

Politics and the Limits of Responsibility to Protect

By Dr Peter Lee

At the UN World Summit in 2005, world leaders agreed an outcome document that formalised the Responsibility to Protect (R2P) as 'an emerging international security and human rights norm'. When UN Secretary-General Kofi Annan announced that the world had taken 'collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity', it appeared that a new era in international cooperation had arrived. This article explores three stages of R2P development from the 1990s to the present: the events that led to the idea and implementation of so-called humanitarian intervention, including the words and actions of Prime Minister Tony Blair in relation to Kosovo in 1999; the disputes that shaped negotiations surrounding R2P, highlighting how political compromise is embodied in the Responsibility to Protect text as an inherent weakness; while the final section uses events in Syria between 2011 and 2014 to explore the conflicting political interests that render the legal dimension of R2P impotent despite the enthusiastic support of its advocates. The article concludes that unremitting mutual opposition between Russia and Western members of the Security Council over Syria – fuelled in turn by geo-strategic and national interests as well as humanitarian concern – means that agreement on R2P and military intervention on humanitarian grounds is as far away as it was at the time of Blair's naively optimistic words in April 1999. The limits of R2P have been reached.

Introduction

At the UN World Summit in 2005, world leaders agreed an outcome document that formalised the Responsibility to Protect (R2P) as ‘an emerging international security and human rights norm.’¹ When UN Secretary-General Kofi Annan announced that the world had taken ‘collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’, it appeared that a new era in international cooperation had arrived.²

Presented separately as either a response to military, or humanitarian, interventions in the 1990s, or a further development of the ideals behind those interventions, R2P provided a framework within which geopolitical, economic or ideological self-interest on the part of the major powers could be resolved.³ At least in principle. The enduring legal and ethical tension at the heart of R2P is between the rights of states and state sovereignty as set out in the UN Charter, and the rights of individuals as set out in the 1948 Universal Declaration of Human Rights. However, the tension is more apparent than real: the sovereign rights of states are protected in international law to a degree that human rights are not. For example, Article 2 of the UN Charter states: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’⁴ In contrast, the Universal Declaration of Human Rights is referred to in UN documentation as ‘complement[ing] the UN Charter with a road map to guarantee the rights of every individual everywhere.’⁵

The UN Summit Outcome Document attempts to extend or redefine the concept of sovereignty, setting out both the responsibilities of states to its citizens: ‘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.’⁶ It also identifies situations in which state sovereignty can be violated by the international community. Namely, where mass atrocities – genocide, war crimes, ethnic cleansing or crimes against humanity – against populations are occurring within a state whose government, assuming there is a stable government, is unable or unwilling to end the violence. However, as always with such documents it was the product of political negotiations which inevitably diluted the substance of the proposal to a lowest common denominator that can be accepted by all parties.⁷

Despite the scope and ambition of R2P and the desire of its proponents to see international law and the protection of populations enhanced by its adoption, significant challenges remain, most notably at the geopolitical level. The trajectory of this article will reflect three stages of R2P development up to the present. Section 1 will provide a broad context for the events that led to the idea and implementation of so-called humanitarian intervention, before going on to examine the words and actions of Prime Minister Tony Blair in relation to the 1999 Kosovo intervention as a precursor to the development of R2P. Section 2 will address the political disputes that shaped negotiations surrounding R2P, highlighting how political compromise

is embodied in the Responsibility to Protect text as an inherent weakness. Subsequently, the final section will use events in Syria between 2011 and 2014 to explore the conflicting political interests that render the legal dimension of R2P impotent despite the enthusiastic support of its advocates. Examples of those interests include the return of *realpolitik* and the pursuit of geopolitical interests by the great powers, as well as the unwillingness of electorates in Western liberal democratic states to mandate their leaders to deploy significant military force in the protection of others.

A New Responsibility – Humanitarian Intervention

The years following the collapse of the Iron Curtain and the end of the Cold War brought new challenges to the international community. Russia entered a period of relative introspection following the demise of the USSR, its status as a world power significantly eroded. The Chinese economic miracle was yet to take place as it too, following the massacre at Tiananmen Square, reflected on its future direction. The US entered a period of unchallenged prestige as the remaining genuine superpower in what Charles Krauthammer called 'the unipolar moment'.⁸ The 1991 Iraq War confirmed American military eminence as it came to terms, under the leadership of President George H.W. Bush, with its new place in the world. The following year President Bush was aware of growing tensions between Serbs and Kosovars and expressed a willingness to intervene should the Balkan war extend to Kosovo.⁹ The public maiming and killing of US Rangers in Mogadishu, Somalia in 1993 reinforced American public unwillingness to tolerate the deaths of their soldiers when key national interests were not at stake: 'peace operations in a permissive environment' were acceptable while peace enforcement or combat operations were not.¹⁰ In the UK, Prime Minister John Major oversaw a downsizing of the British defence establishment as part of the post-Cold War 'peace dividend'.¹¹

