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R2P

In whose name?

A critical view on the Responsibility to Protect

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Executive summary

The concept of the "Responsibility to Protect (R2P)" is one of the ideas that have evolved the fastest in the contemporary international normative arena. R2P affirms that states and governments do not only have a right to sovereignty, but also a responsibility to protect their populations, and that the international community must take action when states fail to uphold this responsibility. R2P has quickly moved up the ladder of international law, from an emerging idea in the late 1990s to its official formulation over the turn of the century. At the same time, skeptics and critics have raised concerns about the concept, arguing that it is a veil for self-interested interventions by major powers and a threat to international peace and security.

This report outlines the concept's key elements and describes how it came into being (Part I). The report then explores the concept's positive aspects (Part II) and its problems (Part III). During our research, a gap in the literature around the "political economy" of the debate on R2P became visible: who is promoting the concept, how, and with what interests? The report addresses some of these questions. It concludes (Part IV) that, although R2P attempted to present innovative ideas to address contemporary humanitarian crises, the concept is irremediably flawed and provides no real solution to prevent and stop gross human rights violations – but there are alternatives.

The origins of R2P

In the face of mass-scale killings and humanitarian disasters in Somalia, Rwanda, and Bosnia in the 1990s, the "international community" often failed to take decisive action to protect civilians at risk. Many observers and policymakers argued that a shift in the international relations framework was needed to offer a proper response to these crises. In situations where states were proving unable or unwilling to halt human suffering, their right to sovereignty should be discarded to allow interveners to protect populations under threat. R2P sought to go beyond the idea of "humanitarian intervention" and "le droit d'ingérence" (the right to intervene). Rather than letting interveners define when and where they wanted to act, R2P proposes to establish criteria to determine when, where, how, and by whom intervention had to be undertaken to be legitimate.

In 2000, the Government of Canada set up the International Commission on Intervention and State Sovereignty (ICISS) to build consensus on what such criteria might be. Eschewing the term "humanitarian intervention," the ICISS introduced the concept of the "Responsibility to Protect," outlining its three components: a "Responsibility to Prevent," a "Responsibility to React," and a "Responsibility to Rebuild." The Commission's report sought to answer 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."[*] It stressed that the understanding of "sovereignty" had shifted, from a simple right to a right and a duty to protect. Although

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[*]   ICISS (2001), p. VII.

the ICISS highlighted that R2P included a responsibility to protect and to rebuild, it focused on the "responsibility to react," and in particular its military component, by laying out six criteria for foreign military intervention. The ICISS envisions the UN Security Council as the ultimate authority to legitimize such intervention, but it does not exclude the possibility of action undertaken by regional organizations or willing powers.

After the ICISS report's publication in 2001, R2P quickly evolved at the UN. The concept was endorsed by member states at the 2005 World Summit, but narrowed and significantly altered. Nevertheless, R2P continued to occupy an important space on the UN scene, through reports of the Secretary-General and resolutions of the Security Council. The concept was invoked during crises in Darfur, the Democratic Republic of the Congo, Mali, and most recently Libya. The application of R2P to these real life situations raises questions about the concept: does it provide a new and effective way to put an end to large-scale killings? Could it be used by interveners to justify military action not in the defense of human rights but for their own interests?

Positive contributions

R2P rejects the misnomer "humanitarian intervention" and acknowledges humanitarian workers' concerns that such a concept could lead to the militarization of their activities. It stresses the primary role of the state in protecting its citizens, thus reiterating and strengthening obligations already outlined in several international human rights instruments. R2P also highlights the role of the international community in helping individual states fulfill their responsibilities, in particular through support for preventive efforts in the economic, social and political areas. Aware of the inconsistent and arbitrary nature of international response to humanitarian and political crises in the 1990s, the concept attempts to create more consistency by establishing a framework that clarifies who should intervene, when, under which criteria, and how. By defining circumstances in which international society should assume responsibility for preventing, halting, and rebuilding after a humanitarian emergency, the ICISS report was aiming to make it more difficult for UN member states to shirk their responsibilities.

The architects of R2P

An analysis of the main architects and supporters of R2P is key to understanding where the concept came from, what it hoped to achieve, and what it has become. Proponents of R2P often hailed from a similar political and ideological background, which contributed to shaping the concept. At the state level, R2P was first supported by liberal, center-left governments, including Canada's Liberal government under Jean Chrétien and the UK's Labour government under Tony Blair. Indeed, endorsement of R2P at the national level (and promotion of the concept at the international level) has often depended on the orientation of the political party in power. This political orientation is reflected among the academics who have advanced the R2P doctrine and the philanthropic foundations that have played a key role in promoting it. The political and ideological roots of R2P have echoed well with some NGOs, which have included R2P in their advocacy work on human rights and the protection of civilians.

In light of such high-profile endorsement and active support by major actors, has the R2P concept proven successful in preventing, halting, and responding to crises since its inception? An examination of the case of Darfur shows that the record is spotty. The crisis in Darfur unfolded as the R2P doctrine gathered pace at the UN and in the international arena. For many R2P advocates, it promised to provide a "test case" for the concept. But NGO advocacy around the Darfur crisis proved problematic. It focused on a military solution to the conflict to the detriment of political mechanisms, and it often

turned out to be highly disconnected from the reality on the ground. Darfur also underlined the difficulty of moving R2P from theory to practice. In many years of intense advocacy, civil society organizations did not achieve much, despite a broad consensus among R2P advocates that Darfur was the utmost case of a "responsibility to protect" and despite the unprecedented mobilization of time, resources, and energy.

The flaws of R2P

R2P comes with many analytical gaps, problematic assumptions, and controversial solutions. The doctrine remains ill-defined, as underlined by debates among supporters who all claim to possess its "true" meaning. The confusion around R2P is well illustrated by disagreements on the role of military intervention in the doctrine. While some R2P proponents argue that military force is just one of many components and was never made to be the principle focus, others claim that it is at the core of R2P. An examination of the concept's genesis suggests that R2P was indeed intended to justify military intervention by foreign powers on humanitarian grounds.

R2P's understanding of the mechanisms behind conflicts and global policymaking is at times naïve and disconnected from reality. It adopts a morality-laden discourse that moves the debate away from objective concepts of legality to subjective perceptions of "right" and "wrong." But the emphasis on moral judgment tends to cloud rather than illuminate the understanding of conflict and violence. R2P portrays perpetrators of human rights violations and killings as insatiable and irrational, when they are in reality usually motivated by political goals. This "good vs. evil" representation of conflict presents violence as slippery slope that leads inexorably to genocide, and it tends to discard opportunities for the negotiations and political compromise usually necessary to end violence.

R2P is far from being universally applicable. The ICISS report acknowledges that no military intervention under the R2P banner can be conducted against the will of the permanent five members of the Security Council or another major power. But while R2P can never apply to major powers, these powers happen to be the only ones capable of mounting a credible military intervention under R2P. The concept does not provide the means to hold major powers accountable. In the absence of mechanisms for accountability, the imperative of "saving lives" can provide justification for many actions, making R2P a slippery slope.

R2P fails to ask the right questions. By focusing on sovereignty as the main obstacle to saving lives, R2P fails to acknowledge that lack of intervention in the past has generally been due to a lack of interest by major powers – or an interest in not solving the crisis – rather than a high regard for sovereignty. R2P claims to be forcing the "international community" to face its responsibilities, but in fact it does not speak truth to power. How can we build an international system that can address violent conflicts and crimes when major powers – in particular the permanent five members of the Security Council – have no interest in stopping the violence, or an interest in keeping it going? The R2P doctrine does not provide an answer to this question.

R2P originates from a government project, rather than a project that sprung from grassroots civil society initiatives. The ICISS report was initially met coolly by NGOs, which were concerned that it would be used to justify military intervention. The government of Canada played an important role in strengthening civil society interest in the doctrine, and government funding has been key to building a movement around R2P. By couching military intervention in the language of human rights (and morality), R2P has made some NGOs more amenable to the possibility of the use of force. It has also created a logical alignment between those countries that have endorsed R2P and are able to carry R2P interventions and some parts of civil society.

Supporters of R2P usually discard criticism of the doctrine as a "misinterpretation" of what R2P truly is or as a knee-jerk reaction from undemocratic regimes overly attached to sovereignty. But opposition to R2P has come from many different sources, including member states generally sympathetic to the concept but concerned about its militarization, citizens disillusioned by calls to humanitarian motives to justify wars, and some humanitarian organizations. The well-respected Médecins Sans Frontières, for instance, has expressed strong criticism of R2P.

R2P is forgetful of its history. Although R2P supporters present the doctrine as a revolutionary advance in international relations, R2P in fact has many historical predecessors. The discourse around the concept tends to ignore a long history of liberal and left support for colonialism and military intervention. Indeed, many progressively-minded groups in the 19th and early 20th centuries were mobilized in favor of colonial intervention and enthusiastically endorsed the idea that colonialism would lift native people out of ignorance, backwardness, and misery. Today, R2P resonates well with governments keen to demonstrate international moral leadership in the protection of human rights and with civil society organizations that advocate for similar values. R2P is tightly linked to "liberal interventionists" who have made the possibility of military intervention more palatable by couching it in the language of human rights and morality.

Conclusions

R2P does not give a satisfying answer to the key question it is supposed to address: how best to prevent and, if prevention fails, respond to large-scale human rights violations and killings? The concept is particularly dangerous as it amalgamates arguments and proposals, mixing uncontroversial and widely accepted notions (that states have a responsibility towards their citizens) with more dubious claims (that military intervention is an appropriate tool to protect civilians). Therefore, it should be rejected entirely.

Rather than unhelpfully pitting one internationally agreed principle (non-intervention) against another (the protection of human rights) and focusing on building a last resort option (military intervention) for when all else fails, there is a dire need to devote attention and energy to ensuring that the system does not fail to begin with. We should work to strengthen parts of the international system that are promising: existing legal instruments and institutions that fulfill many of the functions of R2P without undermining the principles of peaceful dispute settlement or the equal sovereignty of states. This paper ends with an overview of alternatives that deserve more reflection and action.

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Part I: Introduction

1 – Origins of R2P

In the decade following the breakdown of the former Soviet-dominated block, the world was confronted with a series of violent conflicts that appeared different in nature from "traditional" warfare. For a variety of reasons and in very different geographic contexts, conflicts within defined states escalated, triggering reactions by the "international community"[1] – but to varying degrees.

Somalia was one of the defining crises of this period. After many years of repressive rule by General Mohamed Siad Barre, the country was torn by civil war starting in the late 1980s. In January 1991, Barre fled the capital Mogadishu, driven out by former General Aideed. This was only the beginning of a conflict between clans and sub-clans that continues until the present day.[2]

The civil war in the early 1990s led to widespread displacement and famine. In April 1991, the UN Security Council authorized a peacekeeping mission to Somalia to address the situation. However, the mission was not accepted by the warring factions and proved unable to carry out its mandate. A few months later, US-President George Bush authorized an airlift into the region to fly in desperately needed food – but the effort failed due to widespread looting and hijacking. In October 1992, the Special Representative of the Secretary-General, Algeri-

an diplomat Mohamed Sahnoun, left Somalia frustrated with the hopeless efforts of Pakistani peacekeepers and what he perceived was a lack of international commitment.[3]

In November 1992, after having been defeated in his run for re-election, President Bush – "in a kind of last hurrah as commander in chief"[4] – let Secretary-General Boutros-Ghali know that the US was ready to dispatch troops to Somalia. On December 3, 1992, the Security Council passed a resolution authorizing a US-led force to create a "secure environment for humanitarian relief operations in Somalia"[5] until the UN could take over in May 1993. This, however, did not end violence in Somalia. Several battles took place in Mogadishu between local gunmen and peacekeepers, among them an unsuccessful attempt by US forces to apprehend Aideed in October 1993. With public support fading in face of the little effect the military intervention seemed to have, UN troops left Somalia altogether in 1995. Several more interventions have since followed, including deployment by Ethiopian and Kenyan forces, drone strikes by the US, and multinational anti-piracy operations off the coast of Somalia. None of these have helped stabilize the situation or ease human suffering.

Somalia was just one example of bloody conflicts within legally sovereign states that triggered debates on how the international community should react. In 1994, between

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1   The term "international community" is problematic. Cf. Part III, Chapter 2 for a discussion of the issue. We will use the term wherever we state opinion of others, however, since it is widely used.
2   For a concise and critical look into causes as well as dynamics of the conflict, see e.g. Bakonyi (2011).

3   Cf. Meisler (2011), p. 298.
4   Ibid., p. 299.
5   UN Doc. S/RES/794 (1992), p. 3.

500,000 and one million people were killed in the Rwandan Genocide – under the eyes of a UN peacekeeping mission which was not mandated to intervene and reinforced too late.[6] In July 1995, more than 8,000 Bosnian Muslims were killed in and around the town of Srebrenica during the Bosnian War, triggering UN-mandated NATO airstrikes under "Operation Deliberate Force" from August 30 to September 20. Without a UN mandate, NATO began air operations in March 1999 in the Federal Republic of Yugoslavia. The intervention was officially intended to end the civil war in Kosovo and repel Yugoslav troops from the region in order to stop alleged ethnic cleansing.[7]

By the end of the century, the international community had gone through very different experiences in situations involving crimes against humanity and international efforts to stop them. The international community had intervened with Security Council authorization and failed, not intervened at all, and intervened without authorization. These experiences led to academic and political debates and gave rise to the concepts of "New and Old Wars"[8] and "Human Security,"[9] and the promotion of a new doctrine of "humanitarian intervention" that would justify intervention by the UN or other groups of states to address such internal crises. The UN Security Council, which increasingly deployed peacekeeping operations with "robust" mandates in domestic conflicts, seemed to move in a similar direction.

