Introduction

This essay adopts an institutional conception of responsibilities. Second, it adopts the view that responsibilities are expressed through actual practices and not rhetorical affirmations. Third, not only must a specific institution assume and exercise responsibilities, those responsibilities must be specified but generically they include information gathering and analysis, an ability to deliberate and make decisions and a capacity to implement them. Fourth, that body must be accountable to another institution or group to ensure the responsibilities are carried out.

In a previous paper, "Blaming the UN[1]," I examined the ways in which responsibility is assessed with respect to the UN. I used the case of Rwanda to document in detail the different failures of the UN under various categories of responsibility. Part I of this paper examines the efforts to rehabilitate the United Nations after Rwanda and restore the UN to a central role as both the conscience of the international community and as the instrument through which action is taken to prevent or mitigate gross violations of human rights, particularly genocide, through the development of the R2P doctrine. Part II takes up the case of Darfur and examines the current gap between rhetoric and reality, asks whether that gap is recognized and, if so, how it can or should be rectified. Part III in the conclusion harks back to Part I and the conceptual analysis to suggest that R2P cannot become a reality because the R2P doctrine is fundamentally flawed in its conception of responsibility.

Part I Cosmopolitan Sovereignty

1. The Doctrine

Since and in response to the disgrace of the totally inadequate United Nations response to preventing or mitigating the genocide in Rwanda, there have been a number of efforts to restore the UN to a central role in upholding international standards of moral behaviour to enable the UN to fulfil its obligations to prevent and mitigate genocide. The efforts have concentrated on elaborating a doctrine of cosmopolitan moralism and responsibility. In the interests of establishing a civilized and peaceful world, the UN must serve as a moral leader dedicated to upholding the golden rule, "that all people, endowed with reason and conscience, must accept a *responsibility to each and all* (my italics), to families and communities, to races, nations and religions in a spirit of solidarity."[2]

When Kofi Annan, who headed the Department of Peacekeeping Affairs (DPKO) at the UN at the time of the Rwanda crisis, became UN Secretary-General, he began an effort to resurrect the status of the UN, and, thereby, himself. He first posed what was dubbed an alternative conception of sovereignty. Instead of the presumptive doctrine of absolute state sovereignty and territorial inviolability[3], he

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[1] Howard Adelman (2008) "Blaming the United Nations," *Journal of International Political Theory.* 4: 9-33.

[2] Malcolm Fraser (2005) "Sovereignty, international law and global cooperation," in Spencer Zifcak (ed.) *Globalization and the Rule of Law*, London: Routledge, 177.

[3] The doctrine of untrammelled and unfettered sovereignty that allowed a state to act in a totally arbitrary and unaccountable manner is a 'straw man'. Gareth Evans used this caricature of the absolute liberty of a sovereign to kill his own people – "sovereignty is a license to kill" -- in a lecture to the

proposed a doctrine of the government's responsibility to and for its own people. Governments of states were trustees of that responsibility. If they failed in their tasks, they lost any claim to inviolability.[4] Secondly, the new conception of sovereignty linked domestic and foreign policy. Sate sovereignty existed to protect individual members; states had a primary responsibility, not for the security of the state, but for "human security"[5]. The United Nations was given the exclusive role in deciding if and when these trustee states failed in carrying out their sovereign responsibilities and what action to take to serve human security and when to authorize, as a last resort, military intervention.[6] For the UN existed as the expression and representation of the conscience of humanity as a whole.[7] As the S-G's Millennium Declaration worded it, the UN is the indispensable common house of the entire human family."[8]

The Annan principles were systematically articulated in the report of the International Commission on Intervention and State Sovereignty, called, *The Responsibility to Protect*[9] (R2P). The Canadian-sponsored R2P report provided a theoretical basis for authorizing intervention in the domestic affairs of sovereign

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David Davies Memorial Institute, University of Aberystwyth, 23 April 2008 ("The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?": "going all the way back to the emergence of the modern system of states in the 1600s – the view had prevailed that state sovereignty is a license to kill." The phrase was repeated many times: at the 10th Asia Pacific Programme for Senior Military Officers at the S. Rajaratnam Scool of International Studies in Singapore on 5 August 2008 ("The Responsibility to Protect: Meeting the Challenges") and in an interview with SEF (Stiftung Entwicklung und Frieden) News. This mythological historical revisionism is simply an historical falsehood. In practice, sovereign states have always been accountable in the exercise of their responsibilities to their subjects and even to other states, bounded by moral and juridical limits and dependent on reciprocal obligations of sovereign and subject. Even in Thomas Hobbes, the sovereign must secure the safety of his subjects. Although the doctrine of the right of nations to self-determination and non-interference by other nations in domestic matters became an abstract and ahistorical principle incorporated in the UN Charter, this version of absolute sovereignty never licensed the ruler to kill or set aside traditional obligations even if military intervention was not endorsed. See Samuel J. Barkin (1998) "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms," *Millenium* 27:2, 229-252; Daniel Philpott (20001) *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations.* Princeton: Princeton University Press.

[4] Cf. Kofi Annan, "Two Concepts of Sovereignty," *The Economist*, 18 September 1999. [Online] http://www.un.org/Overview/SG/kaecon.htm. For early versions of the doctrine, cf. Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild and I. William Zartman (1996) *Sovereignty as Responsibility: Conflict Management in Africa*, Washington: Brookings Institution; Francis Deng and Terrence Lyons (1998) *A Quest for Good Governance*, Washington: Brookings Institute.

[5] Cf. Kofi Annan, "Human Security and Intervention: Individual Sovereignty," *Vital Speeches of the Day* 66, No.1, 1999.

[6] Cf. Kofi Annan, *The Question of Intervention: Statements by the Secretary-General.* New York: United Nations Department of Public Information, 1999.

[7] Cf. Kofi Annan, "'We the Peoples': The Role of the United Nations in the 21st Century," *Millennium Report of the Secretary-General of the United Nations*, 2000. [Online] http://www.un.org/millennium/sg/report/ .

[8] The problem is that when push comes to shove, the UN is not n a position to act. Gareth Evans, the foremost proponent of R2P, acknowledged as much. "Given the ethic cleansing in Kosovo in 1999, "most people, and governments, accepted quite rapidly that external military intervention was the only way to stop it. But again the Security Council failed to act in the face of a threatened veto by Russia. The action that needed to be taken was eventually taken, by a coalition of the willing, but in a way that challenged the integrity of the whole international security system (just as did the invasion of Iraq four years later in far less defensible circumstances)." Gareth Evans, "The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?"

[9] Cf. International Commission on Intervention and State Sovereignty (2001). *The Responsibility to Protect.* Ottawa, The International Development Research Centre. [Online] Available at http://www.iciss.gc.ca.

states and criteria about when and how such intervention should be conducted. As the two co-chairs of the Commission, Gareth Evans and Mohamed Sahnoun, argue in an article in 2002 in *Foreign Affairs*, the United Nations must play the lead role in humanitarian intervention.