Then came Rwanda (1994) and Srebrenica (1995). Major atrocities – crimes against humanity – were perpetrated along ethnic lines despite the presence of small numbers of UN observers and peacekeepers. In October 1993 the UN Security Council established the United Nations Assistance Mission for Rwanda (UNAMIR) to help implement agreements made between the mainly Hutu government and the Tutsi Rwandese Patriotic Front.¹² When an aircraft carrying the Presidents of Rwanda and Burundi crashed in April 1994 it exacerbated existing tensions and precipitated a wave of ethnic-based killings that left between 500,000 and 850,000 people dead in little over three months.¹³ The small UNAMIR force of around 2,500 personnel came under attack, unable to broker a peace agreement and too militarily inadequate to enforce a ceasefire.¹⁴ Its numbers were rapidly reduced to 270 personnel, though this small force did manage to protect several thousand Rwandans who took refuge with them. Ultimately, despite ongoing negotiations at the UN and the adoption of Resolutions 912, 918 and 929 on 21 April, 17 May and 22 June 1994 respectively, the response of the international community had been too small, too slow and too ineffectual to prevent or even slow the genocide.

Echoes of this pattern of events reverberated the following year as the Balkan War reached its nadir. Between 10 and 20 July 1995 the Bosnian Serb Army killed approximately 8,000 Bosnian

Muslim men and boys in and around the town of Srebrenica.¹⁵ Mass killings in the East of Europe prompted recollections of events last seen in the Second World War. Complicating matters was the presence of a Dutch contingent of the UN Protection Force (UNPROFOR): too small a force, inadequately armed, and with insufficiently permissive rules of engagement to forcibly prevent the killings of the Bosnians. Further, General Mladic threatened that if air power was brought to bear against the Bosnian Serb Army 'he would retaliate by shelling the Dutchbat compound'.¹⁶ The official UN report refers to 'atrocities', 'mass executions', 'mass graves', 'horrors', and 'massacres'.¹⁷ Edward Herman argues that beyond the physical killings, 'Srebrenica has also been the locus of a restructuring of language, bringing terms like ethnic cleansing, genocide and humanitarian intervention to the fore in international discourse'.¹⁸ Herman's point is that terms like ethnic cleansing and genocide here are not mere descriptions of events, they include additional emotive and political layers of meaning that *constitute* events as having a particular degree of seriousness and humanitarian horror. These terms would go on to inform responsibility to protect thinking in the years to follow. However, if the use of such terms is a political as much as linguistic act, to ignore such terms or actions – as will be seen in the Syria case – is a similarly political act that supersedes legal claims. Note also that 'genocide' and 'ethnic cleansing' confer an absolute judgement on the heinousness of the actions involved that does not necessarily compare with historical precedents. Relatively speaking, it should be remembered that the 8,000 deaths at Srebrenica equates to one per cent of the total deaths that occurred in Rwanda, and just over one thousandth of the deaths in the Second World War death camps to which it would come to be compared: the politics of death meets the politics of the discourse of death.

Discussion of Security Council Resolution 1004 at the UN on 12 July 2005 explicitly identifies the political context within which international law operates (or does not operate). The Nigerian delegate stated, "today in Bosnia there is no peace to keep and no political will to impose one. Herein lies the dilemma of the continued involvement of the United Nations with the situation."¹⁹ The Russian delegation called for 'the effective functioning of UNPROFOR' but reminded the Council that the previous provision of a safe area at Srebrenica 'precludes the option of using force' by the UN personnel.²⁰ Setting a pattern that would be repeated in the decade and more to follow, the US and UK called for more stringent UN action while the Chinese government expressed concern about the use of military force by the UN under Chapter VII of the UN Charter, whereby 'the peacekeeping force could become a party to the conflict, losing legitimacy in the process'.²¹

By the time of the Kosovo war in 1999 the political and nascent legal aspects of military or humanitarian intervention had been articulated and rearticulated by opponents and proponents alike. However, the tensions in the UN Security Council and the incommensurability of the pro- and anti-interventionist positions remained. Continued threatened use of the veto by Russia and China blocked a UN Security Council Resolution on intervention in Kosovo: Russia motivated at least in part by historical links with Serbia, with China maintaining a strong non-interventionist stance. Negotiations between NATO and the government of Slobodan