The experience with the crises of the 1990s – and the criticism that the UN had often failed to deal with them – also triggered serious rethinking of the role the organization could and should play in reacting to severe intra-state violence. Already in 1996, Francis Deng (then the UN's Special Rapporteur on the Human Rights of Internally Displaced Persons) was the co-author of a book calling for "Sovereignty as Responsibility."[10] In 1998, UN Secretary-General Kofi Annan, then just 18 months in office, made some important remarks on this issue during a speech for the Ditchley Foundation in the UK.

In his speech, Annan recalled historical examples, noting that "the word 'intervention' had come to be used almost as a synonym for 'invasion'," but then took a sharp turn: "We all applaud the policeman who intervenes to stop a fight, or the teacher who prevents big boys from bullying a smaller one. And medicine uses the word 'intervention' to describe the act of the surgeon, who saves a live by 'intervening' to remove malignant growth […] a doctor who never intervened would have few admirers, and probably even fewer patients. So it is in international affairs. Why was the United Nations established, if not to act as a benign policeman or doctor? Our job is to intervene […]." Turning to the issue of state sovereignty and the principle of non-intervention, a pillar of the UN Charter, Annan concluded: "[…] even national sovereignty can be set aside if it stands in the way of the Security Council's overriding duty to preserve international peace and security."

This interpretation of the UN Charter was by no means new at the time. The Security Council had ruled that internal disputes constituted threats to international peace and security on several occasions in the past, in cases where crises threatened to spill over into neighboring countries. But Annan took another step, which led the way directly to the concept of "Responsibility to Protect" (R2P): "The Charter […] was issued in the name of 'the peoples', not the governments of the United Nations. […] The Charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power."[11] Annan's speech garnered applause, especially from academics working on UN issues,[12] but did not at the time lead to a policy change at the UN.

Although Annan endorsed the idea of military intervention for humanitarian purposes, the concept of "humanitarian intervention" and the experience of the 1990s had been met with suspicion by many countries in the Global South. These governments expressed concerns that increasing international interference in internal disputes would provide a justification for great power intervention. They reminded Western powers that the use of humanitarian justifications to win public support for armed intervention had been a widespread practice during the colonial period, and cautioned against a return to such discourse.[13]

Aware of the polarizing debate around the concept of "humanitarian intervention," UN Secretary-General Kofi Annan, in a major speech to the UN General Assembly in September of 2000, urged member states to study the issue and seek agreement on principles and processes – when intervention should occur and with what authorization.[14] In response to the concerns raised by states from the Global South, a number of Western governments took the lead in attempting to build con-

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6   For more on the Rwandan Genocide and the role of the UN mission in Rwanda at the time, cf. UN Security Council (1999).
7   German Defense Minister Rudolph Scharping was e.g. cited with comparing (not equating) the situation in Kosovo with the Holocaust. German troops were part of NATO operations, the first time German planes were involved in a fighting mission since World War II. Cf. Der Spiegel (1999). The existence of a plan of ethnic cleansing of Kosovo Albanians (so-called Operation Horseshoe) is still unproven; cf. e.g. Schwarz (1999).
8   Cf. Kaldor (2012).
9   Cf. UNDP (1994), ch. 2 (New dimensions of human security).
10 Deng et al. (1996).
11 Annan (1998).
12 Meisler (2011), pp. 352f.
13 For more on this issue, see part III.
14 Cf. Annan (2000).

sensus. In 1999 and 2000, the ambassadors of the United Kingdom and Australia hosted a series of luncheons (funded by the Stanley Foundation), which brought together high-level UN ambassadors and officials to discuss the matter.[15]

In 2000, just at the time of Annan's speech, the Government of Canada (with financial support from US foundations)[16] set up the International Commission on Intervention and State Sovereignty (ICISS). The Commission, eschewing the term "humanitarian intervention" and its controversial background, was tasked with proposing criteria for intervention that could generate consensus. A year later, the Commission published its report that introduced the concept of the "Responsibility to Protect" for the first time.

2 – The concept of R2P in the ICISS report

Following debates at the UN and in the media, the Canadian government under Jean Chrétien announced the establishment of the ICISS. The initiative was framed as a "response to Secretary-General Kofi Annan's challenge to the international community to endeavor to build a new international consensus on how to respond in the face of massive violations of human rights and humanitarian law."[17] It was mandated to promote debate on the issue of humanitarian intervention and "how to move from polemics, and often paralysis, towards action within the international system, particularly the United Nations" by reconciling the notions of intervention and state sovereignty.[18] The Canadian government aimed to present the results of the Commission's work during the 56th session of the UN General Assembly in 2001.

Former Australian Foreign Minister Gareth Evans was invited to head the commission together with Mohamed Sahnoun, Special Advisor to the UN Secretary-General and former Special Representative for Somalia and the Great Lakes in Africa. The co-chairs, together with the Canadian government, appointed ten additional experts from diverse backgrounds, including academia, government, the military, and civil society.[19] The Commission had five meetings from November 2000 to September 2001 and organized eleven regional roundtables and national consultations around the world. In addition, an international research team was created under the chairmanship of Thomas G. Weiss (City University of New York) and Stanlake J.T.M. Samkange (a lawyer and former speechwriter to Boutros Boutros-Ghali) to support the work of the ICISS. The work plan of the ICISS was administered by a small secretariat within the Canadian government, which was also responsible for fundraising. Additional funding came from the Carnegie Corporation, the William and Flora Hewlett Foundation, the MacArthur Foundation, the Rockefeller Foundation, and the Simons Foundation and in the form of in-kind support from the Swiss and UK governments.[20]

The ICISS report introduced the concept of the "Responsibility to Protect," outlining its three components, a "Responsibility to Prevent," a "Responsibility to React," and a "Responsibility to Rebuild." The report marks the beginning of a wide international debate around the issue of when, under what circumstances, and with what authority international interventions in cases of gross human rights violations are justified. The debate has since not only reached the academic sphere, but is expressed in UN documents as well as in political statements by decision-makers and government officials. The concept of R2P has taken very different shapes depending on who addresses it and which aspects they choose to emphasize.[21] The core of the concept, however, can be outlined in three elements:[22]

1 – A shift in the understanding of state sovereignty: sovereignty in the context of R2P is understood as a responsibility rather than a right. "[…] Sovereignty is no longer to be understood as a right to perform whatever domestic activities the state authority desires. […] the very reason for sovereignty is at base the protection of the people's most fundamental rights from egregious acts of violence."[23]

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15   Cf. Stanley (2001), p. 12.
16   Cf. ICISS (2001), p. 85.
17   Ibid., p. 81.
18   Ibid.
19   For a complete list of the experts, see ibid., pp. 77ff.

20   Ibid., p. 85.
21   For more on this issue, see section III, 1.1 below.
22   This breakdown of R2P elements is taken from Breakey (2012).
23   Breakey (2012).

2 – The responsibility of the international community: should a state prove unwilling or unable to fulfill its responsibility, it shifts to the international community. "In this way R2P aims to displace the controversial 'right of humanitarian intervention', and refocus attention on the needs of the vulnerable, rather than the entitlements of interveners."[24]

3 – Interventions or interferences have to happen with great weight given to the importance of a principled and multilateral response consistent with international law.

2.1 Responsibility vs. sovereignty

The ICISS framed its work within the context of recent controversies around "humanitarian intervention." It focused especially on the causes for action or inaction in the face of gross violations of human rights and large-scale crimes against humanity. Why had the international community done nothing in the case of Rwanda, but had acted in Kosovo? For the ICISS, this debate culminates in a question raised by the UN Secretary-General in his Millennium Report of 2000: "[…] 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?"[25]

Annan's challenge encapsulated a highly controversial debate surrounding the question of if, when, and how to intervene in intra-state crises and when it is just to violate the sovereignty of a state. To put it in the wording of the ICISS: "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."[26] When assessing the evolution of R2P, it is important to keep in mind that the question posed was not "how best to avoid humanitarian disaster?" or "how best to react?" It was "what conditions must be present to legitimize military intervention in the case of gross human rights violations?" (Cf. section III.1.10 for how this determined the shape of R2P.)

Two concepts are central to understanding the report of the ICISS: sovereignty and intervention. In the view of the Commission, although sovereignty "[did] still matter,"[27] it had undergone a major shift. It was becoming increasingly accepted that "sovereignty implies a dual

responsibility: externally – to respect the sovereignty of other states and internally, to respect the dignity and basic rights of all the people within the state."[28]

The second central term in the ICISS's report is "intervention." Intervention is understood in a very broad sense, as "action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective."[29] The ICISS underlined that "intervention" was not limited to military action but included "all forms of preventive measures, and coercive intervention measures – sanctions and criminal prosecutions – falling short of military intervention. […] their threatened use as a preventive measure […] and their actual use as a reactive measure, but as an alternative to military force […]."[30] In reaction to very strong opposition to the militarization of the term "humanitarian," the Commission decided not to use the phrase "humanitarian intervention," but rather simply "intervention."[31]

To give justice to the response given by the ICISS to its main question, one cannot simply reduce it to a justification for military interventionism. The report encompasses preventive measures as well as reactive ones. The clear emphasis, however, is put on the reactive side – as the major part of the ICISS's analysis deals with crisis situations that have already proceeded to a point where "intervention" is needed.[32]

2.2 The Responsibility to Prevent

The ICISS states that R2P implies a responsibility to prevent. Without prevention, the Commission says, the international community will find it difficult to build credibility: "The basic point of preventive efforts is of course to reduce, and hopefully eliminate, the need for intervention altogether. But even where they have not succeeded in preventing conflict or catastrophe, they are a necessary precondition for responding effectively to it."[33] In this logic, prevention has a dual use: it can prevent the need for intervention altogether or, should that fail, it serves as the necessary precondition for successful intervention, not least by supporting the argument that intervention is a "last resort" (cf. below).

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24   Breakey (2012).
25   UN Secretary-General (2000), p. 48.
26   ICISS (2001), p. VII.
27   Ibid., p. 7.
28   Ibid., p. 8.
29   Ibid.
30   Ibid.
31   Ibid., p. 9.
32   The following section explores the ICISS' position on the question of the international community's responsibility. A more in depth criticism of the R2P approach follows in Part III.
33   ICISS (2001), p. 19.

The ICISS paints a nuanced picture of prevention, categorizing two types: root cause prevention efforts and direct prevention. The Commission also addresses early warning mechanisms, underlining that, "to date, early warning about deadly conflict has been essentially ad hoc and unstructured,"[34] and provides recommendations on how to improve such mechanisms. The report emphasizes the important role of NGOs, such as the International Crisis Group or Amnesty International.[35] It also proposes to strengthen capacities within the UN system, and specifically calls for an early warning mechanism to be installed within the UN Secretariat.

Root causes

The Commission supports the widespread notion that prevention has to start with the root causes of conflict. Solutions to international economic, social, health, and related problems; international, cultural, and educational cooperation; and "universal respect for human rights"[36] are mentioned as preconditions for any root cause prevention. The Commission identifies four dimensions:

» Addressing political needs (such as democratic institutions, constitutional power sharing, press freedom, etc.),

» Tackling economic needs (such as development assistance, better terms of trade, market access for developing countries, etc.),

» Strengthening legal protection (strengthening the rule of law; protecting integrity of the judiciary, promoting honesty and accountability in law enforcement), and

» Reforms to the military and other state security sectors (education and training for the troops, reintegration of ex-combatants, strengthening civilian control etc.).[37]

Direct prevention efforts

With regard to direct preventive efforts, the Commission is much more specific. While these efforts can be categorized into the same four dimensions, here different instruments are available, "reflecting the shorter time available in which to make a difference."[38] For all the dimensions, the Commission envisages positive as well as negative incentives.

Political and diplomatic measures, according to ICISS, might be fact-finding missions, dialogue, and media-

tion, on the positive end of the scale; and the threat of (not the actual enactment, which would fall under the responsibility to react, cf. below) political sanctions such as diplomatic isolation, suspension of memberships in international organizations, and travel restrictions, on the negative end.

Economic measures might include promises for new funding and investments, more favorable terms of trade, etc. Negative incentives might be the withdrawal of investments, the threat of financial sanctions, threats to withdraw international assistance, etc.

Measures of a legal nature envisaged include offers of mediation or arbitration and the deployment of monitors on the positive side, and the introduction of tribunals on the negative side. The ICISS highlights in particular the deterrence function of international legal institutions such as the International Criminal Court (ICC).

Military measures for direct prevention efforts are more limited. The ICISS provides a few examples, including stand-off reconnaissance missions or the consensual preventive deployment of troops.[39]

For all these measures, the ICISS calls for caution when moving from positive incentives to negative ones, as these might actually increase tensions and lead the targeted state to move towards more isolation. In addition, the Commission underscores that the objective overall must not be to change constitutional arrangements or undermine sovereignty, but to protect them.[40]

2.3 The Responsibility to React

Should all preventive measures have failed to ease tensions and the state be unable or unwilling to solve the situation, intervention has to be considered. For this situation, the ICISS defines threshold conditions that have to be fulfilled in order to move to the next step in the escalation. These are considered to be more important for military than for economic or political interventions. Thus, the report puts an emphasis on what conditions must be fulfilled before military measures can be taken into consideration.

