
Identifying the Responsibility to Protect

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The Responsibility to Protect (R2P) is a concept that has emerged recently in international law in response to humanitarian crises the world over. First proposed by a commission convened by Canada in 2001,¹ it was then approved in the United Nations' 2005 World Summit Outcome,² and through UN Security Council³ and General Assembly resolutions.⁴ R2P confers a responsibility on the international community to prevent war crimes, crimes against humanity, ethnic cleansing, and genocide within a state's borders. It is fulfilled by first warning a state that displays unwillingness to prevent such crimes or an apathy in dealing with them, and can result in a military intervention if deemed necessary.

This article argues that R2P is a reflection of the purported "reason" of the international community. "Reason" here signifies the establishment and verification of facts and practices based on new or existing information.⁵ It is about moving from one vocabulary to another, reflecting those facts and practices.⁶

The possibility of legal obligations being established within the context of R2P raises significant issues. The extent to which R2P is conceptualized as a binding commitment will determine its place in international law, but itself depends on the interpretation of the foundations of any such legal obligation.

There are three key issues in identifying R2P and its exact place in

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international law. First, anchoring R2P in international law is a challenge with regard to both definition and enforcement. Second, it might be difficult to tell the difference between R2P and humanitarian intervention. Third, the feasibility of R2P being envisaged as a legal obligation is questionable. The second and third issues are, in fact, direct causes of the first. Accordingly, the article will first deal with the distinction between R2P and humanitarian intervention. Then, the question of responsibility,⁷ right and obligation will be explored. It will be followed by a discussion of the link between R2P and legal obligation. Finally, the article will conclude that R2P could be identified as the purported “reason” of the international community.

COMMONALITIES OF R2P AND HUMANITARIAN INTERVENTION

Over the last decade, a great amount of effort has gone toward creating the R2P concept. However, apart from its emphasis on prevention and rebuilding, R2P has yet to differentiate itself from humanitarian intervention. While there is no one standard or legal definition of humanitarian interven-

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tion, it can be said—at a minimum—to involve the use of military force against a state to end human rights violations inside the state’s borders. This concept of humanitarian intervention and the newly launched R2P display a number of commonalities, which augment the notion that there is little to distinguish between the two.

First, the right to humanitarian intervention and R2P are, terminologically, inextricably interwoven: R2P has a *humanitarian* objective and entails *intervention*. Conversely, the right to humanitarian intervention cannot be exercised without *responsibility* and the right to humanitarian intervention aims at *protection* of persecuted civilians within the borders of the target state.

Second, both concepts are associated with military intrusion in the affairs of sovereign states. Though R2P aims primarily at the prevention of mass atrocities⁸ and regards military intervention as a final resort in exceptional situations, the substance of the R2P doctrine is essentially the same as that of humanitarian intervention—military intercession in (and as a result of) an internal crisis in a sovereign state.

Third, the *right* of the intervener to humanitarian intervention, and its *responsibility* to protect, have been key issues throughout history.⁹ In the nineteenth century, for instance, Napoleon Bonaparte invaded Egypt, which was then under the sovereignty of the Mamelukes, and the suzerainty of the Ottomans. France claimed to be protecting the indigenous population of Egypt against their overlords.¹⁰ Likewise, the Great Powers of Europe¹¹ argued that humanitarian interventions in the Greek (1827) and Syrian (1860-61)¹² provinces of the Ottoman Empire in the nineteenth century were justified and necessitated by responsibility and by right.¹³ These interventions were portrayed as “civilized” interventions in the Ottoman Empire¹⁴ and as acts of “good government.”

Perhaps the most important intervention categorized as “civilized” was the nineteenth century British effort to abolish the slave trade. This was done on the high seas via the boarding of ships belonging to slave trading countries. The other major states of the time eventually approved of British actions. In the process, Britain was tacitly empowered to enforce abolition regulations, regardless of the conflicting rights of Portuguese and Brazilian sovereignty.¹⁵ In fact, the driving force behind British anti-slave policy in the late nineteenth century stemmed from humanitarian public opinion¹⁶ and popular humanitarian politics.¹⁷

The concept of R2P that has emerged over the last decade has many parallels in more recent history. It emerged, in part, as a reaction to and as a result of popular humanitarian sentiments in the face of mass atrocities in Rwanda, Bosnia, and Kosovo in the 1990s. The path from *right* to *responsibility* was a natural outcome of contemporary domestic and international public opinion, which demanded a stronger vocabulary that would induce the international community to undertake humanitarian intervention. Indeed, the “reason” of the international community consists in changing its vocabulary, to transition between

old and new self-understandings. A mere change of vocabulary, however, does not necessarily imply that R2P is a stronger concept than humanitarian intervention.

