

**The Responsibility to Protect and the Great Powers:
The Tensions of Dual Responsibility¹**

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Abstract

Since the UN's 2005 adoption of the Responsibility to Protect (R2P) the five permanent members (P5) of the organisation's Security Council have been burdened with a *special dual responsibility*, entailing a special responsibility to maintain international peace and security, and a special responsibility to assist those imperilled by the mass atrocity crimes of their home state. The tensions which can arise within this dual responsibility is a largely under-explored aspect of the R2P literature. But consideration of it helps explain why, despite differing views over how best to balance individual and state rights, at times accentuated by clashing interests, the P5 have nevertheless found common R2P ground, most particularly in their largely concerted opposition to the idea of a 'responsibility not to veto' R2P-related resolutions within the Council.

Introduction

Power and state sovereignty, like state sovereignty and forcible intervention to protect human rights, are often uneasy bedfellows. In debates centred on the Responsibility to Protect (R2P) – and before them over the rightfulness of humanitarian intervention – attention has tended to focus on the problematic nature of the latter coupling, with its component elements 'often assumed', as the International Commission on Intervention and State Sovereignty's (ICISS) research team observed, 'to be irreconcilable and contradictory'.² Yet disparities in the global distribution of power have always cast a shadow over the discourse, not least because, as the (then) UN Secretary General (UNSG) Kofi Annan

² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Volume 2 - Research, Bibliography, Background*, (Ottawa: IDRC, 2001), p3.

observed in 2000, 'there is little consistency in the practice of intervention ... except that weak states are far more likely to be subjected to it than strong ones'.³

The different emphases evident in these observations have tended to manifest themselves in two divergent understandings of intervention for humanitarian purposes. In one it is strategic factors that are offered as the key variables determining the policies of states, with responses to interventionary acts depicted as being determined by their impact on the balance of power and thus essentially symptomatic of geostrategic reasoning. State practice during the Cold War offers fertile ground for such narratives, as ostensibly humanitarian issues were viewed in accordance with their impact on wider Cold War politics.⁴ In the other, more intervention/R2P-centric account, it is normative contestation over the appropriate weighting of state and human rights, often intertwined with concerns over ulterior self-interested rationales, which provides the focus for analysis. Nowhere is this latter portrayal more evident than in analyses of post-Cold War, and particularly R2P-related state behaviour in the United Nations Security Council (UNSC) which reveals one of the major Great Power fault lines in international politics. Here the Council's members, and in particular its five permanent, veto-bearing members (the P5), have engaged in often fraught diplomatic exchanges, with the United States, the United Kingdom and France (the P3), more inclined toward intervention, and the other two, Russia and China (the P2), invariably - if not quite always - more cautious or overtly opposed.

This article offers an alternative narrative which highlights the extent to which the P5 are today largely united over key R2P-related issues, specifically in a common commitment

³ Kofi Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, 2000), p. 48

⁴ Philip Windsor, Superpower Intervention, in Hedley Bull (ed.), *Intervention in World Politics*, Oxford: Clarendon Press, 1984). Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: OUP, 2000), pp. 55-136.

to the view that coercive action taken pursuant to R2P must be sanctioned by them, through the auspices of the UNSC. Central to this unity is the largely shared belief that in granting or withholding their approval for a Council mandate, the P5's global management responsibilities necessitate unfettered room to manoeuvre. Consequently, only France has been willing to actively support the notion that the right to veto R2P-related resolutions should be restricted, although the UK has, somewhat equivocally, suggested that it would support such a proposal if all other P5 states were to do so, a proposition so unlikely as to be effectively meaningless. None of this is to deny that questions over coercive intervention for humanitarian purposes have often divided the Council's permanent members, but whilst the P5 may criticise one another's positions and the exercise of the veto pursuant to these in specific instances - as the P3 have so vehemently done in relations to the P2's vetoes over Syria – for the most part they stand in equally strident opposition to attempts to deny or restrict their veto right in relation to the R2P more generally.

In this alternative account normative and material issues are significant, but they play out very differently compared to the more familiar narratives outlined earlier. In the account offered here power and the manner in which it is distributed between states unite rather than divide the P5, for in significant part it is from material abundance that their special status in the UN system arises. Similarly, normative considerations serve to bond rather than dissect, as the P5 recognise that they are collectively and uniquely required to shoulder special responsibilities under the UN system. In this context the UN's adoption of the R2P can be seen as an extension to the P5's special responsibilities, burdening the Council (and hence most significantly the P5) with a responsibility to protect populations from mass atrocity crimes when their host state has proved unwilling or unable to do so. Viewed in isolation such a challenge would be daunting enough, since addressing

humanitarian crises is a notoriously testing business. But the R2P cannot be so viewed since it arises *in addition to* the Council's original obligation to preserve international peace and security. Consequently, the R2P not only extends the obligations which befall the P5, it also complicates them since action taken pursuant to the R2P, at least to the extent that it may have to be coercive in nature, may well have negative implications for global order. One of the fundamental challenges posed by the R2P, therefore, is that it places the P5 under a *special dual responsibility*, with the component elements of this duality, at least potentially, in tension. It is in recognition of this that the UNSC's permanent members have found a basis for R2P-related consensus, reflecting the fact that acting pursuant to this responsibility may give rise not only to clashes of national interest, but also to genuine discord over how best to serve the social obligations to which it gives rise.

This article explores the conundrum posed by the P5's special dual responsibility. It begins by examining the relationship between power and intervention, before then exploring the idea that the P5 are, if to some extent reluctantly, increasingly assuming a special responsibility to respond in the face of the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. The article then considers the nature of this new, R2P-rooted responsibility and its relationship to the P5's more long-lived special responsibility for preserving international peace and security. It briefly examines the steps taken at the 2005 World Summit to ensure that once the international community's R2P is invoked, this is operationalised exclusively through the discretionary workings of the UNSC, before providing a more extensive discussion of the on-going debate over the so-called 'responsibility not to veto' (RN2V).⁵ Here it shows that P5 attitudes to R2P are shaped as

⁵ On the RN2V see Ariela Blätter and Paul D. Williams, 'The Responsibility Not To Veto', *Global Responsibility to Protect*, 3/3: 301-22 (2011); Daniel H. Levine, 'Some Concerns About "The Responsibility Not To Veto"', *Global*

much by the traditional idea that the Great Powers have a special responsibility to maintain order as by any newfound sense of responsibility for humanitarian affairs, and that because these two responsibilities are sometimes in conflict, the Great Powers must maintain the unfettered right to judge these competing demands.

