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Ten Years After The World Summit What Has R2P Achieved?

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Ten Years After The World Summit What Has R2P Achieved?

Dr Aidan Hehir

Abstract
This chapter argues that the importance of the recognition of the Responsibility to Protect at the 2005 World Summit has been widely exaggerated. The *Outcome Document* – a diluted version of the International Commission on Intervention and State Sovereignty's 2001 report – constituted an affirmation of the discredited status quo which has failed to significantly improve the international community's response to intra-state mass atrocities since. The means by which the international community responds to intra-state mass atrocities is the same today as it was prior to 2005 and hence the conflation of politics and law enforcement continues to inhibit the protection of human rights. Since 2005 the currency of the term "the Responsibility to Protect" has certainly increased but actual state practice remains prey to the political whims of the permanent five members of the Security Council. This has been evident during the Arab Spring and particularly the international response to the crisis in Syria.

1. INTRODUCTION

Following the World Summit in 2005 Jack Straw, then UK Foreign Secretary, stated with respects to the two paragraphs in the *Outcome Document* recognising the Responsibility to Protect (R2P), 'If this new responsibility had been in place a decade ago, thousands in Srebrenica and Rwanda would have been saved'.[1] This is, to put it bluntly, totally false. The shameful international response to Rwanda and Srebrenica was a consequence of a lack of political will; those with the authority and power to act simply chose not to because they had no key national interests involved.[2] The response to these crises was a function, therefore, of a legal and political system which explicitly enables geopolitics to determine law enforcement; this system has not been altered in any way by the 2005 World Summit *Outcome Document*. As Nicholas Wheeler noted, the *Outcome Document*,

> …fails to address the fundamental question of what should happen if the Security Council is unable or unwilling to authorize the use of force to prevent or end a humanitarian tragedy, and secondly, it fails to address the question of how this norm could be better implemented to save strangers in the future[3]

This chapter argues that the importance of the recognition of R2P in 2005 has been widely exaggerated. While the Summit affirmed proscriptions against mass atrocities and recognised *a* role for the international community in preventing and halting the "four crimes" – genocide, ethnic cleansing, war crimes and crimes against humanity – this was certainly not the first time such a declaration was made. The *Outcome Document*, in fact, constituted a watered-down[4] version of the International Commission on Intervention and State Sovereignty's (ICISS) 2001

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[1] Nicholas Wheeler 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit', 2/1, *Journal of International Law and International Relations*, (2005) p. 102.

[2] Simon Chesterman, *Just War or Just Peace?*, Oxford University Press, 2002, p. 236; Nicholas Wheeler, *The Humanitarian Responsibilities of Sovereignty*, in Jennifer Welsh (ed) *Humanitarian Intervention and International Relations*, Oxford University Press 2006.

[3] Nicholas Wheeler 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit', 2/1, *Journal of International Law and International Relations*, (2005) p. 97.

[4] Thomas Weiss, one of the contributors to the ICISS report, described the *Outcome Document* as 'R2P lite'. Thomas Weiss, *Humanitarian Intervention*, Polity 2007, p. 177.

report *The Responsibility to Protect* which was itself, essentially little more than an affirmation of the status quo.

In the ten years since the World Summit R2P has become a slogan widely proliferated by non-governmental organisations (NGO's) – which has on occasions found its way into the highest levels of international political debate – yet the gap between the rhetoric of R2P – as especially advanced by states – and the reality of actual state practice during this period is alarming and should temper all reflections on the significance of the World Summit. The centrality of political will remains, the system for redressing human rights abuses continues to be hamstrung by the narrow national interests of the permanent five members of the Security Council (P5), and, as evidenced horrifically during the Arab Spring, millions have continued to suffer egregious oppression at the hands of their own states while the "international community" has wrung their hands.

2. WHY WAS R2P CONCEIVED?
There are myriad reflections on the origins of R2P and the intention here is not to re-state this relatively incontrovertible timeline.[5] *How* the concept evolved and *why* it was conceived are two different questions, however, and it is the latter I wish to focus on here.

