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The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?

Gareth Evans, *International Crisis Group, Brussels*

Editorial Introduction

This is an edited version of the 2008 Annual Lecture of the David Davies Memorial Institute of International Studies (DDMI). The lecture was delivered by Gareth Evans on 23 April at Aberystwyth University. Gareth Evans is President and Chief Executive of the International Crisis Group and a former Australian Foreign Minister. He was co-chair of the International Commission on Intervention and State Sovereignty which developed the concept of responsibility to protect in its 2001 report.

The DDMI was founded in 1951 to commemorate and carry forward Lord Davies' project of creating a just and peaceful world through international cooperation, law and organization. The Institute's Annual Lecture is an important vehicle for exploring and developing normative themes that guided Lord Davies, and it provides an opportunity for the dissemination of new ideas and approaches. On behalf of the DDMI, I would like to thank the Gwendoline and Margaret Davies Charity for funding this year's Annual Lecture.

Gareth Evans delivered an outstanding lecture to a very appreciative audience, and one in the very best tradition of the DDMI's commitment to academic-practitioner engagement. I am delighted to see it published here. A podcast is available at: www.aber.ac.uk/interpol/en/research/DDMI/DavidDavies.htm.

Professor Nicholas J. Wheeler

Director, David Davies Memorial Institute of International Studies

Abstract

How far did the unanimous agreement on the responsibility to protect at the 2005 UN World Summit really mark the international community's acceptance of a new norm supporting collective action – including ultimately military action – when governments through either incapacity or ill-will fail to protect their own people from genocide, war crimes, ethnic cleansing and crimes against humanity? This article describes the rapid initial emergence and acceptance of the concept, but also the subsequent denial and evasion by a number of governments of the commitments they signed up to in 2005. It addresses the five main conceptual misunderstandings and misapprehensions evident in the public debate that need to be overcome if the argument in support of the responsibility to protect is to be won.

Keywords: common humanity, humanitarian intervention, prevention, responsibility to protect, United Nations



When the 2005 United Nations World Summit embraced the concept of ‘the responsibility to protect’, it was an extraordinary moment. Heads of state and government from 150 countries, meeting as the UN General Assembly, unanimously accepted not only that sovereign states have a very explicit responsibility to protect their own people from genocide, war crimes, ethnic cleansing and crimes against humanity, but when they manifestly fail in that responsibility – as a result of either incapacity or ill-will – the responsibility falls upon the wider international community to take whatever action is appropriate, including in the last resort, and if the Security Council agrees, military action.¹ Within just four years of the first articulation of the concept – a mere blink of an eye in the history of ideas – consensus seemed to have been reached on how to resolve one of the most difficult and divisive international relations issues of our, or any other, time.

An idea whose time has come ...

To appreciate how far the world came in 2005, it is important to understand where it had been. For an insanely long time – centuries in fact, going all the way back to the emergence of the modern system of states in the 1600s – the view had prevailed that state sovereignty is a licence to kill: that it is no one’s business but their own if states murder or forcibly displace large numbers of their own citizens, or allow atrocity crimes to be committed by one group against another on their soil.

After World War II and Hitler’s Holocaust some progress was certainly made in challenging this absolutist concept of sovereignty, with individual and group human rights recognized in the UN Charter and, more grandly, in the Universal Declaration; with the Nuremberg Tribunal Charter in 1945 recognizing the concept of ‘crimes against humanity’; and with the signing of the Genocide Convention in 1948.²

But the overwhelming preoccupation of those who founded the UN was not in fact human rights but the problem of states waging aggressive war against each other. And what actually captured the mood of the time, and the mood that prevailed right through the Cold War years, was – more than any of the human rights provisions – Article 2(7) of the UN Charter: ‘Nothing should authorize intervention in matters essentially within the domestic jurisdiction of any State’. The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world’s business prevailed throughout the UN’s first half-century of existence: the invasion of Vietnam, which stopped the Khmer Rouge in its tracks, was universally attacked, not applauded.³

With the arrival of the 1990s, and the end of the Cold War, the prevailing complacent assumptions about non-intervention did at last come under challenge as never before. *The* quintessential peace and security problem, it will be remembered – before 9/11 came along to dominate everything – became not interstate war, but civil war and internal violence perpetrated on a massive scale. With the break-up of various Cold War state structures, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia

and in Africa. But old habits of non-intervention died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counterproductively, as in the debacle of Somalia in 1993, the catastrophe of the Rwandan genocide in 1994, and the almost unbelievable default in Srebrenica, Bosnia, just a year later, in 1995.⁴

Then the killing and ethnic cleansing started all over again in Kosovo in 1999. Not everyone, but certainly most people and governments, accepted quite rapidly that external military intervention was the only way to stop it. But again the Security Council failed to act in the face of a threatened veto by Russia. The action that needed to be taken *was* eventually taken, by a coalition of the willing, but in a way that challenged the integrity of the whole international security system (just as the invasion of Iraq did four years later in far less defensible circumstances).

