

# FROM HUMAN SECURITY TO THE RESPONSIBILITY TO PROTECT: THE CO-OPTION OF DISSENT?

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*In this article I argue that the Responsibility to Protect (R2P) has sanitized much of the revolutionary potential of human security. While R2P has not subsumed human security—the latter arguably involves a broader array of issues and themes which continue to be discussed—it has come to dominate the debate on the protection of human rights and, specifically, preventing and responding to mass atrocities. Whereas human security, in its early inception, constituted a challenge to the state-centric nature of the international system, R2P maintains the systemic status quo and treats states—and the state-based nature of the United Nations (UN)—as unalterable constants. While R2P is propelled largely by non-states actors, the strategic calculus focuses on altering the behaviour of states—a strategy I consider naïve and/or hubristic—rather than reforming the state-based system in a way which coheres with the original human security approach of empowering individuals at the expense of states.*

## I. INTRODUCTION

The refrain “something must be done” periodically rang out in the face of humanitarian crises in the 1990s and the Rwandan genocide precipitated an outraged chorus of “Never Again!”. Yet, precisely who should do the proverbial something quickly emerged as a contested issue. By the end of the decade, in light of the non-intervention in Rwanda and

the “illegal but legitimate” intervention in Kosovo, the existing regulations appeared unsuitable, if not anachronistic.

“Human security” constituted in its early incarnation an attempt to challenge the existing system, specifically to revolutionise the locus of authority. Advocates dissented from the prevailing consensus regarding the immutability of the state-based system and fatalist conceptions of power politics, in favour of an agenda which was predicated on a radical reshaping of international politics. This movement has, however, through the rise of the Responsibility to Protect (R2P), evolved into an acceptance of the status quo and a recognition of the Security Council’s primacy. The R2P industry champions moral advocacy rather than legal reform; the focus has become that of lobbying states to change their behaviour, rather than challenging the state-based international system *per se*.

R2P is thus a restatement of the very international legislation and systemic regulations that suffered such disrepute in the 1990s and impelled the establishment of the International Commission on Intervention and State Sovereignty (ICISS), which coined the term R2P in the first place. The revolutionary potential of the concept was, and remains, therefore, predicated on the notion that “good” people can influence the powerful to change their ways. This idea appears to have proven misplaced during the Arab Spring, and indeed, other crises—most notably in Darfur and Sri Lanka—which have involved massive state-sponsored human rights violations since the concept was recognised at the 2005 World Summit. Clearly, there is a disjuncture between the world imagined by R2P and the reality. Too many within this industry have chosen short-term superficial acclaim and the hypocritical endorsement of the great powers, over a long-term struggle with all its attendant difficulties and challenges. So long as they do, they will sponsor a debate that obscures the real structural problems, which hinder the realisation of the goals of human security to the advantage of the purveyors of the systemic status quo.

## II. HUMAN SECURITY

While the end of the Cold War certainly led to an upsurge in interest in both human rights, and humanitarian intervention, these issues had

been discussed, in some form, for millennia. The idea of using force to protect others can be identified in particular throughout the two-thousand year history of the just war tradition; indicatively, St Ambrose (337-397) argued forcefully that helping others was a divine duty noting, “he who does not keep harm off a friend if he can is as much in fault as he who causes it.”<sup>1</sup> Gary Bass, indeed, provides many examples of this discourse and notes:

[E]motional pleas were a regular feature of international politics throughout much of the nineteenth century, resulting in several important military missions. The basic ideas go all the way back to Thucydides, who, horrified at bloody ancient civil wars, hoped for the endurance of “the general laws of humanity which are there to give a hope of salvation to all who are in distress.”<sup>2</sup>

Of course, evidence that these calls were made does not mean they were heeded, and the history of humanitarian intervention evidences few, if indeed any, instances of altruism; motives behind those putative “humanitarian interventions” of the past have always been mixed.<sup>3</sup>

Yet, while the promotion of human rights in the post-Cold War era was not entirely novel, there was an aspect to the movement that did comprise something revolutionary in outlook. This was captured in the rise of “human security,” the emergence of a discourse which sought not just to have the rights of the individual recognised, but to place them at the top of the international political agenda—to make humans, rather than states, the referent object of security.<sup>4</sup> Indicatively, Inge Kaul wrote, “[w]hat is needed today is not so much territorial security—the security

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1. ALEX BELLAMY, *JUST WARS: FROM CICERO TO IRAQ 24* (2006).

2. GARY J. BASS, *FREEDOM’S BATTLE: THE ORIGINS OF HUMANITARIAN INTERVENTION 4* (2008).

3. Nicholas Wheeler & Justin Morris, *Justifying the Iraq War as a Humanitarian Intervention: The Cure is Worse Than the Disease*, in *THE IRAQ CRISIS AND WORLD ORDER: STRUCTURAL, INSTITUTIONAL AND NORMATIVE CHALLENGES* 448 (Ramesh Thakur & Waheguru Pal Singh Sidhu eds., 2006); Roberto Belloni, *The Tragedy of Darfur and the Limits of the ‘Responsibility to Protect’*, 5 *ETHNOPOLITICS* 340 (2006).

4. Ken Booth, *Human Wrongs and International Relations*, 71 *INT’L AFF.* 103, 110 (1995).

of the state—but human security, the security of the people in their everyday lives.”<sup>5</sup> Given that the subject area of “international security,” and arguably the whole discipline of International Relations (IR), had focused almost exclusively on the state when discussing security, this discourse asserting the primacy of the individual constituted a radical challenge.