Milosevic proved fruitless, with the latter opting to escalate his anti-Kosovar activities and fight rather than accede to the demands set out by US Secretary of State Madeleine Albright at Rambouillet, France in February and March 1999. Highlighting the contentious nature of those events and the entrenched political viewpoints, former American diplomat Henry Kissinger was unequivocally critical of how negotiations were conducted. He said, 'The Rambouillet text ... was a provocation, an excuse to start bombing. Rambouillet is not a document that an angelic Serb could have accepted. It was a terrible diplomatic document that should never have been presented in that form.'²² In contrast, Albright would later answer a question about starting military action without UN Security Council approval as follows:

Let me go back on something when you say, "Is it legal?" Frankly, again, to go back to Kosovo, kind of the system said that what we did there was not legal, but it was right. I have always believed that we are better off doing something multilaterally than unilaterally. But there are other ways to figure this out and get it out of the cul-de-sac of the (UN) Security Council.²³

Albright was echoing the arguments put forward by President Bill Clinton and Tony Blair at the time of the Kosovo intervention, which were based on moral concern in the absence of UN legal sanction. A month into the bombing campaign Blair gave a speech to the Economic Club in Chicago where he set out his justification for intervention in Kosovo:²⁴

While we meet here in Chicago this evening, unspeakable things are happening in Europe. Awful crimes that we never thought we would see again have reappeared - ethnic cleansing, systematic rape, mass murder ... No one in the West who has seen what is happening in Kosovo can doubt that NATO's military action is justified ... We cannot let the evil of ethnic cleansing stand. We must not rest until it is reversed. We have learned twice before in this century that appeasement does not work. If we let an evil dictator range unchallenged, we will have to spill infinitely more blood and treasure to stop him later.²⁵

Having constituted Milosevic as evil and bracketed him with the actions and character of Hitler, Blair set out his justification for military intervention, not only the ongoing military action in Kosovo but for reorganising international institutions to make it easier to use military force to protect vulnerable people on humanitarian grounds in the future. He continued, and it is worth quoting at length:

the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter ... So how do we decide when and whether to intervene. I think we need to bear in mind five major considerations. First, are we sure of our case? War is an imperfect instrument for righting humanitarian distress; but armed force is sometimes the only means of dealing with dictators. Second, have we exhausted all diplomatic options? ... Third, on the basis of a practical assessment

of the situation, are there military operations we can sensibly and prudently undertake? Fourth, are we prepared for the long term? ... And finally, do we have national interests involved?²⁶

The first four considerations for humanitarian intervention coincide reasonably with criteria for war that have emerged in the Western just war tradition over many centuries: just cause, last resort, reasonable prospects and proportional means, all of which coincide with criteria for military intervention later proposed in the 2001 ICISS Report and which will be addressed in the next section. However, even whilst making his case for humanitarian intervention Blair kept 'national interests' as part of his considerations: the moral and legal arguments could not be isolated from the wider political interests, either then or subsequently. He also claimed in the same speech that 'In the end values and interests merge,' though it might be more accurate to say that he sought to subsume 'values' *within* interests to give greater legitimacy to the latter in the process of garnering public support for unpopular actions. Despite scepticism in a number of quarters about the scope of Blair's ambition and the possibility of achieving the international consensus he desired, he had a powerful ally in the White House. Bill Clinton drew upon the discourse of 'ethnic cleansing' and 'genocide' in the emergence of R2P:

if the world community has the power to stop it, we ought to stop genocide and ethnic cleansing ... innocent civilians ought not to be subject to slaughter because of their religious or ethnic or racial or tribal heritage. And that is what we did but took too long in doing in Bosnia. That is what we did and are doing in Kosovo. That is, frankly, what we failed to do in Rwanda.²⁷

Clinton and Blair were not motivated purely by altruistic concern for oppressed peoples – though it would also be unfair to describe their actions as entirely self-interested. Their approach to humanitarian intervention was also underpinned by renewed confidence in Western liberal democratic values and a desire to extend them to parts of the world where they were manifestly absent in the face of abuse of power by dictators.

In late 1999, several months after hostilities ceased between NATO and the FRY/Serbia, Ove Bring, Swedish Professor of International Law, argued for a new 'doctrine of humanitarian intervention' based on what he described as 'the emerging international norm that gives precedence to the protection of human rights over sovereignty in certain circumstances'.²⁸ Bring's arguments continue the trajectory of thought on humanitarian intervention that were articulated by Blair and Clinton and would be taken forward into the formal announcement of Responsibility to Protect. However, they were made in the face of continued Russian and Chinese opposition to the elevation of human rights – in what appears to be almost any circumstances – above state sovereignty. Consequently, a more apt description might be that as the twentieth century drew to a close there was an emerging *Western* norm regarding humanitarian intervention that was treated with caution, and occasionally scepticism bordering on derision, in other parts of the world. Further, Robert Mandel would later ask

whether liberal interventionism was given encouragement because of a misperception of success in Kosovo. That is, Kosovo was deemed to have been a success for NATO/ US policy at relatively low cost, or at least low *human* cost on the NATO side.²⁹ That low cost may have been interpreted to somehow be a manifestation of the innate superiority of the liberal democratic values that motivated leaders to intervene in the first place. However, such a reading may well have embued leaders like Blair and Clinton with a false sense of what liberal interventionism could achieve.

