RESPONSIBILITY to PROTECT

ALEX J. BELLAMY

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The Global Effort to End Mass Atrocities

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For Sara
diligo usquequaque

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AJB
Brisbane, May 2008

Abbreviations

ADF	Allied Democratic Forces
ASF	African Standby Force (AU)
AU	African Union
CIA	Central Intelligence Agency (US)
CIS	Commonwealth of Independent States
DPA	Department of Political Affairs (UN)
DPKO	Department of Peacekeeping Operations (UN)
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
ECOSOC	United Nations Economic and Social Council
EISAS	Information and Strategic Analysis Secretariat for the Executive Committee for Peace and Security (proposed)
EU	European Union
EUFOR RD	European Union Reserve Deployment (DRC)
FAO	Food and Agricultural Organization
FDLR	Democratic Forces for Liberation of the Congo
FEWS	Famine Early Warning System
G8	Group of 8
G77	Group of 77
HEWS	Humanitarian Early Warning System
HLM	High-Level Mission of the United Nations Human Rights Council
HLP	United Nations High-Level Panel
HRC	United Nations Human Rights Council

ICC	International Criminal Court
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
IICK	Independent International Commission on Kosovo
ILC	International Law Commission
IMF	International Monetary Fund
IMTF	Integrated Mission Task Force
IOM	International Organization for Migration
ISHR	International Service for Human Rights
JIU	Joint Inspection Unit (UN)
KFOR	Kosovo Force (NATO Mission in Kosovo)
KLA	Kosovo Liberation Army
MDGs	Millennium Development Goals
MONUC	United Nations Mission in Congo
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGOs	Non-Governmental Organizations
OAU	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
OIC	Organization of Islamic Conferences
ORCI	Office for Research and Collection of

	Information (UN)
OSCE	Organization for Security and Cooperation in Europe
P5	Permanent Five Members of the UN Security Council
PBF	Peacebuilding Fund (UN)
PBC	United Nations Peacebuilding Commission
PBSO	Peacebuilding Support Office (UN)
RUF	Revolutionary United Front
R2P	Responsibility to Protect
R2P–CS	Responsibility to Protect – Engaging Civil Society
SADC	South African Development Community
SPITS	Stockholm Process on the Implementation of Targeted Sanctions
UN	United Nations
UNAMID	United Nations/African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission in Rwanda
UNDP	United Nations Development Program
UNEPS	United Nations Emergency Peace Service (proposed)
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNITA	Nacional para a Independência Total de Angola
UNICEF	United Nations Children’s Fund
UNMIK	United Nations Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in Sudan

UNOCI	United Nations Mission in Côte D’Ivoire
UNPREDEP	United Nations Preventive Deployment in Macedonia
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNTAET	United Nations Transitional Administration in East Timor
UNTAC	United Nations Transitional Administration in Cambodia
UNTAG	United Nations Transitional Administration in Namibia
UPC	Union of Congolese Patriots
VIP	Very Important Person
WACSOF	West African Civil Society Forum
WFM–IGP	World Federalist Movement–Institute for Global Policy
WFP	World Food Program
WMD	Weapons of Mass Destruction

Introduction

Genocide and mass atrocities remain an all too frequently recurring phenomenon. In 1994, 800,000 Rwandans were butchered by *Interehamwe* militia and their supporters in just 100 days – a faster rate of killing than the Holocaust experienced. Elsewhere in sub-Saharan Africa, the 1990s delivered a bloody cocktail of state collapse and warlordism which killed more than five million people in the Democratic Republic of Congo (DRC), Sudan, Burundi and West Africa. In Asia, Indonesia's rule over East Timor came to an end in 1999, amidst an orgy of violence that left thousands dead. Nor was Europe spared. The wars of Yugoslav dissolution killed a quarter of a million people and gave the world a new phrase: 'ethnic cleansing'. In 1995, 7,500 men and boys were taken by Bosnian Serb forces from the town of Srebrenica, a UN-protected 'safe area', and killed. An act of genocide in the centre of Europe, fifty years after the end of the Holocaust. Thanks to concerted efforts by the UN, regional organisations, non-governmental organisations and internationalist-minded states, there are fewer wars and genocides today than there were ten years ago, but those who think that these tragedies are a thing of the past need only look to Darfur to see the durability of humankind's capacity for acts of shocking inhumanity.[1] There the government of Sudan and Arab militia groups collectively known as *Janjaweed* reacted to a rebellion over grazing rights and local autonomy by unleashing a reign of terror which killed 250,000 and forced more than two million to flee. The

fighting has since then extended into neighbouring Chad and into the Central African Republic, spreading death and displacement.