Intervention, Power and the Advent of the R2P

When, in September 1999, UNSG Kofi Annan suggested to the UN General Assembly (UNGA) that there was evidence of a ‘developing international norm in favour of intervention to protect civilians from wholesale slaughter’, he was sufficiently prescient to anticipate that ‘such [an] evolution in our understanding of state sovereignty and individual sovereignty [would], in some quarters, be met with distrust, scepticism and even hostility.’⁶ The following year Annan noted that his prediction had come to pass, with many UN members voicing their concerns ‘that the concept of “humanitarian intervention” could become a cover for gratuitous interference in the internal affairs of sovereign states’, and that this fate was inevitably most likely to befall those members which lacked the material means to prevent it.⁷ Unperturbed, the Secretary General implored UN members to decide: if ‘both the defence of humanity and the defence of sovereignty are principles that must be supported ... which principle should prevail when they are in conflict’?⁸ Yet whilst Annan posed his question in terms of the familiar contrapositioning of the sanctity of sovereignty against the legitimacy of intervention for humanitarian purposes, given the diplomatic

Responsibility to Protect, 3/3: 323-45 (2011); and Justin Morris and Nicholas J. Wheeler, ‘The Responsibility Not to Veto: a responsibility too far?’, Alex J. Bellamy and Timothy Dunne (eds.), *Oxford Handbook on the Responsibility to Protect* (OUP: forthcoming 2015)

⁶ 4th Plenary Meeting of the 54th Session of the United Nations General Assembly, UN Doc A/45/PV.4 of 20 September 1999

⁷ Annan, *We the Peoples’: The Role of the United Nations in the 21st Century* (New York: United Nations, 2000), pp. 47-8

⁸ *Ibid.*

context in which it was asked it was abundantly clear that it would also be perceived as pitting the rights and fears of the weak against the domineering proclivities of the strong. Consequently, any attempt by international society to resolve the normative conundrum posed by the apparent tensions between sovereignty and intervention in the name of human rights would also have to pay due regard to concerns over the material differentials which characterise its diverse membership and the implications which flow from these.

ICISS, the international commission that was established in response to Annan's challenge and originator of the R2P concept, was acutely aware of this. Indeed, the Commission's own research team informed members that, amongst 'developing countries ... deeply conditioned by the legacy of colonialism', sovereignty was 'the preemptive norm *par excellence*',⁹ its 'equality in legal status ... offer[ing] protection for weaker states in the face of pressure from the more powerful'.¹⁰ Advocates of intervention would counter, of course, that it is material inequality which creates the necessary space for states predisposed toward intercession to prevent or end gross human rights violations to act, as the Western powers increasingly did during the 1990s. Whichever position one takes in this debate it is understandable that amidst such attitudes and concerns one of the ICISS's co-chairs, Gareth Evans, would later declare that Commission's 'primary task' was to find a mechanism which 'built bridges, rather than burned them, between North-perceptions [amenable to intervention] and South-perceptions' in which sovereignty and non-interference were accorded precedence.¹¹ Yet material disparities between 'North' and 'South' constitute only one of the dimensions in which power is a significant factor in the debate over intervention

⁹ ICISS, *The Responsibility to Protect: Volume 2*, p.9.

¹⁰ ICISS, *The Responsibility to Protect: Volume 2*, p.7

¹¹ Gareth Evans, 'Ending mass atrocity crimes: a hopeless dream?', 10 May 2013, <http://geevans.org/speeches/speech513.html>, accessed 29 July 2013

to address mass atrocity crimes. It is, for example, the preponderance of power which even relatively weak states hold in relation to their populations which enables state-perpetrated mass atrocity crimes in the first place. At the other end of the spectrum, the vast amounts of material power at the disposal of the Great Powers – not all of which are situated in ‘the north’ - means that, particularly where their relations are fraught and geostrategic sensitivities are acute, intervention for humanitarian purposes may be precluded by the negative implications which it has for global order.¹² It is clear, therefore, that debates over intervention are ones which not only require a weighing of the relative standing of state and human rights, they are also deeply imbued with material considerations, and this is true at a variety of levels.

Even the briefest chronicling of post-1945 state behaviour illustrates well the manner in which the distribution of material power and fluctuating Great Power relations impact upon interventionary practice. The years of the Cold War witnessed a multitude of intra-state conflicts with attendant humanitarian crises in which thousands (and sometimes millions) died.¹³ Yet throughout this time the UNSC invariably remained largely inactive, with its Great Power members, most particularly the US and USSR, often proving themselves more inclined to ignore or even fan the flames of conflict than attempt to extinguish them where geostrategic advantage was potentially attainable.¹⁴ Very few states at the time advocated forcible UN (let alone unilateral) involvement in such situations, with widespread opposition underpinned by a complex and varying amalgamation of instrumental and normative rationales. With regard to the former, there can be little doubt that it was often

¹² Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Basingstoke: Macmillan, 1977), pp.77-98; Wheeler, *Saving Strangers*, pp.21-52

¹³ Barbara Harff and Ted Robert Gurr, ‘Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases since 1945’ *International Studies Quarterly* 32/2: 359-71 (1988)

¹⁴ Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984); Wheeler, *Saving Strangers*, pp.55-136

political and economic interests and/or the desire to avoid the setting of pro-interventionary precedents which influenced policy, although such reasoning was often hidden behind principled appeals to the sanctity of non-intervention. But normative justifications cannot be wholly dismissed as window-dressing; as Robert Jackson has observed, in a postcolonial world of redefined global values it was respect for sovereignty which ensured that 'ramshackle states [were] not open invitations for unsolicited external intervention'.¹⁵ Moreover, globally all appreciated that in a world characterised by superpower distrust and hostility, use of force almost anywhere and for any purpose had the potential to lead to a superpower conflagration with catastrophic repercussions everywhere.

Whatever the particular balance of reasons and motives behind inaction, international society's Cold War record in preventing and alleviating state-perpetrated mass human rights abuses was a lamentable one. But the end of the Cold War lifted the global shadow of mutually assured destruction, reconfigured the logic behind the Great Powers' support for human rights violating regimes, and - at least briefly - heralded an apparent ideological victory for liberal human rights. This was the context in which, during the final decade of the 20th century, the UNSC engaged, with varying degrees of enthusiasm and success, in a series of cases involving humanitarian emergencies arising from the actual or anticipated mass killing of innocent civilians and/or the breakdown of state authority.¹⁶ Notwithstanding the varying shortcomings of the Council's responses to these cases,

¹⁵ Robert Jackson, *Quasi-states: Sovereignty, International Relations and the Third World* (Cambridge: CUP, 1990), p. 23

¹⁶ Jennifer M. Welsh, *Humanitarian Intervention and International Relations* (Oxford: OUP, 2004)

collectively they suggested a significantly greater disposition on its part to determine that intra-state humanitarian emergencies constituted part of its legitimate remit.¹⁷