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The fourth common denominator of R2P and humanitarian intervention is that they both tackle “sovereignty as hypocrisy” vis-à-vis the protection of minorities.¹⁸ Sovereignty as institutionalized indifference—and the conditions under which that indifference is to be set aside for the sake of minorities in target states—constitute the

main themes of both R2P and humanitarian intervention. From the 1648 Treaty of Westphalia onwards, the relationship between sovereignty and the protection and status of minorities within national borders has constituted a primary concern of international law.

This relationship between sovereignty and the protection of minorities has experienced three main fluctuations in modern times: First, following World War I with the establishment of the League of Nations; second, following World War II with the formation of the United Nations; and third, the recent creation of R2P.

When a strong minority rights regime was established following the First World War,¹⁹ the Eastern European States were obligated, by international treaties and the League of Nations system, to uphold the rights of their minorities. States were granted recognition and legitimacy on the condition that these rights were respected and protected. A certain concordance between international law and protection of minorities existed during this period.

The second phase commenced at the end of the Second World War, when sovereignty once again emerged as sacrosanct and was visibly anchored in the UN Charter.²⁰ The balance between minority rights and national sovereignty was tilted in favor of the latter. Individual human rights took center stage over collective rights as embodied by minority legislation. The uprooting of minorities in Eastern Europe (Germans, Poles, Ukrainians, Hungarians, Slovaks, and Albanians) was thus tacitly approved.²¹ The 1948 Universal Declaration of Human Rights did not mention minority rights at all, and the 1966 International Covenant on Civil and Political Rights

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merely underlined the individualistic aspect of minority rights.²²

On the one hand, partitions, exemplified vividly by the decolonization movements in Africa during the 1960s, were preferred to the protection of collective minority rights within the borders of sovereign states. On the other hand, the newly independent colonies were keen to protect their freshly acquired sovereignty, claiming

that their treatment of minorities was now a matter of national concern. This matter was alluded to in the Charter of the Organization of African Unity.²³ In short, nation states were given free rein in their internal affairs.

However, the mass atrocities that jolted the conscience of the international community in Bosnia, Rwanda, Kosovo, and Darfur prompted a

reassessment of the concepts of national sovereignty and minority rights. These massacres made it impossible to maintain neutrality and beckoned the return of international law as a mechanism for minority protection. R2P should thus be seen as an effort by international law to once again frame the sovereignty-minority relationship and assess its ramifications on the world stage. In that respect, R2P represents a third fluctuation in the international discourse. It does not represent a new concept *per se*, but is a modern version of an old story—that is, humanitarian intervention with a new label, one that favors minorities and redefines the limits of sovereignty.

The fifth commonality between humanitarian intervention and R2P is that, under both principles, the national interest of intervening states is an important factor.²⁴ Both the past and the present have demonstrated that humanitarian and strategic concerns are not merely coincidental—they are often indistinguishable.²⁵ As former U.S.

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President Bill Clinton said: “Where

our values and our interests are at stake, and where we can make a difference, we must be prepared to do so.”²⁶ The same argument was made by U.S. President Barack Obama in support of the NATO intervention in Libya in 2011.²⁷ President Obama later made a similar argument regarding the expected U.S. intervention in Syria, by invoking the link between American security interests and the use of chemical and biological weapons by a state against its own people.²⁸

It is essential to point out that national interest cannot be reduced to incidents within national borders, but should be understood in broader terms. In the case of the United States, foreign policy interests include stability in areas that are considered remote. Some regional security organizations, such as NATO (e.g. in Kosovo, 1999) and the Economic Community of West African States (ECOWAS) (e.g. in Liberia, 2003) may be active in ending human rights violations inside state borders. For “lesser” powers, these interests are based on regional stability and, as a corollary, the nullification of proximate and regional threats. Neighbors affected by regional disturbances, therefore, consider it in their interests to intervene.

Historical distrust, enmity, and bitterness can also play an important role.²⁹ In addition to ethnic kinship between the intervening state and the minority in the offending state, historical tensions and rivalries

are often factors.³⁰ For example, the tensions and security complexities between India and Pakistan, and the ethnic kinship between Bengalis in Eastern India and what was formerly East Pakistan, can be said to have contributed to the intervention by Indian forces during the Bangladeshi War of Independence in 1971. Thus, a regional dimension often enters the equation, whereby the issue of minorities in the target state may create an opportunity for the intervener state to mobilize.