Before military action

"Wherever possible, coercive measures short of military intervention ought first to be examined […]."[41] The report lists several such measures and calls for their

34 ICISS (2001), p. 21.
35 Ibid.
36 Ibid., p. 22.
37 Ibid., p. 23.
38 Ibid., p. 23.

39 Cf. ibid., pp. 24f.
40 Ibid., p. 25.
41 Ibid., p. 29.

cautious use, as they could be "indiscriminate weapons." Efforts should be taken to ensure that they have no or as little impact as possible on innocent civilians. In the area of military measures short of actually sending troops, the ICISS suggests arms embargoes and ending military cooperation (such as training programs). Economic measures might be financial sanctions (the freezing of assets), restrictions on the sale of certain goods (oil, diamonds, etc.), and aviation bans. Potential political measures include restrictions on diplomatic representation and on travels, and the suspension of membership in international organizations.

Military intervention: Six criteria

Although the Commission acknowledges the importance of the principle of non-intervention, it states that "in extreme and exceptional cases, the responsibility to react may involve the need to resort to military action."[42] According to the Commission, it is generally accepted that "there must be limited exceptions to the non-intervention rule for certain kinds of emergencies."[43] To define such extraordinary situations, the Commission outlines six criteria that all have to be fulfilled in order to justify military intervention: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects.

Right Authority: The ICISS considers the UN the primary source of authority for military action. According to the Commission, this authority should not only be understood as the UN's (or the Security Council's) right, but also as a responsibility. Therefore, it argues that "Security Council authorization must in all cases be sought prior to any military intervention action being carried out" and that "the Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing."[44]

The ICISS report, however, does not limit "right authority" to the Security Council. It also attempts to define solutions for when the Security Council fails to act. In such a case, "it is difficult to argue that alternative means of discharging the responsibility to protect can be entirely discounted."[45] Options considered include the "Uniting for Peace" procedures in the UN General Assembly (specifically designed for situation where the Security Council fails to act)[46] and intervention by regional organizations. Although such interventions should be authorized by the Security Council, there have been "recent cases when approval has been sought ex post

facto [...] and there may be certain leeway for future action in this regard."[47] These alternatives are not meant to make the Security Council redundant or irrelevant, but they are seen as important sources of pressure on the Council. The Commission stresses that inaction by the Security Council and following action by other actors would erode the Council's legitimacy – and it goes further in asserting: "It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by."[48]

Just Cause: For the just cause criterion to be fulfilled, military intervention must be aimed to halt or avert "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."[49]

These situations are defined more precisely with reference to the 1948 Genocide Convention and the Geneva Conventions. The expression "large scale," however, is not defined, as the Commission expects that it would be subject to disagreement.[50]

In addition to the two cases above, the Commission also includes under "just cause" situations of overwhelming natural or environmental catastrophes, if the state concerned is unwilling or unable to cope or to call for assistance.

The Commission makes clear that, under this definition, a whole set of human rights violations (such as discrimination, large scale imprisonment, etc.) does not justify the use of force. Wherever there is no "large scale loss of life," the criterion is considered not fulfilled.[51]

Right Intention: The proposed intervention must be intended to ease human suffering and must not serve additional purposes, such as the change of an unwanted regime or the occupation of a territory. This, however, does not necessarily mean that self-interest cannot enter into the interveners' considerations. Preventing refugee flows to one's territory and other such interests would be acceptable, the Commission argues, if they are subordinate to the primary aim of helping the civilian population. Such criterion would be satisfied by ensuring that military action is agreed upon multilaterally. Another indicator could be (political) support from affected populations.[52]

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42 ICISS (2001), p. 31.
43 Ibid.
44 Ibid., p. 50.
45 Ibid., p. 53.
46 For an overview of how this works and where it has been used, cf. Tomuschat (2008).

47 ICISS (2001), p. 54.
48 Ibid., p. 55. This issue is still being debated today. Cf. e.g. Peral (2011) and in contrast Paech (2013).
49 ICISS (2001), p. 32.
50 Section III,1.4 discusses the consequences of this formulation.
51 ICISS (2001), p. 34.
52 Ibid., pp. 35f.

Last Resort: Military intervention should always come as a last resort – meaning that all other pathways like preventive measures, sanctions, etc. must have been tried. However, the ICISS qualifies this requirement by adding that "this does not necessarily mean that every such option must literally have been tried and failed: often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, in all the circumstances, if the measure had been attempted it would not have succeeded."[53]

Proportional Means: This criterion outlines the scope of the intervention: it should be targeted, and its size be determined by the "original provocation." International humanitarian law should be respected – or, given that military intervention is not meant to be "all out warfighting" but to protect populations, even higher standards should be observed.[54]

These aspects are outlined in more detail in the report in a separate chapter on "The Operational Dimension," which deals mostly with military intervention. In this section, the ICISS discusses at length planning (including building coalitions, defining objectives and mandate, etc.), carrying out operations (including command structures, civil-military relations, rules of engagement, how to apply force, casualties, media relations, etc.), as well as the follow-up to military interventions (transfer of authority, peacekeeping and –building, etc.).[55]

Reasonable Prospect: Military intervention is only justified if it solves the problem at hand and does not do more damage than good. The Commission stresses that intervention is only likely to succeed if all five permanent members of the UN Security Council agree to it, as well as other major powers.[56]

2.4 The Responsibility to Rebuild

For the cases in which intervention has been unavoidable – and especially for cases in which intervention had taken the form of military action – the ICISS considers that the international community has a "responsibility to rebuild." This responsibility includes the provision of security and protection of the population, as well as disarmament, demobilization, and reintegration of local

security forces. In cases where the country was occupied by intervening powers, these states must devise an adequate exit strategy.

The second dimension of the responsibility to rebuild involves reinstating properly functioning legal systems for justice and reconciliation. The ICISS stresses that "a final peace building responsibility of any military intervention should be as far as possible to encourage economic growth, the recreation of markets, and sustainable development. The issues are extremely important, as economic growth not only has law and order implications but is vital to the overall recovery of the country concerned."[57]

As an alternative to foreign occupation by states or a regional body, the ICISS envisions a new role for the UN Trusteeship Council. Constructive adaptation of Chapter XII of the UN Charter could be used to organize UN administration of former failed states.

Lastly, the ICISS emphasizes the need for dealing with questions of sovereignty, especially in the case of occupation, and achieving local ownership. To this end, the Commission proposes the inclusion of local bodies in decision making at an early stage. In general, the ICISS concludes, occupation and its limits have to be balanced against the interests of the intervening states as well as the interests of the people in the country where the intervention took place.[58]

2.5 Moving the agenda

The ICISS stresses that, if the norms it has developed are to become political practice, they will need support and enactment. Indeed, the Commission considers the need for ensuring political will central to the implementation of R2P.[59] It formulates strategies as well as recommendations to mobilize political will at the domestic and international levels, stressing the importance of the "leadership of key individuals and organizations" in both arenas. These key actors include policymakers (e.g. the UN Secretary-General at the international level) as well as media and non-governmental organizations (NGOs). The latter are seen as particularly important, since "[t]he goals of policy makers and humanitarian advocates are not so different from each other."[60] The importance of the media is presented as obvious, given that "there is

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53 ICISS (2001), p. 36. Cf. below, section III,1.9 for a discussion of the repercussions.
54 Ibid., pp. 36f.
55 Ibid., pp. 57-67.
56 Ibid., p. 37.
57 Ibid., p. 42.
58 Ibid., pp. 44f. More on the issue of "following up military intervention" can be found at ibid., pp. 64ff.
59 Ibid., p. 70.
60 Ibid., p. 73.

no question that good reporting […] and in particular real time transmission of images of suffering do generate both domestic and international pressure to act."[61]

The ICISS even identifies possible arguments to make the case for R2P in a given crisis, although it does not explore them in much detail, as they would depend on circumstances. Four broad potential arguments are mentioned: moral arguments (the fact that human suffering hast to be stopped), financial arguments (early prevention is usually cheaper than late reaction), national interest (avoiding disintegration of a neighboring state may prevent refugee outflows), and even partisan arguments (it may not be necessary to convince a majority; sometimes it is easier to convince e.g. strategically important constituencies of a ruling party).

Suggesting next steps, the Commission recommends that the UN General Assembly adopt a resolution embodying the basic principles of R2P, including the idea of sovereignty as responsibility; the responsibility of the

international community of states to prevent, to react and to rebuild; a definition of the threshold to justify military intervention; and an articulation of the precautionary principles for intervention. The Commission also recommends that the Security Council establish a set of guidelines and "Principles for Military Intervention" and that the permanent five (P5) members of the Security Council "reach agreement not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support."[62]

Lastly, the ICISS calls on the UN Secretary-General and the presidents of the UN General Assembly and the UN Security Council to move the agenda forward politically. As we will see, the ICISS was only partially successful with these recommendations.

3 – Evolution of R2P at the UN

The report of the ICISS was published shortly after the attacks on the World Trade Center and the Pentagon on September 11, 2001. As a result, political and media attention to the report was rather limited. The US invasion of Iraq in 2003 also affected the report's impact. The invasion, which was (partly) justified by US and UK politicians on humanitarian terms, was widely considered to be an example of wrongful foreign military intervention and in breach with international law.[63]

In the face of a lukewarm reception, proponents of R2P did not stand idly by, but pushed for the concept's inclusion in official UN documents and its transformation from a non-binding norm into international law.

The principles of R2P were mentioned in the report of the UN Secretary-General's High-level Panel on Threats, Challenges and Change, which had been convened in the follow-up to the Millennium Summit of 2000. The panel's task was to assess current threats to international peace and security and to evaluate necessary political and institutional reforms. It gathered high-ranking politicians and experts from around the globe, including Gareth Evans, former Co-Chair of the ICISS. The

panel's report, entitled "A more secure world: our shared responsibility," was published in December 2004.

The report echoes the notion that the international community has a responsibility for the protection of human security in all its dimensions. It comes to the conclusion that there is an international obligation to protect, including through the use of military force under the auspices of the UN Security Council, and calls for reforms of the Council and amendments to international law in order to facilitate such reforms (see Box).

Then UN Secretary-General Kofi Annan picked up the High-level panel's conclusions in his own report "In larger freedom: towards development, security and human rights for all," which he presented to the UN General Assembly in the spring of 2005 in preparation for the follow-up to the Millennium Summit in September of that year. Annan also included a passage on R2P in his recommendations for heads of state and government – but he gave it a more subtle twist. Instead of calling for amending the UN Charter or making proposals for R2P-specific UN Security Council reform, he simply suggested that governments should "embrace" R2P and "agree to act on it."[64]

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61   ICISS (2001), p. 73.
62   Ibid., pp. 74f.
63   Cf. Weiss (2007), p. 748.

64   Cf. UN Secretary-General (2005).

After intense negotiations, member states decided to endorse the concept of R2P in the outcome document of the Millennium+5 Summit. The R2P concept defined in the document, however, differs in four important ways from its conception in the ICISS report:[65]

1 – A mandate by the UN Security Council is considered absolutely necessary for any form of military action. No mention is made of regional bodies or the General Assembly acting on behalf of the Security Council.

2 – The demands for a self-regulation of the Security Council and specifically for the five permanent members to drop their vetoes in cases of genocide or ethnic cleansing were not taken up. These, not surprisingly, were blocked by the five permanent members.[66]

3 – The scope of R2P is limited to only four out of the five original cases defined by the ICISS. The World Summit took up "genocide, war crimes, ethnic cleansing and crimes against humanity,"[67] which is narrower than the ICISS' concept of "large scale loss of life," and left aside the case of natural disasters.

4 – The notion of a "responsibility" of the international community under specific circumstances was weakened to "on a case-by-case basis and in cooperation with relevant regional organizations"[68] and with "preparedness."

While it is true that "[w]ith the possible exception of the prevention of genocide after World War II, no idea has moved faster in the international normative arena than the Responsibility to Protect […],"[69] the concept that was endorsed was considerably watered down.

The R2P formulated in the outcome document was the result of a political compromise among member states. The concept had encountered considerable opposition from several countries, especially in the Global South. Some states, although not rejecting the idea of R2P outright, had expressed concerns about the role of the use of force (and continue to do so). During a subsequent debate of the Security Council, a Brazilian delegate stressed that "the United Nations was not created to disseminate the notion that order should be imposed by force." Other states have rejected the doctrine more forcefully. According to a Russian delegate, "it is clearly premature to advance that concept in Security Council documents. We all remember well the complex compromise that was required to reflect that issue in the 2005 Summit Outcome document. In that connection – and the outcome document states this – we need to have a

detailed discussion in the General Assembly of the issue of the responsibility to protect before we can discuss its implementation."[70]

The Word Summit Outcome had several tangible effects: picking up on the statement that "we stress the need for the General Assembly to continue consideration of the responsibility to protect […]," UN Secretary-General Ban Ki-moon has issued annual reports on R2P since 2009. His first report deals with the implementation of R2P. Ban, interpreting the paragraphs of the Outcome Document on R2P, states that the concept rests on three pillars: the protection responsibilities of the state, international assistance, and timely and decisive response. In his recommendations for implementation, he calls on states to become parties to relevant international human rights instruments or the ICC,[71] and more vaguely urges each culture and society to incorporate the principles of R2P without hesitation or condition.[72] Without trying to revisit the outcomes of the 2005 summit, Ban Ki-moon lays out a way forward in asking the General Assembly to take his recommendations into consideration and to establish a periodic review "of what Member States have done to implement the responsibility to protect."[73]

Building on his three-pillar-approach, Ban has since issued four yearly reports. In 2010, he dealt with early warning and assessment,[74] in 2011 with the role of regional and sub-regional arrangements,[75] in 2012 with the issue of timely and decisive response,[76] and in 2013 with state responsibility and prevention.[77] Through these reports, R2P has never vanished from the UN scene. Additional round-table discussions and fora have added to the debate.