While the 1990s began with great optimism – some might now say naivety – about the future role of the UN and the enforcement of human rights, by the end of the decade this had largely dissipated.[6] The debacle in Somalia, the shameful response to the Rwandan genocide in 1994 and the UN's impotence during the massacre at Srebrenica in 1995, contrived to highlight that the end of the Cold War was not in itself a panacea. The decade ended with yet more controversy as NATO intervened in Kosovo in 1999 without a Security Council mandate, leading to a heated debate about the international legal system, specifically the veto power wielded by the P5. If NATO's intervention was 'illegal but legitimate'[7] then surely, many argued, this disjuncture between law and morality had to be addressed.[8] It was in this climate that the ICISS was established.

What then was the problem in the 1990s? As has been well documented there was no shortage of international laws proscribing certain behaviour by states inside their own borders; while the Cold War had severely limited the potential for consensus at, and thus action by, the Security Council, the General Assembly *did* routinely pass resolutions outlawing certain practices.[9] Additionally, the issue was not the legality of external intervention to halt mass atrocities; Chapter VII of the Charter empowers the Security Council to use force if it deems a situation to constitute a threat to international peace and security; this provision was invoked in 1991 with respect to the plight of the Kurds, with many heralding the Resolution as indicative of a new disposition amongst the P5.[10] While the Security Council is not entitled to interpret the Charter anyway it pleases[11], this expansion of its remit to include intra-state humanitarian crises was not especially legally contentious.[12]

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[5] See for example, Alex Bellamy, *Responsibility to Protect*: *The Global Effort to End Mass Atrocities*, Polity 2009; Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press 2008.

[6] See, Michael Barnett, *The International Humanitarian Order*, Routledge 2010, p. 21-22; Mats Berdal 'The UN Security Council: Ineffective but Indispensable', 45/2, *Survival*, (2003) p. 9.

[7] Independent International Commission on Kosovo, *Kosovo Report*, Oxford University Press 2000, p. 4.

[8] Michael Burton, 'Legalising the Sublegal', 85, *The Georgetown Law Journal*, (1996) pp. 417-454; Paul Christopher, *The Ethics of War and Peace*, Prentice Hall 2004, p. 248.

[9] Todd Landman, *Studying Human Rights*, Routledge 2005, p. 14.

[10] Nicholas Wheeler, *Saving Strangers*, Oxford University Press 2002, p. 512.

[11] Nigel White, 'The Will and Authority of the Security Council After Iraq', 17/4, *Leiden Journal of International Law*, (2004) pp. 646.

[12] Monica Hakimi, 'State Bystander Responsibility', 21/2, *The European Journal of International Law*, (2010) p. 343-344; Anne Peters, 'Humanity as the A and Ω of Sovereignty', 20/3, *The European Journal of International Law*, (2009) p. 525.

Additionally, there was no absence of popular momentum behind the idea of human rights protection. Through the 'explosion' in human-rights-orientated NGO's, 24-hour media reportage and the interconnectivity inspired by globalization generally, a global and vocal human rights movement championed the plight of those suffering and forced these issues on to national and international political agendas.[13]

So, laws existed which proscribed egregious "domestic" human rights violations, the Security Council had the legal authority to sanction action against states unwilling to abide by these commitments, and a vocal human rights movement had mobilised behind the idea of "human security" and related slogans. Yet, despite this propitious alignment of factors, the decade ended with the sense of crisis which impelled the establishment of ICISS; why?

The reason was, in essence, the Security Council. The 1990's witnessed the occasional invocation of Chapter VII by the Security Council but the overall pattern was highly erratic; action, when taken, always cohered with the interests of one or more of the P5 and the accompanying resolution invariably described the response as "unique".[14] This led, therefore, to a dramatically inconsistent record of response; certain crises – such as Haiti in 1994 – were afforded sustained attention and a Chapter VII resolution while others – most notoriously the 1994 Rwanda genocide – were essentially ignored until after the extraordinary loss of life. The intervention in Kosovo highlighted that certain states – in this case Russia and China – were prepared to block Security Council action in response to intra-state crises.[15] This was, many argued, untenable; indicatively, Alex Bellamy asked, 'Why should undemocratic states with poor human rights records prevent a group of democratic states from protecting people in foreign countries?'[16] Few embraced the idea that unilateral – that is illegal – intervention was a sustainable long-term solution to the problem of intra-state mass atrocities; this was certainly the view of the developing world who twice condemned NATO's intervention not because they supported Milosevic's policies in Kosovo, or adhered to a conception of total sovereign inviolability, but because they rejected the principle of unilateral intervention.[17] The issue to be resolved, therefore, was the means by which obviously unacceptable – and legally proscribed – mass atrocity crimes could be addressed in a timely and consistent fashion without being prey to the political whims of the P5.[18]

The problem ICISS was established to address, therefore, focused on the question of authority and consistency. There was no lack of laws proscribing state-sponsored mass atrocities, there was no absence of a means by which external intervention could be sanctioned by the Security Council and there was no shortage of popular support for human rights; it is somewhat ironic, therefore, and certainly disappointing, that R2P has focused on reaffirming precisely these pre-existing features whilst essentially ignoring the actual problem it was established in response to.