Subsequently, the UN Secretary-General set up a High-Level Panel on Threats, Challenges and Change that issued a report entitled, *A more secure world: Our shared responsibility* (New York: United Nations, 2004), that both echoed the themes of R2P and Annan's personal ruminations, and specified the areas in which the responsibility to protect would be operative. *Our shared responsibility* (OSR) called for a system of *global collective responsibility* to defend against threats such as international crime and terrorism, communicable diseases, environmental degradation, but also civil wars, the abuse of human rights and even poverty within a state. A threat to any one of us is a threat to all according to the views of the cosmopolitan moralists with their new version of "universal standards of civilization". If R2P provides the theoretical justification, OSR documents the actual threats that, in the view of the authors, make the doctrine of R2P necessary.

Like R2P, OSR proposes a new doctrine of responsibility and of sovereignty. The state has an obligation "to protect the welfare of its own people and meet its obligations to the wider international community." When a state fails in fulfilling those responsibilities, "the principle of collective security means that some portion of those responsibilities should be taken up by the international community." (para. 29, p. 17) How is the international community institutionalised? In the United Nations! Who decides when a state fails to fulfil its responsibilities? The Security Council! States are the front line, the foot soldiers in carrying responsibilities. But if the UN finds the states are slacking, they can remove their governments and place such states in trusteeship – an action to be taken – at least at this time - only in extreme cases of gross violations of human rights, even if the principle allows a much wider range of initiatives. States are only heuristically sovereign as the tools for a cosmopolitan sovereignty. "(N)o state can stand totally alone. Collective strategies, collective institutions and a sense of collective responsibility are indispensable." (OSR, 1)

Annan's writings and both reports articulate a neo-papal model of sovereignty and intervention that requires that military action be legitimised and often carried out under UN auspices, sometimes when states carrying out or financing an intervention require or find it desirable to have a central moral authority at the very least to sanction an intervention, as in Afghanistan, under the auspices of a global authority claiming to represent the conscience of the international community. R2P locates the source for the SC's formal authority in the authentic authority of 'the collective conscience of humanity' (p.2), though there is no depiction of the particular virtues, skills or even traits of such an amorphous entity. Whether launched in the name of self-defence, as in the first Gulf War, or, in the name of humanitarianism, the preservation of peace and security provides the legal cover.

The R2P and OSR reports are quite clear. The only legitimating authority should be the United Nations Security Council. As paragraph 82 of OSR puts it, "the Security Council should be the arbiter of the use of force." (p. 32) The categories of

responsibility are four: 1) gathering, analysing and communicating information;[10] 2) the process of deliberation based on a rationale justifying the UN role and a set of rules, procedures and criteria for deliberation on whether, when and how to intervene to ensure that intervention is carried out effectively and *only* for the purposes proposed;[11] 3) decision-making;[12] and finally, 4) the implementation process that involves transforming the choices into operational and administrative actions. The UN is assigned all four areas of - information, deliberation, decision-making and execution - responsibility described in my paper, "Blaming the United Nations".

Nowhere does either R2P or OSR articulate any doctrine concerning accountability. To whom or what entity is the UN responsible? How should the UN in its various parts and as a whole be dealt with for its failures in carrying out its responsibilities?

2.   Information for Justification

Article 2 (7) of the UN Charter prescribes that, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter." However, the principle of the independence of sovereign states is not absolute. Sovereignty is subject to the requirement that states not be aggressive; states must yield to the demands of international peace and security. The SC can respond to "a threat to the peace, a breach of the peace" as well as to an act of aggression. State sovereignty is also limited by customary law and treaty obligations, obligations assumed by states that are members of the UN and subject to its governing principles. "(T)he corresponding powers of the world organization presuppose a restriction of the sovereignty of member states to the extent of their obligations under the Charter." (p. 7; cf. Article I (2))[13]

The R2P report provides an emergent historical account tracing the alterations and modifications to the doctrine of absolute state sovereignty since the end of the Cold War from the challenge to the principle of sacrosanct borders by the disintegration of the USSR and the secession of Eritrea from Ethiopia, Slovakia from Czechoslovakia, and Slovenia from Yugoslavia. Further, in sanctioning intervention, the meaning of "threats to international peace and security" was broadened to include

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[10] These are discussed in R2P chapter 3 called "The Responsibility to Prevent" in conjunction with the issue of the principle of sovereignty, and in Part 2 of the OSR, "Collective security and the challenge of prevention," esp. paras. 98 & 99. (p. 37).
[11] Cf. Ch. 2 of R2P that is echoed precisely in Part 3 of OSR called "Collective security and the use of force" in which the doctrine of the "responsibility to protect" is reiterated, and the five norms of just war theory provided as the normative guidelines for making intervention decisions.
[12] These are discussed in chapter 4, "The Responsibility to React" of R2P.
[13] For a very succinct summary of this history of the emergence of the idea of the absolute sovereignty of states, cf. Charles Sampford, "Re-conceiving the role of law for a globalizing world," in Spencer Zifcak, ed., *Globalization and the Rule of Law*, London: Routledge, 2005, 9-31, esp. 9-10. Others argue that absolute sovereignty has always been an ideal construct that never existed historically. Intervention, including humanitarian intervention, has been sanctioned since the Treaty of Westphalia. (Cf. Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, The Hague: Klewer Law International.)

gross violations of human rights.[14] Interventions that initially referred to diplomatic actions and then economic sanctions (Rhodesia and South Africa) were broadened in Resolution 688 (1991) in countering the repression of the Kurds of Iraq, attacks on civilians in Bosnia-Herzegovina, Sierra Leone and Kosovo, and in response to "failed states" – the disappearance of a functioning government and the incapacity of certain states to effectively exercise authority over their territories and people.[15] Finally, in this emergent historical account, a change in the "balance between states and people as the source of legitimacy and authority" occurred. (p. 10) In theory, if the doctrine of R2P is accepted, one only needs to *document* the failure of a state to live up to its trust responsibilities to justify authorizing intervention by the SC. This is the requirement for a UN and its global supporters who push one Whig (and very distorted) version of absolute history, on the one hand, while it lacks the in hose capacity to go beyond gathering information to interpret and analyse conflcts and recommend how best to deal with them.

3.   Boundary Conditions for Deliberation

The prospect of intervention is deliberated in the SC in accordance with information measured against a human insecurity index, though, on the other hand, intervention was to be reserved for only extreme cases of mass atrocities. The SC must be able to "act early, decisively and collectively". (OSR, p. 3) To do that, it needs "greater credibility, legitimacy and representations". (OSR, p. 5) For the cosmopolitans, this entails increasing the size of the SC as well as broadening the representation. The irony is that, although this *may* enhance legitimacy – though not evident in the UN Human Rights Commission – such a reform is highly unlikely to enhance early and decisive deliberation and decisions.