One possible explanation for this pattern of post-1945, pre-R2P practice lies in a material account of international politics, whereby fluctuations in the distribution of power permit or preclude interventions by states inclined to act for humanitarian purposes. Accordingly, it can plausibly be argued that when the global distribution of power was precariously and antagonistically balanced between those who might otherwise favour intervention and those implacably opposed to it, inaction was the inevitable, materially induced outcome. As Clark and Reus-Smit comment of such times, 'gridlock in the Security Council was ... mirrored in the wider military checks and balances operating beyond its confines.'¹⁸ Moreover, equilibrium combined with Great Power animosity served to stifle pro-interventionary proclivities, not just because of the disorder which might result should a state choose to act, but also because it demoted humanitarian concerns within the hierarchy of interests and priorities which determine state action.¹⁹ Conversely, once power was preponderantly stacked in favour of the would-be interveners, such material constraints were massively loosened, and within the contemplatory space opened up by the absence of any existential threat, those so inclined were able to direct their minds towards matters of erstwhile secondary concern. Consequently, intervention became more common. In an unbalanced Security Council dominated by those of a pro-interventionary bent legitimising endorsement could, moreover, be more easily secured, with alternative

¹⁷ On the limitations of attitudinal changes during this period see Nicholas J. Wheeler and Justin Morris, 'Justifying the Iraq War as a humanitarian intervention: The cure is worse than the disease' in Ramesh Thakur and Waheguru Pal Singh Sidhu (eds.), *The Iraq Crisis and World Order: Structural, Institutional and Normative Challenges* (Tokyo: UNU, 2006).

¹⁸ Ian Clark and Christian Reus-Smit, 'Liberal internationalism, the practice of special responsibilities and the evolving politics of the security council', *International Politics*, 50/1, 38-56 (2013), p.49

¹⁹ Tim Dunne, 'Distributing Duties and Counting Costs', *Global Responsibility to Protect*, 5/4, 443-65 (2013), p.446

viewpoints succumbing to the silencing constraints of material inferiority, but the availability of normative cover was (at least according to this account) essentially symptomatic of material change and of only secondary significance to the material imperatives that brought it to bear.²⁰

There is, of course, some merit in this account; the genuine and foreseeable possibility of nuclear conflict and planetary destruction focuses minds and shapes behaviours like few other issues. But it does not fully explain all that occurred during this period, as pluralist accounts which emphasise the significance of genuine differences over what constitutes acceptable notions of the 'good life' make clear.²¹ Nor, crucially, can it properly account for subsequent developments. The Cold War's cessation spelled the end for (or at least the chastening of) many authoritarian regimes, and with their demise (or subduing) the dawning of the 21st century was accompanied by a growing acceptance that the privileges of sovereignty could not be wholly divorced from expectations of good governance. In this way a change in Great Power relations heralded a change in the very nature of the membership of international society, opened the door to a process of rebalancing of state and human rights, and thus led to more extensive interventionary practices in the 1990s. In the absence of such events it is almost inconceivable that, at the 2005 World Summit, the UNGA would have endorsed the R2P concept. This signalled international society's acceptance of the ideas, firstly, that sovereignty attributes to states the primary responsibility to protect populations from mass atrocity crimes, and secondly, that whilst this responsibility to protect falls initially on a population's home state, where

²⁰ Wheeler, *Saving Strangers*, 288-93

²¹ Nicholas J. Wheeler, 'Pluralist or Solidarist Conceptions of Humanitarian Intervention: Bull and Vincent on Humanitarian Intervention', *Millennium*, 21/1: 463-87 (1992); Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: OUP, 2000)

this is not fulfilled, the international community has a residual responsibility to protect the endangered.²² R2P's life to date has not been untroubled; its conception, gestation, birth and infancy were overshadowed by the conflict in Iraq,²³ and more recently its adolescence has been troubled by the manner in which NATO interpreted and implemented its UNSC mandate to intervene in Libya.²⁴ Yet despite such issues the advent of the R2P highlights the need to consider an account of interventionary practices which measures more appropriately the balance between material and normative factors. Nowhere is this more necessary than in relation to the actions of the UNSC and its five permanent members, since prior to the R2P's adoption those who questioned the appropriateness of intervention could, at least on the interpretation they favoured, call on the Charter as a basis for their stance.

Intervention, the UN Charter and the R2P

Under Article 24 of the UN Charter the UNSC has 'primary responsibility for the maintenance of international peace and security' and, by implication of the privileges which they enjoy within the Council, its five permanent members can be identified as having a

²² '2005 World Summit Outcome', A/RES/60/1, 24 October 2005, paragraphs 138-9

²³ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009), pp.66-97; Alex J. Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq', *Ethics and International Affairs*, 19/2: 31-54 (2005), p.33

²⁴ Lloyd Axworthy and Allan Rock, 'A reflection on responsibility: What does Syria mean for R2P?', *Diplomat Magazine*. Available at <http://diplomatonline.com/mag/2012/10/a-reflection-on-responsibility-what-does-syria-mean-for-r2p/> (accessed 6 October 2014); Gareth Evans, 'The Responsibility to Protect after Libya and Syria', Address to the Annual Castan Centre for Human Rights Law Conference, Melbourne, 20 July 2012 Available at <http://www.gevans.org/speeches/speech476.html> (accessed 6 October 2014); and Justin Morris, 'Libya and Syria: R2P and the spectre of the swinging pendulum', *International Affairs* 89/5: 1265-1283 (2013). For an alternative perspective, see Alex J. Bellamy, 'From Tripoli to Damascus? Lesson learning and the implementation of the Responsibility to Protect', *International Politics*, 51/1: 23-44 (2014)

special responsibility in this regard.²⁵ But as Ian Hurd has recently observed, the Charter contains ‘no ... category of a “threat to domestic peace and security” which might serve as the counterpart to [this] idea’.²⁶ This omission was no oversight, but rather the outcome of a process of deliberation which privileged state sovereignty and plural conceptions of good governance and rejected collective intervention into the internal affairs of states other than in circumstances where inter-state relations were in jeopardy.²⁷ Whatever the wisdom of such an approach, prior to the adoption of the R2P it enabled those so inclined to draw on the Charter’s provisions, and in particular the exclusionary terms of its Article 2(7) non-intervention clause, as a legally couched, normative defence for inaction even when intra-state conflict resulted in human suffering on a catastrophic scale.²⁸

This is not, of course, to suggest that legal scripture outweighs geostrategic reasoning in the minds of those charged with deciding whether interventionary action should be undertaken, but neither should the resort to legal and normative reasoning by Council members be dismissed as mere window-dressing. The influence which international law may exert on state behaviour has long been shown²⁹ and as Christian Reus-Smit has argued,

‘[o]nce it has been commonly acknowledged that a problem or issue is legal, in the sense of being governed by a pre-existing set of norms [which the issue of intervention unquestionably has] the narrowly defined politics of

²⁵ Clark and Reus-Smit, ‘Liberal internationalism’, 45-7. On the notion of special responsibilities more generally see Mlada Bukovansky et al, *Special Responsibilities: Global Problems and American Power* (Cambridge: Cambridge University Press, 2012)

²⁶ Ian Hurd, ‘The Selectively Expansive UN Security Council: Domestic Threats to Peace and Security’, *Proceedings of the Annual Meeting (American Society of International Law)* 106: 35-8 (2012), p.36

²⁷ Jackson, *Quasi-states*; Justin Morris and Nicholas Wheeler, ‘Human Welfare in a World of States: Reassessing the Balance of Responsibility’, in James Connelly and Jack Hayward, *The Withering of the Welfare State: Regression* (Basingstoke: Palgrave Macmillan, 2012).