Throughout the decade of the 1990s a fierce argument raged between, on the one hand, advocates of 'humanitarian intervention' – the doctrine that there was a 'right to intervene' militarily, against the will of the government of the country in question, in these cases⁵ – and, on the other hand, defenders of the traditional prerogatives of state sovereignty, who insisted that internal events were none of the rest of the world's business. It was very much a North–South debate, with the many new states born out of decolonization being very proud of their newly won sovereignty, very conscious of their fragility, and all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers, and not very keen to acknowledge their right to do so again, whatever the circumstances. And it was a very bitter debate, with the trenches dug deep on both sides, and the verbal missiles flowing thick and fast, often in very ugly terms.

This was the unpromising environment in which the concept of the responsibility to protect was born. The deadlock was broken by what seemed initially destined to be a rather obscure international commission initiated by Canada – the International Commission on Intervention and State Sovereignty – which I had the privilege of co-chairing with the distinguished Algerian diplomat Mohamed Sahnoun, which came up in 2001 with the idea of 'the responsibility to protect'.⁶

The core idea of the responsibility to protect (or 'R2P' as we are all now, rather inelegantly, calling it for short in this age of acronymphomania) is very simple. Turn the notion of the 'right to intervene' upside down. Talk not about the 'right' of big states to do anything, but the *responsibility* of *all* states to protect their own people from atrocity crimes, and to help others to do so. Talk about the primary responsibility being that of individual states themselves – respecting their sovereignty – but make it absolutely clear that if they cannot meet that responsibility, through either ill-will or incapacity, it then falls to the wider international community to take the appropriate action.

Focus not on the notion of 'intervention' but of *protection*: look at the whole issue from the perspective of the victims, the men being killed, the women being raped, the children dying of starvation; and look at the responsibility in question as being above all a responsibility to *prevent*, with the question of reaction – through

diplomatic pressure, through sanctions, through international criminal prosecutions, and ultimately through military action – arising only if prevention fails. And accept coercive military intervention only as an absolute last resort, after a number of clearly defined criteria have been met, and the approval of the Security Council has been obtained.

Well, as many blue-ribbon commissions and panels have discovered over the years, it is one thing to labour mightily and produce what looks like a major new contribution to some policy debate, but quite another to get any policymaker to take any notice of it. But the extraordinary thing is that governments *did* take notice of the R2P idea: within four years it had won unanimous endorsement by more than 150 heads of state and government meeting as the UN General Assembly at the 2005 World Summit.

It seemed to be time at last to break out the champagne, or at least the sparkling brut. The foundations for consensus were laid. We have in the new language a strong basis for finding common ground on hugely divisive issues (rather in the way that the Brundtland Commission years earlier, with ‘sustainable development’, found a way to bridge the chasm which then existed between environmentalists and developers.⁷) We have something in place which can properly be described as a new international norm, and perhaps on its way towards becoming a new rule of customary international law.

And it is fair to say that since the 2005 World Summit there has been at least a reasonably steady trickle of good news. In April 2006 the Security Council adopted a thematic resolution on the Protection of Civilians in Armed Conflict which contains an express reaffirmation of the World Summit conclusions relating to the responsibility to protect.⁸ And this was followed by a further resolution in August 2006 specifically invoking this in the context of the ongoing conflict in Darfur.⁹ A General Assembly resolution may be helpful, as the World Summit’s unquestionably was, in identifying relevant principles, but the Security Council is the institution that matters when it comes to executive action. And at least some toeholds there have now been carved.

There was further reason for optimism in the very enthusiastic embrace of R2P by the new Secretary-General Ban Ki-moon, who succeeded Kofi Annan in January 2007: in both his public and private statements he made clear from the outset that he understood very clearly the significance of the conceptual shift involved (and the risks to his own and the UN’s reputation if anything remotely like Rwanda or Srebrenica ever happened again), and there was no indication at all that he would distance himself from the new norm as his predecessor’s legacy, not his own. On the contrary, as for example when he addressed the African Union Summit on 31 January 2008: ‘I am fully committed to keeping the momentum that you the leaders have made at the 2005 World Summit and will spare no effort to operationalize the responsibility to protect.’¹⁰ And the Secretary-General took some steps down that operationalization path when he appointed a Special Adviser to work on institutional process issues, and replaced the retiring Special Adviser on the Prevention of Genocide with

an impeccably credentialed candidate – but, as we will see in a moment, not without a degree of controversy in both cases.