3. WHAT HAS R2P BECOME?
In *The Responsibility to Protect* the ICISS declared 'we want no more Rwanda's and we believe that the adoption of the proposals in our report is the best way of ensuring that'.[19] The ICISS report also acknowledged the problems with the existing legal system and cited as its

[13] Mary Kaldor 'The Idea of Global Civil Society', 79/3, *International Affairs*, (2003) p. 583.

[14] Simon Chesterman, *Just War or Just Peace?*, Oxford University Press, 2002, p. 5.

[15] Neither state actually formally vetoed a resolution proposing military action over Kosovo; their intentions were clear, however, and thus proffering a resolution to the Security Council was deemed to be a waste of time.

[16] Alex Bellamy, *Kosovo and International Society*, Palgrave 2002, p. 212.

[17] Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention*, Palgrave 2012, pp. 36-37

[18] Ibid, p. 119.

[19] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, International Development Research Centre 2001, p. xiii.

first objective, '[to] establish clearer rules, procedures and criteria for determining whether, when and how to intervene'.[20] In fact, neither *The Responsibility to Protect* nor the World Summit *Outcome Document* actually address the "rules, procedures and criteria" governing intervention.

In *The Responsibility to Protect* the question of legal reform is discussed but no prescriptions are advanced; the ICISS argued that the matter was too divisive.[21] The ICISS warned about the potentially deleterious consequences of permitting unilateral intervention but did suggest that such action could be potentially legitimate. Yet, the better option, according to the ICISS, was to continue to respect the authority of the Security Council, noting, 'the commission 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'.[22] 'The task' the ICISS claimed, 'is not to find alternatives to the Security Council as a source of authority but to make the Security Council work much better than it has'.[23] 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.[24] This "gentleman's agreement"[25] – discussed later – was not included in the 2005 World Summit *Outcome Document*.[26] Essentially, therefore, the ICISS report 'sidestepped the question of Security Council reform'.[27]

The 2005 World Summit *Outcome Document* itself simply reaffirmed the centrality of the Security Council; the relevant wording in Paragraph 139 stated,

> ...we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[28]

The centrality of the Security Council in authorising the "international" responsibility to protect therefore remained. UN Secretary-General Ban Ki-Moon's 2009 report on R2P also reiterated the absolute need for Security Council authorisation.[29] The net result is that the Security Council continues to enjoy what Frank Berman described as a 'discretionary entitlement'[30] to take remedial action; the 2005 agreement did not impose any *obligation* or *duty* to act and did not in any way alter international law.[31]

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[20] Ibid, p. 11.

[21] Ibid, pp. 54-55.

[22] Ibid, p. 49.

[23] Ibid, p. 49.

[24] Ibid, p. 51.

[25] Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press 2008, p. 137.

[26] Alex Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', 20/2, *Ethics and International Affairs*, (2006) p. 155.

[27] Alex Bellamy, *Responsibility to Protect*: *The Global Effort to End Mass Atrocities*, Polity 2009, p. 63.

[28] World Summit *Outcome Document* 2005, para. 138. <http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005(1).pdf> accessed 6.2.2015

[29] Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 25. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015

[30] Franck Berman, *Moral Versus Legal Legitimacy* in Charles Reed and David Ryall (eds) *The Price of Peace*, Cambridge University Press 2007p. 161.

[31] Ramesh Thakur and Thomas Weiss, 'R2P: From Idea to Norm – and Action?', 1/1, *Global Responsibility to Protect*, (2009) pp. 26-28; Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', 101/1, *American Journal of International Law*, (2007) p. 112; Theresa Reinold, 'The Responsibility to Protect: Much Ado About Nothing?', 36(S1), *Review of International Studies*, (2010) pp. 55-78.