²⁸ Anthony Clark Arend and Robert J. Beck, *International Law and the use of Force* (London: Routledge, 1993), pp.112-137; Christine Gray, *International Law and the Use of Force* (Oxford: OUP, 2008), pp.30-47

²⁹ Louis Henkin, *How Nations Behave: Law and Foreign Policy* (London: Pall Mall, 1968)

power and self-interest is deligitimised and communicative action [through institutions such as the UNSC] is empowered.³⁰

In the existential standoff of the Cold War this phenomenon might have been at its weakest and geostrategic concerns most prominent, but it suggests, nevertheless, that a lifting of the geostrategic barriers to action, *combined* with a loosening of the legal constraints to intervention, would be more conducive to heralding a pattern of state practice in which intervention was more frequent than would a change in material *or* normative conditions *alone*.

Such a change in practice was, as noted above, evident in the decade following the end of the Cold War, and whilst during this period no formal amendment to the UN's normative structure occurred, a less restrictive interpretation of the Charter's provisions, itself enabled by the pro-liberal material imbalance which characterised the Council's composition at this time, was crucial in facilitating this. As those Council members predisposed toward intervention 'push[ed] and shov[ed]', as Adam Roberts has argued, in order 'to make the awkward facts of a crisis fit the procrustean bed of the UN Charter',³¹ those who harboured concerns over such activities, though subdued by the silencing effects of material inferiority, sought to hedge against the setting of precedents through the insistence that acts of intervention were legitimised only by the 'unique', 'exceptional' and 'extraordinary' nature of the cases concerned.³² The normative and empirical contorting into which both sides in the debate entered during this period tells us much about the

³⁰ Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge: CUP, 2004), p.38

³¹ Adam Roberts, 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, 69/3: 429-49 (1993), p.440

³² Justin Morris 'The United Nations: collective security and individual rights' in Jane M Davis (ed.), *Security Issues in the Post-Cold War World* (Cheltenham: Edward Elgar, 1996), pp.113-35.; Nicholas J. Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society' in Jennifer M Welsh (ed.), *Humanitarian Intervention in International Relations* (Oxford: OUP, 2004), pp.29-51

significance which states attach to the normative frameworks within which they operate. Indeed, with the mind-focusing prospect of mutually assured destruction seemingly consigned to the history books, normative contestation over the appropriate balance to be struck between state and human rights appeared to assume paramouncy in debates over the appropriateness of intervention.

Viewed in this light the significance of the UN's endorsement of R2P is clear. The concept, described by Bellamy as the usher in of a 'new but imperfect politics of protection',³³ represents a significant step – though not a revolutionary leap – in the UN's ongoing attempts to balance the sometimes conflicting prerogatives of state sovereignty on the one hand, and human welfare and dignity on the other.³⁴ Firstly, R2P establishes a more pro-interventionary position within the UN's normative framework, negating *in principle* the argument that the committing of mass atrocity crimes can be deemed a matter of domestic jurisdiction beyond the remit of the UNSC. Secondly, it entrenches this position, for whilst adoption of the concept does not constitute an amendment to the UN Charter, it does nevertheless place the principle (if not its application) beyond the interpretational vagaries of Council debate. Finally, in the specific context of non-consensual coercive intervention, the adoption of the R2P breaks the Article 2(7) link between the Council's right to intervene and the need to determine that a situation has international ramifications that constitute a 'threat to international peace and security'.

With a firmer normative footing, reduced danger of Great Power conflict, and no lack of cases warranting action, it might be expected that intervention would have become more commonplace. That this has not occurred is, in part, due to a post-Iraq, post-Afghanistan

³³ Alex J Bellamy, *The Responsibility to Protect: A Defence* (Oxford: OUP, 2015), p.11

³⁴ Justin Morris, 'The Responsibility to Protect and the use of force: Remaking the procrustean bed?', *Cooperation and Conflict*, forthcoming 2015.

loss of interventionary appetite on the part of those Western leaderships and publics previously more predisposed to such actions, but as portrayed in the proliferation of literature on the topic, despite R2P's adoption it is more largely a consequence of ongoing Great Power discord over the appropriateness of military intervention as a palliative for mass atrocity crimes. Post-2005 this contestation no longer centres on the question of whether the Council has the right or indeed the responsibility to intervene in mass atrocity situations, but rather on a series of often unfathomable, complex and inter-related questions: do the circumstances of a specific case constitute a mass atrocity crime; is the host state 'manifestly failing' in their responsibility to protect,³⁵ will non-consensual, coercive military intervention help or hinder the plight of those in need; and where there are states willing to act, are they motivated primarily by ulterior rather than humanitarian motives? These questions and the diplomatic manoeuvrings which surround them are rightly, therefore, at the heart of R2P-related commentary and they focus our attention on the Great Power discord which they engender. Nevertheless, they are only part of the story and the concentration lavished on them has tended to obscure another, highly significant aspect of the debate, namely the uniting force of the *special dual responsibility* which the P5 must collectively shoulder since the UN's adoption of the R2P.

The Security Council, the P5 and R2P

The UN's 2005 endorsement of the R2P, in combination with the insistence of the organisation's members that the responsibility befalling the international community be channelled through the UNSC, constitutes a significant furtherance of what Clark and Reus-

³⁵ Adrian Gallagher, 'What constitutes a "Manifest Failing"? Ambiguous and inconsistent terminology and the Responsibility to Protect', *International Relations*, 28/4: 428-44 (2014)

Smit term the ‘noticeable “mission-creep”’ of the Council. Through this, as they explain, the Council’s ‘special responsibilities are migrating from one domain to another: initially they were assigned to the Council in matters of international security, but latterly have been expanded to its safeguarding of human rights.’³⁶ This is a slightly ambiguous depiction of developments in the UNSC’s role, but it is in the observation that the Council’s responsibilities have *expanded*, as opposed to *migrated*, that R2P’s significance for the Council and P5 lies. Put another way, it is the humanitarian *addition to* the Council’s long standing security mandate, rather than the *relocation* of responsibility *from* international security *to* human rights which gives rise to the Council’s newfound *special dual responsibility*. Moreover, this expansion in remit faces the Council, and especially given their role within it the P5, with a dilemma: where a population is subject to mass atrocity crimes which, in all likelihood, can only be stopped by the application of non-consensual, coercive military force, how is the Council to respond to demands that ‘something must be done’ when it fears that the taking of such steps could in turn trigger a wider conflagration, jeopardising international order, and ultimately leading to even greater human tragedy? In the absence of meaningful Great Power rivalry such conflict may not currently carry with it the seeds of global devastation that once haunted the minds of Council delegates, but as the case of Syria shows, such fears are often still sufficiently compelling to incline even those who wish to ‘do something’ to shy away from the advocacy of necessary military intervention. This may not be an altogether new conundrum, but it has taken on a new dimension since the adoption of R2P assigned a special dual responsibility to the Security Council.