A further encouraging indication that R2P continued to have resonance in the post-World Summit period was the way in which it was publicly called in aid to describe the response required to the alarming situation in Kenya. After allegations of a rigged national election in the last days of 2007, an explosion of very overtly ethnic-related violence broke out in which over 1000 people were killed – including dozens in a church-burning incident horribly reminiscent of Rwanda 13 years earlier – and some 300,000 displaced within a few weeks, before a mediation team led by Kofi Annan was able to negotiate a political settlement that dampened the violence and hopefully will prove sustainable. They did so against the background of Secretary-General Ban being very quick to characterize the situation as an R2P one,¹¹ his newly appointed Genocide Adviser, Francis Deng, being very clear in warning political and community leaders that they could be held accountable for violations of international law committed at their instigation in urging them to ‘meet their responsibility to protect the civilian population’,¹² and Archbishop Emeritus Desmond Tutu being very explicit in a widely published opinion article that ‘what we are seeing in Kenya is action on a fundamental principle, the Responsibility to Protect’.¹³

And capping off all that, we had Pope Benedict XVI in New York recently, visiting the UN for the first time in his papacy, and devoting a substantial part of his address to a packed General Assembly to a very explicit and full-throated defence of the responsibility to protect, using among others these words:

Recognition of the unity of the human family, and attention to the innate dignity of every man and woman, today find renewed emphasis in the principle of the responsibility to protect. This has only recently been defined, but it was already present implicitly at the origins of the United Nations, and is now increasingly characteristic of its activity. Every State has the primary duty to protect its own population from grave and sustained violations of human rights, as well as from the consequences of humanitarian crises, whether natural or man-made. If States are unable to guarantee such protection, the international community must intervene with the juridical means provided in the United Nations Charter and in other international instruments.¹⁴

... and gone?

But for all that, there has been a good deal of other news about the embrace of R2P which has not been nearly so encouraging, not least that emanating in recent times from the UN General Assembly itself.

One might have thought it beyond argument that when in 2005 the General Assembly, sitting at head-of-state and government level, unanimously endorsed the language that became paragraphs 138 and 139 of the World Summit Outcome

Document, the words they used actually meant something. After all, the first of these paragraphs begins with the words 'Each individual state has the responsibility to protect its populations' and the second 'The international community, through the United Nations, also has the responsibility ... to help to protect populations.' And that section of the document does have a heading of its own reading '*Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*'. Surely, with this kind of international endorsement, R2P now had the pedigree to be described, at the very least, as a broadly accepted international norm?

Not so, it seems, in the minds of a number of governments who joined in this endorsement, or at least their representatives in New York. It never takes much more than a few days around the corridors and meeting rooms of the UN to learn that absolutely nothing there is beyond argument. The prevailing mood in at least some quarters was captured early in 2008 by the way in which, with evidently perfectly straight faces, Latin American, Arab and African delegates to the UN's budget committee took the floor to say, variously, that 'the World Summit rejected R2P in 2005', 'the concept of the responsibility to protect has not been adopted by the General Assembly', and that 'the responsibility to protect itself ... was not accepted or approved as a principle by the General Assembly'.¹⁵ The occasion for this nonsense – of a class that Jeremy Bentham would have described as 'nonsense on stilts' – was the approval process for the appointment of the highly qualified scholar, Vice-President of the International Peace Academy (now Institute) and former head of the UN Association of the United States Edward Luck, to the position of Special Adviser on the Responsibility to Protect.

The argument, in essence, was that the World Summit paragraphs were just about the protection of civilians from specific crimes, not the endorsement of the concept of the responsibility to protect, so if R2P was never adopted, how could the Secretary-General have the effrontery to seek approval for a special adviser on it? In the event, the 38th floor decided to abandon the unequal struggle and accept Mr Luck as an adviser without either a job description or much prospect of tenure longevity. In a similar spirit, the Secretary-General's Office abandoned under fire its initial decision – made, sensibly, to avoid unproductive legal squabbles about the scope of his mandate – to add to Francis Deng's title as 'Special Representative for the Prevention of Genocide' the phrase 'and Mass Atrocities'. Deliberately unproductive, such squabbles will no doubt continue to be part of the natural order.

The atmosphere in New York on these kinds of issues is often a little more heightened, and ideologically coloured, than it is in capitals, but supporters of R2P ignore these warning signs at their peril. There are problems in a number of capitals as well. For whatever reason – embrace of the concept but concern about its misuse; ideological association of any intervention with neo-imperialism or neo-colonialism; or in some cases simply embarrassment about their own behaviour – there is an evident willingness by a number of states to deflate or undermine the new norm before it is fully consolidated and operational. The language of 'buyer's remorse' is in the air. There has been a falling-away of overt commitment to the norm in sub-Saharan Africa

(although in substance still remaining a significant theme in the doctrine of the AU and some of the sub-regional organizations), and some increased scepticism in the Arab-Islamic and Latin American worlds. And in Asia there has never been much enthusiasm, although not everywhere as overtly hostile as in nationalist governing and media circles in Colombo, where I was told by a newspaper columnist during a visit in July 2007 that: 'The so-called responsibility to protect is nothing but a license for the white man to himself intervene in the affairs of dark sovereign countries, whenever the white man thinks it fit to do so.'¹⁶

If the unanimous adoption of the R2P principles by the 2005 World Summit and the UN Security Council is not to be the high-water mark from which the tides recede – if the responsibility to protect is not to become an idea whose time has gone as fast as it came – then a serious ongoing diplomatic and other advocacy effort has to be made to explain and defend the norm, with serious efforts being sustained over a number of years not only to enshrine R2P principles in the language of relevant international, regional and national institutions and forums beyond the UN, but also in their institutional practice. Those are efforts in which civil society organizations – and I include universities in that description – must play a key role.