All too frequently the world's response to genocide and mass atrocities is slow, timid and disjointed. Just as often it seems that political leaders are confronted with a choice between standing aside and sending in the Marines to wage war on the perpetrators of serious wrongs.[2] Sometimes, as in the case of Rwanda, the world's most powerful states simply lack the political will to step in and put an end to the bloodshed. Placing their own interests ahead of those of the victims, they stand aside in the face of conscience-shocking violence. In other cases, for instance Kosovo in 1999, collective action is blocked by political deadlock between states who are keen to intervene and those who oppose intervention on political, legal or other grounds.[3] More frequent in recent times than either of these two responses is one of a third type, whereby world leaders declare an interest in ending mass killing but find it difficult to muster anything better than tepid political responses and weakly mandated and equipped peace operations. In these cases, made evident in the world's slow response to the bloodshed in the DRC and Sudan, a combination of lack of will and political division produces slow, incoherent and under-resourced responses, which leave civilians facing enduring vulnerability.

The starting point for this book is the conviction that more needs to be done to protect civilians from genocide and mass atrocities. The very fact that the incidence of war and genocide has declined and that much of this decline can be ascribed to international activism suggests that this cause is far from being a hopeless one. Instead, it suggests that new knowledge about measures to prevent and stem the tide of genocide and mass atrocities can be developed, disseminated and translated into timely and effective political action. The single most important recent

development in this regard was the creation, adoption and emerging operationalisation of a new international principle: the Responsibility to Protect (R2P).

The adoption of the R2P was one of the few real achievements of the 2005 World Summit hosted by the UN. World leaders unanimously declared that all states have a responsibility to protect their citizens from genocide, war crimes, ethnic cleansing and crimes against humanity and that they stood ‘prepared’ to take collective action in cases where national authorities ‘are manifestly failing to protect their populations’ from these four crimes. In April 2006, the UN Security Council unanimously reaffirmed the R2P and indicated its readiness to adopt appropriate measures where necessary (Resolution 1674, 28 April 2006) – albeit after almost six months of hard bargaining. The intellectual and political origins of the R2P lay in the concept of ‘sovereignty as responsibility’, developed by the UN Special Representative on Internally Displaced Persons, Francis Deng, and by Roberta Cohen, a Senior Fellow at the Brookings Institution. Amidst the controversy surrounding NATO’s 1999 intervention in Kosovo, the concept was picked up by Kofi Annan, who challenged world governments to develop a way of reconciling the principles of sovereignty and fundamental human rights in a way which could protect individuals from arbitrary killing. That challenge was taken up by the Canadian government, which created the International Commission on Intervention and State Sovereignty (ICISS). Chaired by Gareth Evans and Mohammed Sahnoun, the Commission set out the case for the R2P and identified its three main components: the responsibilities to prevent, to react and to rebuild. The adoption of the R2P at the 2005 World Summit was engineered by key states such as Canada and powerful norm entrepreneurs such as Kofi Annan, who incorporated the R2P into his blueprint for UN reform, guaranteeing it a place on the world agenda at the 2005 summit.