In addition, a Joint Office of the Special Advisors on the Prevention of Genocide and on the Responsibility to Protect was created. The position of a Special Advisor to the UN Secretary-General on the Prevention of Genocide had already been established by Security Council Resolution 1366 in 2001. In 2007, Ban Ki-moon suggested the establishment of a Special Advisor on the Responsibility to Protect. Following debate among member states, Edward Luck was eventually appointed as Special Advisor to the Secretary-General *with a focus* on the Responsibility to Protect. In 2010 the two posts were merged into one office.[78]

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65   Again following Breakey (2012).
66   Cf. Brock/Deitelhoff (2012), p. 86.
67   UN General Assembly (2005), p. 31.
68   Ibid.
69   Weiss (2007), p. 741.
70   Both quoted according to International Coalition for the Responsibility to Protect (ICRtoP) (2005), pp. 1 and 6f.
71   UN Secretary-General (2009), p. 11.
72   Ibid., p. 12.
73   Ibid., p. 30.
74   Cf. UN Secretary-General (2010).
75   Cf. UN Secretary-General (2011).
76   Cf. UN Secretary-General (2012).
77   Cf. UN Secretary-General (2013).
78   Cf. www.responsibilitytoprotect.org/index.php/component/content/article/3618.

" UN documents with reference to R2P

A more secure world: our shared responsibility – Report by the High-level Panel on Threats, Challenges and Change, 2004

II. The case for comprehensive collective security

C. Sovereignty and responsibility

29. In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities. Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. But history teaches us all too clearly that it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community, acting in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights, to help build the necessary capacity or supply the necessary protection, as the case may be.

30. What we seek to protect reflects what we value. The Charter of the United Nations seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of their citizens. These are the values that should be at the heart of any collective security system for the twenty-first century, but too often States have failed to respect and promote them. The collective security we seek to build today asserts a shared responsibility on the part of all States and international institutions, and those who lead them, to do just that. […]

IX. Using force: rules and guidelines

A. The question of legality

3. Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect

[…]

203. We endorse 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 international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.

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In larger freedom: towards development, security and human rights for all – Report of the Secretary-General

Annex: For decision by Heads of State and Government

III. Freedom to live in dignity

[…]

7. (b) Embrace the "responsibility to protect" as a basis for collective action against genocide, ethnic cleansing and crimes against humanity, and agree to act on this responsibility, recognizing that this responsibility lies first and foremost with each individual State, whose duty it is to protect its population, but that if national authorities are unwilling or unable to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect civilian populations, and that if such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required;

World Summit Outcome Document, 2005

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

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.

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 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 manifestly fail 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.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

Since the World Summit of 2005, R2P has been mentioned in several documents, not least in resolutions of the UN Security Council. A notable example is the mention of R2P in Resolution 1674 dealing with the protection of civilians in armed conflict. The resolution "[r]eaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity."[79] Other country resolutions have mentioned R2P, for instance Resolution 1706 regarding the situation in Sudan. Although in the wake of the World Summit allusions to R2P tended to be "subtle and mediated,"[80] the concept quickly picked up pace.

4 – Theory and practice: The latest crises and R2P

Today 'R2P' has become a seemingly obligatory reference point for all researchers in this field and R2P's near ubiquity is testament to the effective marketing of the idea."[81] Indeed, discussion of R2P is present in political and academic circles as well as in practical policy.

Debates have raged on whether international interventions since the World Summit were "R2P cases" and, where R2P was invoked, whether it had been justified. In parallel, some conflicts that could potentially have been qualified as a R2P situation were not addressed by the international community or regional bodies.

Recent cases associated with R2P include (in reverse chronological order) the conflict in the Central African Republic with intervention by French forces in 2013; the conflict in Mali, again with French intervention in 2013; the war in Syria without decisive military intervention by the UN so far; the several conflicts during the Arab Spring in Egypt, Tunisia, Yemen, most notably the intervention in Libya in 2011; the intervention by French troops and a UN mission in Côte d'Ivoire in 2011; the ongoing conflict in Nigeria between the central government and Boko Haram; the crisis in Darfur (ongoing since 2003); and the ongoing civil war in the Democratic Republic of the Congo and the region of the Great Lakes in Africa. In several cases, the some actors' attempt to label a situation as R2P were openly rejected. This includes the French government's argument that R2P justified military intervention for humanitarian purposes in Myanmar following cyclone Nargis in 2008 (as the government was refusing to accept international assistance)[82] and the Russian intervention in Georgia, also in 2008.

Most recently, the case of international intervention in Libya has gained attention among both proponents and critics of R2P. As the conflict escalated and allegations of human rights violations by the government of Muammar Gaddafi multiplied, the UN Security Council passed Resolution 1973 on March 17, 2011 establishing a no fly zone in Libya and authorizing member states "to take all necessary measures […] to protect civilians and civilian populated areas under threat of attack […] while excluding a foreign occupation force of any form on any part of Libyan territory […]."[83]

Following the resolution, a coalition under French and US leadership, in consultation with the Arab League, began airstrikes against government troops in Libya – officially with the aim of protecting civilians and upholding a no fly zone.[84] But it soon became clear that these powers envisioned the removal of Gaddafi as part of their mission. According to a joint op-ed in the New York Times by Presidents Obama and Sarkozy and Prime Minister Cameron, "our duty and our mandate under U.N. Security Council Resolution 1973 is to protect civilians, and we are doing that. It is not to remove Qaddafi by force. But it is impossible to imagine a future for Libya with Qaddafi in power."[85] The airstrikes

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79   UN Doc. S/RES/1674.
80   Breakey (2012).
81   Hehir (2010), p. 218.
82   Cf. Elsener (2008).
83   UN Doc. S/RES/1973.
84   This had been discussed and concluded at a special summit in Paris on March 19, 2011, which included representatives from the European Union (EU), UN, Arab League and NATO, but no one from the African Union, which had previously tried to find a peaceful solution. Cf. Focus (2011).
85   Obama/Cameron/Sarkozy (2011).

(in addition to illegal support for the rebels, including weapons deliveries)[86] allowed rebel forces to overpower government troops and take the capital Tripoli in August 2011. The airstrikes by international forces (under NATO command as of March 31, 2011) went on until October 31. Gaddafi himself was killed by rebel forces on October 20 near Sirte.

The Security Council's resolution, followed by swift international military intervention, was seen by some as a potential example of R2P done right. As the NATO intervention unfolded, Thomas G. Weiss (former head of the international scientific research team of ICISS) cautiously predicted: "if the Libyan intervention goes well, it will put teeth in the fledgling RtoP doctrine. Yet, if it goes badly, critics will redouble their opposition, and future decisions will be made more difficult […]."[87]

While the airstrikes seemed to garner significant public support, observers raised questions about some of the actions carried out by coalition forces, in particular the bombing of a private home resulting in the death of Gaddafi's son Saif and three of Gaddafi's grandchildren,[88] and the targeting of television stations.[89] These actions were clearly overstepping the mandate of Security Council Resolution 1973 and in breach of the Geneva Conventions. Reports also alleged that the internationally-backed rebels had been responsible for war crimes.[90] In addition, several peace offerings by Gaddafi himself and diplomatic steps by the African Union had been ignored or rejected.[91]

In light of these issues, some argue that the international intervention violated the framework of Resolution 1973, and that the resolution itself was in breach of international law. Reinhard Merkel, professor of international law at Hamburg University, asks: "Have the interveners limited themselves in their military force to the boundaries set by Resolution 1973? […] The answer to this question is easy – it is a clear No."[92] Reflecting on whether Libya was a good example of an intervention under the auspices of R2P, Merkel notes: "The development of a Responsibility to Protect is one of the most positive achievements in the recent history of international law. Libya has made painfully clear that it needs protection itself, namely from potential abuses of power. Resolution 1973 has not strengthened this developing norm of a universal duty to help in the cases of grave and large scale crimes, nor has it provided it with teeth […], rather it has done severe damage to it."[93] Many

commentators shared the idea that the Libyan example had dealt a heavy blow to intervention for protection purposes. Some concluded that the fact that NATO had overstepped the spirit of R2P and the mandate of Resolution 1973 in Libya made efforts at reaching a compromise over Syria more difficult.[94] The use of R2P to provide legitimation for regime change seemed to make it unlikely that it would be invoked in the future.[95]

Others, however, noted that, even though NATO had overstepped its mandate, Libya still represented a positive development for R2P. According to Alex Bellamy and Paul Williams, the intervention in Libya (and the intervention in Côte d'Ivoire the same year) marked a "new politics of protection" with four characteristics: "First, […] the Security Council has framed these crises in terms of human protection. Second, the Security Council has demonstrated a repeated willingness to authorize the use of military force for protection purposes and […] has broken through the final constraint […] the nominal consent of the host state. Third, regional organizations have become important 'gatekeepers' […]. Finally, international society has exhibited a commitment to working through the Security Council to fashion responses to human protection crises."[96]

Was Libya a misuse of R2P, or are issues that surfaced during intervention (the possibility for intervening powers to overstep their mandate, the rush to a military option when peaceful alternatives had not been fully explored, etc.) inherent to the concept of R2P? Can interventions under R2P ever be free of the abuses witnessed in Libya? The rest of this paper examines whether R2P can be *"saved"* from those who seek to abuse it or whether the concept is fatally flawed. In addition to looking into arguments for and against R2P, the report also seeks to address who is behind those arguments and promoting the concept. The answer to these questions can help shed light on the future of the norm.[97]

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86 Gelie (2011).
87 Weiss (2011a), p. 287.
88 Cf. Barber (2011).
89 Cf. UN News Centre (2011).
90 Cf. Sherlock (2011).
91 Cf. Aljazeera (2011).
92 Merkel (2011), p. 772 (author translation).
93 Ibid., p. 783 (author translation). For other critical accounts of Libya and R2P, see Haid (2011) and Mickan (2012).

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94 Greiner (2012), p. 78.
95 Needless to say, others come to different results and see leeway for regime change even under the conditions of R2P and international law. Cf. Brozus/Schaller (2013).
96 Bellamy/Williams (2011), p. 847.
97 R2P is sometimes called a norm, sometimes a principle, a concept or a doctrine. The difference in naming shows a difference in understanding. Maybe the only thing that everybody agrees on is that R2P at this stage is not part of binding international law. Cf. e.g. Rudolf (2013), p. 12.

Part II: The case for R2P

1 – Arguments for R2P

R2P seeks to address an important and difficult question: can the international community establish a standardized answer in the face of imminent (or ongoing) large-scale loss of life in a country where government lacks the capacity or willingness to remedy the situation? To answer this question, R2P proposes a number of innovative concepts and reiterates existing state obligations at the national and international levels.[98] This section examines R2P's positive contributions to the debate on how to best prevent and respond to crisis and conflict situations. The flaws and errors within the concept will be discussed in Part III, which will also tackle problematic assumptions of R2P.

1.1 R2P rejects the misnomer of "humanitarian intervention"

The ICISS strictly refers to military intervention and deliberately rejects the term "humanitarian intervention." It spells out that military intervention conceived as "humanitarian" is a contradiction and would compromise the work of truly humanitarian organizations such as the International Committee of the Red Cross (ICRC) and other relief organizations. The ICISS report notes that "it is anathema for the humanitarian relief and assistance sector to have this word appropriated to describe any kind of military action."[99]

Although R2P has not managed to completely disentangle itself from the concept of humanitarian intervention,[100] it has at least questioned its political implications. The ICISS report notes that "use in this context of an inherently approving word like 'humanitarian' tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible."[101] This acknowledges that the use of a term like "humanitarian" tends to skew the debate by putting those in favor of intervention on the moral high ground while painting opponents as "anti-humanitarian."

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98   R2P is not as innovative as its proponents argue. Tony Blair's statement at the closing of the 2005 World Summit to the effect that "for the first time at this Summit we are agreed that states do not have the right to do what they will within their own borders" (quoted in BBC News (2005)) and Gareth Evans' assertion that before R2P "sovereignty was a license to kill" (Evans (2008b)) are overly emphatic and do not give due credit to existing human rights instruments. Before the emergence of R2P, states had already recognized that they could not do whatever they wanted to their citizens and made commitments to uphold their responsibility (Bellamy (2010), p. 230).

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99   ICISS (2001), p. 9.
100 See section III.2 below.
101 ICISS (2001), p. 9.

1.2 R2P prioritizes the territorial state's responsibility to protect

While discussions around R2P often focus on the responsibility of the international community, the concept underlines the primary responsibility of states towards their own people.

By affirming that sovereignty should be understood as responsibility, R2P reiterates and strengthens existing human rights instruments that outline the responsibilities that states have towards their citizens. The World Summit outcome document stresses the primary responsibility of states in protecting their population from genocide, war crimes, ethnic cleansing and crimes against humanity. The basis for this responsibility can be found in existing human rights instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as many other UN treaties and conventions. Both the UDHR and the ICCPR, for instance, affirm individuals' "right to life."[102]

The UN Convention on Genocide also affirms that genocide is a crime under international law, which states undertake not only to punish but also to prevent.[103]

1.3 R2P stresses that the international community must help states fulfill their responsibility

R2P emphasizes the role of the international system in helping individual states to fulfill their responsibility toward their own citizens. In the Outcome Document of the 2005 World Summit, UN member states committed "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."[104] This is an affirmation of the need for international solidarity in helping states avert and tackle crises. While this is nothing entirely new, it deserves repetition in a global system that tends to be leaning toward self-interest.