Of particular novelty was that human security sought to consolidate the individual’s position as primary referent object of security by circumventing the state system.<sup>6</sup> The means by which human security was to be championed, and its vision realised, some argued, was through non-state actors inhibiting the capacity of states to determine the international political agenda, specifically, by preventing them from behaving in ways contrary to the promotion and protection of human rights.<sup>7</sup> The rise of human-security, according to Nicholas Thomas and William Tow, “imposes constraints on state sovereignty through the mobilization of international civil society,” which, they asserted, would lead to “the sharing of power between state and non-state actors in a globalising world.”<sup>8</sup> This aspect of the human security agenda was, therefore, centred on “global civil society”; though a “fuzzy and a contested concept,”<sup>9</sup> this movement sought to “blend normative theory with international relations”<sup>10</sup> and constituted a “set of diverse non-governmental institutions which is strong enough to counterbalance the state and . . . prevent it from dominating and atomizing the rest of society.”<sup>11</sup> Inspired by the civil society groups within Eastern Europe who precipitated the collapse of Communism in 1989, many sought to apply this radical “bottom-up” approach to the international arena, and

5. Inge Kaul, *Peace Needs No Weapons*, 47 ECUMENICAL REV. 313, 313 (1995).

6. Jessica Mathews, *Redefining Security*, 68 FOREIGN AFF. 162, 163 (1989).

7. Martin Shaw, *Global Civil Society and International Relations* 24 (1994).

8. Nicholas Thomas & William T. Tow, *The Utility of Human Security: Sovereignty and Humanitarian Intervention*, 33 SEC. DIALOGUE 177, 178 (2002).

9. Helmut Anheier et al., *Introducing Global Civil Society*, in GLOBAL CIVIL SOCIETY 2001 11 (Helmut Anheier et al. eds., 2001).

10. Jean Grugel, *Democratisation Studies Globalisation: The Coming of Age of a Paradigm*, 5 BRIT. J. POL. & INT’L REL. 258, 275 (2003).

11. ERNEST GELLNER, *CONDITIONS OF LIBERTY: CIVIL SOCIETY AND ITS RIVALS* 5 (1994).

based their prescriptions on cosmopolitanism rather than those mainstream frameworks which, though heterogeneous, all recognised the traditional inter-state system as immutable.<sup>12</sup> “Human security” in certain renderings, therefore, by definition articulated an alternative vision of international politics based on the idea of “[t]ranscending state sovereignty” so as to alter both the systemic rules and institutional architecture.<sup>13</sup>

This discourse won much support within IR, especially amongst those scholars who had grown frustrated both with the academic strictures of studying a narrowly defined rendering of “security” and the manner in which international politics was conducted with, evidently, little regard for the rights of people; this was arguably captured most succinctly and passionately in a speech given by Ken Booth in 1993 in which he decried the blinkered focus within IR and the callous nature of the state system. Calling for a “different discourse of international relations,” which he described as “global moral science,” he argued that the human security approach could revolutionise international politics; “[t]here is some space” he noted “for each individual on earth to make decisions about the direction of the next part of the human story.”<sup>14</sup>

The interest in “human security” was not confined to academia; references to the term abounded in international political discourse and many official UN reports cited the term as the organisation’s goal.<sup>15</sup> The early 1990s also witnessed a dramatic upsurge in optimism as to the UN’s future role; rather than being hamstrung by the competing interests of states, the UN was, some believed, posed to become a genuinely

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12. MARY KALDOR, *GLOBAL CIVIL SOCIETY: AN ANSWER TO WAR* 50 (2003); Interview with David Held, Graham Wallas Professor of Political Science, London School of Economics (Jan. 27, 2003).

13. Andrew Linklater, *THE TRANSFORMATION OF POLITICAL COMMUNITY: ETHICAL FOUNDATIONS OF THE POST-WESTPHALIAN ERA* 109 (Charles W. Kegley, Jr. & Donald J. Puchala eds., 1998).

14. Booth, *supra* note 4, 119.

15. See S. NEIL MACFARLANE & YUEN FOONG KHONG, *HUMAN SECURITY AND THE UN: A CRITICAL HISTORY* (2006).

authoritative organisation capable of shaping the behaviour of its member states rather than simply reflecting their particular agendas.<sup>16</sup>

While proponents of human security were not a heterogeneous mass—a diverse array of reflections and recommendations were made by myriad actors—two common principles provided a foundation from which the plurality of opinions proliferated; first, that the security of the individual was more important than that of the state, and second, that the existing system—the legal, institutional and political status quo—was untenable and had to change.<sup>17</sup> Much of the revolutionary zeal dissipated, however, as the 1990s progressed; in particular, the idea of the UN taking a more independent, proactive and formative role in international politics had all but lost its potency by the end of the decade. Proponents of human security became increasingly orientated around mobilizing campaigns to appeal to states to change their behaviour; the idea of a radically different international system with formalized roles for non-state actors representing global citizenry evolved into a preference for the maintenance of the existing system with non-state actors acting as advocates, and at times, advisers to states.<sup>18</sup> While this certainly involved a role for global civil society, it constituted, essentially, the various NGOs becoming international lobby groups; states retained their position of primacy and the international legal architecture remained the same, while global civil society activism centred on moral suasion.

This was, however, a role which, some maintained, still enabled global civil society to effect real change in the area of human security. NATO's intervention in Kosovo in 1999 was heralded as evidence of the capacity of global civil society activists to push states to act in the interests of those suffering abroad and catalysed a series of effusive reflections on the impact of the new "norms" proliferated by global civil

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16. See MICHAEL N. BARNETT, *THE INTERNATIONAL HUMANITARIAN ORDER* 21-22 (2010); Mats Berdal, *The UN Security Council: Ineffective but Indispensable*, 45 *SURVIVAL* 7, 9 (2003).

17. Nicholas Thomas and William Tow, *The Utility of Human Security: Sovereignty and Humanitarian Intervention*, 33 *SEC. DIALOGUE* 173, 178 (2002).