The purpose of the present book is twofold. First of all it examines the R2P's intellectual origins, the ICISS' proceedings and report and the effort to persuade world leaders to adopt the concept; this is done in order to understand what R2P means, how that meaning has changed and what are the political obstacles confronting it. The second part of the book focuses on the effort to operationalise the R2P; it asks what it takes to prevent, react and rebuild more effectively and it assesses progress towards achieving these goals. The argument that gradually unfolds may be considered controversial in some quarters. Although the R2P was initially conceived – and is, still often, presented – as a way of guiding policy-makers in their deliberations about whether or not to respond to genocide and mass atrocities with non-consensual military intervention, this is not where the principle has made its biggest difference; nor is it likely to do so in the future. Ultimately, even when armed with the criteria for using force set out by the ICISS in the report which gave birth to R2P (see Chapter 2), decisions about intervention will continue to be made in an ad hoc fashion by political leaders balancing national interests, legal considerations, world opinion, perceived costs and humanitarian impulses – much as they were prior to the advent of R2P. When a crisis gets to the point where only military intervention will do, it is in the hands of a combination of *Realpolitik* and the strength of individual leaders' moral commitments, and there is little that criteria can do to shape the leaders' calculations of interests, values, costs and benefits. When it comes to dealing with decisions about the use of force in individual cases, criteria cannot deliver consensus between the great powers, nor can they, by themselves, generate the political will necessary for leaders to commit resources to the protection of civilians in foreign countries.[4]

Where the R2P can make a real difference is in reducing the frequency with which world leaders are confronted

with the apparent choice between doing nothing and sending in the Marines. Indeed, a careful reading of the ICISS report shows that, although much of the attention and focus was given to non-consensual military intervention, the commission itself believed that the *prevention* of genocide and mass atrocities was the single most important element of R2P (see Chapters 2 and 4). By starting with the needs of the victims and by outlining myriad ways in which those needs might be met, the R2P points towards a system of protection involving diplomacy, judicial measures, economic measures, peace operations deployed with local consent – albeit sometimes coerced – international assistance to help build responsible sovereigns with appropriate capacity and much more besides. If the institutional and political capacity necessary to maximise the effectiveness of these measures is developed, then the frequency with which governments are forced to choose between standing aside and going to war for humanitarian purposes will be reduced. This is not to say that such cases will never arise, or that the criteria for the use of force, which formed a large part of the ICISS' proposals on the R2P, do not provide guidance to decision-makers in these difficult cases. What I am saying is that, by reducing the frequency of all-or-nothing decisions, more civilians will be better protected from genocide and mass atrocities. That is the promise of R2P.

This position is seemingly at odds with the concerns which animated those most closely associated with the ICISS and with the concerns which have animated most of the commission's commentators.[5] We should acknowledge, however, that the commission itself certainly nodded in this direction when it identified prevention, not military intervention, as the single most important aspect of R2P. We should also recognise that the R2P endorsed by world leaders in 2005 and by the UN Security Council in 2006 did not include criteria for the use of force (see Chapters 3 and

5), but did point towards a heavy agenda of institutional reform and behavioural change geared towards preventing and mitigating genocide and mass atrocities. The understanding of R2P presented in the second part of this book, where I focus on the principle's operationalisation, is more in keeping with international consensus about what R2P actually entails than with R2P as originally conceived by the ICISS.[6]

Before that, however, I need to clarify briefly the terminology we use to describe the R2P.

Concept, Principle, Norm?

R2P is invariably referred to as a concept, a principle or a norm (usually an 'emerging norm'). Each of these terms confers a different status upon the R2P, so it is important to clarify the meanings behind these words, the reason why different actors use them and the way they will be used in this book.

R2P as concept

Most governments – supporters and critics of the R2P alike – refer to the R2P as a 'concept'. Examples of this abound in Chapters 3 and 5 especially.[7] Edward Luck, the UN Secretary-General's Special Adviser on matters relating to R2P, also describes the R2P as a 'concept', arguing that there is no consensus on whether the R2P has become a norm.[8] Originating from the Latin participle *conceptus* meaning 'conceived', the term 'concept' typically refers to an 'abstract idea'. When governments describe R2P as a concept, therefore, they mean that it is an 'idea' – a thought or suggestion about a possible norm or course of action. In other words it is a proposal, a suggestion, something requiring further development, elaboration or agreement before it can be turned into shared expectations of appropriate behaviour or into a plan of action for

institutional reform. If, as the Chinese government argued in 2007 (but not, importantly, in 2006 or 2008), R2P is a concept, then it is inappropriate for the Security Council or other UN bodies to make use of it in their formal declarations or resolutions, because it is merely an idea warranting further discussion and elaboration and not an agreed principle or norm in need of operationalisation.[9]