In 2000 the theme of intervention was taken up by Kofi Annan who, in his Millennium report, asked the following question:

if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity? We confront a real dilemma. Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict.³⁰

The inference to be taken from this UN report is that Annan and the UN itself wanted to resolve the tension between the protection of individuals and the protection of state sovereignty. Practically speaking, however, he avoided the harsh realities of *realpolitik* and political self-interest, for it is those that in large part dictate for individual countries which priority is granted at a particular time. If there was an emerging 'norm' regarding humanitarian intervention and a responsibility to protect, then its emergence was uneven and shrouded in an optimism that did not survive until 2013 and events in Syria that will be visited later in the paper.

The Emergence of R2P

Motivated by events in Kosovo, Bosnia, Somalia and Rwanda – and prompted by Kofi Annan's plea in the Millennium Report – the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) in September 2000 and was charged with reporting its findings back to the UN. The report began: 'This report is about the so-called "right of humanitarian intervention": the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state'.³¹ The document attempted to span the gap between 'legitimacy' and 'legality' through the use of *jus ad bellum* criteria:³² criteria that are socially, culturally and historically situated in the Western just war tradition and far from being universally accepted. The 'right of humanitarian intervention' was qualified by the phrase, 'so-called', because the existence or otherwise of such a right was the disputed political, legal and moral question to be explored and, ideally, resolved. Consequently, the emphasis was shifted to 'the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation –

but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.³³ This was not primarily a legal manoeuvre but a political attempt to resolve the sovereignty/human rights dilemma by moving away from the language of 'the right of humanitarian intervention' by third-party states towards the needs of potential or actual victims of atrocities.³⁴ The advantage of such an approach to sovereignty, individual rights and possible intervention is that it put the onus on governments to protect the lives and interests of their own people. With this change in emphasis, any violation of sovereignty would be initially caused by the state concerned – through severe neglect of its population or through violations of that population – and not by an external actor. This subtle difference was designed to pave the way to make intervention easier to agree. However, while the report is couched in legal terminology and aspiration, the classification of violent events would continue to be as much a political as a legal act: with all the vested and competing interests that have always been present in the international arena.

Regardless of the degree of nuance, diplomatic sleight-of-hand or legalist attempts to emphasise the 'norm' part of 'emerging norm' rather than the 'emerging' aspect, the incommensurability of state rights and individual rights remains. There is no conceptual continuum where one eventually slides into the other, regardless of the desire of international lawyers that it should do so: an incommensurability that holds sway because of geo-political interests that will not surrender the freedom to exercise power and influence for the sake of a true, codified 'norm' that could automatically trigger an unwanted intervention (unwanted by the target state or a third-party power with interests in that state). This holds true for all interventions but especially so where military force is involved – a point that will be analysed further with reference to Syria in the next section.

Returning to the ICISS Report, the Commission proposed six criteria to be used for determining when military intervention for the protection of populations experiencing atrocities or war crimes can be justified. If these criteria could be codified and universally accepted, judgements on when interventions could take place would move further from the political domain to the legal domain. They are: '*right authority, just cause, right intention, last resort, proportional means and reasonable prospects*'.³⁵ Given the conceptual origins of humanitarian intervention in the West in the 1990s, as well as the European origins of Westphalian notions of sovereignty, it is perhaps not surprising that the six criteria set out by the Commission are to be found in the Western just war tradition.^{36 37} Further, the first three criteria can be found in exactly the order presented here as early as the work of Thomas Aquinas in the thirteenth century.³⁸ Highlighting the conceptual continuity with the interventionism of recent years, four of the six criteria set out in the 2001 ICISS report coincide almost identically with those set out by Blair in his 1999 Chicago speech.

Such a close similarity between the humanitarian interventionism set out by Blair (and supported by Clinton) and that proposed in the ICISS report has both strengths and weaknesses. Positively, there would appear to be a continuity and development of thought on a crucial

international principle. Negatively, opponents of humanitarian intervention, most notably Russia and China, could point to the emerging responsibility to protect as a continuation of a liberal-motivated political ideology framed in legal terms.