18. Nicholas J. Wheeler, *Agency, Humanitarianism and Intervention*, 18 *INT'L POL. SCI. REV.* 9, 22 (1997).

society.<sup>19</sup> According to Mary Kaldor, “[b]y the end of the 1990s, it could be said that pressure from global civil society had given rise to widespread acceptance of humanitarian norms.”<sup>20</sup> Likewise Nicholas Wheeler noted, “[w]hat emerges from a study of state practice in the 1990s, is that it is not states but an emergent global civil society that is the principal agent promoting humanitarian values in global politics.”<sup>21</sup> Thus, while the system remained the same, the manner in which states behaved was ostensibly different because of the vocal advocacy of human rights groups. This was reflected in the Human Rights Watch 2000 World Report which welcomed the “significant progress” recently made in the area of human rights protection; noting that “the international community displayed a new willingness to deploy troops to stop crimes against humanity,” the organisation thus heralded “the beginning of a new era for [] human rights.”<sup>22</sup>

This optimism was predicated on the emergence of new “norms” rather than laws. The vision of a world more responsive to human security was, therefore, to be achieved not by actually changing institutions, but rather by changing the discourse of international politics specifically through the proliferation of “norms” which would, ostensibly, constrain state behaviour. Indicatively, Helmut Anheier, Marlies Glasius and Mary Kaldor wrote of the link between global civil society, norms and the acceptance by states of the human security discourse. “The changing international norms concerning humanitarian intervention can be considered an expression of an emerging global civil society. The changing norms do reflect a growing global consensus about the equality of human beings and the responsibility to prevent suffering wherever it takes place.”<sup>23</sup> Thus, by 2000 the majority of human security’s proponents had largely determined that the most effective

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19. Geoffrey Robertson, *CRIMES AGAINST HUMANITY: THE STRUGGLE FOR GLOBAL JUSTICE* 88 (3d ed. 2006).

20. KALDOR, *supra* note 12, at 132.

21. Nicholas J. Wheeler & Alex J. Bellamy, *Humanitarian Intervention and World Politics*, in *THE GLOBALIZATION OF WORLD POLITICS: AN INTRODUCTION TO INTERNATIONAL RELATIONS* 470, 490 (John Baylis & Steve Smith eds., 2d ed. 2001).

22. HUMAN RIGHTS WATCH, *WORLD REPORT 2000: INTRODUCTION 1* (2000), available at <http://www.hrw.org/legacy/wr2k/Front.htm#TopOfPage>.

23. Anheier et al., *supra* note 9, at 110.

means by which they could realise the goals of human security was through advocacy directed at the levers of power, namely states. Calls for substantive changes to the international legal system—though occasionally still advanced—were essentially drowned out by the more vocal discourse of norm proliferation and moral suasion. R2P was conceived at precisely this time and reflected this normative framework and political strategy.

### III. R2P: REAFFIRMING THE STATUS QUO

The ICISS, established in the wake of NATO's controversial intervention in Kosovo, acknowledged the problems with the existing legal system and cited as its first objective, "to establish clearer rules, procedures and criteria for determining whether, when and how to intervene."<sup>24</sup> This section argues, however, that R2P does not in fact achieve these aims as—in the absence of any legal innovation—it constitutes a reaffirmation of the very international legal system which was so discredited by the end of the 1990s.<sup>25</sup> R2P comprises two main elements, the internal and the international responsibility to protect,<sup>26</sup> and each is dealt with in turn below.

#### A. The Internal Responsibility to Protect

The foundational principle underlying the ICISS report was that "sovereignty," rather than simply signifying an inalienable right to inviolability, imbued states with a set of domestic responsibilities.<sup>27</sup> The 2005 World Summit Outcome Document recognises this in paragraph 138. "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes

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24. Int'l Comm'n on Intervention & State Sovereignty [ICISS], *The Responsibility to Protect*, at XI (2001), available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

25. PAUL CHRISTOPHER, *THE ETHICS OF WAR AND PEACE* 248 (2004).

26. Often referred to as "Pillar 1" and "Pillar 3" respectively. See U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep of the Secretary-General*, at 2, U.N. Doc. A/63/677 (Jan. 12, 2009).

27. ICISS, *supra* note 24, at 11.

against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.”<sup>28</sup> While this is, arguably, a laudable principle, whether it constitutes anything new—or was a meaningful commitment likely to have real impact—is debatable. The agreement reached in 2005 did not include any new means by which compliance with states’ internal responsibility would be regulated or, crucially enforced.

Since at least the formation of the UN, states have accepted that they have certain responsibilities to their citizens and also that, though they may enjoy sovereign inviolability as per Article 2.7 of the UN Charter, they were prohibited from committing certain acts against their own people.<sup>29</sup> Post-1945, states have been willing and able to agree on certain universal human rights laws—such as the Convention for the Prevention and Punishment of the Crime of Genocide (1948), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the Convention against Torture (1984)—and thus, by definition, accepted that as sovereign states they had certain responsibilities to their own population.<sup>30</sup> The principle of internal responsibility has not, therefore, historically been a source of great contestation.<sup>31</sup> Indeed, in his 2009 report, the UN Secretary-General acknowledged that Pillar 1 “rests on long-standing obligations under international law.”<sup>32</sup>

Of course, compliance with international laws, treaties and commitments on human rights has been erratic.<sup>33</sup> States are subject to

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28. 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 138, U.N. Doc. A/RES/60/1 (Sept. 15, 2005).

29. Ramesh Thakur & Thomas Weiss, *R2P: From Idea to Norm—and Action?*, 1 GLOBAL RESP. TO PROTECT 22, 26-28 (2009); Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT’L L. 99, 112 (2007).

30. See TODD LANDMAN, *STUDYING HUMAN RIGHTS* 14 (2005).

31. Alex Bellamy, *Kosovo and the Advent of Sovereignty as Responsibility*, in KOSOVO, INTERVENTION AND STATEBUILDING 42 (Aidan Hehir ed., 2010).