³⁶ Clark and Reus-Smit, ‘Liberal internationalism’, p.39

To fully appreciate the nature of the dilemma with which the P5 is now faced we need to go back to the UN's founding. The origins of the United Nations lay in the notion that Great Powers should shoulder the primary burden for directing global affairs and, above all, for preserving international peace and security.³⁷ The material might of these states – or at least of the so called 'Big Three', the USA, USSR and Great Britain – had proved crucial to victory in the Second World War, and from this it could easily be concluded that it would be essential to the preserving of the post-war peace. To ensure the availability of such power - and hence to rectify one of the most destructive deficiencies of the UN's predecessor the League of Nations - Great Power participation would be secured through the granting of special privileges to these powers, a *quid pro quo* for the special responsibility for preserving international order which they were expected to assume. Most notable amongst these was their permanent, veto-bearing membership of the UNSC,³⁸ intended to promote the maintenance of Great Power unanimity and thus to ensure that any resolution which passed successfully through the Council would have the P5's collective backing along with the material support which coincided with this and which was deemed necessary for success.³⁹ Yet for the states which gathered in 1945 at the UN Conference on International Organization (UNCIO) at which the Charter was approved,⁴⁰ the veto was also intended to serve a wider purpose, namely to prevent the UN emerging as a cause of Great Power war. As Inis Claude explains, 'the philosophy of the veto [was] that it is better to have the Security Council stalemated than to have that body used by a majority to take

³⁷ Justin Morris, 'From "Peace by Dictation" to International Organisation: Great Power Responsibility and the Creation of the United Nations', *International History Review*, 53/3: 511-33 (2013)

³⁸ On the veto, its history and use see Loraine Sievers and Sam Daws, *The Procedure of the UN Security Council* (Oxford: OUP, 2015), pp.294-316

³⁹ Inis L. Claude, *Swords into Ploughshares: The Problems and Progress of International Organization* (New York: McGraw-Hill, 1982), p.146-7

⁴⁰ On the UNCIO generally see Ruth B. Russell, *A History of the United Nations Charter* (Washington D.C.: Brookings Institution, 1958), pp.625-934, and on the Security Council and veto specifically, pp.646-85 and 713-49

action so strongly opposed by a dissident Great Power that a world war [would] likely ... ensue.⁴¹ With such fears in mind the veto was intended to operate as a 'fuse, ... a deliberately created weak point in the line, designed to ... interrupt the flow of power whenever circumstances make the continued operation of the circuit dangerous.'⁴²

It is now a matter of historical record that Great Power cooperation did not survive into the post-war era, and whilst – for the most part courtesy of the logic of mutually assured destruction – this did not lead to direct conflict between the Cold War's main protagonists, it did nevertheless result in circuit-breaking voting behaviours which thwarted decision-making within the Council, rendering it largely impotent for the first four and a half decades of its existence. The relative disinclination of P5 states to exercise their veto power post-Cold War reflects the reduced geostrategic tensions of the time, but whilst its potential to stymie Council action was largely left lurking in the shadows of the chamber's fringes, it was never fully dispelled. Indeed the memory of Council stalemate resulting from the threat of Russian and Chinese vetoes over Kosovo in 1999 did much to shape thinking about the UN's ability to deal with humanitarian crises in the opening years of the twenty-first century, and the aim of preventing similar impasses in the future conditioned much of the ICISS's report on *Responsibility to Protect*.⁴³

With this goal in mind, the Commission recommended a series of measures designed to enhance the UN's ability to respond to the most acute of humanitarian catastrophes. Firstly, ICISS sought to enumerate criteria which could be applied in order to determine the circumstances in which the 'exceptional and extraordinary measure' of 'military intervention

⁴¹ Inis L. Claude, *Power and International Relations* (New York: Random House, 1962), p.160

⁴² *Ibid.*

⁴³ Bellamy, *Responsibility to Protect*, pp.25-34

for human protection purposes' would be 'warranted'.⁴⁴ Secondly, it contemplated resort to the UNGA or regional organisations as potential (if limited) alternative sources of authority for action in the face of UNSC inertia.⁴⁵ These suggestions, the debates surrounding them and, indeed, their ultimate fate are strikingly reminiscent of events at UNCIO six decades earlier. In 1945 attempts to define those acts of aggression which warranted a Council response had been rejected partly on the basis that 'mak[ing] Council action automatic would be dangerous for it might force premature application of sanctions',⁴⁶ but more generally because it 'might endanger the Council's free discretion' and was therefore 'in contradiction ... with the general spirit of the Charter.'⁴⁷ Similarly UNCIO delegates accepted, as a senior member of the US's conference delegation put it, that the Security Council would have 'the functions of a policeman and the functions of a jury',⁴⁸ and on this basis 'declared [themselves] against intervention [in this role] by the Assembly'.⁴⁹ A proposal that regional bodies should be able to resort to or authorise force without the Council's prior permission (other than in self defence) was similarly rejected.⁵⁰

It is, of course, unlikely that the arguments of San Francisco were at the forefront of the minds of those who gathered at the World Summit in 2005 as they contemplated the adoption of some variant of the R2P. The 2005 proposals were certainly not without merit. Sandwiched between those who, on the one hand, criticised the Council for failing to act in cases of gross human suffering, and those, on the other hand, who feared that a legitimised right to use force for humanitarian purposes would simply be abused by those with the

⁴⁴ ICISS, *The Responsibility to Protect*: Volume 1, paragraph 4.14-4.18

⁴⁵ ICISS, *The Responsibility to Protect*: Volume 1, paragraph 6.30-6.31

⁴⁶ United Nations, *Documents of the United Nations Conference on International Organization* (hereafter *UNCIO*) (Hein: Buffalo NY: 1998), Volume 12, p.342

⁴⁷ *UNCIO*, Volume 11, p. 18

⁴⁸ *UNCIO*, Volume 6, p.29

⁴⁹ *UNCIO*, Volume 12, p.446. See also Russell, *A History of the United Nations Charter*, pp.750-76

⁵⁰ *UNCIO*, Volume 11, p.235. See also Russell, *A History of the United Nations Charter*, pp.688-712

material power to do so, the attractiveness of the enabling and constraining nature of criteria for intervention was plain for all to see. Likewise, the UNSC's track-record demonstrates only too clearly its vulnerability to veto-induced paralysis, and given the unlikelihood that criteria, even if adopted, would prove the perfect remedy to this,⁵¹ the identification of alternatives to Council legitimation seems a prudent step. Yet the proposals were not accepted and, whether consciously or not, in adopting a more dilute version of the R2P than that proposed by the ICISS, World Summit delegates mirrored many of the views that influenced the thinking of their predecessors in 1945: the use of force should be constrained and hence utilisable only when authorised by the UNSC; in determining when such authorisation was appropriate the Security Council should exercise its judgement and not be inhibited by pre-determined criteria; and the Great Powers, in the form of the P5, should, by virtue of their special responsibilities and for the reasons outlined above, have the ability to block action where they see fit.