The principal merit of describing the R2P as a concept is that this best reflects the language used by most governments themselves. Moreover, it is important to remember that, whilst the 2005 World Summit Outcome Document was unanimously endorsed by world leaders. It reflected not a determination by the assembly itself but a blueprint for the future direction of the UN. The decisions and proposals laid out in the Outcome Document were not self-authorising or self-executing but required further decisions by the General Assembly or other relevant Councils. Nor did the Security Council Resolution 1674 change this basic fact, since it was limited to endorsing the relevant paragraphs of the Outcome Document.

There are, however, problems with describing the R2P as a 'concept' in the post-World Summit era. First, the World Summit Outcome Document did not refer to R2P as a concept or idea requiring further deliberation. Its wording clearly indicated that R2P exists as something more than an idea – something to which all states pledge to adhere, both in their relations with their own citizens and in their behaviour as members of international society (see Chapter 3). Second, the Outcome Document did not *require* further decisions by the General Assembly in relation to the basic R2P commitment. Third, as chapters 4–6 of this book attest, the R2P has been incorporated into the practice of the UN, regional organisations and individual states.

R2P as principle

Sometimes R2P is referred to as a ‘principle’. A ‘principle’ is commonly understood as a fundamental truth or proposition which serves as the basis for belief leading to action. Labelling the R2P a ‘principle’ rather than a ‘concept’ implies that it has acquired a status of shared understanding and that there is sufficient consensus to allow it to function as a foundation for action. Both the ICISS and the UN’s High-Level Panel referred to the R2P as ‘an emerging principle of customary international law’.[10] References to the R2P as a principle are not always associated with international law, however, and it is worth mentioning that the legal implications of the R2P remain controversial.[11]

Those who believe that the 2005 World Summit set out a clear understanding of the R2P and that world leaders actually committed to it rather than merely deliberating further are likely to argue that the R2P is a principle. Important in this regard, however, are those things which *are* typically referred to as ‘principles’ by world governments. Since 2001, international discussions about the the R2P have been punctuated by the insistence that it does not challenge or violate the well-established international ‘principles’ of sovereignty – non-interference and territorial integrity. Indeed, Paragraph 139 of the World Summit Outcome Document pointedly identified the ‘principles’ of the UN Charter and international law as a check on the advancement of the R2P.

Clearly the distinction between R2P as a concept and R2P as a principle is important. Conceptually, it determines whether the R2P is subordinate to traditional principles of sovereignty and non-intervention or whether – as a principle in its own right – it has the effect of altering the meaning of sovereignty itself. Practically, it has the effect of determining whether R2P remains primarily in the realm of rhetoric and deliberation for the next few years (the corollary of thinking of R2P as concept) or becomes the

guide to institutional reform and behavioural change envisaged by UN Secretary-General Ban Ki-moon.[12]

R2P as norm

Academic commentators in particular prefer to describe R2P in relation to its status as a norm. At their most basic, norms are best understood as 'collective understandings of the proper behaviour of actors'.[13] Typically, the academic debate has centred not on the question of whether the R2P is a concept or principle, but on whether it is a norm and – if so – whether it is an emergent or an embedded norm.[14] But it is not only academics who have referred to R2P as a norm. The UN High-Level Panel, for instance,endorsed the 'emerging norm that there is a responsibility to protect' and confirmed the developing consensus that this norm was 'exercisable by the Security Council'.[15] In the same year (2004), Gareth Evans criticised the 'poorly and inconsistently' argued humanitarian justification for the war in Iraq, arguing that it 'almost choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of "responsibility to protect'".[16]