32. Implementing the Responsibility to Protect: Rep of the Secretary-General, *supra* note 26, at 10.

33. DAVID ARMSTRONG ET AL., *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 157 (2007); CATHERINE LU, *JUST AND UNJUST INTERVENTIONS IN WORLD POLITICS: PUBLIC AND PRIVATE* 54 (2006).

scrutiny by UN bodies such as the Human Rights Council (formerly the UN Commission on Human Rights), the Human Rights Committee and the Office of the UN High Commissioner for Human Rights, yet compliance with even just the supervisory role of these organizations is poor and the enforcement capacity, and thus effectiveness, of these organizations is minimal.<sup>34</sup> The result is a large body of both treaty and customary human rights law, which lacks a means by which these laws can be enforced consistently in the event that a state wilfully violates the law.<sup>35</sup> Rhetorical commitments to accept a responsibility to protect one's citizens have historically been, therefore, of dubious utility given the nature of the international human rights regime.

States may well agree amongst themselves about the standards they should uphold domestically, but ultimately the necessarily domestic nature of compliance with these agreements limits the effect the inter-state context of the original treaty can have. As Malgosia Fitzmaurice states, “[h]uman rights treaties are not contractual in nature and do not create rights and obligations between States on the traditional basis of reciprocity; they establish relationships between States and individuals.”<sup>36</sup> With the exception of the possibility that the Security Council will determine that a situation warrants a Chapter VII intervention, non-compliance with human rights treaties results in negative consequences only for the domestic citizenry rather than other signatories to the treaty.

The fact that states agreed again in 2005 to commit to protecting their citizens certainly did not constitute a unique occasion in the post-Charter era. The problem has not been the principle of internal state responsibility but rather regulating and enforcing compliance.<sup>37</sup> Additionally, the “four crimes” noted as being within R2P’s purview have long been prohibited under international law.<sup>38</sup> In short, the idea

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34. JULIE MERTUS, *THE UNITED NATIONS AND HUMAN RIGHTS* 7 (2009).

35. See Louis Henkin, *International Law: Politics, Values and Functions*, in *RECUEIL DES COURS* 11, 250 (1989).

36. Malgosia Fitzmaurice *The Practical Workings of the Law of Treaties*, in *INTERNATIONAL LAW* 187, 207 (Malcolm D. Evans ed., 2d ed. 2006).

37. AIDAN HEHIR, *HUMANITARIAN INTERVENTION: AN INTRODUCTION* 111 (2013).

38. Stahn, *supra* note 29, at 111.

that states have a responsibility, under international law, to protect their own citizens predates the emergence of R2P; clarifying that states have an internal responsibility was not, and is not, part of the problem R2P sought to solve.

### B. The International Responsibility to Protect

The aspect of R2P that attracts most attention is the principle that if states fail to meet their responsibility to protect their own citizens this responsibility transfers to the international community.<sup>39</sup> This, of course, raises a profoundly important question; in the event that a state manifestly fails to meet its internal responsibility, who can/should take action?

In the 1990s, the Security Council expanded its interpretation of its Chapter VII powers to include intra-state humanitarian crises. Chapter VII empowers the Security Council to determine “the existence of any threat to the peace, breach of the peace, or act of aggression” and decide what measures—including the use of force—need to be taken. During the Cold War this provision was interpreted restrictively; in the landmark Resolution 688 in 1991, however, the Security Council declared, “[the Security Council] [c]ondemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region.” This signalled a new willingness on the part of the Security Council to broaden its interpretation of Chapter VII to include intra-state humanitarian crises. Stretching this provision to include humanitarian crises provoked some controversy,<sup>40</sup> but an intervention authorized by the Security Council has a very strong legal

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39. AIDAN HEHIR, *THE RESPONSIBILITY TO PROTECT: RHETORIC, REALITY AND THE FUTURE OF HUMANITARIAN INTERVENTION* 75 (2012).

40. See INDEP. INT’L COMM’N ON KOS., *KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED* 196 (2000); ARMSTRONG ET AL., *supra* note 33, at 132-33; see generally Nigel D. White, *The Will and Authority of the Security Council After Iraq*, 17 *LEIDEN J. INT’L L.* 645 (2004).

case, and authorized interventions have not, historically, been sources of great legal contestation.<sup>41</sup>

Of greater concern, however, was the inconsistent use of Chapter VII in the post-Cold War era; while the permanent five members of the Security Council (P5) reinterpreted their remit, they did not advance any coherent guidelines outlining how their new understanding of Chapter VII would be consistently applied; in his assessment of this “remarkable transformation” in the Security Council’s use of Chapter VII, Simon Chesterman observed that the application of this provision was haphazard, leading to “ambiguous resolutions and conflicting interpretations.”<sup>42</sup> Action taken by the Security Council under Chapter VII, he noted, was driven by the national interests of the P5 at the expense of issues of procedural legality.<sup>43</sup> The inconsistent and highly politicised manner in which the P5 authorised intervention led some to call for unilateral intervention; “illegal but legitimate” action taken to alleviate suffering without P5 support.<sup>44</sup> This proved hugely controversial, however, as evidenced by the debate generated by NATO’s intervention in Kosovo in 1999.

The ICISS warned about the potentially deleterious consequences of permitting unilateral intervention, but did suggest that such action could be potentially legitimate.<sup>45</sup> Yet, the better option, according to the ICISS, was to continue to respect the authority of the Security Council; the report noted, “the [c]ommission is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes.”<sup>46</sup> The task the ICISS emphasised “is not to find alternatives to the Security Council as a source of authority but to make the Security Council work much

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41. Anne Peters, *Humanity as the A and Ω of Sovereignty*, 20 EUR. J. INT’L L. 537-38 (2009).

42. SIMON CHESTERMAN, *JUST WAR OR JUST PEACE? HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* 5 (2001).

43. *Id.* at 165; *see also* ANTONIO CASSESE, *INTERNATIONAL LAW* 165 (2005).

44. INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO, *KOSOVO REPORT*, 4 (2000).

45. ICISS, *supra* note 24, at 55.

46. ICISS, *supra* note 24, at 49.

better than it has.”<sup>47</sup> Recognising the obstacle presented by the veto power of the P5—evident during NATO’s intervention in Kosovo in 1999—the ICISS put forward the “code of conduct” proposal.<sup>48</sup> This “gentleman’s agreement”<sup>49</sup> was not included in the 2005 World Summit Outcome Document.<sup>50</sup>

Paragraph 139 of the World Summit Outcome Document recognised to the external aspect of R2P and the relevant wording in the paragraph stated;

[W]e 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 manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>51</sup>

The centrality of the Security Council in authorising the “international” responsibility to protect remains, therefore, post-R2P. Ban Ki-Moon’s report on the matter also reiterated the absolute need for Security Council authorisation.<sup>52</sup>

As with the internal responsibility to protect, there was nothing new in the fact that states agreed in 2005 that the international community has the right to become involved in the domestic affairs of states.<sup>53</sup> The Security Council’s use of Chapter VII in the 1990s had amply demonstrated that internal events, including humanitarian crises, could be deemed of international concern and importance, and potentially,

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47. *Id.*

48. *Id.* at 51.

49. GARETH EVANS, *THE RESPONSIBILITY TO PROTECT: ENDING MASS ATROCITY CRIMES ONCE AND FOR ALL* 137 (Brookings Inst. Press 2008).

50. Alex Bellamy, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, 20 *ETHICS & INT’L AFFAIRS* 143, 155 (2006).

51. 2005 World Summit Outcome, *supra* note 28, ¶ 139.

52. Implementing the Responsibility to Protect: Rep of the Secretary-General, *supra* note 26, at 25.

53. Monica Hakimi, *State Bystander Responsibility*, 21 *EUR. J. OF INT’L LAW* 341, 343-44 (2010); *see* Peters, *supra* note 41, at 525.

grounds for external intervention; as Chesterman notes, “[b]y the time RtoP was endorsed by the World Summit in 2005, its normative content had been emasculated to the point where it essentially provided that the Security Council could authorize, on a case-by-case basis, things that it had been authorizing for more than a decade.”<sup>54</sup>

Nothing has been achieved, and no changes to the international system have occurred, which, in any way, alter the legal process governing the response to intra-state crises to ensure consistency or automaticity. Paragraph 139 states that the international community, acting through the UN, has a “responsibility” rather than an obligation to act and that the Security Council is “prepared” to act. These changes, in conjunction with the reaffirmation of primacy of the Security Council, enable the P5, therefore, to determine what, if indeed any, action to take in response to a humanitarian crisis. There is certainly no new “duty” or “obligation” to act; indeed, following the publication of the ICISS report the P5 emphatically distanced themselves from accepting any obligation to take action,<sup>55</sup> while during the course of the 2005 World Summit negotiations the reluctance of P5 states to accept anything approximating an obligation to intervene was very evident.<sup>56</sup> As with the internal dimension of R2P, the external aspect of the concept comprises no novel legal compulsion or innovation. R2P’s utility, therefore, is ostensibly that it can be employed to put pressure on the Security Council to sanction action; a means by which the political will to intervene can be generated through the advocacy of those groups and individuals with the capacity

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54. Simon Chesterman, “*Leading from Behind*”: *The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya*, 25 ETHICS & INT’L AFF. 279, 280 (2011), available at <http://www.carnegiecouncil.org/resources/journal/index.html>.

55. Jennifer M. Welsh, *Conclusion: The Evolution of Humanitarian Intervention in International Society*, in HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 176, 210 (Oxford Univ. Press, 2006).

56. U.S. Ambassador to the U.N., Letter dated Aug. 30, 2005 from the Representative of the U.S. addressed to President Ping (Aug. 30, 2005), available at [http://www.responsibilitytoprotect.org/files/US\\_Boltonletter\\_R2P\\_30Aug05%5B1%5D.pdf](http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05%5B1%5D.pdf); Theresa Reinhold, *The Responsibility to Protect—Much Ado About Nothing?*, 36 REV. OF INT’L STUD. 55, 67 (2010).



by powerful states of its more controversial aspects, meaning that today it is no more than a linguistic conceit that reaffirms the status quo.<sup>64</sup> Indeed, one must ask, why would states, particularly the Great Powers, not support such a nebulous concept? What possible disadvantages could result? The powers vested in the P5 have been reaffirmed by R2P and the structure of the system remains the same in all significant respects.

Since R2P was recognised in 2005 a number of conflicts have erupted—or continued to rage—unaffected by this putative “norm.” Many indeed have pointed to the systematic state-sponsored violence in Darfur,<sup>65</sup> the violence that ravaged the Democratic Republic of Congo and the Great Lakes region generally,<sup>66</sup> and the “counter-insurgency” in Sri Lanka in 2009<sup>67</sup> as examples of conflicts, which have accrued little demonstrable benefits from the recognition of R2P in 2005. These cases each evidence an unedifying juxtaposition of the publicising of egregious human suffering and international inertia. Global civil society has certainly mobilized in response to many crises since 2005 but this has rarely led to remedial action by the “international community.” While the websites of many R2P advocacy groups contain myriad articles, opinion pieces, and transcripts of conference proceedings, which highlight the terms proliferation in international political discourse, it is not at all clear that this has much resonance outside the veritable “R2P bubble” that exists, particularly in New York. This has arguably been most obvious with respects to the response to the Arab Spring.

#### A. R2P and the Arab Spring

Since the Arab Spring began in Tunisia in December 2010 the world had witnessed a series of intra-state crises, often involving the massive loss of life. In certain cases—such as in Jordan and Kuwait—the tensions

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64. See Chesterman, *supra* note 54, at 280.