Paul Williams et al argue from a legalist perspective for the establishment of 'specific criteria that allow for the limited use of force when the Security Council fails to act'.³⁹ This limited use of force could include the provision of safe havens, no-fly zones or other specifically protective – as opposed to aggressive – measures. At the heart of this argument is a desire to have a degree of 'automaticity' when it comes to the use of force on humanitarian grounds, even if that force is minimal. The establishment of criteria with automatic trigger points for intervention under R2P is attractive to two groups: those who seek to have R2P increasingly established as a 'norm' of international law; and advocates who are ideologically convinced – as Blair was – of the merits of humanitarian intervention. Opposing the principle of automaticity are two further groups: states who place a high value on state sovereignty and the principle of non-interference in all circumstances; and states whose interests might be impinged upon in specific circumstances or who want to explore further options.

An example of the kind of tensions that shape political dialogue arose in 2002-2003 prior to the Iraq War, concurrent with the development of R2P before its adoption in 2005. Although the UK's Attorney General told Prime Minister Tony Blair in 2002 and 2003 – and reiterated in evidence to the Iraq Inquiry in 2010 – that the Iraq invasion could not be justified using the 'humanitarian crisis' argument, the circumstances at that time highlight the significance of 'automaticity' in political discourse.⁴⁰ In the days and weeks before the US and UK invaded Iraq the Security Council was split. A crude analysis says that the US and UK were in favour of intervention while Russia, China and France were vehemently opposed.⁴¹ However, the differences were more subtle. As the invasion approached, China and Russia were increasingly opposed to military action. France, in contrast, was prepared to be flexible. When on the eve of war on 18 March 2003 Tony Blair told the British Parliament that France 'would veto a second [UN] Resolution [authorising the invasion of Iraq] whatever the circumstances,' he misrepresented the French position.⁴² A few days previously the French Foreign Minister, Dominique de Villepin spoke to Jack Straw, the British Foreign Secretary, telling him that 'France was still willing to consider any new proposals' and a 'solution based on benchmarks'.⁴³ The summary of the conversation records: 'Villepin willing to consider any new proposals which don't contain *automaticity*'.⁴⁴ While the UK and US governments felt that every reasonable option had already been explored, France did not.

There are limitations to the applicability of this example. In the year before the 2003 Iraq War Blair repeatedly argued a humanitarian dimension to the justification of the intervention:

Saddam has used these [chemical] weapons against his own people, the Iraqi Kurds. Scores of towns and villages were attacked ... In one attack alone, on the city of Halabja,

it is estimated that 5,000 were murdered and 9,000 wounded in this way ... In the destruction of the marshlands in Southern Iraq, around 200,000 people were forcibly removed. Many died.⁴⁵

Despite the historical accuracy of these humanitarian claims, they were not persuasive enough to win support to the interventionist cause, primarily because there was no *imminent* humanitarian disaster on the same scale: these events took place more than a decade earlier. Further, because of the associated accusations of dishonesty over Blair's real intentions towards Saddam Hussein and Iraq and the way intelligence was used – perhaps abused is a better term – to support his case,⁴⁶ Blair together with President George W. Bush impeded the emergence of R2P as an accepted international legal and ethical norm. His use of humanitarian arguments ostensibly as a pretext for a war that would still otherwise have taken place,⁴⁷ has given succour to critics and sceptics who are concerned that R2P will be used as a 'Trojan Horse' to hide neo-colonialism or liberal democratic expansionism.⁴⁸ It is for these reasons, or perhaps pretexts, that the leaders of major powers like the US, Russia and China have been and continue to be reluctant to surrender or limit their freedom of political manoeuvre by codifying rigid criteria for military intervention under R2P.

In a follow-up to the outcome of the UN Millennium Summit a High-level Panel on Threats, Challenges and Change was convened at the Secretary-General's behest to consider global security threats and how they might be addressed. One of the recommendations from the panel was to establish 'criteria for the use of force' in a 'renewed system of collective security'.⁴⁹ Ultimately these should lead to new agreement on 'rules and norms governing the use of force'.⁵⁰ However, the document also acknowledged the failure of the UN to resolve the tension between 'sovereign inviolability' and the right to intervene in order to stop severe human rights abuses.⁵¹

Central to the aim of protecting peoples, the report explicitly extends the notion of state sovereignty from its *prima facie* right to non-interference set out in Article 2 of the UN Charter⁵² to include protecting the welfare of its own peoples.⁵³ This was the first step in attempting to shift the balance of relative rights from the state to the individual: where governments would not or could not protect its own citizens then the UN was claiming for the international community a degree of right to intervene, using means up to and including military force. The report went on to say:

The Panel endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.⁵⁴

Despite the nuanced diplomatic rhetoric, or the number of different ways it is stated, it is not possible to escape the tension between the long-established norm – an absolute norm as

far as many states are concerned – of sovereign inviolability with the *emerging* norm of the responsibility to protect. Put crudely, an emerging norm is not a norm. At best it would be an aspiration that is being actively pursued by a broad international constituency, including some or all of the major powers and Permanent Members of the Security Council. At worst it is a well-intentioned but vainglorious hope with very little political support from – or surrender of power by – the great powers.