In their attitudes to these particular points the P5 states have in some instances divided. Despite their often seesawing support for the whole R2P venture, China and Russia have remained consistent in arguing that whenever forcible action might be taken it must be sanctioned by the Council, and that Council decision making must be based on discretion and not be prescribed by criteria. On this latter point the P2 have found common ground with the United States, although the US, like the United Kingdom, was in 2005 amenable to the idea that action might be authorised by bodies other than the UNSC.⁵² Yet on one point all four of these states (hereafter the P4) have remained united; R2P, just like all other decisions on substantive matters taken by the Council, should be subject to the P5 veto. In

⁵¹ Chris Brown, 'Selective humanitarianism: in defense of inconsistency' in Deen K. Chatterjee and Don E. Scheid (eds.), *Ethics and Foreign Intervention* (Cambridge: CUP, 2003), p.42

⁵² Bellamy, *Responsibility to Protect*, pp.86-7

this regard they have formed the most potent opposition to the ICISS's other major proposal regarding the UNSC and R2P, namely that:

The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.⁵³

This proposal was based on what was originally a French suggestion,⁵⁴ and whilst France briefly returned to the P5 fold in opposing veto restraint, it was later to resume its position as a Great Power outlier on the matter. Like the other ICISS proposals referred to above, the idea of a so-called RN2V failed to gain support at the 2005 World Summit, but the proposal is nevertheless of relevance to the arguments proffered here for three reasons: firstly, because the debate over such a responsibility is ongoing; secondly, because in their rejection of this claim the P4 states have referred explicitly to the logic of 1945, the special responsibilities with which they were then charged, and the associated privileges which they were granted; and finally, because the notion of a RN2V puts into stark relief the potential tensions which may arise as the P5 attempt to live up to their special dual responsibility for the maintenance of international peace and security and the prevention of mass atrocity crimes.

In the aftermath of the 2005 World Summit the cause of translating the RN2V from Commission proposal to a UN-adopted practice was taken on by the so-called 'Small Five' (S5) group of states (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland), which tentatively (re)floated the idea at the 2006 UNGA without gaining significant traction, and then aired it for debate in more substantive form at the 2012 Assembly. With the issue having between times become an established item in the UN's Informal Interactive

⁵³ ICISS, *The Responsibility to Protect*: Volume 1, p.XIII

⁵⁴ ICISS, *The Responsibility to Protect*: Volume 2, p.379; Bellamy, *Responsibility to Protect*, p.48.

Dialogues on R2P⁵⁵, and the UNSG⁵⁶ and an estimated fifty percent of the UN membership⁵⁷ supporting their cause, by the latter meeting the S5 looked better placed than ever to succeed. But even this profile and support, along with the S5's assiduous efforts to decouple RN2V from the wider – and diplomatically even more contentious – questions of UN reform proved no match for what Volker Lehman describes as the P5's 'concerted [behind-the-scenes] action to prevent member states from casting a positive vote on the proposal',⁵⁸ and as support duly ebbed away the S5 withdrew their draft resolution.⁵⁹

The episode was, in Lehman's words 'first and foremost a show of force on the part of a P5 determined to maintain their control over the representation of member states' interests and the reform agenda at the UN',⁶⁰ but even this did not mark the end of the road for the RN2V. Great Power opposition to the proposal was by now running against the tide of growing support amongst UN members⁶¹ and wider civil society movements engaged in the debate.⁶² This increasing prominence and significance of the RN2V proposal owed much to the UNSC's failure to address the conflict in Syria, but for many this case not only vindicated arguments in favour of veto-restraint, it also illuminated a perceived incongruity in the behaviour of certain P5 states. This sentiment was best captured by the Singaporean

⁵⁵ *Global Centre for the Responsibility to Protect*, "Timely and Decisive Response": Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect held on 5 September 2012, available at <http://www.globalr2p.org/publications/223> accessed 26 November 2014

⁵⁶ Ban ki Moon, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2012, pp. 26-7

⁵⁷ Colum Lynch, 'Rise of the Lilliputians', *Foreign Policy*, 10 May 2012, available at http://blog.foreignpolicy.com/posts/2012/05/10/rise_of_the_lilliputians accessed 11 November 2014

⁵⁸ Volker Lehman, 'Reforming the Working Methods of the UN Security Council: The Next ACT', *Perspectives*, (New York: Friedrich Ebert Stiftung, 2013), p.3

⁵⁹ A/66/L.42/Rev.1, 3 May 2012; A/66/L.42/Rev.2, 15 May 2012

⁶⁰ Lehman, 'Reforming the Working Methods of the UN Security Council', p.4

⁶¹ In May 2013 the S5 reconstituted itself into a broader based UN grouping of states, the 'Accountability, Coherence and Transparency Group', (ACT). See 'The Accountability, Coherence and Transparency Group – Better Working Methods for today's UN Security Council', August 2013, available at <https://www.eda.admin.ch/content/dam/eda/en/documents/topics/ACT%20Fact%20Sheet.pdf> accessed 13 November 2014

⁶² *Global Centre for the Responsibility to Protect*, 'UN Security Council Veto Reform', available at http://www.globalr2p.org/our_work/un_security_council_veto_restraint accessed 10 November 2014

delegate's address to the UNSC in the aftermath of the S5's 2012 attempt to gain UNGA approval for the RN2V, when he recalled how the proposal:

[H]ad asked the P5 to consider refraining from vetoing action aimed at preventing genocide, war crimes and crimes against humanity. That aspect was considered particularly controversial by the P5, which were affronted by the suggestion that limits be placed on the use of their veto power. That position was shared by all the P-5, even those who fervently support the principle of responsibility to protect. Those permanent members that repeatedly express outrage at what is happening within the Council on issues like Syria are the same ones that blocked [the S5 proposal]. Trumpeting moral outrage over the Council's non-action is particularly hypocritical because whatever divisions there may be among the P-5, they are united in having no limits placed on their use or abuse of the veto.⁶³

Developments in the Middle East led to the splintering of P5 unity over RN2V in 2013 when France reverted to its original policy in favour of veto restraint, but whilst Foreign Minister Laurent Fabius argued that the 'dramatic human consequences' of UNSC stalemate over Syria 'cannot be accepted by the global conscience',⁶⁴ the P4 maintained their opposition. In this context it could plausibly be argued that, however widespread demands for the adoption of RN2V become, they will amount to nought given the material and constitutional brakes which lie in the hands of the P4.⁶⁵ Moreover, it is also arguable that, even if the RN2V did secure UNSC assent, it would in practice have little impact, given the caveats which attach to all of its various iterations, namely that it excludes situations in which vital state interests are deemed to be at stake and only becomes operative once a threshold of human suffering set out in the R2P has been crossed. Given the highly contested nature of both of these conditions it is not difficult to envisage the Council's permanent members continuing to exercise their voting privileges in largely unfettered

⁶³ S/PV.6870 and S/PV.6870 (Resumption 1), 26 November 2012, p.27

⁶⁴ Laurent Fabius, 'A Call for Self-Restraint at the UN', *The New York Times*, 4 October 2013, available at <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html? r=0> accessed 26 November 2014

⁶⁵ Bardo Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (The Hague: Kluwer, 1998)

fashion whilst simultaneously claiming with some plausibility that their actions remain true to their newly accepted RN2V.