65. See Belloni, *supra* note 3, at 330.

66. H. Weiss, *The Democratic Republic of the Congo, in RESPONSIBILITY TO PROTECT: THE GLOBAL MORAL COMPACT FOR THE 21<sup>ST</sup> CENTURY* (Richard H. Cooper & Juliette Voinov Kohler eds., 2009).

67. DAMIEN KINGSBURY, *SRI LANKA AND THE RESPONSIBILITY TO PROTECT* 115 (Routledge 2012).

between protestors and the government were resolved diplomatically, while in Egypt, Tunisia and Yemen the old order was deposed by the protestors. Others cases, however, were—and continue to be in the case of Syria—characterized by an escalation of violence by the regime; these are precisely the cases which have demonstrated R2P’s impotence.

In March 2011 the UN Security Council passed Resolution 1973 which sanctioned the imposition of a no-fly zone over Libya. This led to a series of effusive declarations suggesting the action was evidence of R2P “working exactly as it’s supposed to.”<sup>68</sup> The intervention certainly cohered with the spirit of R2P, but there is no evidence to suggest R2P played any role in the decision to intervene. The key development which impelled Resolution 1973 was the statement released by the Arab League on March 12, 2011, calling for military action to be taken against Gaddafi; this convinced the U.S. to support action and Russia and China to abstain on the resolution. In addition, a number of secondary factors aligned to facilitate the passage of the Resolution, including Gaddafi’s unique unpopularity in the region, Libya’s oil reserves, the proximity of Libya to NATO airbases, the country’s favourable demographic and infrastructural concentration along the northern coastline, Gaddafi’s unprecedented public promise to slaughter his opponents, and the vocal calls from within the “rebels” for support.<sup>69</sup> There is scant evidence that R2P played a role Resolution 1973; the external dimension of R2P is not mentioned in the Resolution, references to the term in the negotiations preceding the resolution were made by three states—and only fleetingly—and none of the key states involved mentioned R2P in any of the public statements defending the intervention.<sup>70</sup> This doesn’t mean that the intervention was somehow inherently mendacious or that R2P activists shouldn’t have welcomed it, but rather, that there is no evidence

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68. Gareth Evans, *Ending Mass Atrocity Crimes: The Responsibility to Protect Balance Sheet After Libya* (July 31, 2011), available at <http://www.gevans.org/speeches/speech443.html>; see Aidan Hehir, *The Permanence of Inconsistency: Libya the Security Council, and the Responsibility to Protect*, 38.1 INT’L SEC. 137, 139 (2013).

69. See Alex Bellamy & Paul Williams, *The New Politics of Protection? Cote d’Ivoire, Libya and the Responsibility to Protect*, 87:4 INT’L AFF. 826, 841-42 (2011).

70. *Contra* Hehir, *supra* note 68, at 139.

that R2P played a causal role in the decision to take action. The national interests of the P5 happened to coincide with the interests of people suffering abroad; the intervention was, therefore, at most a welcome aberration in keeping with the pre-R2P trend evident during the 1990s.

The aberrant nature of the action in Libya is further evident with respects to the Security Council's response to Bahrain and Syria. The situation in Bahrain in March 2011 echoed that in Libya; the Sunni Monarchy faced calls from the majority Shia population for democracy and legal reform. Rather than accede to these demands, the regime sought military support from Saudi Arabia and Qatar. On March 14<sup>th</sup>, both sent troops into the sultanate to help the Khalifa Monarchy crush the popular uprising.<sup>71</sup> The international response was minimal and to this day the Security Council has never mentioned Bahrain in either a resolution or a Presidential Statement. The U.S. has a naval base in Bahrain and the country is a key ally of Saudi Arabia, both of which appear to have contrived to limit any public denunciation, let alone R2P-type action.

With respect to Syria, some 200,000 people have now been killed in over five years of fighting.<sup>72</sup> Despite a vocal campaign from a variety of human rights NGO's, the response from the Security Council has been ineffectual and marked by pronounced divisions amongst the P5. Russia and China have on four occasions blocked resolutions seeking to censure Assad's regime; again, like Bahrain, there is an obvious link between this stance and the geopolitical importance of Syria to Russia, in particular, and China. The Security Council's response has been widely criticised; in September 2012 the General Assembly condemned the Security Council's inaction; Kofi Annan stepped down as UN/Arab League Joint

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71. For details of the unrest, see International Crisis Group, *Popular Protests in North Africa and the Middle East (VIII): Bahrain's Rocky Road to Reform*, 111 Middle East/North Africa Report 2-9 (2011), available at <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Bahrain/111-%20Popular%20Protest%20in%20North%20Africa%20and%20the%20Middle%20East%20VII%20-%20Bahrain's%20Rocky%20Road%20to%20Reform.pdf>.

72. *Syria Death Toll Now Exceeds 210,000*, REUTERS, (Feb. 7, 2015), <http://www.reuters.com/article/2015/02/07/us-mideast-crisis-toll-idUSKBN0LB0DY20150207>.

Special Envoy for Syria in August 2012 decrying the “finger-pointing and name-calling in the Security Council” which had impeded his efforts,<sup>73</sup> while Navi Pillay, in her final speech to the Security Council as UN High Commissioner for Human Rights, declared, “greater responsiveness by this council would have saved hundreds of thousands of lives.”<sup>74</sup>

The importance of Bahrain and Syria for understanding the efficacy of R2P stems not so much from the fact that they constitute examples of states wilfully oppressing their own population; while this is clearly a violation of Pillar 1 of R2P, the existence of Pillar 3 is an acknowledgment that no proscription against egregious intra-state oppression can hope to be consistently respected. Rather, their importance derives from what they tell us about Pillar 3. While timely and decisive action undeniably took place in response to Libya, R2P was of no significant causal influence; geopolitics determined the (albeit possibly welcome) decision made by the P5. In both Bahrain and Syria, human rights violations listed as within R2P’s purview unequivocally occurred; in response, global civil society mobilized and called for action, not necessarily, it must be stated, military action. The Security Council’s response, however, has been characterised by disunity and the prioritisation of national interests over human rights. None of the four resolutions vetoed by Russia and China suggested military action but even the modest sanctions proposed were deemed contrary to Russia and China’s national interests.