There was nothing new in the fact that states agreed in 2005 that the international community had the right to become involved in the domestic affairs of states.[32] But the problem was that while the Security Council's use of Chapter VII in the 1990s had shown that internal events, including humanitarian crises, constituted issues within the purview of Chapter VII, this right had been employed erratically and only when there was a coincidence between humanitarian crises and the interests of the P5. As a result, those cases where there was no national interest involved but egregious human suffering – most notably Rwanda in 1994 – went unaddressed. Given the expressed intention of the ICISS being to ensure there were "no more Rwanda's" it is difficult to determine the logic behind sidestepping the very cause of the Rwandan disgrace. Recognising that the Security Council *could* – but didn't in any way *have to* – respond to intra-state crises was simply reaffirming the status quo. As Simon Chesterman noted, '...by 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'.[33]

The absence of any legal reform related to R2P is, therefore, quite clear and, indeed, acknowledged by some of its more vocal proponents.[34] This is ostensibly mitigated, however, by virtue of the fact that R2P is a means by which pressure to act can be coordinated and exercised. R2P is championed, therefore, as a means by which those with the authority and capacity to act are encouraged to both prevent and halt mass atrocities.[35] As Francis Deng stated '…perhaps there is nothing new here. But, what we're doing is sharpening our consciousness of the problem and rallying forces together with a sharper focus on how to act to resolve, to address these problems, to protect populations'.[36] R2P is lauded as 'revolutionary', therefore, because it is said to have created an ostensibly powerful framework for moral advocacy.[37] Yet, a review of the ten years since R2P was recognised at the World Summit suggests that the concept has had a negligible impact in practical terms.

4. TEN YEARS ON: *PLUS ÇA CHANGE, PLUS C'EST LA MÊME CHOSE*?

In the period since the 2005 World Summit *Outcome Document* was signed, two crises have occurred which are routinely cited as evidence of R2P's efficacy. The first is the crisis in Kenya in 2007.[38] Following the Presidential election in December rioting broke out; up to 1,000 people were killed and over 250,000 people were displaced from their homes. In response, Francis Deng, then the UN Special Adviser on the Prevention of Genocide, travelled to the country and, employing the language of R2P, called for an end to the violence. He warned political leaders that they could be held accountable for violations of international law committed in response to inflammatory speeches and the coordination of violence. As a result, restrictions were placed upon the broadcasting of speeches and the conflict eventually dissipated.

The outcome in this case was clearly welcome but establishing a causal link between R2P and the cessation of the violence is not axiomatic. The diplomatic efforts of Deng – and others

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[32] Monica Hakimi, 'State Bystander Responsibility', 21/2, *The European Journal of International Law*, (2010) pp. 343-344; Anne Peters, 'Humanity as the A and Ω of Sovereignty', 20/3, *The European Journal of International Law*, (2009) p. 525.

[33] Simon Chesterman, '"Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya', 25/3, *Ethics and International Affairs*, (2011) p. 2.

[34] Alex Bellamy, *The Responsibility to Protect: A Defence*, Oxford University Press 2014, p. 13.

[35] Ibid, p. 11.

[36] Aidan Hehir, 'JISB Interview with Francis Deng', 4/1, *Journal of Intervention and Statebuilding*, (2010) p. 86.

[37] Lee Feinstein, 'Beyond Words: Building Will and Capacity to Prevent More Darfurs', *The Washington Post*, 26 January, 2007; David Scheffer, *Atrocity Crimes: Framing the Responsibility to Protect*, in Robert H. Cooper and Juliette V. Kohler (eds) *Responsibility to Protect: The Global Moral Compact for the 21st Century*, Palgrave Macmillan 2009, p. 95.

[38] Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 24. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015.
Aidan Hehir (2010) 'JISB Interview with Francis Deng', *Journal of Intervention and Statebuilding*, 4/1, p. 84.

– *may* have influenced the protagonists to desist but other factors surely also played a role. Even if we accept, however, that the *only* reason that the conflict ceased was the intervention of international actors then this still does not necessarily mean that R2P can take the credit. Inflammatory speeches inciting violence were outlawed in the 1969 International Convention on the Elimination of All Forms of Racial Hatred and thus, R2P did not provide the international community with any new means by which to exercise leverage, a point indeed, acknowledged by the Secretary General.[39] There is no evidence that R2P acted as a silver bullet in this case; rather, as with all cases where hostilities cease, a confluence of factors aligned to convince the warring factions to put down their weapons.