In this regard, R2P does not make any claims to innovation. The NATO intervention in Libya in 2011, which explicitly referred to R2P via UN Security Council (UNSC) Resolution 1973, was supported by both

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global and regional powers and organizations (UN, European Union, Arab League) that considered intervention in Libya to be in their interests. There was a rapid diplomatic and military reaction by the international community, including an early de-recognition of the effective Libyan government by several states. There was also a significant regional and international dimension, including critical UN engagement and a clear UNSC Resolution (UNSC Resolution 1973), which favored military protection of the civilian population in the name of R2P. Afterwards, local forces were given maneuvering space to establish their own political structure. These sensible changes on the ground in Libya may represent a

further development of humanitarian intervention for the sake of a new and operational rule of R2P. However, their repercussions on both the theoretical and legal fronts are to be tested in future cases with a view to identifying R2P in international law.

Sixth, both R2P and the concept of humanitarian intervention aim at transformation and reconstruction of the target state. This was most clearly evident in the aftermath of the Second World War when the victorious powers were involved in the reconstruction of Germany and Japan. The political structures of the two nations were transformed and they were admitted into the new UN politico-legal system.³¹ Though World War II was an all-out war among nations, the Allied Powers, from the war's

inception, regarded themselves as morally *responsible to protect*. In the UN Declaration of January 1, 1942, the signatory governments declared that victory against the Axis Powers was necessary “to defend life, liberty, independence and religious freedom, and to preserve human rights and justice *in their own lands* as well as *in other lands*.”³² The withdrawal of the Allied Powers from occupied Germany and Japan took place only after they were certain that these principles had been sufficiently adopted and that any potential threat from these states had been nullified. Such certainty emerges when the target country has sufficiently transformed in the eyes of the intervening forces.

The above analysis suggests that both R2P and humanitarian intervention aim, in the short term, at preventing mass atrocities from being committed (prevention), and, in the long term, for the transformation of the target state so that it is no longer a threat (rebuilding). The Great Powers of Europe in the 1860s demanded and succeeded in achieving reform in Syria-Lebanon.³³ In the short term, they intervened in Lebanon militarily to bring an end to atrocities and bloodshed between two religious communities—the Druze and the Maronites. In the long term, they wished to transform the regime and administration in Lebanon. The 1861 reform (*Règlement organique*) proclaimed by the Ottoman authorities satisfied their demands and a multilateral commission on Syria-Lebanon was formed by the western powers and the Ottomans to oversee the reform process.³⁴ This can be considered a typical case of humanitarian intervention. The same is applicable to Libya in 2011 as an R2P case. The short-term goal was an end to the conflict in Libya and, to this end, the rebels were assisted financially and militarily by both western and Arab governments. An international coalition of representatives from various states—the political contact group³⁵—then pledged support to the new interim Libyan administration and helped establish the new regime with the aim of long term transformation.

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Seventh, the reaction of the international community to the intervention in sovereign states to protect persecuted people is either that of tacit approval or of rejection—although not necessarily condemnation—of

the intervention. The latter entails the perception of a gross violation of international law and may require considerably more effort on the part of the intervener state to justify its case to the international community. The concept of R2P does not alter this classical dichotomy in the reaction of the international community. For instance, Vietnam's intervention in Cambodia (1978-79) elicited rejection and condemnation, whereas Tanzanian intervention in Uganda (1979) received tacit approval from the international community. The 1999 Kosovo intervention was supported by

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..... NATO countries but was opposed by Russia, China, and India. Intervention in Libya—as an R2P case—saw general support from the Western and Arab worlds, although Russia and China abstained. This is important to underline because the reconstruction of R2P as a customary international norm runs into the same difficulties as humanitarian intervention. The inconsistent practice leads to the question of whether R2P can be conceptualized as a legal obligation.

RESPONSIBILITY, RIGHT OR OBLIGATION TO PROTECT?

R2P has not been represented in a primary formal source of international law, as indicated in Article 38 of the Statute of the International Court of Justice. As long as the obligation itself can be identified in one of the so-called formal sources—treaty, custom, or in general principles of law—it seems to matter little what the underlying basis of the obligation may be.³⁶ A new concept becomes a legal right or obligation only if it is certified as constituting an integral part of the law through the formal sources of that legal system. R2P exists as neither, apart from the teachings of publicists, which constitute a subsidiary and non-binding source of law.