The immediate objective must be to get to the point where, when the next conscience-shocking case of large-scale killing, or ethnic cleansing, or other war crimes or crimes against humanity come along, as they are all too unhappily likely to do, the immediate reflex response of the whole international community will be not to ask *whether* action is necessary, but rather *what* action is required, by whom, when and where.

There have been some encouraging signs – in particular the swift and supportive diplomatic and political response to the crisis in Kenya early in 2008 – that this may be beginning to happen, but there are still three big challenges that need to be addressed if R2P is indeed to have complete reflex international acceptance in principle, and if it is to be given practical operational effect as new cases arise.

The first challenge is essentially *conceptual*, to ensure that the scope and limits of the responsibility to protect are fully and completely understood in a way that is clearly not the case now. In particular, it is to ensure that R2P is seen not as a Trojan Horse for bad old imperial, colonial and militarist habits, but rather the best starting point the international community has, and is maybe ever likely to have, in preventing and responding to genocide and other mass atrocity crimes.

The second challenge is *institutional* preparedness, to build the kind of capacity within international institutions, governments and regional organizations that will ensure that, assuming that there is an understanding of the need to act – whether preventively or reactively, and whether through political and diplomatic, or economic, or legal or policing and military measures – there will be the physical capability to do so.

The third challenge, as always, is *political* preparedness: how to generate that indispensable ingredient of will; how to have in place the mechanisms and strategies necessary to generate an effective political response as new R2P situations arise.

I hope that through a new institute that I have recently been involved in creating – with the organizational help of a number of other international NGOs, and the financial help of a number of major foundations and like-minded governments from both North and South – we will be able to significantly address and advance all three of these challenges. The ‘Global Centre for the Responsibility to Protect’ was launched at UN headquarters in February: based in New York, with a small but highly professional staff which we are presently recruiting, it will work with Associated Centres now being established or identified in a number of countries, and a network of affiliates, to provide research and advocacy support to both governments and NGOs, and to the UN, and will engage over time in a major global public outreach exercise.

In the remainder of this lecture I want to focus just on the first of these three challenges that the Global Centre and those who sail with it will be trying to meet: the conceptual challenge. I do this not least because it is the area in which scholars, in their writing and speaking, can make the most immediately useful contribution, and because there are plenty at this university, with its great international reputation for stimulating and advancing policy debate, who can do just that.

Meeting the conceptual challenge

Why is there so much continuing resistance to a principle which has seemed to so many to be an important breakthrough, capable of resolving an age-old debate in a practical and principled way? A good part of the answer seems to lie in five big conceptual misunderstandings which seem to be very widespread about the responsibility to protect. Sometimes these misunderstandings are cynically and deliberately fostered by those with other axes to grind, or interests to protect, but rather more often they are real, and the product of quite genuine misapprehension as to what R2P is all about. Let me address each of them in turn.

1. R2P is just another name for humanitarian intervention

This is absolutely not the case: they are very different concepts. The very core of the traditional meaning of ‘humanitarian intervention’ is coercive military intervention for humanitarian purposes – nothing more or less. But ‘the responsibility to protect’ is about much more than that.

Above all, as every relevant document from the ICISS report to the 2005 Summit Outcome Document makes abundantly clear, R2P is about taking effective *preventive* action, and at the earliest possible stage. It implies encouragement and support being given to those states struggling with situations that have not yet deteriorated to the point where genocide or other atrocity crimes are a reality, but where it is foreseeable that if effective preventive action is not taken, with or without outside support, they *could* so deteriorate. It recognizes the need to bring to bear every appropriate preventive response: be it political, diplomatic, legal, economic, or in the

security sector, but falling short of coercive action (e.g. a 'preventive deployment' of troops, as in Macedonia in 1995).¹⁷ The responsibility to take preventive action is very much that of the sovereign state itself, quite apart from that of the international community. And when it comes to the international community, a very big part of *its* preventive response should be to help countries to help themselves.

Perhaps the best case-study we have of what R2P means in its preventive dimension is Burundi, in central Africa. With its long history of earlier atrocity crimes and continuing ethnic tensions, the country could very easily have followed Rwanda's path in 1994, and it remains extremely fragile to this day. But multiple international players have been working hard and long to ensure that the situation did not so deteriorate. These efforts have included Nelson Mandela's initial political mediation; the deployment, essentially preventive, of peacekeeping troops, particularly by South Africa; the detailed analysis and recommendations for a decade now by my own International Crisis Group as to what is necessary to achieve sustainable peace;¹⁸ and the attention being given to Burundi as one of the first two cases taken up by the UN's new Peacebuilding Commission. We have not been in the habit of using the R2P label in describing what has been going on in Burundi, but we should: it is a perfect example of the concept at work.