In this regard, R2P's focus on "root cause prevention" offers an opportunity to advocate for more international support to help states not only in times of crisis and conflict but also in times of peace, in particular

in the realm of economic assistance. The principles of Article 2 of the ICESCR, for instance, could gather more weight under R2P. Article 2 provides that "each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical [...] with a view to achieving progressively the full realization of the rights recognized in the present Covenant," which anticipates the dual responsibility at the core of R2P.[105] How this could be transformed into obligations (rather than responsibilities) by states in their extraterritorial matters is e.g. outlined in the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.[106]

1.4 R2P attempts to build more consistent international response to crises and to overcome the doctrine of (unilateral) intervention

Historical experience shows that interventions carried on "humanitarian" grounds have usually been conducted arbitrarily: "repeatedly, unilateral military operations genuinely or supposedly aimed at saving people's lives in third countries were opportunistic in nature and stemmed from the intervening countries' overwhelming power."[107] R2P acknowledges that international response to humanitarian and political crises in the 1990s (and earlier) has been inconsistent. States have resorted to military action in cases that did not warrant it and failed to consider the option in cases that may have.

R2P attempts to establish criteria that would make interventions more consistent and justify the breach of the norm of non-intervention. It seeks to prevent "another Rwanda" (a situation in which the Security Council failed to act in the face of widespread killings and human rights violations) or "another Kosovo" (a situation in which a group of states decided to act without the Security Council's authorization). Rather than allowing for ad hoc (and predictably inconsistent and self-interested) reactions to crisis situations, R2P (in its ICISS format) attempts to establish a framework that clarifies who should intervene, when, under which criteria, and how. By defining circumstances in which international society should assume responsibility for preventing, halting, and rebuilding after a humanitarian emergency, the ICISS report was attempting to make it more difficult for Se-

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102 UN General Assembly (1966), art. 6.1.
103 UN General Assembly (1948b), art. 3 and UN General Assembly (1948a), art. 1.
104 UN General Assembly (2005), para. 139.

105 UN General Assembly (1966), art. 2.
106 Maastricht University (ed) (2012).
107 von Schorlemer (2007), p. 3.

curity Council members to shirk their responsibilities.[108] The limitations on the use of the veto for the permanent five members (P5) was supposed to have a similar effect, by forcing the P5 to disclose the reasons for their veto to other member states and public opinion, which would have constituted a (limited) form of accountability. According to the ICISS report, the framework used by intervening powers to justify their actions would allow other states and observers to evaluate their claims against a "standard" and make abusive claims of humanitarian intervention less likely.[109]

The recommendation on the use of the veto, however, was abandoned during the 2005 World Summit, as were the criteria for intervention. And, as even supporters of R2P underline, the idea that the P5 would have been pushed to more consistent and effective answers to crises by the existence of a standard framework against which their action could be compared (and found acceptable or wanting) is dubious. Indeed, "there is little evidence to suggest that states intervene in foreign emergencies because they are in some sense morally shamed into doing so by either domestic or global public opinion."[110]

1.5 R2P stresses the correlation between criminal prosecution and deterrence

R2P (as formulated by the ICISS) stresses that all actors involved in a conflict should be held accountable. Under the "responsibility to rebuild," it underlines that properly functioning legal systems are needed for justice and reconciliation. R2P also emphasizes the deterrence function of international law and its institutions (like the ICC), which change expectations "about what is and what is not acceptable conduct by states and other actors."[111] Such mechanisms can have a strong impact on the prevention of crimes during conflicts.[112]

However, some have also raised concerns about the politicized nature of the international legal system (exemplified by the fact that the Security Council, a highly politicized body, can refer cases to the ICC) and the fact that indicting key actors in a conflict can actually make it more difficult to reach a peaceful solution.[113] The selective application of international law, with defeated parties being sent to trial while the victors are not held accountable in the name of "stability" (as in the recent case of Côte d'Ivoire),[114] also raises questions about the deterrent potential of international legal mechanisms. If international law is to prevent crimes, it must be applied consistently.

A recent initiative under R2P also raises the important question of accountability for the interveners. In a 2011 letter addressed to the UN Secretary-General, Brazil proposed to complement the idea of R2P with the concept of a "Responsibility While Protecting." Underlining that military action must always be a last resort and must follow clear guidelines, Brazil suggested that "enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting" and that "the Security Council must ensure the accountability of those to whom authority is granted to resort to force."[115] The possibility of holding intervening states accountable for their action in the course of R2P could have serious repercussions for the effectiveness of interventions.

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108 Bellamy (2006), p. 146.
109 Bellamy (2006), p. 147.
110 Bellamy (2010), pp. 150f.
111 ICISS (2001), p. 6.
112 von Schorlemer (2007), p. 6.

113 For more on this issue, see section III.2.
114 In Côte d'Ivoire, both the forces of ousted President Laurent Gbagbo and his opponent Alassane Ouattara allegedly committed war crimes during the 2011 crisis, but only Gbagbo was sent to the ICC. See for instance Human Rights Watch (HRW) (2011).
115 Permanent Representative of Brazil to the UN (2011), paras. 11 (h) and (i).

2 – Proponents of R2P

This section gives a brief overview of the main architects and promoters of R2P in government, civil society and academia. It is not meant to be exhaustive but to reflect patterns and commonalties among R2P proponents. As we shall see, supporters of R2P often came from a similar political and ideological background, which contributed to shaping the concept.

2.1 Governments

Although the concept of R2P formulated by the ICISS in 2001 was not universally accepted, it encountered a broad base of support among UN member states. Canada, Germany, and the UK were the most vocal supporters of the ICISS conclusions, which were also endorsed (to varying degrees) by Argentina, Australia, Colombia, Croatia, Ireland, South Korea, New Zealand, Norway, Peru, Rwanda, Sweden, and Tanzania.[116] These countries generally supported R2P in the lead up to the 2005 World Summit, as did Chile, France, Iceland, Israel, Liechtenstein, Mexico, Singapore, and Switzerland.[117] They endorsed the concept that was adopted at the Summit, although some of them noted that it had been considerably watered down from its original formulation.

Since the World Summit, several governments have spearheaded initiatives to promote the concept of R2P at the national and international levels. At the UN, the Group of "Friends of the Responsibility to Protect," which gathers governments interested in advancing the doctrine, is co-chaired by the Netherlands (formerly by Canada) and Rwanda and includes Argentina, Australia, Chile, France, Luxembourg, Nigeria, South Korea, the UK, and the US,[118] among others. As the Global Centre for the Responsibility to Protect (GCR2P) noted in a brief following the 2013 elections of non-permanent members of the Security Council, 10 of the 15 members of the Security Council in 2014 are members of the "Friends of" group, making it likely that R2P will be high on the agenda.[119]

Some governments have also adopted R2P "focal points," an initiative jointly supported by GCR2P. These focal points are senior level officials responsible for the promotion of R2P at the national level and members of a global network. The R2P Focal Points initiative was launched in September 2010 by the governments of Denmark and Ghana.[120] Thirty-five countries have since adopted focal points, including twenty-four European countries (including Austria, Belgium, Germany, Greece, Sweden, and the UK), four Latin American countries (Argentina, Costa Rica, Guatemala, and Uruguay), four African countries (Botswana, Côte d'Ivoire, the Democratic Republic of Congo, and Ghana), the US, Australia, and New Zealand.[121]

Endorsement of R2P at the national level (and promotion of the concept at the international level) has often depended on the orientation of the political party in power. The following section explores three examples of countries that have played an important role in the promotion of R2P, but whose support has often varied following party lines.

Canada

The Canadian government played a key role in promoting the concept of R2P in the very beginning. Canada's endorsement of R2P was part of a broader focus on human rights in its foreign policy, which included the promotion of the concept of "human security" and support for the creation of the ICC and the International Campaign to Ban Landmines.[122] After the ICISS published its report, Canada made active efforts to promote its findings, in particular by reaching out to civil society.[123] As the R2P project was progressing in the lead up to the 2005 World Summit, Canada endorsed the concept in many high-profile settings. Liberal Prime Minister Jean Chrétien referenced R2P himself during the 2003 UN General Assembly Opening, and his successor Paul Martin at the 2004 UN General Assembly Opening, as well

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116 Bellamy (2006), p. 151.
117 For a helpful overview of country positions on R2P in the lead up to the 2005 World Summit, see this table by the World Federalist Movement [www.responsibilitytoprotect.org/files/Chart_R2P_11August.pdf].
118 The US joined the Group in 2013. See White House (2013).

119 Global Centre for the Responsibility to Protect (2013).
120 Cf. www.globalr2p.org/our_work/r2p_focal_points.
121 Ibid.
122 Gionet (2010).
123 See below for more on this issue.

as in domestic speeches.[124] The Canadian government also supported academic research on R2P and issues related to human security. For instance, the Canadian Consortium on Human Security (an "academic-based network supporting policy-relevant research on human security") was established in 2001 with funding from the Human Security Program of Canada's Department of Foreign Affairs and International Trade (DFAIT).[125]

However, as Conservative Prime Minister Stephen Harper came to power, Canada's support for R2P dramatically diminished. Although Harper mentioned R2P in his speech at the opening of the 2006 General Assembly, he has not done so in recent years. From 2008 to mid-2010, in a total of 31 statements made to the Security Council, Canada did not mention R2P.[126] The Harper government even reportedly banned the use of the term "R2P" by government departments in 2009 (along with "human security").[127]

United States

The US – under the G. W. Bush administration – was originally cool about the concept of R2P, raising concerns that criteria for intervention would constrain US ability to use force. In the lead up to the 2005 World Summit, the US did not reject the concept but raised two important caveats: that R2P did not create a legal duty of the Security Council to intervene, and that R2P did not preclude the possibility of action absent authorization by the Security Council.[128] The fact that the then US Ambassador to the UN John Bolton did not reject R2P at the Summit was key in leading to its endorsement in the outcome document.

Under the Obama administration, the US has embraced R2P much more decidedly. In 2010, President Obama created "the first-ever White House position dedicated to preventing and addressing war crimes and atrocities."[129] A subsequent Presidential Study Directive of 2011 declared "preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States."[130] In April 2012, the US set up the "Atrocities Prevention Board," a new interagency body tasked with ensuring that "genocide and mass atrocity prevention are a priority at the highest lev-

els of the U.S. government."[131] The board was chaired by Samantha Power, author of the seminal *A Problem from Hell*, which addressed US failure to prevent genocide in the past. Power handpicked the other board members, who represent eleven government agencies, including the Treasury Department and the Centarl Intelligence Agency (CIA).[132] In 2013, Power was appointed US Ambassador to the UN, illustrating the Obama's administration continued support for R2P.

Germany

Germany has been a supporter of R2P since the very beginning. It is a member of the Group of Friends of R2P and has established a R2P focal point at the Foreign Office. Support for the doctrine at the national level crosses almost all party lines – to varying degrees and with different emphases.

Germany was a non-permanent member of the Security Council in 2011 and 2012, a time of intense debate on the possibility of international intervention in Libya and Syria. In its report on Germany's term on the Council, the Foreign Office concluded that R2P had evolved positively during those two years, in particular with references to the concept in the Council's Resolutions on Libya and Côte d'Ivoire.[133]

In its approach to R2P, the German government has emphasized preventive efforts,[134] the role of international law and the importance of considering military intervention only as a last resort. The 2013 coalition's agreement, which forms the political program of the federal government for 2014-2017, reiterates that R2P deserves to be further developed and better implemented in international law – with a focus on strengthening the preventive part of the concept.[135] The Social Democrats, who are part of the new coalition government, have called for more leadership by the German government in the implementation R2P and for more efforts to increase acceptance of the concept.[136]

The two opposition parties, the Left and the Greens, are divided in their stance on R2P. The Greens – a party with roots in the peace movement of the 1980s – generally welcome R2P, arguing that it is a civil society initiative and a universal, rather than western, norm.[137] But they are still grappling with the concept's connection

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124 Gionet (2010).
125 Cf. www.international.gc.ca/about-a_propos/oig-big/2007/evaluation/cchs-ccsh07.aspx?lang=eng.
126 Gionet (2010).
127 Owen/Dey (2011). On this issue, see also Matthews (2012).
128 Bellamy (2006), p. 164.
129 According to a fact sheet on "A Comprehensive Strategy and New Tools to Prevent and Respond to Atrocities" on the White House's website [www.whitehouse.gov/the-press-office/2012/04/23/fact-sheet-comprehensive-strategy-and-new-tools-prevent-and-respond-atro].
130 White House, Office of the Press Secretary (2011).