If an issue does not fall into the category of rights or obligations, it cannot be considered a matter for international law. Arguably, R2P implies neither right nor obligation. Indeed, the 2005 World Summit Outcome makes it clear that the case-by-case approach is to be adopted for genocide, crimes against humanity, war crimes, and ethnic cleansing. This approach presumes flexibility and implies various responses to crises. If R2P fails, there is no accountability and the international community cannot be held liable. Thus, R2P represents a general framework or goal, rather than a defined reaction to humanitarian crises.

Some may argue that there are other legal categories into which R2P could be placed; most importantly, it can come under the umbrella of soft law. Insistence on the requirement of either a right or an obligation for the identification of R2P in international law may minimize its role and value. Soft law is non-binding and represents the wish of the international community with a view to further development of international law. It is the “future law in progress,” and may also be called “quasi-law” or “emerging law.” Soft law consists of guidelines, draft proposals, concept notes, etc. It has aspirations to legally binding power, whether it be in terms of rights or obligations, but one cannot definitely pre-determine the exact point at which this “quasi-law” or “emerging law” becomes legal right or obligation.

Legally, R2P does not go beyond the limits imposed on humanitarian intervention. R2P has not facilitated outside intervention in sovereign states and is still based on mitigating circumstances. It does not indicate any difference in its reliance on “exceptional” and “unique” circumstances. Outside intervention—apart from self-defense and Security Council resolutions on collective security as posited in Chapter VII—is still the exception and requires an extraordinary justification. Thus, R2P is an initiative that aims to facilitate this justification. In doing so, it possesses several characteristics of soft law. First, R2P does not entail legal obligation. Second, it is imprecise in definition, nature, and scope. Third, there is no mechanism for delegating authority to other bodies for the purpose of legal interpretation. Lastly, there is no clear framework for accomplishing the goals of R2P.

There is a danger that focusing on the terminology of rights and obligations may lead us astray. Instead, what should count in terms of identifying R2P are the ultimate objectives and conditions. There may be no clear distinction between the *responsibility* to protect, the *right* to protect, and the *obligation* to protect when it comes to ending human rights violations within state borders. The enforceability of the protection of persecuted populations does not depend on these classifications. Political, military, and other calculations are equally valid and applicable. Thus, the positivist view that only the category of rights and obligations may identify R2P as an element of international law is not plausible. International law is to be understood, rather, as shades of grey, where concepts and responsibilities outside the narrow class of rights and obligations carry weight.

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The status of obligation in international law should not be exagger-

ated. The enforceability and practicalities of a concept should count as much as the label it assumes, as the problem of enforceability is inherent in all three classifications. The problem of positivism within the context of R2P is that the latter requires ambiguity—not definite enforcement. A case-by-case approach to R2P—as adopted by the 2005 World Summit Outcome—implies flexibility and ambiguity vis-à-vis crises. That is, the relationship between R2P and sovereignty is neither competitive nor oppositional. R2P is a tactic rather than an enforceable rule.

Nevertheless, R2P cannot, of its own accord, constitute a functioning mechanism without interacting with the pre-existing rights and obligations regarding sovereignty and the use of force as indicated in the UN Charter and the various other instruments of international law.³⁷ R2P can be legally meaningful only to the extent that it lends itself to the language of rights and obligations in international law.

R2P: LEGAL OBLIGATION?

The question then arises: what is the extent to which R2P establishes links with legal obligations? This depends on the perception and the interpretation of the foundations of legal obligation. Four foundations of legal obligation may be posited.

The first foundation is the sanction-based theory of legal obligation. Under this theory, only punitive and remedial rules of conduct constitute binding obligations. However, R2P lacks any sanction whatsoever and does not take advantage of pre-existing sanctions in international law. As the 2005 World Summit Outcome makes clear, the UNSC acts with complete discretion in its implementation of R2P and is not required to justify its decisions. Importantly, there is no organ or mechanism above the Security Council, which could sanction its stance on R2P. Likewise, neither states nor international organizations could be sanctioned for failing to implement R2P.