Describing the R2P in the language of norms both helps and complicates efforts to understand it. It complicates matters because, as commonly understood, 'norms' do not sit comfortably along a spectrum containing 'concepts' and 'principles' . Norms comprise elements of both concept and principle, involve actual behaviour and relate to a different standard of analysis. Given this, we should see the question of whether or not R2P is a norm, and what sort of norm it might be, as *parallel* to, but separate from, the question of whether it is a concept or principle. To be sure, both ways of understanding the issue ask similar questions, but the language of norms brings with it a host of concepts, distinctions and methods which are not easily tacked onto

the language of concepts and principles. It is precisely the specificities associated with norms, however, that make this approach useful. For the language of norms allows us to make use of theories about different types of norm, norm entrepreneurs, and the development and evolution of norms.[17]

For the purposes of this study, however, I will use the language of ‘concepts’ and ‘principles’ rather than that of ‘norms’ because this reflects the terms in which governments themselves refer to the R2P. For the reasons set out above, I will treat the R2P as a ‘concept’ in the period between its articulation by the ICISS and adoption at the 2005 World Summit and as a ‘principle’ thereafter, noting that aspects of the R2P were altered, amended or simply ejected during this transition. Describing the R2P as a principle after 2005 reflects the fact that governments have indeed agreed on its content and have pledged to act in accordance with it.

1

Sovereignty and Human Rights

Sovereignty Versus Human Rights

Questions about preventing, reacting to and rebuilding after man-made catastrophes tend to be framed around an enduring struggle between sovereignty and human rights. By this account, sovereignty refers to the rights that states enjoy to territorial integrity, political independence and non-intervention, whilst human rights refer to the idea that individuals ought to enjoy certain fundamental freedoms by virtue of their humanity. Where sovereign states are either unwilling or unable to protect the fundamental freedoms of their citizens, sovereignty and human rights come into conflict.

This tension is evident in the UN Charter itself.[1] When it came to designing the post-war order, the horrors of the Second World War produced a contradictory response from world leaders. Three concerns pulled them in different directions. First, there was a strong impetus for the outlawing of war as an instrument of policy. Thus Article 2(4) of the UN Charter forbade the threat or use of force in international politics, with only two exceptions: each state's inherent right to self-defence (Article 51) and collective measures authorised by the UN Security Council (Chapter VII of the UN Charter). The second concern was the emergence of the idea that peoples had a right to govern

themselves. This gave impetus to the process of decolonisation, which proceeded apace in the post-war era. How, though, would these new states be protected from the interference of great powers in their domestic affairs? The UN Charter's answer to this question came in the form of a commitment to 'mutual respect for sovereignty', the blanket ban on force mentioned earlier, and Article 2(7) prohibiting the UN from interfering 'in matters essentially within the domestic jurisdiction of states'.

The third concern was in large part a reaction to the Holocaust and the Second World War's many other horrors. Evidence of the depths to which humanity could sink persuaded the UN Charter's authors that aspirations for human rights had to be placed at the heart of the new order. But how might different conceptions of human rights be reconciled without undermining the UN's other ambitions? The tension this problem created is evident in the preamble to the UN Charter, in which the members promise to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person', while also promising to 'practice tolerance and live together in peace with one another as good neighbours'. This set in train a critically important political dilemma: how should states behave in cases where maintaining faith in human rights meant refusing to be a good neighbour to genocidal and tyrannical states? Influenced by this tension, for the past sixty years debates about the relationship between sovereignty and human rights and the legitimacy of humanitarian intervention have boiled down to a single core question: should sovereignty and the basic order it brings to world politics be privileged over the rights of individuals, or should it be overridden in certain cases, so as to permit intervention for the purpose of protecting those fundamental rights?