131 According to the organization "United to End Genocide" [http://endgenocide.org/learn/preventing-future-genocides/the-atrocities-prevention-board/].
132 Landler (2013). For more on Samantha Power, see section II.2.3. below.
133 Auswärtiges Amt (2012), p. 29.
134 Ibid.
135 CDU/CSU/SPD (2013), p. 171.
136 Deutscher Bundestag (2012a), pp. 2f.
137 Deutscher Bundestag (2012b), pp. 2f.

to international law, the role to be played by different international institutions, and what can be understood as the "right" interpretation of R2P.[138] The Greens, for instance, support the Brazilian government's "Responsibility while Protecting" initiative.[139] It is important to note, however, that it was a Social Democratic-Green government that decided to take part in NATO air-strikes against Yugoslavia in 1999 (the first military action by Germany since World War II)[140] and that, even today, the party considers that the UN Security Council is not the only source of legitimacy to justify military interventions.[141]

The Left, on the other hand, has so far generally rejected R2P, arguing that it is a veil for regime change policies and a circumvention of international law.[142] This view has been balanced, however, by a reflection on whether the principle of non-interference met its limits in cases of genocide or mass murder.[143] Some within the party have argued that interventions should not be rejected if they are mandated by the UN, requested by conflict parties, or when civil society actors within the country in question favor international intervention.[144]

2.2 NGOs

NGOs have played a key role in disseminating and promoting R2P at the national and multilateral levels. Although these organizations often have international activities, they have devoted particular time and efforts to advocacy at the UN headquarters in New York, to advance R2P in UN documents and lobby member states to include references to the concept in resolutions. In recent years, a couple of New York-based organizations have been set up to focus specifically on R2P. These NGOs and networks constitute an important "R2P lobby" around the UN in New York.

The World Federalist Movement-Institute for Global Policy (WFM-IGP) has been one of the driving forces behind the promotion of R2P at the UN and beyond. WFM-IGP has worked for many years on UN issues ranging from UN reform to peace and security. It played an important role in the civil society movement to

establish the International Criminal Court, notably by spearheading the creation in 1995 of an NGO coalition to promote the idea of an ICC.[145]

Starting in 2003, WFM-IGP led the "Responsibility to Protect – Engaging Civil Society (R2PCS)" project to reach out to NGOs worldwide and disseminate information about the ICISS report.[146] In 2009, the project transitioned into the "International Coalition for the Responsibility to Protect," which WFM-IGP co-founded and currently hosts.[147] The Coalition works "to strengthen normative consensus for RtoP, further the understanding of the norm, push for strengthened capacities to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilize NGOs to push for action to save lives in RtoP country-specific situations."[148] It gathers over 60 members from a wide range of countries, including small local organizations and large international organizations such as Human Rights Watch, International Crisis Group, and Oxfam International.[149]

These three NGOs, along with WFM-IGP, Refugees International, "a number of supportive governments [and] leading figures from the human rights community"[150] co-founded the Global Centre for the Responsibility to Protect (GCR2P) in 2008, "to promote universal acceptance and effective operational implementation of the norm of the "Responsibility to Protect" populations from genocide, war crimes, ethnic cleansing, and crimes against humanity."[151] The GCR2P, one of the first organizations created specifically to advocate for the implementation and operationalization of R2P, gathers many of the key figures around the R2P concept. Its advisory board includes the former co-chairs of the ICISS, Gareth Evans and Mohamed Sahnoun, as well as former and current UN officials and Permanent Representatives from member states.[152] The Centre receives support from individuals, foundations, and governments.[153]

On their website and in their advocacy work, both the ICRtoP and the GCR2P focus on a number of current crises and how they relate to the R2P concept. In this regard, these organizations build on the work of the International Crisis Group (ICG), which was created in 1995 to focus on the prevention and resolution of conflict. With researchers in many countries, the ICG

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138 Ibid., pp. 5-12.
139 Cf. www.schutzverantwortung.de/front_content.php?idart=608.
140 Cf. for example, Joschka Fischer's speach on the issue (Fischer (1999)) – and the reactions in the audience [www.youtube.com/watch?v=7jsKCOTM4Ms].
141 Cf. Bündnis 90/Die Grünen (2012), p. 7.
142 Cf. Paech (2013).
143 Cf. Schäfer (2013), p. 27.
144 Schäfer (2013), p. 30.
145 The Coalition for the International Criminal Court [www.iccnow.org/?mod=home].
146 For more on WFM-IGP and this project, see section III.2.
147 Cf. www.responsibilitytoprotect.org/index.php/about-coalition.
148 Ibid.
149 Cf. http://responsibilitytoprotect.org/index.php/about-coalition/current-members.
150 Cf. www.globalr2p.org/about_us.
151 Cf. www.ralphbuncheinstitute.org/projects/projects_gcr2p.html.
152 Cf. www.globalr2p.org/about_us.
153 Including Australia, Belgium, Canada, Denmark, France, Germany, Luxembourg, Mexico, the Netherlands, Norway, Rwanda, Slovenia, Sweden, Switzerland and the UK.

produces field-based reports alerting policymakers to developing crises and provides "analysis and advice" to "help[…] policymakers in the UN Security Council, regional organisations, donor countries and the countries at risk themselves do better in preventing, managing and resolving conflict."[154] The organization is based in Brussels but has offices in many countries, including in the US in New York where it carries out advocacy with member states and, in particular, members of the Security Council. Gareth Evans was president of the ICG from 2000 and 2009, including at the time of his tenure as chair of the ICISS. The ICISS report mentions ICG as a key actor in the implementation of R2P, noting that organizations like ICG "are aggressive in alerting governments and the media if they believe preventive action is urgently required."[155]

Although the activities of Human Rights Watch (HRW) and Oxfam International, two major supporters of R2P, are quite different from those of ICG, they have also promoted the concept in their advocacy efforts in national and multilateral settings. In a December 2006 open letter to UN Secretary-General Ban Ki-Moon, HRW placed R2P at the top of what it argued should be the UN's agenda. The letter states that "recognition of the responsibility to protect (R2P) was in some sense the culmination of Annan's tenure as Secretary-General" and that Ban Ki-Moon's challenge was to "make the agreed principle a reality."[156]

Oxfam has linked R2P to the "protection of civilians," a key concept in its advocacy work at the UN, in particular with the Security Council. In 2005, a group of NGOs including Oxfam International, HRW, World Federalist Movement, Refugees International, International Rescue Committee, International Save the Children Alliance, and CARE sent a joint letter to the permanent representatives of the Security Council urging them to include a reference to R2P in a draft resolution on the protection of civilians in armed conflict that they were negotiating.[157] While the concept of protection of civilians encompasses a number of things, it has been used in particular to advocate for peacekeeping mandates that allow peacekeepers to use force to protect civilians. According to a 2008 brief by Oxfam, "governments, regional organisations and the UN Department of Peacekeeping Operations need a military doctrine that includes the protection of civilians."[158] Although Oxfam and other development and humanitarian organizations have endorsed R2P prominently and featured it in their advocacy work, civil society organizations (CSOs) have not universally accepted the concept.[159]

2.3 Academics

Academics have played an important role in developing, analyzing and promoting the R2P concept. Many of the most high-profile academic supporters of R2P have come from elite Ivy League universities on the US East Coast. Harvard University, in particular, has been an important center in the history of R2P. Canadian scholar (and former politician) Michael Ignatieff, one of the members of the ICISS and a vocal supporter of R2P, was teaching at Harvard's Kennedy School of Government during the time of the ICISS report, and joined the School again in 2013.[160] He is currently affiliated with the Carr Center for Human Rights Policy, an initiative within the Kennedy School, which Samantha Power helped to found in 1998 and headed until 2002. In 2007, the Carr Center started the "Mass Atrocity Response Operation" (MARO) Project in conjunction with the US Army Peacekeeping and Stability Operations Institute. According to its website, "the goal of the MARO Project is to enable the US and other governments to prevent and halt genocide and mass atrocity through the effective use of military assets and force as part of a broader integrated strategy."[161]

After a career in academia, Samantha Power left Harvard in 2005 to work with then US Senator Barack Obama and has since held several governmental positions. After Obama's election, Power worked as a staff member on his National Security Council, where she was reportedly instrumental in pushing for the NATO intervention in Libya, along with Hilary Clinton and then US ambassador to the UN Susan Rice.[162] She was also the lead author of the 2011 Presidential Study Directive on Mass Atrocity Prevention[163] that affirmed that the prevention of mass atrocities was part of US core national interests and core values. As a senior director on the National Security Council, she argued for a more robust response to Syria, which eventually led the Obama administration to supply small arms and ammunitions to rebels.[164] Since mid-2013, Power has been US Ambassador at the UN.

Other high-profile supporters of R2P associated with Harvard and the Kennedy School include Anne-Marie Slaughter, who was director of the International Legal Studies Program at Harvard Law School from 1994 to 2002 and professor at the Kennedy School in 2001–2002. In 2004, Slaughter authored a controversial article in Foreign Affairs on "the duty to protect," arguing that the use of force was justified not only in humanitarian

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154 Cf. www.crisisgroup.org/en/about.aspx.
155 ICISS (2001), p. 21.
156 Human Rights Watch (2006).
157 Oxfam International et al. (2005).
158 Oxfam International (2008).
159 See Section III.2 below.

160 Cf. www.hks.harvard.edu/about/faculty-staff-directory/michael-ignatieff. For more on Ignatieff, see below section III.2.
161 Cf. www.hks.harvard.edu/centers/carr/programs/mass-atrocity-response-operations.
162 Atlas (2013) and Landler (2013).
163 Norris (2013).
164 Landler (2013).

crises but also in response to the development of weapons of mass destruction.[165] Slaughter, who left Harvard for Princeton, also worked for the Obama administration. In 2009, she was appointed Director of Policy Planning at the State Department by Hilary Clinton,[166] a position she occupied until 2011 when she returned to Princeton. Slaughter has promoted the idea of a UN-mandated military intervention in Syria through several pieces in the media.[167]

Gareth Evans is of course a key individual in the establishment of R2P. After serving as Australia's Foreign Minister, Evans left government to become head of the International Crisis Group, which he headed until 2009.[168] He is now chancellor of the Australian National University[169] and participates in a number of initiatives, including as co-chair of GCR2P. Evans has been one of the most prolific academic authors on R2P.

Thomas Weiss is also an important actor in the R2P academic sphere. Weiss, who was educated at Harvard and Princeton, is a professor at City University New York and the head of the Ralph Bunche Institute for International Studies, which houses GCR2P.[170] Weiss was the research director of the ICISS and co-authored the supplementary volume that accompanied the ICISS report.[171] An expert on the UN and humanitarian intervention, Weiss has also written on the "War on Terrorism" and how the UN deals with terrorism.[172]

2.4 Foundations

US-based foundations have funded several initiatives for the establishment and promotion of the R2P concept. The Carnegie Corporation, the William and Flora Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, and the Simons Foundation all contributed funding to the ICISS.[173] The Stanley Foundation also played a role in the genesis of R2P by funding luncheons bringing together high-level UN officials and diplomats to discuss humanitarian intervention in 1999 and 2000,[174] and it is currently a supporter of GCR2P. Other supporters of the Centre include the Arsenault Family Foundation, the Carnegie Corporation, Humanity United, the MacArthur Foundation, and George Soros' Open Society Foundations.[175] All these foundations have traditionally given funding to liberal and progressive groups for causes including education, art, social justice, peace, and the environment.

The role of foundations, however, has not been limited to providing funding to organizations promoting R2P. Indeed, several foundations have undertaken direct activities to advance the concept. In early 2012, for instance, the Carnegie Corporation, the MacArthur Foundation, and the Stanley Foundation organized a joint day-long conference on "R2P: The Next Decade." The event, which was by invitation only, gathered many of the key people in the R2P sphere, including some of the former members of the ICISS, UN officials, civil society representatives, and academics.[176] The Stanley Foundation is also a member of the ICRtoP.[177]

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165 Feinstein/Slaughter (2004).
166 Cf. http://web.archive.org/web/20110617191917/www.state.gov/s/p/115437.htm.
167 See for instance Slaughter (2012).
168 For more on Gareth Evans, see section III.1.
169 Cf. http://about.anu.edu.au/governance-structure/council/chancellor.
170 Cf. www.ralphbuncheinstitute.org/projects/projects_gcr2p.html.
171 Weiss/Hubert (2001).
172 Boulden/Weiss (eds) (2004).

173 ICISS (2001), p. 85.
174 Cf. Stanley (2001).
175 Cf. www.globalr2p.org/about_us#supporters.
176 Cf. www.stanleyfoundation.org/r2p.cfm.
177 http://responsibilitytoprotect.org/index.php/about-coalition/current-members.

3 – Promises and pitfalls of the R2P campaign

As the previous section highlights, an important R2P constituency has emerged in recent years around the UN in New York. How has this affected the analysis of and response to crises since R2P was established? R2P has been invoked in a number of cases since the early 2000s, including during conflicts in the Democratic Republic of Congo, Darfur, Kenya, Côte d'Ivoire, Libya, Syria, and most recently the Central African Republic. The civil society campaign around Darfur, which started in 2004 and continues to this day, has been one of the most significant examples of public mobilization around the concept of R2P.

In March 2004, as the world was commemorating the ten year anniversary of the Rwandan genocide, reports started appearing that Darfur was experiencing the "world's greatest humanitarian crisis"[178] and that armed groups were responsible for "ethnic cleansing."[179] As the crisis rapidly garnered public attention in the media and within civil society, many observers saw in the developing R2P doctrine the best tool to stop the suffering and call on the international community to protect civilians.