The second case is Libya in 2011, which, to a far greater extent than the 2007 crisis in Kenya, was championed as definitive evidence that R2P works. In this case the Security Council sanctioned the imposition of a "no-fly zone" over Libya in response to the escalating conflict in the country and Colonel Gadaffi's public threats to the people of Bengazi.[40] The response of the Security Council was unusually timely and decisive and led to an outpouring not only of support, but claims that this was proof of R2P's efficacy. Indeed, according to Gareth Evans, the intervention was, '...a textbook case of the R2P norm working exactly as it was supposed to'.[41] This was, Paul Williams declared, 'an unprecedented moment in the history of the UN Security Council and the responsibility to protect'[42] and Ban Ki-Moon announced triumphantly, 'By now it should be clear to all that the Responsibility to Protect has arrived'.[43]

The effusive declarations that R2P had proved itself seemed to derive from the – not unreasonable – delight at the fact that an imminent mass atrocity appeared to have been forestalled by Security-Council-sanctioned multilateral action. Yet, while the military action against Gaddafi was possibly welcome, the fact that this action cohered with the spirit of R2P is not the same as it having being a function of R2P. Identifying a causal link between R2P and the decision to take action against Libya proved to be essentially impossible. Certain observers noted that the Resolutions 1970 and 1973 which sanctioned the action – and the Security Council debates which preceded them – referred only fleetingly to R2P – and only then to the internal aspect of the concept – while the term was conspicuously absent from all the main speeches delivered by the key statesmen who supported the intervention.[44] Even many advocates of R2P advanced, at most, tenuous causal claims while acknowledging that a set of disparate factors unrelated to R2P had aligned to enable the intervention to go ahead[45]; as Bellamy noted the decision to intervene was impelled by a, '...confluence of factors' a situation which he stated, '...is unlikely to be often repeated'.[46] While the intervention in Libya thus cohered with the spirit of R2P it did not actually signify the concept's efficacy; rather, the more accurate appraisal was that it evidenced that the international community

[39] Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 24. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015.

[40] See, Aidan Hehir, *Libya and the Responsibility to Protect*, in Aidan Hehir and Robert Murray (eds) *Libya, The Responsibility to Protect and the Future of Humanitarian Intervention*, Palgrave 2013, pp. 2-6

[41] Gareth Evans, 'The RtoP Balance Sheet After Libya', September 2, 2011, <http://www.gevans.org/speeches/speech448%20interview%20RtoP.html> accessed 29.11.2014.

[42] Paul Williams, 'The Road to Humanitarian War in Libya', 3/2, *Global Responsibility to Protect*, (2011) p. 249.

[43] Ban Ki-Moon, 'Remarks at Breakfast Roundtable with Foreign Ministers on "The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities"', UN News Centre, 23 September 2011, <http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1325>, accessed 29.11.2014.

[44] See, Aidan Hehir, 'The Permanence of Inconsistency: Libya, The Security Council and the Responsibility to Protect', 38/1, International *Security*, (2013) pp. 137-159; Justin Morris, 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum', 89/5, *International Affairs* (2013) pp. 1265-1283.

[45] Ramesh Thakur, 'Has R2P Worked in Libya?', *Canberra Times*, 19th September, 2011;Tim Dunne and Elizabeth Gelber, 'Arguing Matters: R2P and the Case of Libya', 6/3, *Global Responsibility to Protect*, (2014) pp. 326-349..

[46] Alex Bellamy, 'Libya and the Responsibility to Protect: The Exception and the Norm', 25/3, *Ethics and International Affairs*, p. 4.

would 'occasionally' do the right thing.[47] This inconsistency of course, as noted earlier, predated the emergence of the concept.

While the response to Kenya in 2007 and Libya in 2011 are the most widely cited examples of the concept's efficacy since 2005 they are in fact of dubious merit. The occasions when R2P has failed to influence the international community since the World Summit are, however, more obvious. In the ten years since the *Outcome Document* was signed there have been a number of intra-state crises which suggest that many states have not honoured their commitments to protect their domestic population from genocide, war crimes, ethnic cleansing and crimes against humanity. But, the fact that states have continued to systematically violate the rights of their people can hardly – in itself – be cited as evidence that R2P has failed. The very fact that R2P included the subsidiary responsibility of the international community – as per paragraph 139 of the *Outcome Document* – was an acknowledgement that some states were inevitably going to break their domestic commitments as outlined in paragraph 138 of the *Outcome Document*. The more damning trend post 2005, however, has been the extent to which the international community has neglected to abide by its responsibility to protect those suffering at the hands of their host state.