Of course there will be situations when prevention fails, crises and conflicts do break out, and reaction becomes necessary. But reaction does not have to mean *military* reaction: it can involve political, diplomatic, economic and legal pressure, measures which can themselves each cross the spectrum from persuasive to intrusive, and from less coercive (e.g. economic incentives, offers of political mediation or legal arbitration) to more coercive (e.g. economic sanctions, political and diplomatic isolation, threats of referral to the International Criminal Court) – something which is true of military capability as well. Coercive military action is not excluded when it is the only possible way to stop large-scale killing and other atrocity crimes, as nobody doubts was the case, for example, in Rwanda or Srebrenica. But it is an absolute travesty of the R2P principle to say that it is about military force and nothing else. That is what 'humanitarian intervention' is about, but it is not R2P.

2. At least in really extreme cases, R2P does always mean the use of coercive military force

It is easy enough to see how this misunderstanding arose, but it is a misapprehension nonetheless, and one that does not help the R2P cause because it implies much too willing an embrace of the military option. The misunderstanding arises out of a confusion, as is often the case, between necessary and sufficient conditions. In short, it is certainly necessary for a case to be really extreme for coercive military force to be an option, but the fact that it is extreme is not in itself sufficient to conclude that such force *should* be applied.

The point is that military intervention for human protection purposes is a desperately serious, extraordinary and exceptional matter, which has to be judged by not just one prudential criterion but a whole series of them. The first of those criteria is certainly the seriousness of the threat: does it involve genocide or other

large-scale killing, or ethnic cleansing or other serious violations of international humanitarian law, actual or imminently apprehended? But it is not just a matter of saying that if a threshold of seriousness is crossed in one or other of these ways, then it is time for the invasion to start.

There are another four criteria of legitimacy, all more or less equally important, which also have to be satisfied if the case is to be made out for coercive, non-consensual military force to be deployed within another country's sovereign territory: the motivation or primary purpose of the proposed military action (whether it was primarily to halt or avert the threat in question, or had some other main objective); last resort (whether there were reasonably available peaceful alternatives); the proportionality of the response; and, not least, the balance of consequences (whether overall more good than harm would be done by a military invasion).

One of the many disappointments of the World Summit is that although guidelines for the use of force of just this kind were argued for in the Canadian Commission report and two other major reports leading up to it,¹⁹ in the hope that this would lead to their adoption by the Security Council, they were not adopted by the Summit. The issue was caught in a diplomatic pincer movement between the United States, who wanted no such restrictions to affect any decision to use force, and some in the South who argued, in a way that they at least found convincing, that to adopt guidelines purporting to limit the force would in fact, by recognizing its legitimacy in at least some cases, on the contrary encourage it. Had the proposed criteria been accepted, and made part of the Summit Outcome Document, it would have been very much clearer that in applying the R2P norm, the extreme nature of a particular conscience-shocking situation, and the failure of preventive attempts to resolve it, is only the beginning of the argument about the use of military force, not the end of it.

Darfur is the clearest contemporary example of this misunderstanding at work, with the debate about how the international community should react tending to polarize into a choice between, as Lee Feinstein put it, 'the stark options of Doing Nothing and Sending in the Marines', without acknowledging the many way-stations in between.²⁰ There is no doubt that the 'seriousness of threat' criterion has been satisfied, with since 2003, in this region of Sudan, more than 200,000 dying from outright violence or war-related disease and malnutrition, well over two million being displaced and, at the time of writing in early 2008, peacekeeping efforts proving manifestly inadequate, peace negotiations going nowhere fast, humanitarian relief faltering, the conflict spilling over into neighbouring countries, and the overall situation remaining desolate. But the argument is very strong – and accepted by most governments and relief organizations on the ground – that a non-consensual military intervention (even assuming that the troops could be found anywhere to sustain it) would almost certainly be disastrously counterproductive, in terms of its impact on current humanitarian relief operations and the very fragile north–south peace process.²¹

Darfur still remains, on any view, an 'R2P situation', and one moreover where the responsibility to react has shifted to the international community because of the manifest abdication of its own sovereign responsibility by Khartoum. The inability

here to use coercive military measures does not mean that this is a case of 'R2P failure': it just means that the international responsibility to protect the people of Darfur against the incapacity or ill-will of the Sudan government has to take other forms, including the application of sustained diplomatic, economic and legal pressure to change the cost-benefit balance of the regime's calculations. If the concept of R2P is not to be eroded, it is important that its friends apply it, here and elsewhere, in an appropriately nuanced way.

3. R2P applies only to weak and friendless countries, never the strong

This is a very frequently heard objection to the R2P norm, and one that must be taken seriously because it has *prima facie* plausibility. How could, after all, a coercive military intervention ever seriously be contemplated against China or Russia, let alone the United States, whatever terrible situation might internally unfold? And with the Security Council as ultimate arbiter, how could an adverse finding ever be made against those wielding the power of veto, or any country that any one of the Permanent Five might in turn choose to protect?