Second, obligation may merely imply social pressure. These are sanctions in the form of public condemnation and are linked to a sense of righteousness and the will of the international community. The international community is deemed to have a common purpose and accordingly advances the “rules of the game.” The question is then whether R2P has created such social pressure. This was the case with the intervention in Libya in 2011, where multiple public opinions were mobilized. Indeed, humanitarian publics in various states can unite and form a common front for the sake of intervention. They may constitute transnational pressure groups—a process facilitated by the communicative space of the global-

ized media. Even in cases where the necessary intervention does not take place, *post-hoc* interpretations of the failure could form pressure for future crises. A retroactive humanitarianism of sorts may emerge that would establish a narrative of R2P, a role ideally suited to international lawyers and researchers.

For instance, the long, slow process of bringing the Khmer Rouge leadership to account for their actions in Cambodia is a story of the dogged persistence on the part of a handful of researchers and jurists.³⁸ Indeed, experts produce the knowledge, and a language as a corollary, advancing the need for intervention. As there is no central legislation on the world stage, it falls upon experts to help establish the social pressure. Every government may be challenged by the knowledge and language created by experts, which captures the imagination and the conceptual workings of public opinion, both international and domestic.

In this view, R2P creates the conviction that governments should adhere to the principle of the protection of populations. At first glance, this may seem a product of free will. A closer look reveals how fundamental values like R2P blur the line between freedom of choice and enforced freedom. Resistance to R2P can hardly be said to be easy, as envisaged by its quasi-universal acceptance by the 2005 World Summit Outcome. No country can openly repudiate the values enshrined in R2P.

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Third, legal obligations may be based on state practice—a truism that hints at customary international law. In other words, if the international community were to follow R2P, it becomes a *de facto* legal obligation. The congruence between the practice and the norm of R2P and its consistency in implementation could pave the way for the consolidation of R2P into a legal obligation. The establishment and implementation of international rights and obligations requires coordinative actions among states, which culminate in customs and treaties. When states reciprocate indications given by other states, customs and treaties emerge. However, fundamental moral principles do not require coordinated action, nor can they be conceptualized in terms of reciprocity between states. Likewise, R2P does not invoke reciprocal relations among states—it represents the fundamental value of protecting human lives. Thus, the discrepancy between R2P on paper and its actual practice should not necessarily undermine its value.

Fourth, a legal obligation may mean a bare willingness to benefit from a system of mutual restraint. It implicates shared expectations of the international community, enjoining “fairness” in the international system. Is R2P beneficial for the international community, and does it pave the way for mutual restraint between nations? In this regard, R2P can be asso-

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ciated with two types of sovereignty: the territorial sovereignty of weak states and the decision-making sovereignty of powerful states. On the one hand, in the face of mass atrocities, powerful states may be obliged to intervene in the internal affairs of a sovereign state due to the pressure of the global public opinion and the international media triggered by the discourse of R2P.

Powerful states may have to confront the allegation that R2P has turned into a general principle of law or an emerging customary rule as a supplement to the obligation of all states to prevent and punish crimes of genocide as provided by the 1948 Genocide Convention.³⁹ On the other hand, weak states that do not protect their populations may be subject to intervention. R2P could be seen as a mutual restraint mechanism between these two poles of sovereignty. R2P may imply a restriction of the margin for maneuver for both types of states. Both may be restrained.

All in all, “social pressure” and a system of “mutual restraint” seem to be the two most plausible bases, though tenuous, for linking R2P to international law. Still, there is considerable difficulty in linking R2P with a clear-cut obligation. In this view, a congruence of sorts exists between R2P and sovereignty. The concept of sovereignty can be stretched, narrowed, restricted, and manipulated according to time and place. Likewise, R2P is also amenable to such flexibility, being a political and legal concept too.

Both sovereignty and R2P are *ad hoc* “doctrines,” which presuppose the existence of constant fluctuations and the concomitant need for flexibility in international law. To handle such fluctuations, R2P purports to expand the rule of the international executive via an increase in the authority of the UN when confronted with atrocities within a state’s borders. R2P is this recognition of the supplementary authority of the UN. Just as sovereignty rationalizes the allocation of authority among nations and is seen as the optimum way to secure international peace and security, R2P purports to rationalize the practice of the UN executive rules that have developed

over the past five decades with regard to sovereignty.⁴⁰ Formal, juridical, and positive UN law is intertwined and works in tandem with informal, ideal, and *ad hoc* R2P principles.

If R2P is neither a right nor an obligation, however, it may be open to abusive interpretations. The discourse of responsibility and the invocation of various terminologies such as “concept” and “doctrine” do not necessarily bring about the validity of intervention in sovereign states. The danger of recklessness in the application of R2P looms. If R2P can be advanced in a manner not framed as a right or obligation, it may lose its intrinsic value for the protection of collectively punished civilian populations.