There are good reasons for thinking that this tension goes to the very heart of international order, not least

because those who argue against collective action aimed at reaffirming faith in fundamental human rights invoke sovereignty to support their case. Thus in 1977, when Vietnam invaded Cambodia and ousted the murderous Pol Pot regime, responsible for the death of some two million Cambodians, this state was widely condemned for violating Cambodian sovereignty. China's representative at the UN described Vietnam's act as a 'great mockery of and insult to the United Nations and its member states' and sponsored a resolution condemning Vietnam's 'aggression'. The United States agreed. Its ambassador argued that the world could not allow Vietnam's violation of Cambodian sovereignty to 'pass in silence', as this 'will only encourage Governments in other parts of the world to conclude that there are no norms, no standards, no restraints'.[2] France argued that 'the notion that, because a regime is detestable, foreign intervention is justified and forcible overthrow is legitimate is extremely dangerous. That could ultimately jeopardize the very maintenance of law and order.' Norway (among others) agreed, admitting that it had 'strong objections to the serious violation of human rights committed by the Pol Pot government. However, the domestic policies of that government cannot – we repeat cannot – justify the action of Viet Nam.'[3]

More recently, in 2004, Pakistan argued against collective action in order to halt the mass killing and expulsion of civilians in Darfur sponsored by the Sudanese government on the grounds that 'the Sudan has all the rights and privileges incumbent under the United Nations Charter, including to sovereignty, political independence, unity and territorial integrity'.[4] Nowadays, Western commentators sometimes put these sorts of arguments down to political posturing by recalcitrant states who invariably have their own human rights problems. But these arguments are still sometimes used by liberal states themselves. For example, in a March 2005 Security Council debate on whether to

refer alleged crimes in Darfur to the International Criminal Court (ICC), the US representative argued that the court 'strikes at the essence of the nature of sovereignty' by purportedly sitting in judgement over the conduct of a state's internal affairs.[5]

At first glance, therefore, by insisting that sovereignty and fundamental human rights need not be antagonistic, the R2P stands at odds with what seems to be the main debate on how to respond best to humanitarian emergencies and on the legitimacy of such responses: namely the question whether sovereignty or human rights should be privileged. On closer inspection, however, there are four anomalies that this way of thinking about the problem cannot accommodate – which suggests the need to think differently about the relationship between sovereignty and human rights.

Sovereignty no barrier to intervention

Simon Chesterman has demonstrated that sovereignty has not in fact inhibited unilateral or collective intervention to protect fundamental human rights in other countries. Chesterman's argument was a response to lawyers who have engaged in the 'sovereignty versus human rights' dilemma by arguing that, in order to short-circuit the struggle and enable human rights to prevail, there ought to be a legal exception to the non-intervention rule in cases of gross human rights abuse. In response to this position, Chesterman argued that 'implicit in many of the arguments for a right of humanitarian intervention is the suggestion that the present normative order is preventing interventions that should take place. This is simply not true. Interventions do not take place because states do not want them to take place.'[6] From this point of view, it was not concerns about sovereignty that prevented timely intervention in Darfur or Rwanda, but rather the basic

political fact that no state wanted to risk its own troops to save strangers.

What, though, of Vietnam's invasion of Cambodia? Was it not the case that Vietnam paid a heavy political and economic price because it was seen as violating Cambodia's sovereignty? If this is so, could it not be argued that violating sovereignty imposes inhibitive costs on the one who intervenes, acting as a potential deterrent to others? This position certainly has merit but needs to be viewed alongside two other considerations. First, Vietnam was not principally motivated by humanitarian concerns, nor did it justify its invasion as a humanitarian intervention. Second, and perhaps more importantly, we need to take the arguments levelled against Vietnam with a pinch of salt. Whilst not denying the fact that many states, particularly some members of the Non-Aligned Movement, opposed Vietnam on principled grounds, political considerations unrelated to sovereignty or human rights played an important part in shaping the way international society reacted to the Vietnamese intervention.[7] In the same year as Vietnam's invasion of Cambodia, Tanzania – a highly regarded state with a wellrespected President, Julius Nyerere – invaded Uganda and deposed Idi Amin with barely a ripple of international condemnation. The vast difference between the way the world reacted to Vietnam and the way it reacted to Tanzania suggests that sovereignty was indeed doing less work than *Realpolitik* in shaping international reactions.

Sovereignty as a human right

The second set of issues surrounds the principle of sovereignty itself. This is a matter I will return to later in this chapter, so there is no need to labour the point here. At issue is the apparent disconnection between the idea that sovereignty stands in opposition to human rights and the