But the ability to apply coercive military force in extreme cases is not and cannot be the yardstick by which the success or failure of the R2P principle is measured. The first misunderstanding involved here is a variation on that which I have just addressed. Situations will arise where such military action is just not a realistic or acceptable option, because one or more of the five criteria of legitimacy have not been satisfied – even though lesser measures have not produced the results hoped for, and the military option seems very attractive. In the case of Darfur, just discussed, the 'balance of consequences' problem remains that any such action would be likely to trigger an even greater humanitarian disaster, both in Darfur itself and in a much wider area of Sudan.

In the case, moreover, of any proposed military action against a Permanent Five member or any other major power, this particular criterion would always be a showstopper, whatever other factors (including the possible exercise of veto power in the Security Council) were in play. The ICISS commissioners were deeply conscious of this issue, and the 'double standards' criticism that would inevitably be attracted, but as they said, 'the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them not to be mounted in any case'.²²

The reality that there will always be some countries too militarily powerful for military action against them to be likely to do more good than harm does not mean that the rest of the world is totally impotent when it comes to applying the R2P norm against them. No major country in the world, however big and powerful, is today wholly immune from peer group pressure. In 1999, for example, Indonesia, a large and important regional power, with over 230 million people, the largest Islamic population in the world, and armed forces 300,000 strong, did in fact succumb to strong collective international pressure to allow – much against its instincts and initial will – the Australian-led intervention to protect the people of Timor-Leste in

September 1999. The pressure in question was essentially diplomatic, applied here very directly and personally by President Clinton and other presidents and prime ministers in the margins of the Asia-Pacific Economic Cooperation forum (APEC) heads of government meeting which happened, very fortuitously, to be meeting in Auckland just at the time the situation on the ground was exploding.

4. R2P covers all human protection issues

This misunderstanding is at the other end of the spectrum from those which take it that R2P is only about the application of military force. The concern about it is that to use R2P too broadly, in non-mass-atrocity contexts, is to dilute to the point of uselessness its role as a mobilizer of instinctive, universal action in cases of conscience-shocking killing, ethnic cleansing and other such crimes against humanity.

Of course one can argue, linguistically and as a matter of good public policy, that the international community has the responsibility to protect people from the ravages of HIV/AIDS worldwide; the proliferation of nuclear weapons and other weapons of mass destruction; the ready availability of small arms, and the use of landmines and cluster bombs; the impact of dramatic climate change, particularly on specific groups like the Inuit of the Arctic circle; and much more besides. But if one is looking for umbrella language to bring these issues and themes together, it is much more appropriate to use a concept like 'human security' than to say these are proper applications of the new international norm of 'the responsibility to protect'.

It is not just a matter here of making the formal point that these cases are clearly not intended to be subsumed under the various descriptions of mass atrocity crimes that appear in the World Summit Outcome Document and the relevant lead-up reports. The argument is a more practical one – if R2P is to be about protecting everybody from everything, it will end up protecting nobody from anything. The whole point of embracing the new language of 'the responsibility to protect' is that it is capable of generating an effective, consensual response in extreme, conscience-shocking cases, in a way that 'right to intervene' language simply was not. We need to preserve the focus and bite of R2P as a rallying cry in the face of mass atrocities.

A variation on the misunderstanding just discussed is that 'every kind of conflict or human rights abuse is a potential R2P situation'. The problem here is not so much R2P being stretched to deal with all the world's ills – from HIV/AIDS to climate change – but being too indiscriminately applied to a narrower group of those ills. Of course people do need protection from the horror and misery of any violent conflict, and from the ugliness of tyrannical human rights abuses; again one can easily see how, linguistically, the R2P principle could be seen as having ready application. But, again, R2P situations have to be more narrowly defined.

Certainly it is the case that issues of civilian protection (from loss of life, injury, economic loss and assaults on human dignity) are always involved in any deadly conflict, whatever its cause and whatever its scale, and in any significant human rights violation. And of course it is true that some fully fledged R2P mass atrocity

situations evolve out of less extreme human rights violations, or out of general conflict environments. But, again, to widen the focus too much is dangerous from the perspective of undermining R2P's utility as a rallying cry. If too much is bundled under the R2P banner, we run the risk of diluting its capacity to mobilize in the cases where it is really needed.

5. Iraq 2003 was an example of the application of the R2P norm and a foretaste of things to come

Few misunderstandings have been more persistent, or have done more to undermine global acceptance of R2P, than the perception that the coalition invasion of Iraq in 2003 was a good example of the responsibility-to-protect principle at work. In fact, quite apart from its obvious failings with the lack of Security Council authorization, and botched execution of the intervention, it was nothing of the kind – and stands as a classic example of how *not* to apply the R2P norm.

The misunderstanding is due more than anything else to the enthusiasm with which, in explaining why a military invasion was necessary, some of the coalition partners, the UK in particular, came to hang their hats on the tyrannical and murderous character of the Saddam Hussein regime. That was not the explanation of choice for President Bush, who preferred the concern about Iraq's weapons of mass destruction, or the alleged connection of Iraq with the Al-Qaeda terrorists responsible for 9/11. But as these rationales crumbled away for want of any serious supporting evidence, the human rights argument was the only one left with any shred of credibility, and was embraced accordingly – although, to be fair to Prime Minister Blair, his instinctive distaste for the undoubtedly brutal and ugly Saddam regime, and desire to produce a better life for the people of Iraq, appears to have been his primary motive from the outset.

