in particular, the economic interests of several adjacent countries in the country's resource wealth has invited, and could still further invite, intervention from those neighbours where their interests appear imminently to be threatened. The Security Council will naturally be hesitant to embark upon a course that may provoke any wider regional, military confrontations.
- This latter consideration might possibly suggest that it should fall to regional organisations to try, in the first instance, to resolve local conflicts involving the commission of mass atrocity crimes. In principle, this is appropriate. As will have been discerned, however, the application of the principle is not without significant disadvantages. The first is that a resolution devised by a regional entity whose members have significant political, economic or tribal interests in the outcome of a nation's conflict, is unlikely to be framed impartially and independently. Secondly, as in South Sudan and CAR, a reliance by the Security Council upon peacemaking efforts by a regional organisation, such as the African Union or IGAD, may result in a destructive delay in international involvement. This is particularly so where it is apparent that the regional process has become dysfunctional or ineffective. There is a great deal more work to be done on establishing effective protocols between the Security Council and recognised representative regional organisations to ensure that either misplaced reliance upon them, or extended delay because of them, does not result in ever more numerous civilian casualties.
- Beneath all of these factors, there still lies the fundamental clash between the essential political and legal principle of state sovereignty and the moral principle that underpins the international community's responsibility to prevent the commission of mass atrocity crimes. On the Security Council this divides Britain, France and the US from Russia, China and the increasingly influential BRICS nations from an array of other smaller ones — those in the S-5 for example.¹¹⁴

In the present context this clash of principle is a source of deep division as to the extent and limits of the strategies to be employed in peacekeeping operations, and on the justification or otherwise of coercive forms of international

¹¹⁴ The S-5 consists of Costa Rica, Jordan, Lichtenstein, Singapore and Switzerland.

intervention designed to diminish, if not eliminate, the actual or anticipated commission of crimes against humanity. Where the balance between intervention and sovereignty should properly lie remains R2P's most significant dilemma. The failure even to approach an answer remains the cause of untold suffering and the waste of innumerable innocent lives.

Should one conclude, therefore, that the doctrine of the 'responsibility to protect' has failed? After all, if it has not been applied effectively in poverty stricken, militarily weak, politically chaotic and strategically inconsequential nations such as the two studied here, are there any conditions or locations in which its success might realistically be anticipated?

The question, in my view, is misplaced for two reasons. First, it is clear that while civil wars in South Sudan and CAR were not halted within the year, the international community's concern to act to protect civilians and prevent mass atrocities committed in conflicts internal to nations has intensified. The Security Council's focus upon protecting civilians caught up in intra-national civil wars is significantly greater than it was even 20 years ago.¹¹⁵ Further, despite some disagreements on its parameters, the Council remains committed to international peacekeeping. With the introduction of the UN's Peacebuilding Commission and other related institutions and offices, significant progress is being made through the UN in determining the best means and methods through which national capacity-building may be institutionalised and advanced — a key strategy in insuring against state failure. Following the recommendations of the Petrie Commission, the recent introduction of the 'Rights Up Front' initiative is another promising advance. Under this initiative, each and every UN agency will be required to plan and audit its activities against transparent human rights criteria and engage in early warning and analysis of threats of national catastrophe.¹¹⁶ Introducing the initiative, the Deputy Secretary-General of the UN, Jan Egeland, said that:

It is irrefutable ... that serious human rights violations are the best early warning of impending atrocities. If we fail to act early, the human, political and economic costs can be devastating ... This calls for a more alert, flexible and coordinated UN System, both on the ground and at headquarters.¹¹⁷

While none of these measures has been explicitly linked to R2P, every one is consistent with its conceptual and ethical underpinnings. It can fairly be said, in this sense, that while R2P may have faded from the international diplomatic lexicon, its schema and commitments remain influential.

Secondly, the challenge facing the international community is to prevent the commission of genocide, crimes against humanity, war crimes and ethnic cleansing. This presents immensely complex and variegated problems in

¹¹⁵ See Michael Bothe, 'Peacekeeping' in Simma et al (eds), above n 71, 1171.

¹¹⁶ Ban Ki-moon, 'Renewing Our Commitment to the Peoples and Purposes of the United Nations' (Speech delivered at the United Nations Headquarters, New York, 22 November 2013) <http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2068>.

¹¹⁷ Jan Egeland, 'Informal Remarks at Briefing of General Assembly on Rights Up Front' (Speech delivered at the United Nations General Assembly, 17 December 2013) <<http://www.un.org/sg/rightsupfront/doc/DSG-rights-up-front-GA-statement.htm>>. See also Kristen Boon, 'Assessing the UN's New "Rights Up Front" Action Plan' on *Opinio Juris* (27 February 2014) <<http://opiniojuris.org/2014/02/27/assessing-uns-new-rights-front-action-plan/>>.

circumstantially highly divergent contexts. It is too much to expect that one overarching framework or mechanism, like R2P, could ever meet that challenge.

This does not mean, however, that incremental advances in mass atrocity prevention are unachievable. So, the more that is learnt about R2P's failures and successes; about its plans and their misconceptions; about implementation and its errors; about its politics and conflicting interests; about national, regional, political, economic and cultural differences in its spheres of application; the better will be the chance that practical experience of innovative, astute and diverse forms of international intervention to protect human life will in time develop. These innovations should inform a more intricate and dynamic conception of how the international community in general, and the UN in particular, might best tackle people's and nations' evils.¹¹⁸ This article has sought to make its own, modest contribution in that regard.

In the meantime, the Petrie Commission's recent conclusion as to the most constructive role that the R2P doctrine can presently play is worth close consideration. It embraces both concept and practice:

All Member-States regret and would wish to prevent situations where there is large scale loss of life. The single most effective UN action to protect civilians from gross human rights violations is early and robust political consensus among UN Member States in favour of protection ... The single most significant factor that limits the UN's ability to adequately address such situations is the difficulty Member States have ... in reaching an early and qualitatively adequate political consensus ... Approaches need to be identified to allow UN Member States to more easily reach the necessary political consensus. These could include ... offering them new models of UN action which protect the human rights of civilians but which also have minimal impact on the wider concerns of Member States. ... [I]n practice possibly the greatest contribution of [the Responsibility to Protect] would be as a process to help facilitate the emergence among Member States of early political consensus on human rights protection.¹¹⁹

¹¹⁸ As to further lessons from recent experience, see Gareth Evans, 'Lessons and Challenges' in Jared Genser and Irwin Cotler (eds), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time* (Oxford University Press, 2011) 375; Ramesh Thakur, 'The Responsibility to Protect: Retrospect and Prospect' in Charles Sampford and Ramesh Thakur (eds), *Responsibility to Protect and Sovereignty* (Ashgate, 2013) 189.

¹¹⁹ *Petrie Report*, above n 99, 30–1 [86].