Legitimacy, however, is an equivocal term. On the one hand, it refers to a constituted and recognized formal authority. On the other hand, an electrician with all the requisite legitimate credentials is worthless if s/he cannot fix your electrical problems. The electrician is only legitimate if s/he also has the skills, expertise and proficiency to complete a job properly and fully. Thus, legitimacy refers to both a proper formal authority **and** the expertise to exercise that authority within the realm of formal qualifications. Unfortunately, a broader and more representative body may diminish the need for greater expertise and experience. Further, gaining legitimacy through expertise and experience may be a far more important need than formal legitimacy.

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[14] The International Court of Justice (ICJ) in *Nicaragua vs United States* ruled that the use of force is **not** an appropriate method of reinforcing the respect for human rights in contrast to R2P.

[15] This doctrine of limited sovereignty when states fail to protect their citizens was articulated in the report of the Wilton Park Conference on the United Nations in the New World Disorder that reiterated Michael Walzer's doctrine that, "Intervention by a state [note – not the U.N.] in the internal affairs of another state seemed to have been warranted when its own citizens or the citizens of the state subjected to intervention were mistreated in a way inconsistent with civilized behavior." The Wilton Park Report went even further in calling for safe havens and humanitarian corridors so that Resolutions such as 688, 43/131 and 45/182 with respect to Northern Iraq, Somalia, Liberia and former Yugoslavia were effectively made part of a domestic territory subject to international jurisdiction without the consent of the state that formerly exercised a monopoly control over that territory. OSR goes much further. "Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security." (p. 2)

The moral authority of the UN is not free floating and does **not** derive from an amorphous entity such as the "conscience of humanity". The members of the UN are moral entities since they are expected to behave responsibly and are accountable for their behaviour as responsible agents. The point of the UN is not to enforce states fulfilling their responsibilities anymore than it is the duty of the state to ensure individuals fulfil their responsibilities. Rather, when individuals or states behave in such a way that they interfere with the ability of other units to behave responsibly, if they murder, maim, and kill, then the state can punish individuals. A coalition of states and/or the UN can punish a wayward state. Given prudential considerations and the fact that the UN lacks a base of either manpower or material wealth, the UN can only carry out such a function on behalf of the states if those states trust the UN to carry out the task effectively. The UN's legitimacy rests not so much on some amorphous moral authority as on a record of expertise and proficiency in fulfilling its mission to preserve the peace. That is the real legitimacy it needs and not the sovereign will of humanity as a whole, but it is a legitimacy it has not established.

In R2P and OSR, humanitarian intervention has been recast as intervention for *protection* purposes[16] for citizens against a state or its leaders without their consent. The purpose is not the protection of collective rights, even though claims concerning collective rights in relationship to territory are the primary grounds for violent conflict. For cosmopolitan sovereignists, inequalities in economic distribution provide a critical cause of violent conflict. (OSR, 24) In the 1994 UN Human Development Report and the 1995 Commission on Global Governance, equitable economic development became a key component of human security.[17] According to both R2P and OSR, the absence of human security warrants intervention.[18] Hence, human inequalities produce human insecurity and provide the grounds for the SC to debate possible intervention even though, as we shall soon provide evidence to demonstrate, the prime cause of ethnic revolt – the main factor in intra-state wars – is marginalization of ethnic groups from power.

Sovereignty used to be indivisible. R2P now claims that, "human security is indivisible" (p. 5). "(S)ecurity depends on a framework of stable sovereign entities."

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[16] This is ironic. Intervention has been about using military force to protect humanitarian workers and volunteers as well as humanitarian supplies more than intervening to protect the rights of citizens.

[17] Cf. the UNDP 1994 *Human Development Report*. For a more recent and fuller examination of the concept that puts greater emphasis on the security of people than the security of the state, see The report of the Commission on Human Security co-chaired by former High Commissioner for Refugees, Sadako Ogata and Amartya Sen and established by the Government of Japan in 2001 as a follow-up to the UN Millenium Summit: *Human Security Now: Protecting and Empowering People*, New York: United Nations, 2003. In that report, human security includes not only threats of genocide or even infectious diseases but illiteracy. Further, it repeats the emphasis on the individual rather than the security of language groups, religions or nations. As the report states, "there is an important need to keep the individual at the center of attention." (p. 10) Human security was initially identified with human emancipation, freeing people from "physical and human constraints which stop them carrying out what they would freely choose to do" (Booth 1991, 319), constraints that included war, political oppression, poverty and even poor education. In contrast to state security concerned with protecting the territory and its people from external threats and protecting a government from internal threats, human security has three dimensions: social security (identity issues related to cultural, economic and population movements), economic security (freedom from want), and political security (freedom from oppression). This conception justifies external intervention in a state if large-scale poverty is pervasive.

[18] For an academic analysis of the concept, cf. J. Ann Tickner (1995), George Lopez and Nancy Myers (1997), Axworthy (1997); Krause (1998), Suhrke (1999) and Bilgin (2002; 2003) offer critical analyses of the concept.

However, the world is now threatened by fragile states, failing states, weak states that harbour those dangerous to others, or states that can only maintain order by means of gross human rights violations that pose a risk to people everywhere. In other words, although human security has superseded state security in importance, the two issues are indivisible since state security now depends on human security according to this emerging moral doctrine.

Human security in this vein entails taking sides in intra-state conflicts on behalf of apparent victims, whereas traditional humanitarianism demanded neutrality. Thus, the very conception of human security contributes to the further fragmentation of the state, posing the danger of doing more harm than good. Finally, in ignoring the issues of identity security central to intra-state conflicts, coercive intervention threatens the very foundations of that specific state's security. In the context of all these tensions, tough choices have to be made. And the principle of "protection" in the name of "human security" is too abstract, too complex, too broad (in including economic equality), too narrow (in excluding identity politics) and too irrelevant to the sources of domestic violence to arrive at appropriate decisions let alone easy answers.

For the cosmopolitans, three of the supporting wall frames are state security, human security and minimal economic inequalities. The fourth is the critical one. Information technology has produced a new awareness of world conditions and given a new visibility to human suffering. At the same time, economic globalization has increased economic interdependence. The result has been greatly increased expectations about *needs*. However, it has also produced demands for actions based on *rights*. There are new expectations for conduct and corrective action when there are gross abuses of human rights. For R2P, that is really the critical guideline for making any decision about intervention.

If state and human security enjoy an ostensible synergistic relationship, *within* the state there is a tension between abstract universal rules founded on the principle of individual human rights and the self-realization of communities based on popular sovereignty that, through the expression of communal will, results in collective self-government. In popular sovereignty, individual rights provide boundary conditions for the expression of that sovereign will to ensure that a polity is governed by laws and not by the will of a passing majority. Although the two conceptions of individual and collective rights can be complementary, they can and do clash. But without any recognition of this contradiction, how can the walls be braced if they are not to fall away from one another?