The truth of the matter is that Iraq in 2003 would have been on anyone's R2P country watchlist, and a suitable case for a variety of preventive and reactive responses by the international community designed to improve the human rights environment. But this was simply not a case for a coercive military intervention, applying the criteria of legitimacy that the Canadian Commission and others have argued are applicable here. The problem arises right at the threshold level, when one is weighing the gravity of the threat involved. Although there were clearly significant human rights violations continuing to occur (which justified international concern and response, e.g. by way of censure and sanctions), and although mass atrocity crimes had clearly occurred in the past, against the Kurds in the late 1980s and the southern Shi'ites in the early 1990s, which justified close international attention to a whole variety of preventive strategies to ensure that they did not occur again, such crimes were neither actually occurring nor apprehended as being likely to occur when the coalition invaded the country in early 2003.

The irony is that while Iraq in 2003 was not an R2P situation of a kind justifying military intervention, it may well by now have become one, with more than two million people displaced so far and hundreds of people still dying violently every

month, in a situation which is unquestionably capable of deteriorating further into full-blooded ethnic cleansing and genocide on a scale greater than that witnessed even in the Balkans. As much as I for one wished that the foreign troops had never been sent there in the first place, I have to acknowledge now that there is every reason to fear that – if they were precipitately withdrawn – the present situation, bad as it is, would rapidly deteriorate into a massive further outbreak of communal and sectarian violence beyond the capacity of the Iraqi government to control, and from which it would be unconscionable for the wider world to stand aloof.

An argument that must be won

I remain confident that the concerns and anxieties that have been expressed about R2P can all be answered – that we *can* clarify its scope and limits in a way that does avoid the perils of overreach, that we *can* demonstrate the practicability of the solutions that it embraces, and that we *can*, as we must, eventually create an international consensus in its support that is much less fragile than the one that exists at the moment.

I suspect that ultimately the considerations that will matter the most are those that go not to the utilitarian dimensions of the concept, but its moral heart. We can, if we need to, always justify making R2P a reality on hard-headed, practical, national interest grounds: states that cannot or will not stop internal atrocity crimes are the kind of rogue states, or failed or failing states, that cannot or will not stop terrorism, weapons proliferation, drug and people trafficking, the spread of health pandemics and other global risks.

But at the end of the day the case for R2P rests simply on our common humanity: the impossibility of ignoring the cries of pain and distress of our fellow human beings. For any of us in and around the international community – from individuals to NGOs to national governments to international organizations – to yet again ignore that distress and agony, and to once again make ‘never again’ a cry that rings totally empty, is to diminish that common humanity to the point of despair. We should be united in our determination not to let that happen, and there is no greater or nobler cause on which any of us could be embarked.

Certainly, to add a final personal note, that sense of what is demanded by our common humanity is what ultimately motivates me to pursue this issue, as I have done now for many years. I suspect that for all of us for whom the idea of responsibility to protect really resonates, there will have been some personal experience which has touched us deeply. For many of us that will be bound to be scarifying family memories of the Holocaust; for others the experience of personal loss or closely knowing survivors from Rwanda or Srebrenica or any of the other mass atrocity scenes of more recent decades; for others still, perhaps, the awful sense that they could have done more, in their past official lives, to generate the kind of international response that these situations required.

For me it was my visit to Cambodia in the late 1960s, just before the genocidal slaughter which killed two million of its people. I was a young Australian making my first trip to Europe, to take up a scholarship in Oxford, and I spent six months wending my way by plane and over land through a dozen countries in Asia, and a few more in Africa and the Middle East as well. And in every one of them I spent many hours and days on student campuses and in student hangouts, and in hard-class cross-country trains and ramshackle rural buses, getting to know in the process – usually fleetingly, but quite often enduringly, in friendships that have lasted to this day – scores of some of the liveliest and brightest people of that generation.

In the years that followed I have kept running into Indonesians, Singaporeans, Malaysians, Thais, Vietnamese, Indians, Pakistanis and others whom I either met on the road on that trip, or who were there at the time and had a store of common experiences to exchange. But among all the countries in Asia I visited then, there is just one, Cambodia, from which I never again, in later years, saw *any* of those students whom I had met and befriended, or anyone exactly like them – not one of those kids with whom I drank beer, ate noodles and careered up and down the dusty road from Phnom Penh to Siem Reap in shared taxis, scattering chickens and pigs and little children in villages all along the way.

The reason, I am sadly certain, is that every last one of them died a few years later under Pol Pot's murderous genocidal regime – either targeted for execution in the killing fields as middle-class intellectual enemies of the state, or dying, as more than a million did, from starvation and disease following forced displacement to labour in the countryside. The knowledge, and the memory, of what must have happened to those young men and women haunt me to this day.