For a brief period in 2011 there appeared to be a breakthrough on the part of R2P and its supporters when the Security Council authorised the use of force – from the air – in Libya to protect its civilians from attack by Colonel Gaddafi's armed forces⁵⁵ as he fought to protect his regime at any cost.⁵⁶ However, it is tempting to posit too much of an advancement and acceptance of R2P in a situation where the political interests of the major powers were insufficiently strong to prompt the use of a veto in the Security Council. Further, accusations that the intervening NATO forces exceeded their UN mandate increased international wariness of military interventionism to protect oppressed peoples.⁵⁷ Consequently, strategic self-interest would return to the centre of Security Council debate and division in subsequent years as the situation in Syria deteriorated to the point of human catastrophe and beyond.

Syria and the Triumph of *Realpolitik*

In the UN's Millennium Report, Secretary General Kofi Annan highlighted the political, legal and moral tensions at the heart of the humanitarian dimension dilemma:

Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely no legal principle—not even sovereignty—can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.⁵⁸

The adoption of the 2005 UN World Summit Outcome document and further development of R2P principles in subsequent years have provided a degree of (cautious) optimism in terms of international law and the emergence of new R2P norms that has not been matched by the political realities posed to the international community and the UN by events in several countries. To explore the tensions between R2P claims and aspirations and the political realities of self-interest and power politics, this final section will examine recent events in Syria to illustrate how the politics of humanitarian intervention – or non-intervention – continue to outweigh the still-emerging legal norms of R2P.

By 2009 there had been little progress made in the implementation of R2P:

Nine years after those sobering reports [on Rwanda and Srebrenica] many of their institutional recommendations, including on early warning, analysis and training, have not been fully implemented, despite efforts to improve the prevention capacities of the

Organization. The United Nations and its Member States remain underprepared to meet their most fundamental prevention and protection responsibilities.⁵⁹

This report from the UN Secretary General highlights the extent of the ongoing failure – at a political level – of the UN to facilitate the orderly and reasoned use of force in the protection of vulnerable citizens from the four criteria specified in the 2005 UN Summit Outcome document: genocide, war crimes, ethnic cleansing or crimes against humanity. Despite the ICISS proposal of six criteria as the basis of determining when military force can and should be used to intervene on behalf of others, in the same 2009 UN document there were still appeals for ‘criteria relating to the responsibility to protect’ to be introduced to regional peer review mechanisms.⁶⁰ These appeals served two purposes: first, an attempt to circumvent stalemates on the UN Security Council by somehow giving authority to regional organisations; and second, the pursuit of less contentious intervention criteria than those proposed by the ICISS document.

Preventative strategies and diplomacy are relatively non-controversial but they can only ever offer a very limited coercive effect when atrocities are being committed. The UN acknowledges the ‘hard truth’ that military action is needed in extreme situations while offering no solution to the problem of how it can be brought about where political will and/or military capability is absent.⁶¹ Put more forcefully: ‘there are substantial gaps in capacity, imagination and will across the whole spectrum of prevention and protection measures relating to the responsibility to protect. Nowhere is that gap more pronounced or more damaging than in the realm of forceful and timely response to the most flagrant crimes and violations relating to the responsibility to protect.’⁶² In its final section the Implementation Report concedes that the R2P edifice and the extent to which it can credibly be described as an emerging norm ultimately rests on ‘the policies and attitudes of states.’⁶³

In response to the political stalemate over Syria, Williams et al argue that a regional organisation or coalition should be allowed to use force in a limited way as a means of preventing or stopping atrocities.⁶⁴ They acknowledge, however, that such a course of action would violate Article 2 and the sovereignty of the target state. In other words, the further development of an emerging legal norm would necessitate that violation of one of the fundamental legal norms on which the entire UN edifice has rested since its inception. Consequently, Williams et al propose that:

Recognized experts, such as leading academics and former prosecutors, can also play a key role in evaluating whether atrocity crimes are occurring within a sovereign state. The international community would be able to ensure objectivity in this process because it now has clear, well-defined standards by which to determine whether a state is committing mass atrocity crimes.⁶⁵