4.   Decisions

Legitimate authority for cosmopolitan sovereignists is based on formal authority that is representative. Constitutions should follow from principles of representation, though modified by prudence to take into account power. Little attention is paid to the need to base legitimacy on expertise and experience. The framework for deliberation involves the support of secure states, human security, minimal human inequality, and a respect for basic human rights but without taking into account the central conceptual conflict between individual rights and collective communal rights. Hhow do you put a roof on a frame when the walls lack the braces

to overcome these outward pressures? What are the guidelines or braces for making interventions decisions that take account of these contradictory pulls?

When states fail morally to provide protection to their own citizens, R2P and OSR view the situation as requiring intervention by other states Both reports emphasize intervention in cases of gross violations of human rights. Both place the same boundary conditions on authorizing intervention. The threat must be serious. Intervention must be undertaken for a proper purpose. It must be adopted as a last resort. Proportional means must be used. The consequences of intervening must cause less harm than if the UN fails to intervene. (OSR, p. 3) Since the duty to intervene is restricted by prudential considerations – such as the probability of success and the ability to enlist interveners – it is clear that the political, legal, economic and, especially, military clout of the state all provide key determinants in whether any intervention will be authorized let alone attempted.

That is why the norms governing decisions and not objective circumstances become the determinants of intervention. For a decision to intervene is a *judgement* concerning one's own action that is not simply determined by objective circumstances regardless of how terrible such circumstances are. A state weighs its own capacities and connections in relationship to the horrific circumstances it perceives. In the words of the OSR report, it is necessary "to combine power with principle". (p. 4) In other words, the issue is not making a decision as a deduction from a set of principles, but making a decision in the context of as complete information and analysis as possible as well as careful deliberation that takes into account conditions, connections and capacities. But without an adequately structurally sound intellectual frame, reasonable such assessments and judgments are impossible.

Do the rules governing decisions help? A principle such as proportional means is unlikely to be a hindrance or inhibit any decision since the problem will be arranging adequate means given that the UN lacks any autonomous ownership of the means of intervention. The issue is always too little not too much. On the other hand, weighing the consequences and certainly insisting on the principle of last resort are both guaranteed to ensure that the decision-making will **not** be early or decisive. Rather than fostering decisions, they will delay them. The principles of deliberation and legitimacy seem to be at odds with the criteria to ensure the decisions are timely and efficacious.

5.   Implementation

Once a collective authority enters the process of connecting to an issue and deliberating upon it, that deliberation may require a decision. Decisions require sacrifices, commitments and risks in a context of uncertainty. Do not enter a fray half-heartedly or as an exercise in moral rhetoric lest you do more harm than good. The information and analyses must include taking into account connections and capacities as well as conditions. If they indicate that intervention is demanded to stop an evil, then the agents must be prepared to bear the costs and the risks with determination to complete the task. One of the lessons of Rwanda is that the UN, even before

Mogadishu, put its leg into the dispute half-heartedly.[19] When events became much worse and far more challenging, the UN chickened out and abandoned people to their fate whose expectations had risen because of the presence of UN peacekeepers. The R2P and Response to Threats formula, by expanding UN exposure and range of actions well beyond its capacities, yet within an intellectual frame virtually guaranteed to ensure untimely rather than timely behaviour, turns out to be irresponsible.

The Security Council can fulfill the role envisioned for it in the UN Charter - to engage in "effective joint international action" to ensure peace, security, human rights and sustainable development on a global scale. The stress should be on *effective* as well as on *joint* action. When states jointly carry out actions through the UN, and the UN proves, because of its skills and developed expertise to possess a significant added value, then the UN leading a humanitarian intervention can be justified.

Part II   Reality and Rhetoric: Darfur

The UN has driven off in the very opposite direction that it should have been going to establish its legitimacy. Is this supported by UN's response to the crisis in Darfur after the Rwandan genocide?

Mukesh Kapila was appointed in June 2003 as the UN Resident and Humanitarian Coordinator for Sudan four months after the rebellion broke out in earnest in the three western states of Sudan. Early in his tenure he pointed out the widespread human rights abuses occurring in Darfur; he openly and repeatedly claimed that the ethnic cleansing in Darfur had been state-sanctioned.[20] When he left his position in June 1994, he repeated his March comparison of Darfur to Rwanda, and said the only difference was in the numbers. He claimed the government was practicing a scorched-earth policy in which government-backed Arab militias, the Janjawid[21], (literally 'evil horsemen') systematically burned villages and raped women.

The UN Commission of Inquiry into Darfur in its report to the Secretary-General on 25 January 2005[22] drew exactly the same conclusion as Makesh Kapila had made *eighteen* months earlier. There was a prima facie case for government

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[19] Howard Adelman and Astri Suhrke (2004) "Rwanda," in David Malone, ed. *The UN Security Council: From the Cold War to the 21st Century*. Boulder: Lynne Rienner Publishers, 483-499.

[20] The vast majority of international observers supported this view. For example, after touring the Darfur area for 13 days in June 2004, Asma Jahangir, the United Nations special rapporteur on Sudan, who unlike others had been very cautious about labeling the atrocities as ethnic cleansing let alone genocide, nevertheless insisted that, "there was no doubt that Khartoum had sponsored, armed or recruited the Janjawid militias which have been blamed for committing most of the atrocities in Darfur." She even claimed that the militias often wore the uniforms of Sudanese government soldiers, used government vehicles, and often raided villages "in concert with attacks by military forces."

[21] The term Janjawid, once a name for Arab bandits on horseback, is now used for the Arab militias drawn from the Arabic nomadic tribes in Darfur, who, riding horses, camels and land rovers, have attacked the non-Arab villagers for almost the past two years either as part of the Sudanes military, as adjuncts to it under tribal command or as paid agents of the government.

[22] *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005.

responsibility for human rights crimes[23] and for crimes against humanity that include murder, extermination, the forcible transfer of populations, wrongful detention[24], torture and rape, all of which were widespread and systematically practiced in Darfur. In fact, the overwhelming evidence is that civilians were directly targeted in what constituted large-scale war crimes in a climate of legal impunity. (para. 293, p. 79)

Why has the UN not intervened?[25] The rebellion started in earnest in February of 2003. It escalated significantly in April of 2003. Extensive government reprisals on innocent villagers began the following month. The information came to the UN from respected and authoritative sources within the first months of its commencement. Yet the UN did not set up a full commission of inquiry until fifteen months after receiving the initial reports. Did the USA prevent intervention as UN officials claimed with respect to Rwanda?