Whatever judgements one comes to over the prospects for and desirability of the RN2V,⁶⁶ the reasoning behind P4 resistance to it warrants consideration, although such a task is hindered by the fact that little of the P4's opposition has been aired in public forums. In the Council the S5 and subsequently ACT have succeeded in raising the idea of a RN2V during discussions over UNSC working methods,⁶⁷ but the fact that the working method's agenda makes no reference to the topic⁶⁸ has enabled the US, UK and China (as well, notably, as aspirant permanent Council members such as India and Brazil) to adopt what amounts to a policy of opposition by omission, whilst Russia has been more direct in its opposition, insisting that 'the fundamental provisions of the Charter pertaining to the right of veto do not ...pertain to the working methods of the Council.'⁶⁹ So in the absence of much 'on the record' comment, a ministerial-level 'side event' on 'regulating the veto in the event of mass atrocities' during the 2014 UNGA provides rare public insight into P4 concerns.⁷⁰

This event was used by the US and UK as a forum for criticising Russian and Chinese vetoes over Syria, but whilst the US ambassador chose not to widen her focus and comment on broader based concerns over the notion of a RN2V, the UK was less reticent. Assuring those present that it could not envisage circumstances in which it would use the veto to 'block an appropriate response to mass atrocity crimes', the UK 'welcome[d the] initiative as

⁶⁶ For fuller discussion see Morris and Wheeler, 'The Responsibility Not to Veto'

⁶⁷ S/PV.6870; S/PV.7285 and S/PV.7285 (Resumption 1), 23 October 2014

⁶⁸ S/2010/507, 26 July 2010; S/2012/853, 19 November 2012

⁶⁹ S/PV.6870, p. 6; also S/PV.7285, p. 11

⁷⁰ *Global Centre for the Responsibility to Protect*, 'Statements delivered at Ministerial Side-Event on regulating the veto in the event of mass atrocities', 25 September 2014, available at <http://www.globalr2p.org/resources/773> accessed 10 November 2014

an important contribution to the debate' but stressed that 'in order to achieve the objective behind [it] ... the commitment of all five permanent members' was required. Moreover, beyond linking the proposal's future success to such an unlikely alignment, the UK also called into question its essential premise, reminding delegates that:

[w]hile today's realities differ in many ways to the challenges that faced the world in 1946 [*sic*], the veto continues in some degree to fulfil th[e] function [of] enabl[ing] those states who would bear the main responsibilities for ensuring international peace and security ... to commit to the UN Charter and to the United Nations as an organization.⁷¹

The logic of 1945 as a basis for rejecting advocacy of RN2V weighed even more heavily in Chinese and Russian contributions to the event. For China 'the principle for concurrence of bigger powers for the Security Council's decision making mechanism ... [was] the foundation to guarantee the feasibility of the United Nations collective security arrangements'.⁷² Similarly, the Russian delegate argued that '[t]he right of the veto is one of the UN Charter's main pillars [which, as] an indispensable element of the system's of checks and balances ... stimulates [the] seeking [of] compromise and consensus.' Moreover, from a Russian perspective, whilst exercises of the veto were often criticised by others as irresponsible, they were actually the very opposite; 'the use of the veto or the threat to use it' he argued, 'ha[d] repeatedly safeguarded the UN against doubtful undertakings, [such as in] Yugoslavia in 1999, war in Iraq in 2003 or [in] pushing Syria towards collapse in recent years'.⁷³

⁷¹ See *Global Centre for the Responsibility to Protect*, Statement by the United Kingdom at the Ministerial Side-Event: "Regulating the veto in the event of mass atrocities", 25 September 2014, available at: <http://www.globalr2p.org/media/files/united-kingdom-transcribed.pdf> accessed 10 November 2014

⁷² See *Global Centre for the Responsibility to Protect*, Statement by China at the Ministerial Side-Event: "Regulating the veto in the event of mass atrocities", 25 September 2014, available at: <http://www.globalr2p.org/media/files/china-transcribed.pdf> accessed 10 November 2014

⁷³ See *Global Centre for the Responsibility to Protect*, Statement by Russia at the Ministerial Side-Event: "Regulating the veto in the event of mass atrocities", 25 September 2014, available at: <http://www.globalr2p.org/media/files/russia-transcribed.pdf> accessed 10 November 2014

Such arguments might, of course, be dismissed as the self-interested pleadings of Great Powers keen to preserve the privileges to which they have become accustomed and which afford them the ability to dominate the UN's most significant chamber. For those inclined to favour the type of materially based accounts of international politics outlined earlier, such arguments will no doubt smack of normative platitudes designed only to cloak the power-driven *realpolitik* which constitutes the essence interstate life. But such reasoning is problematic because it fails to recognise that in a forum such as the UNSC states must persuade others of the legitimacy of their cause if they are to avoid the costs which arise from alternative strategies based on the issuing of threats and/or the offering of side-inducements.⁷⁴ Normative claims and counter-claims are the currency in which the UNSC deals. It is important to recognise, therefore, that where detractors criticise the P5 for not supporting, or even preventing international society's efforts to meet its residual obligations under the R2P, the claim being made is a normative one premised on a particular view of rightful behaviour. In this context advocates of the RN2V would argue that it offers - in however imperfect a form - a means by which the P5 states can be prevented from utilising their voting privileges in order to undertake obstructive practices, and hence it constitutes a means by which rightful outcomes can be promoted, if only because wrongful behaviour can be blocked. But equally, credence must be given to the normative claims of those who oppose the idea of a RN2V whose concerns centre on the concept's potential to undermine the very foundations of Great Power consensus on which the UN was built. For them RN2V could bridge the protective fuse built into the Council's voting system, letting power surge in a dangerously uncontrolled manner and threatening international order. The debate over the R2P and RN2V cannot, therefore, be understood

⁷⁴ Christian Reus-Smit, 'International Crises of Legitimacy', *International Politics*, 44/2-3: 157-74 (2007), 160-65

simply in terms of the self-interested pleadings of the materially privileged, nor even as these, combined with the questions over whether states are meeting or derelict in their international responsibilities to endangered populations. Instead it must be recognised that it also entails the even more tortuous process of navigating between what might at times be the competing obligations inherent in the Council's, and most significantly the P5's, special dual responsibility to the potential or actual victims of mass slaughter on the one hand, and interstate order on the other.