The conflict in Darfur, which started about a year before the issue came to the attention of NGOs and policy-makers, was complex.[180] In early 2003, groups in the politically marginalized and impoverished region of Darfur had taken up arms against the central Sudanese government in Khartoum. The government responded by sending militias, the Janjaweed, to crush the uprising. The Janjaweed were responsible for mass killings, rapes, and gross human rights violations against the civilian population. As the conflict progressed, however, it acquired many new layers, with fighting between groups sponsored by Sudan and neighboring Chad as well as infighting among the Darfurian groups that had rebelled and among the militias sent to suppress them.[181]

Although the situation evolved rapidly, the understanding of the Darfur crisis did not shift much within civil society at UN headquarters and in Western capitals. The crisis had rapidly been analyzed as the result of massacres and human rights violations committed by Arab militias (the Janjaweed) against non-Arab African civilians (Darfurians), and this understanding changed very little over the years.

The possibility of military intervention in Darfur – to protect civilians and stop "ethnic cleansing" – was quickly put on the table. In an April 2004 speech to the Human Rights Commission, UN Secretary-General Kofi Annan suggested that foreign military intervention might be needed to stop the killings and allow access by humanitarian workers.[182] In an op-ed for the International Herald Tribune, Gareth Evans stressed that military action (authorized by the Security Council) should be on the table if other measures did not succeed in stopping the killings.[183] The President of the organization Genocide Watch, underlining that the Janjaweed militias were armed and supported by the Sudanese government, called for the overthrow of Sudanese President Omar al-Bashir's government.[184]

Advocacy by civil society, however, generally focused on calls for the deployment of a UN peacekeeping force with a "robust" mandate. Although these calls were well-intentioned, the emphasis on the need for a UN peacekeeping force took attention away from the political process necessary to resolve the crisis. A 2006 report by the ICG entitled "To Save Darfur,"[185] for instance, devoted approximately seven times as much space to international forces than to the peace process.[186] In addition, calls for the deployment of a peacekeeping mission did not take into consideration the feasibility of such an operation. In a region as large as France, how could an international force provide physical protection to Darfurian victims in the middle of continuing hostilities and with no agreement from the warring parties? Civil society activists seemed to ignore this conundrum.[187] Little attention was paid to the fact that the mission of the African Union, AMIS, which had been sent to monitor a cease-fire in Darfur in 2004, was under-staffed and ill-equipped and had failed to do much to protect civilians. Why would a UN-led mission be more successful, and why would the major powers give it the means to succeed which they had failed to provide to AMIS?

178 According to Mukesh Kapila, then UN resident coordinator for Sudan (Sudan Tribune (2004)).
179 UN News Centre (2004).
180 For a history of the conflict, see Flint/de Waal (2005).
181 A 2008 brief by Médecins Sans Frontières notes that that there were no fewer than four wars being fought in Darfur, in addition to tensions created by organized crime (Weissman (2008a)).

182 Annan (2004).
183 Evans (2004).
184 Stanton (2004).
185 International Crisis Group (2006).
186 This example is noted by Alex de Waal (2007), p. 1043.
187 Ibid., p. 1044.

The use of the R2P prism in the case of Darfur focused civil society (and eventually government) attention on the possibility of the deployment of a military force to the detriment of the necessary peace process. Indeed, the constant calls for force deployment "compromised the integrity of the peace process. In most circumstances, the political and diplomatic objective is to obtain a peace agreement, and a peacekeeping force is secondary to and supportive of that agreement. In Darfur, it was the other way round."[188]

The R2P lens tended to confuse rather than illuminate the mechanisms of the crisis in Darfur – and the best way to solve it. The debate over whether killings by the Janjaweed militias amounted to a campaign of genocide by the Sudanese government is a case in point. In June 2005, President Bush declared that the situation in Darfur amounted to genocide, breaking with UN officials who had not used the term.[189] The term was picked up by civil society organizations working on the Darfur campaign. The use of the term genocide exacerbated tensions with the Sudanese government and at times led civil society organizations to overplay the extent of the killings in Darfur. In August 2007, the New York Times revealed that the vocal "Save Darfur" campaign had greatly inflated the number of deaths in order to heighten the sense of crisis in Darfur, fit it into the qualification of "genocide" and press for intervention.[190] While the UN and other serious estimates spoke of 200,000 deaths, advocacy groups had argued that the death toll had surpassed 400,000. The New York Times article raised concerns that "the inflated claims fuel a death race in which aid and action are based not on facts but on which advocacy group yells the loudest."[191]

Claims that an ongoing genocide was taking place during the conflict in Darfur (which continue to this day) ignored the fact that the situation had changed since the worst of the violence directed at civilians in 2003-2004. A 2008 brief by Médecins Sans Frontières (MSF) noted that, although the security situation in Darfur remained volatile, humanitarian workers were not witnessing co-ordinated and systematic attacks against civilians.[192] The paper also stressed that many humanitarian organizations were not comfortable with the strategy of groups like "Save Darfur" and their push for a military intervention without the agreement of the Sudanese government.[193]

Darfur acted as a test case for R2P, as the crisis unfolded around the 2005 World Summit at a time when the concept was being defined and negotiated. The issues raised by some of the civil society advocacy around Darfur – the focus on a military solution to the detriment of political mechanisms, the disconnect between the reality on the ground and its representation in NGO discourse, the reticence of some humanitarian organizations to endorse calls for military action – highlight some of the pitfalls of the R2P prism when applied to real life cases. The case of Darfur has also underlined the difficulty of moving R2P from theory to practice. In many years of intense advocacy, civil society organizations did not achieve much, despite a broad consensus among R2P advocates that Darfur was the utmost case of "responsibility to protect" and despite the unprecedented mobilization of time, resources, and energy. In 2014, fighting continues in Darfur and the civilian population is still suffering from violence, displacement, and hunger.

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188 De Waal (2007), p. 1056.
189 VandeHei (2005).
190 Dealey (2007).
191 Ibid.

192 Weissman (2008a).
193 Ibid.

Part III: The case against R2P

1 – Intrinsic flaws of R2P

This section explores the many analytical gaps, problematic assumptions, and controversial solutions present in the R2P concept. It concludes that R2P does not help to understand (and thus solve) the conflicts it is supposed to address, focuses on the wrong tools, and is too open to political manipulation. An analysis of the "political economy" of the concept also underlines its origins as a government project, rather than a project that sprung from grassroots civil society initiatives. It identifies sources of resistance to R2P and places the concept in historical perspective, highlighting the political continuity between liberal and progressive support for colonization and military action in the past and today's supporters of R2P.

1.1 An ill-defined doctrine

R2P proponents usually point to the outcome document of the 2005 World Summit as proof that the R2P doctrine has been universally approved by member states and has become (or is on its way to becoming) an emerging norm of international law. However, they also tend to disagree on what the norm is exactly. In articles and op-eds, R2P proponents caution against "misconceptions" of the doctrine. But internal debates on the definition of R2P, the role of military intervention in

the doctrine, and which cases should be defined as "R2P situations" show that this is still far from being a clear cut concept.

In debates among R2P supporters, many argue that they possess the true meaning of the doctrine and seek to "protect" it against both "enemies" and "false friends." Gareth Evans, for instance, seeks to correct "those who say they are friends of R2P" but "play into the hands of the ideological critics [...] by being far too ready to think of R2P situations only in military terms."[194] Thomas Weiss similarly cautions against the "false friends of R2P who have pointed to the ethical underpinnings of pre-emptive and even preventive war," putting Anne-Marie Slaughter in that category.[195]

Disagreements among R2P supporters on the connection between humanitarian intervention and R2P also underline the lack of clarity around the concept. While some use R2P and humanitarian intervention interchangeably and argue that R2P is a new way to think about humanitarian intervention,[196] others say they have nothing to do with each other.[197]

The ambiguous status of the ICISS report in the R2P doctrine adds to the confusion. Unlike the outcome document of the 2005 World Summit, the ICISS report was not endorsed by member states, and so is not officially part of the UN definition of the R2P doctrine.

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194 Evans (2007a).
195 Weiss (2006), p. 752.
196 Ibid.
197 Evans (2007a).

The report's understanding of R2P, however, permeates much of the discourse around the doctrine. Prominent academics who have promoted R2P tend to blur the distinction between the 2005 UN definition and the ICISS doctrine in their writings.[198] Similarly, most NGO supporters of R2P refer to the 2005 World Summit outcome document as the "official" definition of R2P, but also use concepts defined in the ICISS report. ICRtoP, for instance, not only supports "the essential elements of the Responsibility to Protect norm agreed to in Paragraphs 138-139 of the 2005 UN World Summit Outcome Document" but also promotes the "responsibility to prevent, to react, and to rebuild," a concept that originated in the ICISS report and is not to be found in the UN document.[199] As one international legal scholar notes, "it is difficult to tell whether the growth of [civil society support for R2P] represents a human rights consensus on last-resort military intervention in the name of 'human rights' protection, or merely a commitment to the uncontroversial idea that states, on their own and collectively, should always strive to protect civilians."[200] Indeed, "part of the cleverness of R2P is that it has been constructed so as to be virtually impossible to disagree with in principle"[201] without necessarily agreeing with the proposed solutions.

This lack of clarity makes it easier for R2P proponents to dismiss criticism of the doctrine, by arguing that it stems from a misunderstanding or misconception of what R2P really is about. The possibility of dismissing both "false friends" and "enemies" of R2P on the basis that they have not properly understood the doctrine has proven politically expedient. In cases where R2P was used to justify (often unpopular) military interventions, R2P proponents have systematically argued that this was a misinterpretation or misuse of R2P. On the other hand, R2P advocates have labeled as "R2P successes" situations that have more to do with traditional mediation and prevention efforts, such as UN Secretary-General Kofi Annan's diplomacy in Kenya in 2008.[202] Former Canadian Minister of Foreign Affairs Lloyd Axworthy, who played an important role in the genesis of the R2P doctrine, recently argued that the negotiated amnesty for President Saleh in Yemen was "R2P in action," as it ended what may have been a long crisis.[203] The elastic understanding of R2P allows its proponents to associate it with successes and dissociate it from failures when convenient.

1.2 A doctrine that justifies the use of force

The confusion around R2P is well illustrated by disagreements on the role of military intervention in the doctrine. While some R2P proponents argue that military force is just one of many components and was never made to be the principle focus, others claim that it is at the core of R2P. Gareth Evans has repeatedly fought to correct the "misunderstanding" that "R2P is only about military intervention, that it is 'simply another name for humanitarian intervention'."[204] Thomas Weiss, on the other hand, argues that R2P is primarily concerned with non-consensual intervention and that its other elements are secondary.[205] Weiss has called the concept that emerged from the 2005 World Summit "R2P lite", as it ruled out the possibility of intervention not authorized by the Security Council.[206] He welcomed the NATO intervention in Libya as a way of refocusing R2P's attention on military intervention, arguing that "the increasing and, at times, virtually exclusive emphasis on prevention in the interpretation of RtoP was politically correct but counterproductive".[207]

An examination of the genesis of R2P suggests that the facts are on the side of those who see military action as the core of the doctrine. The construction of the ICISS report reflects a clear imbalance between the military option and other tools.[208] Under the rubric of "the responsibility to react," only two pages examine options short of military action[209] while seven pages are devoted to military action.[210] In addition, the section on the responsibility to rebuild is almost solely concerned with rebuilding after a foreign military intervention, not just after a conflict or crisis. In this context, Gareth Evans' assertion that "of the three dimensions to the responsibility to protect, the Commission made very clear its view that prevention was the single most important"[211] seems disingenuous.

Military force is central to the ICISS report, and its militarism is at times striking. The report mentions that the use of force by intervening powers should be moderated in order to win the targeted population's support, but goes on to lament the "disadvantages" of restraining violence.[212] The report does not seem overly concerned with the potential impact of a military deployment on

198 Okeke (2010), p. 69.
199 ICRtoP website [www.responsibilitytoprotect.org/index.php/about-coalition/our-understanding-of-rtop].
200 Bell (2012).
201 Ibid.
202 Evans (2012).
203 Axworthy (2012).

204 Evans (2007b).
205 Weiss (2007), p. 106.
206 Weiss (2007), pp. 116f.
207 Weiss (2011b), p. 287.
208 Bellamy (2008), p. 621.
209 ICISS (2001), pp. 29ff.
210 Ibid., pp. 31-37.
211 Evans (2003).
212 ICISS (2001), p. 63.

the well-being of the targeted population. When it does address casualties, it is only to ponder on the impact of casualties among the intervening forces.[213]

The focus on military intervention as the main vector for R2P has led some of its proponents to deplore the demilitarization of societies following the end of the Cold War. Thomas Weiss, for instance, notes that "downsizing of the armed forces over the last fifteen years means an insufficient supply of equipment and manpower to meet the demands for humanitarian intervention."[214]

Rather than questioning whether military intervention may do more harm than good, R2P proponents often argue that the real risk comes from too few military interventions.[215] This rather casual approach to military action ignores the potential for escalating violence, civilian casualties, damage to infrastructure, and many potential negative impacts of military force. Such an omission is problematic given the less than stellar record of "humanitarian interventions" in this regard. The background research for the ICISS report acknowledges as much in its analysis of the military interventions in Somalia and Kosovo. In Somalia, an estimated 10,000 Somali casualties resulted from the UNITAF and UNOSOM II operations in 1993-1995. As many as about 1,000 Somalis – many of them civilians – were killed just in the firefight during the "Black Hawk Down" incident. In addition, intervening powers' focus on the use of force resulted in the paradox that the costs of the military interventions (US$ 1 billion for UNITAF and US$ 1.6 billion for UNOSOM II), which were supposed to help facilitate the delivery of humanitarian aid, ended up dwarfing humanitarian and development efforts by at least ten to one.[216] In Kosovo, the 1999 NATO bombing initially exacerbated humanitarian problems and ethnic cleansing. Prior to the bombing, UNHCR estimated that there were 410,000 ethnic Albanian internally displaced persons (IDPs) as a result of Serb operations, and another 90,000 across the border. Within a few days, there were 750,000 refugees in Albania and Macedonia, as well as 250,000 IDPs at the border.[217]

The UN, well-aware of the politically-sensitive issues raised by R2P's close links with military intervention, tried to dissociate the two concepts. Although the report of the UN Secretary-General's High-level Panel on Threats, Challenges and Change (released in late 2004) placed R2P in its section on the use of force,[218] the Secretary-General moved the doctrine to the section on the rule of law in his subsequent report "In larger freedom."[219] Such sleights of hand, however, have not fully succeeded in eclipsing the military origins of the doctrine.