In 1997, the Clinton administration imposed sanctions on the Sudanese government for its "support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom". US President George Bush extended the order imposing a trade embargo against Sudan and a total asset freeze against its government, even though Washington acknowledged the cooperation of the government in Khartoum with US efforts to combat international terrorism. Short of military intervention for humanitarian purposes, as well as freezing assets in the US and prohibiting the issuance of visas to Sudanese officials, that have since been threatened, other more extensive measures were contemplated, such as: a suspension of diplomatic relations with Khartoum, vetoing loans and assistance from international financial organizations, embargoing Sudanese oil revenues as was done with Libya to such good effect, and a UN-backed arms embargo.

These options were put on hold in 2002 as the American government began a policy of positive engagement with the Khartoum government to try and broker a peace with the southern rebels where fighting had been going on for twenty years at a cost of 2 million lives and the forced displacement of most of the population of the region. With American involvement as a catalyst, government officials and rebels at the Machakos talks quickly agreed on a framework for further negotiations that provided that Sudan's constitution would be rewritten so that the Sharia Islamic law would not be applied to non-Muslims in the south. A referendum would be held in six years that would allow the south to decide on secession. On 20 July 2002, for the first time, President Omar al-Bashir met with John Garang in Kampala, Uganda to sign the Machakos Protocol. One week later, a new partial cease-fire began.

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[23] The Commission found plenty of evidence for a prima facie case for indicting members of the government, the army and the intelligence service on numerous grounds and according to many international laws and treaties to which the government was a signatory directly or indirectly. (Cf. paras. 147 & 148)

[24] The vast majority of those detained were civilians and not rebels. (para. 297, p. 80)

[25] Paul D. Williams and Alex J. Bellamy (2005) ("The Responsibility to protect and the crisis in Darfur," *Security Dialogue* 36:1, 27-47) suggest Western efforts were ineffectual because of scepticism of Western intentions after Iraq, suspicion that the West just wanted to advance its own interests, and the West's fear of risking the south/north peace agreement. R2P advocates failed to rally sufficient public support to put pressure on Western governments. My analysis suggests the overwhelming importance of the third factor, the risk to the north-south agreement.

The beginning of the end of the war in the south in 2002, culminating in a full peace agreement on 9 January 2005, also marked the beginning of the rebellion in the west of Sudan in the three states in Darfur - North, South and West. Resentful of their neglect and marginalisation in Sudan, the rebels felt left out of the power and wealth sharing agreement being negotiated.[26] They organized. A few sporadic clashes occurred in 2002. The rebellion became a civil war in February of 2003, and escalated enormously following a very successful attack in April by the rebels on the airport at El Fashir in which 100 soldiers were killed and 2 fixed wing aircraft and 2 helicopters were destroyed. Within a month the government had lashed back, arming nomadic Arab tribesman to serve as militias under army command and with air support to attack villages.

By the end of June 2003, about 40 villages had been destroyed, 300,000 people had been internally displaced, 10-15,000 refugees had fled to Chad, and an estimated 15,000 had been killed, overwhelmingly civilians. This was the new Rwanda that Mukesh Kapila reported to his superiors at New York headquarters. Over the next twelve months, those figures escalated so that by the end of the following spring, 200,000 refugees had fled to Chad and 1.5 million internally displaced persons had been produced. About 160 villages had been destroyed in what was branded by Roger Winter in the U.S. State Department as ethnic cleansing. Six years later, 2.7 million were internally displaced and an estimated 400 villages had been destroyed.

The tenth anniversary commemoration events for Rwanda on 7 April 2004 finally instigated the UN to raise the issue. However, the very next day, Khartoum and Darfur's two rebel groups signed a ceasefire agreement in Chad on 8 April. Unfortunately, it was repeatedly violated. A high-level team, led by UN World Food Programme Executive Director James Morris, and including the UN Secretary-General's special envoy for humanitarian affairs in Sudan, Ambassador Tom Eric Vraalsen, met with President Umar Hasan al-Bashir of Sudan in early May travelled to the stricken region, confirmed the extent of the destruction and the forced expulsion of civilians, and indicated that the evidence pointed to systematic involvement of the Sudanese government rather than simply tribal clashes as the government claimed.

Under pressure from the United States where an unusual collection of American legislators - the Congressional Black Caucus, the Christian right, liberals, human rights activists and American humanitarian agencies – combined to pass an unprecedented unanimous Congressional resolution condemning Sudan for committing genocide in Darfur, UN Secretary-General Kofi Annan travelled with a delegation to Khartoum that same July. Annan asked a group of Sudanese ministers to help disarm the Janjawid militias and to remove all impediments to humanitarian relief, such as delays in granting visas to aid workers or releasing essential equipment

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[26] The UN Darfur Commission found *seven* factors that reinforced the sense of marginalization and led to violence in the region: 1) inter-tribal conflict, particularly between sedentary and nomadic tribes exacerbated by desertification and the conflict over scarce water and land; 2) the weakening of local administration when former President Numeri abolished the traditional tribal structures of authority; 3) the weak presence of police, greatly exacerbated by rebels targeting police stations; 4) foreign interference; 5) availability of weapons and uniforms left from the Chad-Libya war; 6) politicization of issues; 7) the scant development and relative lack of infrastructure in Darfur. (para. 203, 57-8)

from customs. Sudanese Foreign Minister Mustafa Uthman Isma'il assured Annan that the Sudanese government was ready to accept assistance to solve the Darfur crisis

The Security Council was not satisfied with government assurances. It passed resolutions condemning the violence inflicted on the people of Darfur and holding the Sudanese government responsible. On 30 July 2004, Resolution 1556 required the Sudanese government to stop the indiscriminate violence that targeted civilians much more than rebels; women had been raped, men and boys killed and villages burned. Sudan was given until August 30 to make substantial progress in providing protection for the people of Darfur, to disarm the Janjawid, and to facilitate humanitarian aid reaching the stricken region. Five years later, the same resolutions could be passed.

N 2004, the United Nations and Sudan signed an agreement committing Khartoum to take "detailed steps" in the next 30 days to disarm the Janjawid militias accused of attacking civilians in the western Darfur region, to improve security for the IDPs (internally displaced persons), and to alleviate the humanitarian crisis. Economic sanctions were threatened if the Sudanese government did not make progress on commitments to disarm the feared Janjawid militias and restore security in Darfur. However, the August 30th deadline passed and there had been no substantial progress, one of many such instances that did not auger well for the people of Darfur and signalled that the UN talked loudly but only carried a twig instead of a big stick.

In early September, Jan Pronk, the UN Secretary-General's special envoy to Sudan reported to the Security Council that not only has there been no substantial progress to stop the gross violations of human rights in Darfur by stopping the attacks or disarming the militias, but **no** concrete steps at all had been taken to rectify the situation, or even identify any of the militia leaders responsible for attacks against civilians; the Janjawid militias continue to wreck their havoc with impunity. The UN continued to temporize and seemed impotent to take concerted action as China[27] and possibly Russia threatened to veto any resolutions supporting armed intervention, as Pakistan and Algeria, then on the Security Council, reinforced that resistance.