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The counter-argument is that real social problems cannot be conceptualized and solved in the legal terminology of rights and obligations or through technical legal expertise. Here, the concept of governmentality, coined by Michel Foucault, may be of use.⁴¹ Governmentality, in essence, provides for the indirect rule of the subjects of law, via the adoption of the *raison d'état*, without regular and visible intervention on the part of the state. Governmentality, in short, is a method of subtle self-government.

Governmentality is both a strategy of power and a style of government. It constitutes a regime of truth and a form of “reason” in that it may offer an avenue outside the right or obligation dichotomy in international law. Although Foucault applied governmentality to relationships in Western liberal states—particularly the interaction between the liberal state and the individual—the concept can be applied to wider, non-Western and global contexts as well. This is because governmentality is concerned primarily with subtle procedures that lead to the “reason of government”—a “reason” that may also be global in scale. The international system therefore may also have a “reason.”

In this approach, R2P would “governmentalize” the UN system and would represent a subtle play on UN law. R2P can be viewed as a political act on the part of the international community for the sake of the completeness of UN law, and may be perceived either as a rare act of justice or as a suspension of law. Either way, R2P aims to rectify the inadequacies of UN law. It is also a confirmation that nation-states are and are to remain open to influence, and to remain governable for the sake of global peace,

security, and stability. R2P is thus a message that the well-being of populations the world over is a concern and priority,⁴² in stark contradistinction to the discourse of legal rights and obligations.

Ultimately, R2P represents a subtle mechanism. It consists of observations, suggestions, and stimulations as epitomized by the 2001 International Commission on Intervention and State Sovereignty, the 2005 UN World Summit Outcome, and by General Assembly and Security Council resolutions. R2P, as a form of knowledge, aims to indirectly and subtly govern states. These subtle procedures of governmentality run counter to positivism.

R2P has the potential to embody the new global rationality of government. Instead of official acts by states, unofficial agents of the international system—whose activities cost governments and international institutions little or nothing—could more effectively advance the new rationality of R2P. This was indeed confirmed by the commission convened by Canada (the International Commission on Intervention and State Sovereignty), which coined the term R2P. The Commission report did not represent a source of international law; it merely foresaw and prepared the groundwork for the new rationality of intervention in sovereign states. Still, it should be noted here that the subsequent 2005 World Summit Outcome endorsing R2P may have represented the general will of the UN and of sovereign states—in short, the international community. However, it should also be stressed that this was not binding, but rather a continuation of informal techniques used by the UN—akin to UN General Assembly recommendations or UN Secretary-General initiatives.

CONCLUSION

Responsibility in international law, as an institution, remains in a state of gestation; there is no binding international convention determining parameters of responsibility in international law today, and R2P offers little clarification. Indeed, R2P has still not been embodied in any primary source of international law—treaty, custom or general principle of law.

R2P has still not distinguished itself from humanitarian intervention, and these two concepts remain terminologically interwoven. A tenuous link between R2P and legal obligation might be made—that is, R2P could be based on social pressure and a system of mutual restraint. Increasing pressure of the international community might lead to the emergence of customary international law of R2P. Yet, this tenuous link may not be sufficient to transform R2P into law, in which case R2P would remain merely

an informal and subtle mechanism of monitoring and intervention. Thus, R2P might always exist as an *ad hoc* doctrine, identified in the framework of governmentality. Ultimately, R2P purports to represent the “reason” of the international community in that it aims to realize a transition from an old practice of humanitarian intervention—an attempt to move from one vocabulary to another.^f

ENDNOTES

- 1 “The Responsibility to Protect,” *International Commission on Intervention and State Sovereignty*, December 2001, <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>> (accessed September 19, 2013).
- 2 UN General Assembly, 2005 World Summit Outcome, Resolution, 60/1, <<http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>> (accessed November 24, 2013). Paragraph 138: Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability. Paragraph 139: The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, 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 are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.
- 3 R2P has been referred to by the UNSC for the protection of civilians in intra-state armed conflicts—the UNSC resolution 1674 (2006) and the UNSC resolution 1706 (2006) concerning Darfur, the UNSC resolution 1814 (2008) on Somalia and the UNSC resolution 1973 (2011) on Libya. Additionally, the UNSC has implicitly or explicitly approved some unilateral humanitarian interventions after they took place—such as the Economic Community of West African States’ (ECOWAS) intervention in Liberia through resolution 788 (1990) and in Sierra Leone through resolution 1132 (1997).
- 4 On September 14, 2009, the General Assembly passed its first resolution on R2P and a General Assembly debate in July 2011 reasserted its support for R2P.
- 5 Nikolas Kompridis, “So We Need Something Else for Reason to Mean,” *International Journal of Philosophical Studies* 8(3) (2000): 273-74.