There have been a number of intra-state crises since 2005 which have very definitely evidenced the commission of crimes – by states – within R2P's purview without occasioning any meaningful international response. The crisis in Darfur[48], the Democratic Republic of the Congo[49] and Sri Lanka[50] have all been cited as occasions when R2P has failed to influence the international response. These crises have been characterised by the unedifying spectacle of mass atrocities, the mobilisation of international human rights NGOs calling for remedial action, and inertia on the part of the international community. Of all the crises which have occurred since 2005, however, the situation in Syria has inspired the most lamentations about R2P's impotence.

The crisis in Syria began in mid-March 2011 and deteriorated rapidly; to date over 200,000 people have died while over 11 million people – more than half of Syria's total population – have been displaced either within Syria or abroad. Despite the effusive declarations that R2P had "arrived" with the intervention in Libya, the response of the Security Council to Syria has been marked by inertia and division. Indeed, by September 2011 UN Secretary General Ban Ki-Moon was decrying, '... the failure of the Security Council's responsibility to protect the Syrian population'[51] and in the intervening four years Ban Ki-Moon has repeatedly called for more robust action to little avail, largely because the P5 have been so hopelessly divided on the issue due to their competing national interests.

While the situation in Syria was – and remains – complex due to the involvement of an array of regional actors – particularly Iran, Israel, Lebanon, Saudi Arabia and Turkey – the range of remedial options available to the Security Council under R2P is not limited to military intervention – as outlined by the Secretary General in his 2012 report there are myriad forms of non-military censure available to the P5 under Chapter VII[52] – which, most observers agree, could exacerbate the situation. The choice was not, therefore, between potentially counter-productive military intervention and inaction. Yet even non-military action has been impeded

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[47] Thomas Weiss, 'R2P Alive and Well After Libya', 25/3, *Ethics and International Affairs*, 2011, p. 5.

[48] Roberto Belloni, 'The Tragedy of Darfur and the Limits of the "Responsibility to Protect"', 5/4, *Ethnopolitics*, (2006) pp. 327-346.

[49] Herbert Weiss, *The Democratic Republic of the Congo*, in Robert H. Cooper and Juliette V. Kohler (eds) *Responsibility to Protect: The Global Moral Compact for the 21st Century*, Palgrave Macmillan 2009.

[50] Damien Kingsbury, *Sri Lanka and the Responsibility to Protect*, Routledge 2011.

[51] Ban Ki-Moon, 'Statement by the Secretary-General on Libya', 17th March 2011. <http://www.responsibilitytoprotect.org/index.php/crises/190-crisis-in-libya/3269-ban-says-historic-resolution-was-clearly-the-international-community-fulfilling-of-its-responsibility-to-protect> accessed 18.10.2014

[52] Ban Ki-Moon, 'Responsibility to Protect: Timely and Decisive Response: Report of the Secretary-General', A/66/874, 25 July, 2012, p. 12.

by the self-interest and obfuscation of certain members, most notably Russia and China; on four occasions both have vetoed resolutions seeking to impose modest punitive sanctions against Assad.

The first Security Council Resolution on Syria (2042) was not passed until April 2012, over a year after the crisis began, and the Security Council has more often played host to openly divisive meetings on Syria leading to widespread international condemnation of the body; in early August 2012 Kofi Annan stepped down as United Nations/League of Arab States Joint Special Envoy for the Syrian Crisis decrying the 'finger-pointing and name-calling in the Security Council' which had impeded his efforts.[53] In August 2012 the General Assembly took the unusual step of condemning the Security Council in a non-binding resolution which followed an emotive debate on the situation.[54] Syria became, according to Ban Ki-Moon 'the biggest peace and security [challenge] in the world'[55] and yet by any standards the Security Council's response was neither timely nor decisive, and this arguably cost innumerable lives. Indeed, in her final speech to the Security Council as UN High Commissioner for Human Rights, Navi Pillay stated, 'greater responsiveness by this council would have saved hundreds of thousands of lives'.[56] The Security Council's response to Syria certainly deflated the post-Libya optimism; as Gareth Evans noted, 'the shame and horror of Syria' has led to 'a real sense of disappointment'.[57] Syria has, therefore, highlighted the deleterious structural flaws of the existing system which R2P has merely reaffirmed.