After the U.S. State Department sent its own inquiry that confirmed the charges of Congress that genocide had been committed, and Colin Powell, then Secretary of State, publicly made that charge in the UN SC, the SC passed Resolution 1564 of 18 September 2004 that set up the above-mentioned *International Commission of Inquiry on Darfur to the United Nations Secretary-General* that reported on 25 January 2005.

What is noteworthy about this process is that what happened in September of 2004 setting up the investigation should have happened in June of 2003 after the government reprisals escalated in the spring of 2003 and "the intensity of the attacks and the atrocities committed in any one village spread such a level of fear that populations from surrounding villages that escaped such attacks also fled to areas of relative security." (Commission of Inquiry Report, para. 186, p. 55) The inquiry that resulted in an outstanding report on 25 January 2005 documenting massive human rights abuses should have been initiated and completed well before two-thirds of the

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[27] Khartoum was a major purchaser of Chinese military exports. Further, China sent 4000 "volunteers" to Sudan to help guarantee the construction and subsequent security of the oil pipeline that it built in Sudan that enabled the country to increase its oil exports so exponentially.

government scorched earth policy towards the rebels and the Zaghawa, Fur and Masaalit tribes had been accomplished. Instead of January or 2005, October of **2003** would have been a more timely date. The same exact general conclusions would have been drawn but before the number of killed, expelled and raped had tripled.[28]

The information and analysis with options and recommendations came very late, but it did come. And the product was excellent. From what has already happened, it is quite evident that the American "hysterical" response, in direct contrast to its response to Rwanda, in designating the horrific atrocities in Darfur incorrectly as genocide, became both a sideshow, but also served to galvanize serious involvement in the issue. However, there is little evidence that needs, state security or human security were factors governing the deliberations. Massive human rights violations were because they breached international treaties to which Sudan was a signatory both directly and indirectly.

Nor was the SC's legitimacy to make the assessment ever in question. Only what assessment and action to take! Instead, the UN's credibility was once again on the line. But this time, it was being handicapped and incapacitated by other powers than the U.S. So though its failure to collect the information and undertaking the analysis much earlier could be seriously faulted, only certain powerful members could be cited for failures in deliberation, decision-making and implementation.

Finally, according to the Darfur Inquiry Report, the UN was not the only legitimate authority around. The SC was asked to refer the matter to the ICC to investigate laying criminal charges. As the Commission viewed the matter, ending a culture of impunity was the best contribution to peace and security in Sudan and for the future. That could be done without invoking a responsibility to protect. But it took the ICC until 4 March of 2009 to indict Omar al-Bashir, the President of Sudan, for war crimes and crimes against humanity, but could take no action to arrest him.

What else happened in the next four years? The Janjawid were not disarmed. The rebels, until very recently, divided and subdivided like amoeba splintering into factions and increasingly engaging in outright banditry. The AU and then the UN deployed, or, at the least, authorized the deployment of a very large peacekeeping force but explicitly with no western troops and no mandate to take coercive action without government consent. In response to his indictment by the ICC, President Bashir ordered 13 major international NGOs carrying out crucial humanitarian work for the 2.7 million IDPs to leave Sudan. One positive by-product, either of Bashir's indictment and/or the ordered withdrawal of the humanitarian agencies, is that the rebel factions, either driven by opportunism or desperation or both, have finally shown signs of unity under the umbrella of the Islamist Justice and Equality Movement (JEM), the only faction that remained in peace negotiations with the

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[28] By September of 2003 when, in response to rebel attacks, the claims of government backed significant escalation and intensification of government reprisals involving wanton killings of civilians, massacres, summary executions, abduction, rape and sexual assault, torture, looting of livestock and portable property, and the torching of villages were scarcely deniable. When peace talks broke down on 15 December 2003 between the government and the Sudan Liberation Army (SLA) rebel group, and 30,000 more people fled to neighbouring Chad, increasing its Sudanese refugee population by 50%, and thousands more were uprooted in the New Year, certainly by then an inquiry should have been launched.

central government. In April 2009, Suleiman Jamous, of the SLM/A-Unity faction joined JEM with his 30 commanders and 500 soldiers. Even Arab tribes - the Beni Halba, the Rizeigat and the Misseriya –joined.[29] There is no indication that the UN, or any outside forces for that matter, have had any effect on this process. Further, in an excellent analysis of this situation in Sudan by David Mozersky, who directs the Horn of Africa Project for the International Crisis Group, Gareth Evan's vehicle for promoting R2P, he urged the Canadian Parliamentary Standing Committee on Foreign Affairs to push a comprehensive and coherent international approach to Sudan using whatever leverage is available on the different parties to push everyone down the path towards peace. He specifically ruled out seeking regime change even though his diagnosis pointed to the Khartoum regime as the heart of the problem and even contemplated non-consensual military intervention – a most unlikely prospect.[30] R2P had so clearly been abandoned that it was not even cited.

In words and practice, how were the various dilemmas brought to the fore concerning R2P considered? Was the contradiction between the principle of self-determination and non-intervention reconciled with the right of an international body to intervene if the state representing a people did not conform to what the UN considered minimal civilized norms, specifically the human rights of the citizens of a state and the responsibility of majorities to protect and not persecute minorities? What role did the emerging international organizations mandated to defend human rights play in holding both states and the UN accountable? Did even the threat of such intervention improve the behavior of states?

The Human Security Report Project at Simon Fraser University produced a miniAtlas of Human Security (October 2008) that indicated a dramatic decline in political violence worldwide[31], but the decline cannot be correlated with the work of the United Nations even as violent conflicts dropped by 40 percent, the deadliest conflicts and genocides dropped by more than 70 percent and the wars themselves became far less deadly killing just 700 per war in 2005 compared to a 38,000 average in 1950. However, the maps do suggest an inverse correlation between rising wealth and incomes and a decline in armed conflict. Commerce promotes inter-state peace but intra-state conflict remains at a high level, the very target of R2P. It appears that the most significant factor in intra-state wars is not authoritarian regimes per se but authoritarian regimes that are under threat from excluded minorities.[32] The reality is

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[29] IRIN, Nairobi, 18 May 2009.

[30] "Non-consensual military action is the last resort, following efforts at diplomacy, sanctions, humanitarian assistance, naming and shaming, and the like. Even then, military engagement could occur only under the strictest of tests to ensure that this doesn't become an excuse for regime change under another name." David Mazorsky (2008) "Sudan's Multifaceted Crisis," presentation to the Canadian parliamentary Standing Committee on Foreign Affairs, 11 April 2008.