In theory, Williams et al are correct and put forward a strong case – previous and existing International Criminal Tribunals together with the ICC provide a sound basis in jurisprudence

for identifying mass atrocities against vulnerable populations.⁶⁶ Yet again, however, the politics of self-interest and the interests of alliances introduce practical limitations. Take the most obvious: *whose* 'recognised experts', academics and prosecutors would assess situations for evidence of atrocities? The very appointment of such specialists is politically contentious and it is difficult to envisage any permanent members of the Security Council being willing to overlook a selection that would be detrimental to their interests. Evidence of atrocities in Syria, some anecdotal and some more robustly founded, has been forthcoming since 2011. Political interpretation of that evidence has so far outweighed legal analysis and claim when it has come to the vexed question of taking action. Further, as increasing numbers of atrocities are attributed to opposition groups it becomes even more difficult to identify a party or parties against whom military action could be taken whilst *improving the situation* on the ground. When those atrocities occur between rival opposition factions at the behest of sponsor governments elsewhere, any pretence at a regional alternative to the Security Council should be dropped.

A positivist legal perspective from Diana Amnéus adopts a more practical and pragmatic tone than that of Williams et al. Focusing on military aspects of humanitarian intervention she argues that 'the international discourse on R2P has not at this point contributed to the evolution of legal customary rights or obligations to conduct humanitarian interventions outside the Security Council framework; neither by regional organisations, nor by individual states or coalitions of willing states'.⁶⁷ A crucial step in Amnéus's approach is to attribute to the word 'norm' – as in R2P as an 'emerging norm' – a broader social, political and ethical dimension in international relations and other discourses than is found in international law, which she prefers to refer to as a 'rule'.⁶⁸ Amnéus points out that resolutions passed by the UN General Assembly are not legally binding under international law. Consequently, this point of disputed interpretation explains why the UK and Russia could adopt diametrically opposed positions with regard to Syria in August 2013.

On 29 August 2013 the UK government published a summary of its legal position on military intervention in Syria as a response to the use of chemical weapons in that country.⁶⁹ Identifying the use of chemical weapons as both 'a war crime and a crime against humanity', intervention on humanitarian grounds would provide the legal basis of any military action.⁷⁰ Further, the British government position was that even in the event of the Security Council blocking military intervention it would still be allowed, under international law,

to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention...⁷¹

In light of Amnéus's warning about transposing loosely defined terminology from the political and international relations domains onto the more specific field of international law, the phrase

'doctrine of humanitarian intervention' exposes a vulnerability in the UK government's legal claim: a doctrine is neither a *legal article* nor a *legal rule*. David Cameron had barely started setting out his government's case to the British Parliament when he was challenged by Caroline Lucas MP. She demanded to know why only a summary of the Attorney General's advice had been published 'when so many legal experts are saying that without explicit UN Security Council reinforcement, military action simply would not be legal under international law?'⁷² Another significant voice making the same point was Lakhdar Brahimi, UN Special Envoy for Syria who, the day before the UK Parliamentary debate, said of the legal arguments surrounding military intervention in Syria: 'I think that international law is clear on this. International law says that military action must be taken after a decision by the Security Council.'⁷³

In his speech to Parliament Cameron referred to the responsibility to protect as a 'doctrine ... which commands widespread support': not universal support but merely widespread support.⁷⁴ Perhaps acknowledging the weak and problematic nature of the legal case Cameron deployed the words 'legitimate' and 'legitimacy' more than a dozen times. Eventually, however, despite the numerous and continuing atrocities in Syria, the British Parliament voted against military intervention.

Only a few days earlier a YouGov poll had offered the British public various options for potential UK military involvement in Syria. Maximum support was for the sending of defensive military equipment to the Syrian opposition: 19% of those polled.⁷⁵ Only 9% supported the sending of British military personnel to fight against the Assad regime. Setting aside the contested legal basis for such action, when the complexities of the escalating military and security situation were placed alongside the humanitarian crisis in Syria, British parliamentarians voted against Cameron's proposed intervention – with overwhelming public support. It seems reasonable to assume that at a time of Coalition government, with a general election not too far in the future and experiences of Iraq and Afghanistan weighing heavily on the UK, members of parliament were not prepared to expend political capital on a risky venture with no obvious positive outcome in view and numerous disastrous possibilities presenting themselves. Any moral and emerging legal aspects of responsibility to protect were side lined in London – as they were at the UN, Washington, Moscow, Beijing, Paris – by wider national and international political interests.