The only aspect of R2P which sought to address the potential for Security Council inaction in the face of mass atrocity crimes was the 'code of conduct'. This was put forward in the ICISS report[58] and subsequently by various reports and commissions including the 2004 report of "The UN Secretary General's High-Level Panel on Threats Challenges and Change", the 2008 "United States Genocide Prevention Task Force" and the UN Secretary General's report "Implementing the Responsibility to Protect" in which Ban Ki-Moon asked the P5 to 'refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect'.[59] Crucially, though, the "code of conduct" was not included in the 2005 World Summit *Outcome Document* and thus does not constitute a component of the officially recognised variant of R2P. Yet, it has been revived in the case of Syria as a possible way around the P5's evident disunity.

Following the double veto by Russia and China of a draft resolution aimed at the regime of President Assad in May 2014, a coalition of NGO's and think tanks – including the International Coalition for R2P and the Global Centre for RtoP – issued a statement which included the following;

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[53] UN News Centre, 'Kofi Annan Resigns as UN-Arab League Joint Special Envoy for Syrian Crisis', 2 August 2012. <www.un.org/apps/news/story.asp?NewsID=42609#.VBAkIvldWSo> accessed 1.2.2015

[54] General Assembly, 124th Plenary Meeting, 3 August 2012. <daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/449/39/PDF/N1244939.pdf?OpenElement> accessed 14.09.2014.

[55] Ban Ki-Moon, 'Address to the General Assembly', 24th September 2013. <www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1985#.VA8OkvldWSo> accessed 25.09.2014.

[56] Navi Pillay, 'UN Human Rights Chief Criticises UN Over Global Conflicts'. *The Guardian*, August 22, 2014 <www.theguardian.com/world/2014/aug/22/un-human-rights-chief-criticises-security-council-over-global-conflicts> accessed 6.2.2015.

[57] Gareth Evans, 'After Syria: The Future of the Responsibility to Protect', S.T. Lee Lecture, Institute for Advanced Study, Princeton, 12 March, 2014 <www.gevans.org/speeches/speech545.html> accessed 2.6.2014.

[58] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, International Development Research Centre 2001, p. 51.

[59] Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 27. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015

> Today's use of the veto by Russia and China…is a shameful illustration of why voluntary restraint on the use of the veto in mass atrocity situations is essential to the Council's ability to live up to the UN charter's expectations.[60]

Yet, suggesting that the solution to this overt instance of politically-motivated obstructionism is for Russia and China to demonstrate "voluntary restraint" just after they have manifestly failed to do so appears counterintuitive. While Russia and China's use of the veto may well be morally illegitimate, they did not break any laws or neglect any duties; the P5 are constitutionally entitled to *choose* whether, and how, to enforce international laws proscribing atrocity crimes. In the case of Syria, therefore, Russia and China, for reasons of national interest, have determined to block efforts to sanction Assad and, as a consequence of the international legal architecture, they have succeeded in doing so. This has obvious parallels with the situation pre-R2P and must surely temper any considerations of progress with respects to the international protection of human rights.

5. WORDS VERSUS DEEDS?

R2P advocates have often been unashamed about the concept's lack of legal innovation predicating its efficacy instead on the capacity of R2P to serve as a focal point of activism and moral suasion. This focus on advocacy has led the concept to become increasingly – if not exclusively – a tool of humanitarian NGO's employed to highlight crises and demand remedial action. A number of organisations have been established since 2005 with just this purpose, such as the Asia Pacific Centre for R2P, the International Coalition for R2P and the Global Centre for RtoP. One must ask, however, why R2P advocacy has not worked in the case of Syria – and indeed Darfur – where there has been no shortage of appeals – often explicitly couched in R2P language – made by global civil society activists to the Security Council to take more robust measures. Surely the fact that Russia and China have routinely blocked draft resolutions against Assad demonstrates the limits of moral suasion?