[31] This finding is corroborated by the 2.0 Version of the Correlates of War Project Trade Dataset, Version 4-2008 of the UCDP/PRIO Armed Conflict Dataset, the Polity IV Annual Time-Series 1800-2007 Dataset, the Center for Systemic Peace's Coup d'état events 1960-2006 Dataset and the World Development Indicators Online Database,

[32] Holger Meyer (2009) "Economic Liberalism and the Challenge of Domestic Armed Conflict," Midwest Political Science Association Annual National Conference, 3 April 2009. http://www.allacademic.com//meta/p_mla_apa_research_citation/3/6/3/2/6/pages363262/p363262-1.php.

that 95% of all armed conflict now occurs within countries promoted by political exclusion of ethnic groups competing for political power.[33]

If ethnic exclusion from power is the key source of intra-state conflict, what has the UN been able to do about conflicts in such places as Darfur, Georgia, Gaza/Israel, Iraq, Afghanistan, Zimbabwe and Myammar? Has the doctrine of R2P been of any assistance? Garth Evans, one of the authors of the Canadian R2P proposal and the President of the International Crisis Group, argues that R2P *can* prevent mass atrocities n such situations[34] but that "much remains to be done to solidify political support and to build institutional capacity." What Garth Evans has been selling for the past decade is a promise. Accept the principle of R2P, build the effective capacity and "never again!" can at last become a reality. On 5 September 2008, at the Working Group on Peace Operations and the Protection of Civilians, ICRC and IIHL Conference on International Humanitarian Law, Human Rights and Peace Operations in San Remo he reiterated his call for operationalising the principle.[35]

> It is a central characteristic of the responsibility to protect norm, properly understood, that it should only involve the use of coercive military force as a last resort: when no other options are available, this is the right thing to do morally and practically, and it is lawful under the UN Charter. If such force from outside has to be used, as the only way to protect people from genocide and mass atrocity crimes, then it is far better for this to happen with the consent of the government in question. But if that consent is not forthcoming, perhaps because the government itself is part of the problem, then—in extreme cases—outside forces will have to take action without it.

However, the UN has not been successful in "peacekeeping plus" or "coercive protection missions" in Darfur, not because of the inexperience, lack of preparation or reluctance of military commanders, as Evans contends[36], but because it would mean the UN assuming the task of defeating a repressive regime that refuses fundamentally to engage in power sharing with ethnic minorities. And countries like China, though China is far from alone, see such actions as totally undermining principles of national self-determination by foreign do-gooders. The UN is not the only body deficient in

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[33] In contrast to Ted Gurr's claim in a 2000 May/June article in *Foreign Affairs* entitled "Ethnic Warfare on the Wane," such wars have risen in the twenty-first century. They are *not* the result of ethnic diversity per se but the effort of a regime's efforts to exclude minorities from power. The issue the UN should be tackling is not individual human rights but power sharing among different ethnic groups. Cf. Andreas Winner, Lars-Erik Cedarman and Brian Min (2009) "Ethnic Politics and Armed Conflict: A Configurational Analysis," *American Sociological Review*, April 74:316-337. This study corroborates the conclusions of Andreas Wimmer. (2002) *Nationalist Exclusion and Ethnic Conflict: Shadows of Modernity*, Cambridge: Cambridge University Press.

[34] Gareth Evans (2008) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Washington: Brookings Institution Press.
http://www.crisisgroup.org/home/index.cfm?id=5667&l=1&m=1

[35] There are a host of others who join the same chorus. Cf. Edward C. Luck's 2008 report for the Stanley Foundation, "Actualizing the Responsibility to Protect" who gets around the problem by shifting the emphasis from military operations without the consent of the regime in power to the relatively uncontentious issue of capacity building. However, as Gareth Evans has repeatedly said as one of the co-authors of the doctrine, "it is not about human security generally, or protecting people from the impact of natural disasters, or the ravages of HIV-AIDS or anything of that kind. Rather, "R2P" is about protecting vulnerable populations from "genocide, war crimes, ethnic cleansing and crimes against humanity." "Facing Up to Our Responsibilities," *The Guardian*, 12 May 2008.

[36] Cf. Victoria K. Holt and Tobias C. Berkman (2006) *The Impossible Mandate: Military Preparedness, the Responsibility to Protect and Modern Peace Operations,* Washington, D.C.: Henry L. Stimson Center.

such activities. The US led coalition in Iraq allowed ethnic and religious cleansing to proceed apace, driving out Christian Assyrians and Palestinians and then separating Shiites, Sunnis and Kurds, after which peace became more or less established in most areas of Iraq.[37] An observing and monitoring role cannot stop ethnic cleansing, though ethnic cleansing may be preferable to genocide. It is possible that the presence of foreign forces may inhibit mass atrocities, but murder and mayhem may proceed apace just short of genocide to drive out minorities. As long as the military forces have their hands tied behind their back and are not mandated to overthrow the regime – and it is fully understandable why they are not - then any human protection operation to "enforce compliance with human rights and the rule of law as quickly and as comprehensively as possible" is inherently flawed. It is the responsibility of the regime upon which the forces must rely to uphold human rights protection. The problem is not a military training, mandate and deployment problem at root, but a failure to cross the Rubicon and make regime change an integral part of the mandate if the regime fails to comply with fundamental human rights norms and share power with minorities. When it comes to this issue, most states equivocate and undermine the norm - as Gareth Evans himself admits.

Further, although the proponents of R2P celebrated the unanimous adoption of the principle by the UN in 2005, they conveniently omit to mention the qualifications placed in principle and in practice – making military actions dependent on the consent of the government, thereby fundamentally eviscerating the concept. The fact is, changing the language from the right to intervene to the responsibility of all states to intervene and changing intervention to "protection" does not help. It remains newspeak unless the central issue of governance is tackled. Post WWII governments and international bodies have achieved great success is promoting high sounding principles. The advocates of R2P even cite these cases as examples of exercises in international responsibility when, in reality, these are just cases of employing old fashioned diplomacy in places such as post-election Kenya in 2008 or earlier against a financially crippled Indonesia in 1999 to wrangle a referendum for East Timor.[38] The fact is, the challenge is not conceptual[39]; it is a matter of practice and the practices of states are not congruent with the concept of R2P so the principle is either transformed, amended or simply ignored.

PART III   R2P and the Conception of Responsibility

[37] Howard Adelman (2008) "The Refugee and IDP Problem in Iraq," in Howard Adelman, ed. 2008, *Protracted Displacement in Asia: No Place to Call Home,* London: Ashgate, 306-348.

[38] Gareth Evans, "In 1999 for example, Indonesia, a large and important regional power, with over 230 million people, the largest Islamic population in the world, and armed forces 300,000 strong, did in fact succumb to strong collective international pressure to allow – much against its instincts and initial will – the Australian-led intervention to protect the people of Timor-Leste in September 1999. The pressure in question was essentially diplomatic, applied here very directly and personally by President Clinton and other presidents and prime ministers in the margins of the Asia Pacific Economic Cooperation forum (APEC) heads of government meeting which happened, very fortuitously, to be meeting in Auckland just at the time the situation on the ground was exploding." "The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?" The example merely proves the superfluity of R2P.