Where, one may ask, has R2P been during the crises in Bahrain and Syria? The generous answer is that it can be found in the agitation and campaigns waged by global civil society; these calls for “something” to be done, though arguably laudable, are cold comfort for those who have suffered so gravely at the hands of their respective national governments. Additionally, the fact that global civil society so vocally pleaded with

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73. UN News Centre, *Kofi Annan Resigns as UN-Arab League Joint Special Envoy for Syrian Crisis* (Aug. 2, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42609#.VBakIvldWSo>.

74. *UN Human Rights Chief Criticises Council Over Global Conflicts*, THE GUARDIAN (Aug. 22, 2014), <http://www.theguardian.com/world/2014/aug/22/un-human-rights-chief-criticises-security-council-over-global-conflicts>.

states to take action arguably makes the inertia more damaging to perceptions of R2P's efficacy as—unlike the genocide in Rwanda, for example—the campaign to “do something” was sustained and loud, and yet ultimately ignored.

What, one may also ask, is the difference between the slaughter in Syria and the carnage in Rwanda and Srebrenica? Does the international response to Syria not evidence the same unedifying juxtaposition of human suffering, humanitarian appeals for action and inertia at the Security Council? In light of this, surely we must be wary of heralding R2P as revolutionary, or even significant. In the absence of any change to the international system—in terms of legal innovation or new political processes—the manner in which external actors respond to egregious suffering is remarkably similar post-R2P to what it was prior to the concept's inception and subsequent recognition. The ICISS noted that one of its aims was “crafting responses that are consistent.”<sup>75</sup> The Arab Spring suggests it has failed.

## V. THE CHILDREN OF LIGHT AND THE CHILDREN OF DARKNESS

Many R2P lobby groups evidence two related prominent characteristics; a strong focus on the use of social media to promote the concept and an emphasis on celebrating the usage of the term “responsibility to protect” in political discourse. The result is a proliferation of tweets, e-mails and Facebook posts publicising occasions when R2P has made its way into speeches or policy reports. This approach gives the impression that R2P is dynamic, being increasingly endorsed, and becoming embedded in the international political lexicon. This approach coheres with the idea that “speech acts” and “discourse” constrain behaviour.<sup>76</sup> What this fails to appreciate, however, is the yawning gap between rhetoric and reality.

R2P advocates often take the rhetorical usage of R2P at face value, and axiomatically worthy of praise. As an illustration, in September 2014 the Global Center for R2P published a list of every Security Council

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75. ICISS, *supra* note 24, at 5.

76. Tim Dunne & Katharine Gelber, *Arguing Matters: The Responsibility to Protect and the Case of Libya*, 6 GLOBAL RESP. TO PROTECT 326, 331(2014).

Resolution that mentions R2P.<sup>77</sup> Since the first reference to R2P in Resolution 1653 in January 2006, 26 Resolutions have mentioned the concept; 22 of these have been passed since the start of the Arab Spring, of which seven directly relate to the Arab Spring itself. While this may seem somewhat impressive, though it is worth mentioning that this number equates to 13.25% of the total number of resolutions passed during the Arab Spring,<sup>78</sup> by way of contrast, during this period 16 resolutions were passed on Somalia alone, some 9.65% of the total. The nature of the references made to R2P evidences a very definite, and potentially troubling, trend. In each of the seven resolutions passed, the reference to R2P is exclusively to Pillar 1, the internal dimension of the concept relating to the host state's responsibility to protect its population. There is no mention in any of these resolutions of Pillar 3, the international community's responsibility to protect. This could well indicate that the Security Council employs R2P so as to deflect responsibility for halting a crisis onto the host state; indeed, even prior to the Arab Spring, some warned that R2P was being used, paradoxically, to legitimise non-involvement in cases where one or more of the four crimes were demonstrably being committed.<sup>79</sup> This trend is also evident beyond just the Resolutions related to the Arab Spring. Of the 26 Resolutions that mention R2P, only four even acknowledge the existence of Pillar 3; none point to this as the basis for action. Thus, the fact that the Security Council mentions R2P a certain number of times, in and of itself, is not necessarily significant; the nature of the references must be examined as of course must the actual policies, if any, which stemmed from these references. It may well be, rather than a cause for celebration, actually a negative trend.

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77. See R2P References in United Nations Security Council Resolutions and Presidential Statements, GLOBAL CTR FOR RESP. TO PROTECT (2014), <http://www.s156658.gridserver.com/media/files/unsc-resolutions-and-statements-with-r2p-table-as-of-august-2014-1.pdf>.

78. The date range used is January 1, 2011 to December 31, 2014.

79. David Chandler, *Unravelling the Paradox of 'The Responsibility to Protect'*, 20 IRISH STUD. INT'L AFF. 27, 31 (2009); Stahn, *supra* note 29, at 116. See Alex J. Bellamy, *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq*, 19 ETHICS & INT'L AFF. 31, 45 (2005).

What this points towards is the superficiality of the contemporary R2P advocacy; rather than challenging states, the statements they make are often taken at face value and lauded as evidence of progress. The P5, of course, are naturally reluctant to publicly declare its intention to act without concern for human rights and, thus, unsurprisingly issue general statements supportive of R2P, and indeed myriad other cause célèbre. Hence, there is little shortage of ostensibly “good” news. In fact, what this evidences is that the discourse of human rights, and indeed the radical challenge posed initially by “human security,” has been co-opted, sanitised and employed by the powerful to legitimise their privileged position.