In defence of the concept's efficacy R2P supporters have pointed to the fact that the term has been included in a number Security Council Resolutions. In September 2014 the Global Center for R2P published a list of every Security Council Resolution which mentions R2P.[61] 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 this number equates to 13.25% of the total number of resolutions passed during the Arab Spring[62]; 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 I; 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 III, the international community's responsibility to protect.[63] 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, by states to legitimise non-involvement in cases where one or more of the four crimes were demonstrably being committed.[64] This trend is also evident beyond just

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[60] Global Center for R2P, 'Joint NGO Statement on Use of the Veto', 22 May, 2014 <www.globalr2p.org/publications/306> accessed 25.09.2014.

[61] Global Center for R2P, 'R2P References in UN Security Council Resolutions and Presidential Statements', 2014. <www.s156658.gridserver.com/media/files/unsc-resolutions-and-statements-with-r2p-table-as-of-august-2014-1.pdf> accessed 6.2.2015.

[62] The date range used is 1st January 2011 to 31st December 2014.

[63] The "Pillar" conception of R2P was advanced by Ban Ki-Moon in 2009; see, Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 2. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015

[64] David Chandler, 'Unravelling the Paradox of "The Responsibility to Protect"', 20, *Irish Studies in International Affairs*, (2009) pp. 27-39; Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?',

the Resolutions related to the Arab Spring; of the 26 Resolutions which mention R2P only four even acknowledge the existence of Pillar III; 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 as it suggests a determination to distance those with the authority to act from a responsibility to do so.

In this sense, simply pointing to instances when the Security Council has mentioned R2P does not indicate the efficacy of the concept; it certainly suggests it has become increasingly employed as a rhetorical device but the proliferation of a term in international political discourse is not necessarily indicative of its impact on actual international politics; how many times, for example have states pledged to eradicate world hunger, global warming, nuclear proliferation and, most infamously, solemnly intoned "never again", to evidently little practical effect? R2P was not established to fill a slogan gap but rather to practically influence the way the international community responds to state-sponsored mass atrocities. To focus only on rhetorical usage of the term is, therefore, arguably disingenuous and certainly unrelated to issues of practical influence.

6. CONCLUSION

Despite being vaunted as something of a breakthrough, the 2005 World Summit *Outcome Document* has failed to catalyse any significant change to the manner in which the international community responds to intra-state mass atrocities. Ban Ki-Moon's claim, '…when confronted with crimes or violations relating to the responsibility to protect or their incitement, today the world is less likely to look the other way' does not convince in light of the wanton carnage in Syria over the past four years and the repeated vetoing of remedial action by Russia and China at the Security Council.[65] The *Outcome Document* did arguably usefully clarify the nature of the crimes which potentially warrant external action, but some have argued that even this was regressive as it constituted a diminution of the scope for action which previously existed.[66]

As a result of its reaffirmation of the status quo, R2P's efficacy has become almost singularly predicated on its supposed capacity to serve as a means by which moral advocacy can be coordinated and framed. This has manifest in the creation of R2P-related NGOs who are prolific users of social media. They and proliferate a steady stream of information on R2P-related crises and occasions when the term "Responsibility to Protect" is employed by states and included in Security Council and General Resolutions. This strategy of highlighting instances when the term has been used has generated a false impression of the concept's efficacy; there is no doubt that the term has become embedded in the international political lexicon but the proliferation of references to R2P cannot in itself be deemed indicative of its actual influence on the international community's response to intra-state crises. The increase in references to R2P in official discourse has in fact, served to highlight the glaring disjuncture between rhetoric and reality.

R2P was conceived at a time when there was widespread consensus that the international system for preventing and responding to intra-state mass atrocities was fundamentally flawed. That R2P has come to reaffirm this very system constitutes, therefore, a disappointment, and the lamentable litany of post-2005 crises which have raged on without inspiring a meaningful

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101/1, *American Journal of International Law*, (2007) p. 116; Alex Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq', 19/2, *Ethics and International Affairs*, (2005) p. 45.

[65] Ban Ki-Moon, 'Implementing the Responsibility to Protect: Report of the Secretary-General', A/63/677, 12 January, 2009, p. 27. <http://globalr2p.org/pdf/SGR2PEng.pdf> accessed 6.2.2015

[66] Michael Byers, 'High Ground Lost on UN's Responsibility to Protect', *Winnipeg Free Press*, September 18th 2005.

international response can hardly occasion any real surprise. Those interested in redressing the perennial problem posed by intra-state mass atrocities must surely, in the wake of R2P's failure, at least think about creative proscriptions for reforming the international system in terms of both processes and positive law, and specifically, challenge the power of the Security Council.

BIOGRAPHY

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