[39] "The first challenge is essentially **conceptual**, to ensure that the scope and limits of the responsibility to protect are fully and completely understood in a way that is clearly not the case now." Gareth Evans, speech to the 10th Asia Pacific Programme for Senior Military Officers at the S. Rajaratnam School of International Studies in Singapore on 5 August 2008. ("The Responsibility to Protect: Meeting the Challenges".

The R2P doctrine has been institutionalized in academe with the creation of the Global Centre for the Responsibility to Protect at the Ralph Bunche Institute at the City University of New York under the leadership of Andy Knight, a Canadian, and the Asia-Pacific Centre for the Responsibility to Protect at the University of Queensland, Australia, under the leadership of Alex Bellamy.[40] R2P "represents a universal political commitment to protect those rights and turns attention to what needs to be done in order to protect civilians at risk."[41] Insofar as states, by definition in contractarian assumptions of the state - even in Hobbes, have a responsibility to safeguard their citizens, that aspect of R2P is virtually universal. So is the obligation to provide access for humanitarian relief if possible. What is not accepted universally in the right to intervene by force if the UN deems a state is failing to carry out its responsibilities. No one suggested such a course for Sri Lanka even though there were calls for a ceasefire which the government of Sri Lanka believed would only lead to more deaths in the long run. R2P as a novel doctrine of justifying non-consensual military intervention was irrelevant to Sri Lanka in spite of James Traub's insistence in the *Washington Post*, that R2p be applied to Sri Lanka and that the UNSC intervene.[42]

Gareth Evans claims progress in the use of R2P language that has indeed gained currency and recognition but which he also claims has established a new international norm that is perhaps on its way to becoming a new rule of customary international law.[43] Secretary-General Ban Ki Moon has enthusiastically embraced the language but it is not at all clear that he has adopted the concept. Applying the language to Kenya is no indication that anyone was contemplating intervention if the pressure to form a unity government did not work. Further, this claim directly contradicted that of Donald Steinberg, the deputy President of the ICG. "Given the backsliding and buyer's remorse in the international community regarding the R2P norm, it is perhaps fortunate that no one labeled this as an R2P situation." However, Steinberg went on to insist that, "the motivation, the early response, and the outcome are all straight from the R2P playbook."[44] He could just as easily and much more accurately have said that the concerted diplomatic pressure on the parties in Kenya was an excellent example of old fashioned international diplomatic effort and an exercise in traditional assumptions of responsibility by states and international agencies that long preceded R2P.

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[40] Alex Bellamy has been a prolific publicist of the R2P concept. Cf. Alex Bellamy (2005) "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics and International Affairs* 1 October, 19:2, 31-53; in 2008, Alex J. Bellamy stressed the prevention rather than reaction aspect of the doctrine - "Conflict Prevention and the Responsibility to Protect," *Global Governance*, April-June. Finally, see Alex Bellamy (2009) *Responsibility to Protect: The Global Effort to End Mass Atrocities*, Oxford: Blackwell.Publishing. Alex Bellamy and Sara Davies have started a new journal this year: *Global Responsibility to Protect* .

[41] Alex Bellamy "The Conflict in Sri Lanka and the Responsibility to Protect," 1 May 2009, http://www.e-ir.info/?p=1053.

[42] James Traub, "At Risk in Sri Lanka's War," **Washington Post,** 22 April 2002.

[43] Gareth Evans (2008) "The Responsibility to Protect: Ending Mass Atrocity Crimes," address to the Global Philanthropy Forum, San Francisco, 11 April 2008. For a more grounded, more subtle and more detailed analysis see his lessons learned address to the Issam Fares Institute for Public Policy and International Affairs, American University of Beirut, 10 November 2008: "Preventing and Resolving Deadly Confict: What Have We Learned?"

[44] Donald Steinberg (2008) "Responsibility to Protect in the Real World: From Rwanda to Darfur to Kenya," address to the Cardoza law School, Yeshiva University, New York, 10 March 2008.

The problem is *not* educating politicians to understand what R2P means, or building the capacity to operationalize R2P, or to muster the political will to back both processes and implement the concept. Rather, there is a fundamental misunderstanding of the notion of responsibility. Responsibility means being accountable for a specific task to a specific institution or group of people. A body is not accountable if it takes on itself the conception that it is the embodiment of the conscience of all humanity, especially when the history of its performance indicate no such characteristic. Further, when the states which elect part of that body and which make up the permanent membership of that body are neither ready to delegate to the SC that role nor hold the SC accountable for fulfilling that role, and indeed in all diplomatic statements deny the SC that role in the first place as much as they endorsed the principle of R2P, then we have an exemplary case of irresponsibility, uttering words without meaning them and without any intention of translating such principles into daily practices, the only real signs of assuming a responsibility.

Swearing over and over again to tell the truth or forswear alcohol or stop using drugs without any concomitant action is generally recognized as clear cases of irresponsibility. However, when moral preachers adopt that role, they are listened to and even revered, applauded and even awarded honorary doctorates, but they are generally not followed. Thank goodness. For the installation of a twenty-first century papal moral regime under the auspices of the United Nations Security Council would be even more ominous than the fragile system we have in place. For the SC, whatever its beneficial uses, has not demonstrated that it is a body that can gather the information and undertake an objective analysis, that can deliberate in a reasoned way to take all relevant norms and factors into account, that can make effective decisions and that can implement those decisions expeditiously. The UN could not even do this when the Myanmar regime was denying humanitarian relief to its own people to drop supplies by air against the will of the military junta in power.[45] Even the UK argued that such a unilateral approach would be "incendiary" and international NGOs questioned its effectiveness without trained volunteers on the ground capable of utilizing the dropped material. Gareth Evans dismissed the effort as a distraction from the central task of R2P, preventing mass atrocities. Such protestant pluralism will save us from a new form of a moral papacy.

The problems with R2P are legion. When intervention with force to stop ethnic cleansing was effective, as in Kosovo, it was not carried out by the UN. The UN has not proven it has the expertise to even undertake a proper analysis given that it is caught up in an older language of inequality and individual human rights issues rather than addressing the main issue in intra-state conflicts – communal rights and the marginalization of minorities. In putting forth its doctrine, the authors of R2P subscribe to an invented Whig version of history as progress towards its global ideal where traditional concepts of sovereignty are simplified, caricatured and distorted to offer its version as a substitute. While the rhetoric is profuse, and often contradictory – between pushing the human security agenda versus the military intervention Holy Grail – actual practice has been non-existent and the UN has still failed to develop the expertise let alone capacity that would give it a truly legitimate role. In the meanwhile, the proponents of R2P, in the guise of good intentions, push a doctrine of a new moral papacy that hides the greatest danger to a pluralist international polity.

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[45] See Gareth Evans, "Facing up to our Responsibilities," *The Guardian*, 12 May 2008.