At the heart of this dilemma lays what Hedley Bull termed the debate over 'order versus justice in world politics' and his seminal exploration of this issue did more than most to attune us to the nature of the conundrum to which it gives rise.⁷⁵ While stressing the need to weigh the claims of order and justice in any particular case, Bull nevertheless argued that as a general rule we should view 'order in world politics ... [as] prior to ... justice',⁷⁶ and hence he cautioned of the dangers of pursuing a specific conception of justice in the absence of a 'consensus ... as to what justice involves'.⁷⁷ Bull was pessimistic about the ability of states to forge such consensus, and despite the demise of the Cold War which shaped so much of his thinking there remain good reasons for continuing to be so. In the most immediate context the capacity of states to form a sufficiently wide consensus over cases involving the grossest of human rights violations tends to be curtailed by their inability to determine in a sufficiently uncontested manner exactly what is happening on the ground, as well as to agree on the most appropriate remedy; who, exactly, is responsible for what and how might their actions most effectively be stopped? This problem is exacerbated, as David Bosco has observed, by the fact that 'what constitutes a "mass-atrocity situation" is

⁷⁵ Bull, *The Anarchical Society*, p. 77-98

⁷⁶ *Ibid.*, p. 97

⁷⁷ *Ibid.*, p. 96

largely in the eyes of the beholder. Almost all international and internal conflicts feature atrocities of one sort or another. But these conflicts also have political and strategic dimension.⁷⁸ Consequently, what the eye sees is conditioned by where the observer sits in relation to the political and strategic aspects of the conflict in question; states are far more forgiving of the indiscretions of their friends and allies than of other states, and similarly they tend to be far more critical of the behaviour of the friends and allies of their competitors and foes. It is for this reason that proposals over the RN2V have sought to exclude cases of vital state interest from their remit, but even if one accepts the dubious contention that such an exception could ever be applied in a manner which did not nullify the whole RN2V concept,⁷⁹ it attends to only part of the problem.

States struggle to reach a consensus over issues of humanitarian intervention not only because specific cases can give rise to clashes of interest, but also because, R2P's advent notwithstanding, they continue to harbour genuinely divergent understandings of how best to balance the demands of state and individual rights and over how these issues impact on international order.⁸⁰ The problem is not simply (or even necessarily) one of conflicting interests; discord amongst P5 states may arise as a consequence of genuinely different conceptions of how best to attend to their social obligations. The R2P was, as Chris Brown has argued, intended to overcome such differences, with its 'inherently anti-political ... design [intended] to avoid ... the toxic politics of previous approaches to

⁷⁸ David Bosco, 'France's Plan to Fix the Veto', *Foreign Policy*, 4 October 2013, available at http://bosco.foreignpolicy.com/posts/2013/10/04/frances_plan_to_fix_the_veto accessed 26 November 2014

⁷⁹ Morris and Wheeler, 'The Responsibility Not to Veto'

⁸⁰ Edward Newman, 'R2P: Implications for World Order', *Global Responsibility to Protect*, 5/3: 235-59 (2014); Philipp Rotmann, Gerrit Kurtz and Sarah Brockmeier, 'Major powers and the contested evolution of a responsibility to protect', *Conflict, Security and Development*, 14/4: 355-77 (2014)

interstate intervention',⁸¹ but such an objective was doomed to failure, for as Brown continues, the 'political cleavages that characterise the modern world cannot be wished away'.⁸² Such discord lies at the very heart of the tension over the P5's special dual responsibility, dividing the Council's permanent members along the P3-P2 axis. Yet simultaneously it unites the Great Powers in recognition of the fact that, so long as such genuinely divergent views prevail, the collective interests of international society are best served by allowing the P5 to prevent the passage of decisions to which they have the most fundamental objections. It would be naive to deny that at times these are manifestations of more narrowly defined national interests, but it would be equally imprudent to refute the idea that they may also stem from the fundamentally different interpretations of the social obligations which P5 states hold.

Conclusion

Decisions over whether to undertake coercive military intervention for humanitarian purposes and the manner in which other states reacted to these are both symptomatic of the prevailing distribution of power *and* of the outcome of deliberations over the appropriate balancing of state and human rights. It is, therefore, necessary for us to consider these issues and to recognise that the manner in which they amalgamate may, given the impact which military intervention may have on international order, largely be determined by the level of tension or, indeed, antipathy, which characterises Great Power relations at any particular period in time. During the Cold War concerns over the impact of

⁸¹ Chris Brown, 'The Antipolitical Theory of the Responsibility to Protect', *Global Responsibility to Protect*, 5/4: 423-42 (2013): p.425

⁸² *Ibid.*

actions on the distribution of power were at their most acute, whereas in today's comparatively benign Great Power environment it is on the nature of sovereignty and the responsibility of states to their citizens and the citizens of other states that attention is centred.

What unites accounts focused on the balance of power and those concerned with the balancing of state and individual rights is that they tend to portray the P5 as divided. But to understand interventionary behaviour and, in the contemporary context, debates over R2P we must also look beyond these accounts to an alternative which helps explain another key issue, namely the extent to which, despite their divisions, the P5 at times offer a far more united front, as they have most notably in relation to the highly contentious subject of the RN2V. Viewed from this perspective the distribution of power is significant not only as a basis for Great Power competition (though such competition does ensue), but also as a factor which unites the P5 in their shared preponderance of power compared to other states, whilst normative concerns serve not to divide the Great Powers but to unite them in contemplation of the dual responsibility which they, as P5 states, much shoulder above all others. This sense of unity, as opposed to division, is too rarely reflected in the R2P-related discourse and, to the extent that it is (as, for example, with respect to RN2V), the tendency is to depict it as the special pleadings of a privileged, self-serving elite.

But what such criticism of the P5 fails to acknowledge is the extent to which the Council's permanent members are, by virtue of their special dual responsibility, faced with an acute normative tension as they attempt to satisfy the sometimes contradictory demands which stem from their obligations as guardians of international order and as protectors of the victims of mass atrocity crimes. This tension may, of course, at times be

cited as a disingenuous cover for ulterior political motives, and viewed from beyond the confines of the P5 and their special dual responsibility, the all too manifest levels of human suffering which crises may entail, especially when compared to the unrealised, perhaps distant, and intangible prospects and implications of wider conflict, focuses attention on such malfeasance. But this does not negate the facts that the tension remains an all too real aspect of global affairs and that the P5 above all others must try to attend to it. Their special dual responsibility demands a high degree of prescience from the P5 and the unpalatable truth of this for them is that policies predicated on a genuine sense of responsibility may be seen as being more akin to a dereliction of humanitarian duty. Amidst harrowing reports of gross human suffering the temptation to rush to judge is strong, but given the imponderable nature of the P5's special dual responsibility we should resist it. Such resistance will be assisted if, along with the narratives with which we are more familiar, we also acknowledge the tension inherent in the special dual responsibility of the UNSC's five permanent members.