In a paper with a strong R2P advocacy tone, Kikoler says of political will and the great powers: 'Much emphasis will have to be placed on building the political will of Security Council members to respond to the most extreme of cases,' before going on to add that 'Efforts should also be taken in keeping with the Secretary-General's report to solicit agreement among the permanent five on withholding the use of veto.'⁷⁶ These are not additional factors to be considered: from a political perspective they are the *e* factors to be considered. No matter how much 'emerging' has taken place, if there is no political will for major powers to spend their blood and treasure in the protection of third-party citizens from atrocities in the pursuit of international peace and security, R2P might as well not exist.

In June 2014 the Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic reported torture, beheadings, sexual abuse, war crimes and crimes against humanity perpetrated against Syrian citizens: some by government forces and some by armed opposition groups like Jabhat Al-Nusra and ISIS.⁷⁷ Further, if more than 2.6 million refugees and 6.5 million internally displaced people within Syria⁷⁸ cannot prompt Russia and other permanent members of the Security Council to accept and participate in a responsibility to protect through military intervention – as opposed to supporting either the perpetrating government of President Assad or opposition forces – then it is difficult to envisage how severe the activities would have to be to illicit such a response. In addition, Russia and China have repeatedly vetoed UN attempts to refer Syria and the perpetrators of war crimes to the International Criminal Court.⁷⁹

Mr Churkin, the Russian Federation delegate, made some pointed observations to the 7180th meeting of the Security Council, criticising France for putting forward the draft resolution on Syria and the ICC, 'fully aware in advance of the fate it would meet'.⁸⁰ He went on to further criticise Western states for 'offering talk, which is good for naïve people ... their list of good guys now includes the Al-Nusra Front, which has openly confessed to a series of brutal terrorist attacks'.⁸¹ The inherently politicized discourse not only constitutes the Al-Nusra Front as terrorists and potentially war criminals, it questions Western judgement and parallels the behaviour of opposition groups with the Syrian government forces. Churkin did not claim innocence on behalf of Assad and his regime, he merely drew attention to actions that make it difficult to make a moral judgement entirely in favour of one side over the other.

Conclusion

The 2005 UN World Summit Outcome Document is the high water mark of responsibility to protect as a collective global commitment to populations who endure atrocities at the hands of their political leaders. A debate about the relative merits of humanitarian intervention was prompted in the 1990s by events in Rwanda, Srebrenica and elsewhere. From the 1990s through 2005 to the present, repeated attempts to define and apply new legal norms to the use of military force in the protection of third parties has been thwarted by the conflicting political interests – and the ideological underpinnings of those political interests – of the major powers. The 2005 statement was not a legal breakthrough and it did not resolve the incommensurabilities that play out regularly amongst the permanent members of the Security Council. It merely provided a minimalist, aspirational form of words that were seized upon in some legalist quarters as the beginning of the end for long-established understandings of state sovereignty and the Article 2 principle of non-interference across state borders.

In the absence of genuine political compromise a (Western) constituency in the field of international law has attempted a textual solution to a political stalemate. Its reasoning is that if the word 'norm' and the phrase 'emerging norm' is repeated enough times in sufficient numbers of UN and governmental documents – again, Western governmental documents – then R2P will eventually become reality. However, the approach has not gone unnoticed or

unopposed, either by political opponents in Russia and China or by international lawyers and academics who point out that legal language must be focused and specific in a way that the language of politics and international relations often is not. Furthermore, even where there is a degree of enthusiasm or willingness to intervene across borders on humanitarian grounds in London and Washington, the experiences of Kosovo, Afghanistan and Iraq have left the respective populations of the UK and US both war weary and sceptical about the effectiveness and cost of using force to solve other peoples' problems, no matter how serious. In addition, the legal finding on 16 July 2014 by a Dutch court which held that state liable for the deaths of 300 Bosnian men and boys at Srebrenica in 1995 (those who were handed over by Dutch UN Peacekeepers to Bosnian Serbs) will further discourage governments from committing their military forces in humanitarian interventions.⁸² Events in Syria – massacres, war crimes, the use of chemical weapons, mass displacements of people and so on – have not prompted co-ordinated, protective action. Rather they have reinforced the political chasm between Russia, the US, UK and France that is no closer to resolution today than it was when Russia vetoed UN Security Council-sanctioned military action in Kosovo in 1999. In light of this unremitting mutual opposition between Russia (and to a lesser extent, China) and Western members of the Security Council over Syria – fuelled in turn by resurgent geo-strategic and national interests as well as humanitarian concern – agreement on R2P and military intervention on humanitarian grounds appears as far away as it was at the time of Blair's naively optimistic words in April 1999. The limits of R2P have been reached.

Notes

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⁵⁴ Report of the UN Secretary General's High-level Panel on Threats, Challenges and Change, 2 December 2004, Annex I, Part 3, Para. 55.

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