- 6 Nikolas Kompridis, "So We Need Something Else for Reason to Mean," *International Journal of Philosophical Studies* 8(3) (2000): 277.
- 7 Bear in mind that the definition of responsibility in international law (and thus its subsequent enforcement) is already a highly loaded concept. The Draft Articles on the Responsibility of States for Internationally Wrongful Acts, though commended by the United Nations General Assembly, has yet to be converted into a binding treaty. States generally balk at a definite mechanism that pressures them to admit to their wrongs, and allocation of responsibility in international law is seen as a veiled threat, violation, or challenge to the sacrosanct nature of sovereignty. While the democratic state is restricted domestically by clear laws and a strong regime of responsibility and accountability vis-à-vis its citizens, no such responsibility regime exists on the international plane to mandate or enforce intervention.
- 8 Payam Akhavan, "Preventing Genocide: Measuring Success by What Does Not Happen," *Criminal Law Forum* (2011): 6.
- 9 Ian Brownlie, "International Law and the Use of Force by the States, in Ian Brownlie, ed., *Principles of Public International Law* (Oxford: Oxford University Press, 2008), 742: "By the end of the nineteenth century the majority of publicists admitted that a right of humanitarian intervention (*l'intervention d'humanité*) existed. A state which had abused its sovereignty by brutal and excessively cruel treatment of those within its power, whether nationals or not, was regarded as having made itself liable to action by any state which was prepared to intervene. The action was thus in the nature of a police measure, and no change of sovereignty could result."
- 10 Napoleon argued that his intervention in the Middle East was based on humanitarian values. See Davide Rodogno, "The Principles of Humanity and the European Powers' Intervention in Ottoman Lebanon and Syria in 1860-1861" in Brendan Simms and D.J.B. Trim, eds., *Humanitarian Intervention: A History* (New York: Cambridge University Press, 2011), 179; İbrahim Kalın, *Islam ve Batı (Islam and the West)* (Istanbul: Isam publications 2007), 111, 112, 113.
- 11 The United Kingdom, France and Russia.
- 12 Thomas M. Franck and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *The American Journal of International Law* 67 (April 1973): 281; Engin Deniz Akarli, *The Long Peace, Ottoman Lebanon, 1861-1920* (Berkeley and Los Angeles: University of California Press, 1993): 31.
- 13 Mohammad Taghi Karoubi, "Unilateral Use of Armed Force and the Challenge of Humanitarian Intervention In International Law," *Asian Yearbook of International Law* 10 (2001-2002): 100-101.
- 14 Franck and Rodley, 275, 280: "The episode may, but need not, be seen as part of a general pattern of protecting Christian minorities against Mohammedan infidels; it may also be classified as a chapter in the epic of European love-hate toward the Turk, governed by the desire to bring the Ottoman Empire under European surveillance as a necessary concomitant of Europe's civilizing mission, its trade superiority, the imperatives of the balance of power, and the Western powers' fear of Russia...Unlike the principle of unilateral rights of intervention urged by India vis-à-vis Bangladesh, the Ottoman interventions were carefully orchestrated by the Concert of Europe."
- 15 Maeve Ryan, "The Price of Legitimacy In Humanitarian Intervention: Britain, the Right of Search, and the Abolition of the West African Slave Trade, 1807-1867" in Simms & Trim, eds., *Humanitarian Intervention: A History* (New York: Cambridge University Press, 2011), 253-254. The Vienna Declaration of 1815 held the slave trade to be wrong, but reserved the manner and time of remedy to individual state discretion.