The vision of the R2P advocates, and the contrasting real world of international politics, coheres with the Reinhold Niebuhr’s distinction between the “children of light and the children of darkness.” Though writing in a very different era, the parallels between Niebuhr’s critique of naivety resonates with R2P’s contemporary predicament. Niebuhr defined the children of light as, “those who seek to bring self-interest . . . in harmony with a more universal good.”<sup>80</sup> This group comprised those who sought to contrive strategies for global reform without an appreciation of the nature of the actors who determine the contours of the system and, naturally, have an interest in its perpetuation. Niebuhr criticised, “[t]he social and historical optimism” prevalent among this group as, “the typical illusion of an advancing class which mistook its own progress for the progress of the world.”<sup>81</sup> The children of light seek to propel human progress without recognising the existence of the “children of darkness” who take advantage of the normative idealism of the children of light. While the children of light imagine a world where progress is inevitable and impelled by rational argument and moral suasion—and accept promises at face value—the children of darkness exploit regulatory weaknesses and the malleability of moral norms to pursue their own self-interest. The children of light, Niebuhr argues,

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80. REINHOLD NIEBUHR, *The Children of Light and the Children of Darkness*, in THE ESSENTIAL REINHOLD NIEBUHR: SELECTED ESSAYS AND ADDRESSES 166 (Robert McAfee Brown ed., 1986).

81. *Id.* at 162.

Are virtuous because they have some conception of a higher law than their own will. They are usually foolish because they do not know the power of self-will. They underestimate the peril of anarchy in both the national and the international community. Modern democratic civilisation . . . has an easy solution for the problem of anarchy and chaos on both the national and international level of community, because of its fatuous and superficial view of man. It does not know that the same man who is ostensibly devoted to the “common good” may have desires and ambitions, hopes and fears, which set him at variance with his neighbour.<sup>82</sup>

Democracy exists, Niebuhr argues, not because man is inherently virtuous but precisely because man is not.<sup>83</sup> It can only work if constructed in concert with legal principles, which are designed to mitigate the influence of these negatives, such as duty, punishment and judicial probity. Niebuhr’s key point of greatest relevance to the debate on R2P is the dangers inherent in assuming that self-interest can be harnessed by moral advocacy without concomitant legal regulation and the establishment of punitive capacity. “The children of light,” Niebuhr argued, “have not been as wise as the children of darkness.” The fatal mistake they have made, he warned, is that they “underestimated the power of self-interest.”<sup>84</sup> Self-interest, therefore exists, and will likely always exist, but this need not induce fatalism. Niebuhr does not suggest the international system is immutable; evolution—progress even—is certainly possible, but it cannot be generated by good intentions and moral appeals alone.

## VI. CONCLUSION

The vision of a world no longer dominated by the national interests of states and oriented around human security was revolutionary, and thus, it is counter-intuitive to expect change of this magnitude whilst affirming the status quo. Even with the endorsement of R2P by states in 2005, nothing has actually changed to compel states or the P5 to alter their

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82. *Id.* at 166.

83. *Id.* at 160.

84. *Id.* at 166.

behaviour; the Arab Spring demonstrates that the P5 have little compunction about ignoring certain crises or blocking international efforts to alleviate others. The idea that the P5 are today less likely to veto interventions because of the existence of vocal proponents of R2P does not equate with reality, certainly not the P5's response to the crisis in Syria. As yet, overtly blocking remedial action does not carry sufficient disincentives for the P5. As Allen Buchanan and Robert Keohane note, "[t]he permanent members most likely to use the veto against humanitarian intervention are extremely powerful and not likely to suffer severe political or economic consequences for using it to thwart such interventions."<sup>85</sup> The well-funded and vocal advocacy of many R2P-orientated NGOs can, certainly potentially, make inaction less easy to justify, but hardly impossible, and surely a modest return on the time, money and energy expounded on R2P to date. As Chesterman notes, "anxiety about doing nothing is a far cry from effective intervention to protect the population at risk."<sup>86</sup>

In his 1993 speech extolling the virtues of human security and calling for a radical reorganisation of the international system, Booth warned against "self-deception," the tendency amongst observers of international politics to see what they want at the expense of the real.<sup>87</sup> This had turned many, he argued, into "house trained 'critics' of the powerful" who ultimately, "always adjust to their rulers agendas and flatter the power which is ruling."<sup>88</sup> Without radical change, the international system would continue, Booth warned, to be unresponsive to human rights. With respect to the expectation that state leaders would voluntarily change their behaviour, Booth was scathing: "Look at some heads of governments or heads of state. Can we hope that this 'community' of dignitaries and states will deliver the world from massive human

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85. Allen Buchanan & Robert O. Keohane, *Precommitment Regimes for Intervention: Supplementing the Security Council*, 25.1 ETHICS & INT'L AFF. 41, 47 (2011).

86. Simon Chesterman, *The Outlook for UN Reform* 23 (N.Y.U. Law, Working Paper No. 11-55, 2011), available at <http://ssrn.com/abstract=1885229>.

87. Booth, *supra* note 4, at 104.

88. *Id.* at 109.

wrongs?”<sup>89</sup> The fate of R2P, derived from its affirmation of the systemic status quo and its strategy of engaging in moral suasion, appears to confirm Booth’s fears and, lamentably, ultimately inhibited the realisation of human security.

The power of narrowly defined self-interest among states remains the guiding force in international relations. This was readily evident with respects to the P5’s response to the Arab Spring. To ignore this and assume we can convince these states to change their ways through moral advocacy alone is unlikely to achieve positive results. Those supportive of the ethos underlying human security and the promotion of human rights generally must accept that the goals set can only be realised through an acceptance of the limits of moral suasion, the narrow national interests of states and the need to think seriously about the contours of a radically different international system.

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89. *Id.* at 121.