And it means that my attachment to the idea, and ideal, of the responsibility to protect is not just a matter of intellectual persuasion, but of very powerful emotional commitment. I know that will be the case for a great many of you too. So let us work together to make the responsibility to protect an idea that *really* comes – and never goes.

Notes

- 1 'World Summit Outcome 2005', UN General Assembly Resolution A/RES/60/1, 24 October 2005, paras 138, 139; available at: www.un.org/summit2005/documents.html.
- 2 The Preamble of the Charter of the United Nations reaffirms the 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'; Art. 55 commits the UN to the 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. Charter of the United Nations 1945, available at www.un.org/aboutun/charter. The 1948 Genocide Convention defined genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group: Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III), 9 December 1948, available at: www.unhchr.ch/html/menu3/b/p_genoci.htm.

- 3 See e.g. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), pp. 78–110.
- 4 Among many accounts, see e.g. Samantha Power, *'A Problem from Hell': America and the Age of Genocide* (London: Flamingo, 2002).
- 5 Bernard Kouchner was the most prominent international advocate of 'the right to intervene'. For its original articulation, see Mario Bettati and Bernard Kouchner (eds), *Le devoir d'ingérence* (Paris: Denoël, 1987), p. 300, and for commentary see e.g. Tim Allen and David Styan, 'A Right to Interfere? Bernard Kouchner and the New Humanitarianism', *Journal of International Development*, 12, 2000, p. 828, and James Traub, 'A Statesman without Borders', *New York Times Magazine*, 3 February 2008.
- 6 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), available at: www.iciss-ciise.gc.ca.
- 7 World Commission on Environment and Development (Chair, Gro Harlem Brundtland), *Our Common Future* (Oxford: Oxford University Press, 1987), available at: www.un-documents.net/wced-ocf.htm.
- 8 Resolution 1674 of 28 April 2006, operative paragraph 4 of which reads: 'Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity', available at: www.un.org/Docs/sc/unsct_resolutions06.htm.
- 9 Resolution 1706 of 31 August 2006, the second preambular paragraph of which reads: 'Recalling also its previous resolutions ... and 1674 (2006) on the prohibition of civilians in armed conflict which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document', available at: www.un.org/Docs/sc/unsct_resolutions06.htm.
- 10 The Secretary-General's address to the Summit of the African Union, Addis Ababa, 31 January 2008, available at: www.un.org/apps/sg/sgstats.
- 11 In a statement made through his spokesperson on 2 January 2008 he reminded 'the Government, as well as the political and religious leaders of Kenya of their legal and moral responsibility to protect the lives of innocent people, regardless of their racial, religious or ethnic origin', available at: www.un.org/apps/sg/sgstats.
- 12 Daily press briefing by the Office of the Spokesperson for the Secretary-General, 28 January 2008, available at: www.un.org/News/briefings.
- 13 Desmond Tutu, 'Responsibility to Protect', *International Herald Tribune*, 20 February 2008.
- 14 Pope Benedict XVI, Address to the General Assembly of the United Nations, New York, 18 April 2008, available at: www.un.org/webcast/pdfs/Pope_speech.pdf.
- 15 UN General Assembly, Fifth Committee, 28th meeting, 4 March 2008 (GA/AB/3837) (United Nations, 2008), available at: www.un.org/News/Press/docs/2008/gaab3837.doc.htm.
- 16 Nalin de Silva, 'White Man's Burden in Black and White or R2P the LTTE?', *The Island*, 8 August 2007.
- 17 The United Nations Preventive Deployment Force (UNPREDEP) to the Former Yugoslav Republic of Macedonia was established in March 1995 by the UN Security Council (S/RES/983) (United Nations, 1995) and ended in February 1999. For background on the mission see e.g. Henryk J. Sokalski, *An Ounce of Prevention: Macedonia and the UN Experience in Preventive Diplomacy* (United States Institute of Peace Press, 2003).
- 18 Crisis Group has continuously covered the Burundi peace process with 22 published reports since the first in 1998, Africa Report no. 2, *Burundi's Peace Process: The Road from Arusha*: all available at www.crisisgroup.org.
- 19 See ICISS, *The Responsibility to Protect*, synopsis p. xii, and text pp. 35–7; High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (United Nations, 2004), pp. 66–7, 106–7; Kofi Annan, *In Larger Freedom: Toward Development, Security and Human Rights for All*, A/59/2005, United Nations, pp. 43, 83.
- 20 Lee Feinstein, *Darfur and Beyond: What is Needed to Prevent Mass Atrocities* (New York: Council on Foreign Relations, 2007), p. 48, available at www.cfr.org.
- 21 See e.g. Crisis Group Africa Report no. 125, *Darfur: Revitalising the Peace Process*, 30 April 2007; Crisis Group Africa Briefing no. 43, *Getting the UN into Darfur*, 12 October 2006; Crisis Group Africa Report no. 105, *To Save Darfur*, 17 March 2006. All available at www.crisisgroup.org.
- 22 ICISS, *The Responsibility to Protect*, p. 37 (discussing the 'Reasonable Prospects' precautionary criterion).