- 16 William Mulligan, "British Anti-Slave Trade and Anti-Slavery Policy In East Africa, Arabia, and Turkey In the Late Nineteenth Century," in Simms & Trim, eds., *Humanitarian Intervention: A History* (New York: Cambridge University Press, 2011), 267.
- 17 *Ibid.*, 271.
- 18 Stephen D. Krasner, *Sovereignty – Organized hypocrisy* (Princeton: Princeton University Press, 1999).
- 19 The Polish treaty (1919), the first of the Minority Treaties, served as the template for the subsequent ones. It is often referred to as either the Little Treaty of Versailles or the Polish Minority Treaty; the Turkish as the Treaty of Lausanne(1923); the Hungarian as the Treaty of Trianon(1920), the Austrian, Czechoslovak and Yugoslavian treaties are referred to as Treaty of St Germain-en-Laye(1919); the Romanian treaty as the Treaty of Paris(1919), the Greek as the Treaty of Sevres(1920); the Bulgarian as the Treaty of Neuilly-sur-Seine(1919).
- 20 United Nations Charter, Article 2(7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."
- 21 Mark Mazower, *No Enchanted Palace – The End of Empire and the Ideological Origins of the United Nations* (Princeton, New Jersey: Princeton University Press, 2009), 133.
- 22 International Covenant on Civil and Political Rights, Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." (underlining added)
- 23 The Charter of the Organization of African Unity underlined the importance of sovereignty, but no mention of minority rights was made: Charter of the Organization of African Unity, Article II-1-(c): [The organization shall have the following purposes] To defend their [African States'] sovereignty, their territorial integrity and independence. Article III-The Member States, in pursuit of the purposes stated in Article II solemnly affirm and declare their adherence to the following principles: 1. The sovereign equality of all Member States, 2.Non-interference in the internal affairs of States, 3. Respect for sovereignty and territorial integrity of each State and for its inalienable right to independent existence.
- 24 Lea Brilmayer, "What's the Matter with Selective Intervention?," *Arizona Law Review* 955 (37): 5.
- 25 Matthew Jamison, "Humanitarian Intervention Since 1990 and Liberal Interventionism," in Simms & Trimm, eds., *Humanitarian Intervention: A History* (New York: Cambridge University Press, 2011), 379.
- 26 Bill Clinton, speech of June 10, 1999, cited in Jamison, 365.
- 27 Remarks by the President in Address to the Nation on Libya, The White House, Office of the Press Secretary for Immediate Release, 28 March 2011.
- 28 Annie Castellani, "President Obama's Bush Moment," *Foreign Policy in Focus*, August 31, 2013, <<http://fpif.org/president-obamas-bush-moment/>> (accessed September 4, 2013).
- 29 Dominique Moisi, *The Geopolitics of Emotion: How Cultures of Fear, Humiliation, and Hope Are Reshaping the World* (New York: Anchor Books, 2010). This book makes it clear that emotions are crucial in international relations.
- 30 Anne Noronha Dos Santos, *Military Intervention and Secession In South Asia-The Cases of Bangladesh, Sri Lanka, Kashmir, And Punjab* (Westport, Connecticut: Praeger Security International, 2007), 18.

- 31 United Nations Charter, Article 107: “Nothing in the present Charter shall invalidate or preclude action, in relations to any State which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.”
- 32 “A Decade of American Foreign Policy 1941-1949,” *Yale Law School: The Avalon Project*, <http://avalon.law.yale.edu/20th_century/decade03.asp> (accessed January 6, 2012).
- 33 Rodogno, 178-9.
- 34 Engin Deniz Akarlı, *The Long Peace, Ottoman Lebanon, 1861-1920*, (Berkeley and Los Angeles: University of California Press, 1993); Rodogno, 182.
- 35 Stephen Flanagan, “International Assistance to the New Libya”, CSIS, <<http://csis.org/publication/international-assistance-new-libya>> (accessed January 6, 2012); http://www.mfa.gov.tr/conclusions-of-the-libya-contact-group-meeting_-istanbul_-25-august-2011.en.mfa (accessed January 6, 2012).
- 36 Oscar Schachter, “Toward a Theory of International Obligation,” *Virginia Journal of International Law* 8 (2) (1968): 302.
- 37 Such as Friendly Relations Declaration: Resolution adopted by the General Assembly, 2625 (XXV), Declaration on principles of international law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations, 24 October 1970.
- 38 Sophie Quinn Judge, “Fraternal Aid, Self-Defence, or Self-Interest? Vietnam’s Intervention In Cambodia (1978–89)” in Simms & Trimm, eds., *Humanitarian Intervention: A History* (New York: Cambridge University Press, 2011), 358.
- 39 UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948.
- 40 Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 44.
- 41 Michel Foucault, *Security, Territory and Population: Lectures at the College de France, 1977-1978*, (New York: Picador, 2009), Chapters 4, 5.
- 42 Actually, the concern for the well-being of the world population started with the 1919 League of Nations experience. “Economic and social duties” of the League covered health, housing, nutrition, wages, taxation, emigration, and education.