The centrality of military intervention in R2P is obvious when one considers that most of the non-military elements of the doctrine are already present in other instruments. There is significant overlap between R2P's "atrocity prevention" agenda and the toolbox of more traditional peacebuilding practices,[220] suggesting that R2P tools (short of military intervention) pre-dated the establishment of the norm. As one academic supportive of R2P notes, the section on prevention in the ICISS report is "brief, confused and unoriginal."[221] In other words, R2P does not offer new approaches to established response agendas, except for a new paradigm for armed intervention. What is truly new in the concept is the potential to legitimize the use of force on the grounds of protecting civilians.

Even if military intervention is not intended to be the center of the R2P doctrine, including it as one "tool" among others tends to dwarf the other tools in the toolbox. Incorporating military intervention within the same norm as conflict prevention and peace support operations skews the whole R2P doctrine towards the extreme option of coercive intervention, which tends to become the center of the entire principle.[222] If the "stable" of instruments to answer crisis and conflict situations contains both "donkeys" (traditional and slow diplomatic mechanisms) and a "tiger" (the possibility of coercive military intervention), the tiger will always end up ruling the stable.[223]

This is especially true if the donkeys are underfed and crippled – in other words, if resources and attention are not given to foster prevention capacities within the UN. In a system where the coercive option is the only capacity that is functional, it becomes the only option. R2P's "military aspect remains the most usable element of the doctrine because it is the only one that is both coherent and practicable."[224]

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213 ICISS (2001), p. 63.
214 Weiss (2006), p. 755.
215 Thomas Weiss, for instance, argues that "overzealous military action for insufficient humanitarian reasons certainly is no danger. Rather, the real threat to international society comes from doing nothing." (Weiss (2006), p. 747), while Simon Chesterman notes that since the inception of R2P there have been more examples of "inhumanitarian non-intervention" than "inhumanitarian intervention." (Chesterman (2003), p. 54).
216 Weiss/Hubert (2001), p. 97.
217 Weiss/Hubert (2001), p. 113.

218 High-level Panel on Threats, Challenges and Change (2004), para. 203.
219 UN Secretary-General (2005).
220 Bellamy (2011).
221 Bellamy (2009), p. 52.
222 De Waal (2009).
223 Ibid.
224 Rieff (2011a).

1.3 A doctrine that expects clarity, where there is none

R2P is based on a number of core assumptions that, although they appear self-evident, deserve scrutiny. R2P's reliance on concepts such as "the international community," which is all but clearly defined, raises questions about its grasp of and applicability to real life situations. R2P's understanding of the mechanisms behind conflicts and global policy making seems at times naïve and disconnected from reality.

R2P, for instance, suggests that in cases of "large scale loss of life" and "conscience-shocking situations" facts are clearly established and all the perpetrators identified (and therefore, a military force could be potentially sent to protect victims and stop perpetrators). However, in highly contentious (and often chaotic) situations, it is extremely difficult to assess who is actually doing what and who can be held responsible for which actions. This makes it easier for information to be manipulated depending on one's interests. In addition, the information revolution, which has in effect given almost anyone the ability to spread news in real-time around the globe, has created an environment in which also propaganda and false information can travel quickly. Even professional information news sources encounter difficulties (and carry their own biases) when it comes to establishing a clear picture of what is occurring on the ground. During the civil war in Syria, for example, while there seemed to be no doubt that chemical weapons had been used, the "international community" failed to agree on who had actually used them. The US, the UK, and France blamed the Assad government, but Russia did not accept information provided by Western secret services as reliable enough to act upon it.[225] Neutral experts sent by the UN did not find enough evidence to hold one of the warring factions responsible.[226]

In the face of such disagreements, which are bound to occur in any given crisis, who is the "international community?" References to this concept by R2P advocates quickly become a code word for "the good members of the international community," generally understood to be Western powers, in particular the US, the UK, and France.

The case of chemical weapons in Syria is interesting as it underlines a key issue with the idea that the "international community" will act upon objective facts. That the responsibility for the use of chemical weapons was the subject of debate is not surprising in light of the underlying interests of key actors in the Syrian conflict. Interests influencing the position of major powers on Syria include, but are not limited to, the fact that the country holds Russia's last base in the Mediterranean, the Syrian conflict's implication for US-Iran relations, and US interests in the Middle East. This raises the question: is it ever possible to consider the "international community" as a neutral broker? What about the interests of the community's individual members and the interests of the "international community" itself?

While it is obvious that the interests of the members of the international community may at times clash, even the "international community" as a monolithic actor (represented e.g. by the UN Secretariat or by the administration of another international organization) can be following interests or motives beyond mere compliance with international law or justice. Critics have long argued, for example, that the Bretton Woods Institutions are dominated by a certain economic belief-system (the so-called "Washington Consensus") and act to defend and promote it. The UN, in addition to serving the interests of its members, can also have interests of its own, including the need to be seen as "relevant" in a given crisis. In a context where core funding to the organization by member states has dwindled, it is often vital for the UN (and its departments, agencies, funds, and programs) to position itself as a relevant actor in situations of interest to donors so as to receive funding for its activities. The "international community," conceived as the community of member states or as the UN, is likely to be an interest-driven actor in conflict situations rather than a neutral broker or judge.

1.4 A doctrine open to subjective interpretation and selective application

The R2P doctrine adopts a morality-laden discourse that moves the debate away from objective concepts of legality to subjective perceptions of "right" and "wrong." This is illustrated by the shift in R2P advocacy from the four well-defined crimes in the 2005 World Summit outcome document to "mass atrocity crimes" (which is usually meant to encompass those four crimes) to "mass atrocities," a term which has never really been defined.

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225 A later report by investigative journalist Seymour Hersh in fact alleged that the Obama administration had manipulated intelligence to make it look more likely that the Assad government was responsible. See Hersh (2013). A subsequent UN report found that evidence "indicated that the perpetrators likely had access to the chemical weapons stockpile of the Syrian military, as well as the expertise and equipment necessary to manipulate safely large amount of chemical agents," but concluded that "the commission's evidentiary threshold [was not] met with regard to the perpetrator" (UN Human Rights Council (2014)).
226 See for instance Charbonneau/Nichols (2013).

This vocabulary is not benign, as "atrocity" clearly places the debate on moral grounds (atrocities are by definition appalling and shocking) compared to, for instance, the more neutral "human rights violations." The importance of morality in the R2P discourse is echoed by the term "conscience-shocking situations," which is used in many instances in the ICISS report[227] and by individual proponents of R2P.[228]

By placing the debates on a moral ground, these terms create an emotionally-charged minefield where questioning the wisdom of intervention can get one accused of being an apologist for mass murderers and genocide. By arguing that they occupy the moral high-ground, R2P proponents can dismiss critics as conscience-less and more concerned with outdated notions of sovereignty than with the well-being of humankind. It is not benign, for instance, that R2P advocates sometimes talk about the "enemies of R2P."[229]

In addition to giving R2P proponents the moral high ground, the language of morality allows them to base arguments on subjective rather than legal criteria. Many R2P advocates make a distinction between what is "legal" and what is "legitimate," arguing that "the fact is that what law forbids conscience may still command" and "what is legal is not always legitimate."[230] But without clear criteria "legitimacy" becomes a moral judgment call.

This is well illustrated by the ICISS report's use of Just War theory, which introduces moral criteria for military intervention. These criteria are supposed to exist independently of international law and are difficult to assess objectively. How is one supposed to determine the "right intention" of interveners or that their primary motivations are indeed to "halt or avert human suffering?"[231] The ICISS report admits that it would be naïve to believe that "the humanitarian motive is the only one moving the intervening state,"[232] but does not see this caveat as challenging the criterion of "right intention." Other criteria for intervention are similarly open to subjective interpretation. How does one establish that "serious and irreparable harm [is] occurring to human beings, or imminently likely to occur?"[233] In his seminal book on the R2P doctrine, Gareth Evans

acknowledges that deciding on the countries where the use of violence is necessary is ultimately based on "non-quantifiable and subjective judgments."[234]

The use of subjective and moral criteria in the R2P concept formulated by the ICISS is particularly problematic as these criteria are meant to justify and legitimize military intervention in the absence of a Security Council authorization. Indeed, although the ICISS stresses that military intervention should ideally be authorized by the Council, it also questions what should happen if the Council fails to agree on a resolution. The Security Council should be "the first port of call" for R2P, but should it be the last?[235] The ICISS leaves the door open to "coalition of the willing" interventions without Security Council authorization.

1.5 A counter-productive doctrine

R2P's emphasis on moral judgment tends to cloud rather than illuminate the understanding of conflict and violence. While the doctrine constantly refers to the Holocaust and the genocide in Rwanda to give moral weight to its claims ("never again"), these very specific historical examples do little to help understand current occurrences of violence and how to stop them. The emphasis on extreme cases of genocide taints the understanding of violence by "corral[ing] the full complexity of conflict and inter-ethnic relations into a one-dimensional slippery slope that leads inexorably to genocide, and reduc[ing] the varied instrumental political logics of violence to evil motive alone."[236]

Although R2P tends to portray perpetrators of human rights violations and killings are as insatiable and irrational, individuals are in reality usually motivated by political goals.[237] The fact that the use of violence is instrumental creates an opportunity for negotiating, through peace talks and with financial and diplomatic incentives and pressure. But this opportunity can be dismissed if the conflict is framed as a "good vs. evil" narrative, where perpetrators will not stop until they have completely annihilated the other side (which is often painted as entirely victimized and blameless). By upping the moral ante and waving the specter of genocide, such approach can eliminate the possibility of settling for a compromise and logically push for nothing short of "justice" (and democracy) imposed by military intervention.[238] In a context where perpetrators become the latest iteration

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227　ICISS (2001), pp. 33, 55, 70, 74.
228　See, for instance, Weiss (2006), pp. 744, 745, 755.
229　Gareth Evans, for instance, mentions "continued hostility by enemies of the concept" (Evans (2007a)), and Kyle Matthews of the "Will to Intervene Project" at the Montreal Institute for Genocide and Human Rights Studies argues that "the Responsibility to Protect doctrine has many enemies" (Matthews (2012)).
230　Ignatieff (2013a).
231　ICISS (2001), Para. 4.33.
232　Ibid., p. 35.
233　Ibid., p. 32.

234　Evans (2008a), p. 75.
235　ICISS (2001), p. 53.
236　De Waal et al. (2012), p. 17.
237　De Waal (2012).
238　Ibid.

of the Nazi or Hutu regimes, alternatives that may lead to compromise quickly find themselves off the table.[239] Creating a morality tale around violence often undermines the best ways to deal with the worst crimes.[240]

Brandishing the possibility of military intervention as a "last resort" can also generate counterproductive results. The perspective of foreign military intervention is likely to lead to escalation, as it rules out the possibility of a compromise. Mahmood Mamdani and others caution against "winner takes all" solutions to conflicts, which exclude the political compromise often necessary to ensure long term stability and create incentives for the party that is expected to lose to exert violence for as long as possible.[241]

The possibility of coercive military intervention can also have the perverse effect of pushing groups to escalate violence to provoke a foreign military response.[242] If one group is expecting to benefit from military intervention, it may escalate hostilities to provoke intervention, rather than settle for a less advantageous compromise with the other party. R2P might "encourag[e] secessionist minorities by giving them the often false impression that the sole Superpower will come to their rescue in case they are repressed," therefore "lead[ing] to more violence, hatred and death, not less."[243] One scholar has dubbed this issue "the moral hazard of humanitarian intervention," underlining that, in cases where violence stems from challenges by rebel groups to a central authority, R2P may raise expectations of diplomatic and especially military intervention to protect these groups, therefore unintentionally fostering rebellion by lowering its expected cost and increasing its likelihood of success.[244]

1.6 A universal doctrine?

Although R2P aspires to become a new universal doctrine, it is far from being universally applicable. Indeed, the ICISS report acknowledges that no military intervention under the R2P banner can be conducted against the will of the permanent five members of the Security Council or another major power, as the prospect of success would be unlikely. Although the Commission optimistically concludes that "the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them

not to be mounted in any case,"[245] such caveats seriously undermine R2P's claims to the status of "emerging norm" in international law.

R2P can never apply to major powers, but these powers happen to be the only ones capable of mounting a credible military intervention under R2P. According to the ICISS report, given that "the UN does not have its own military and police forces, [...] what will be increasingly needed in the future are partnerships of the able, the willing and the well-intended – and the duly authorized."[246] The role of the "able" in implementing R2P echoes the "Blair Doctrine," formulated by UK Prime Minister Tony Blair at the time of the NATO intervention in Kosovo. In defense of humanitarian intervention, Blair argued that "those nations which have the power, have the responsibility."[247]

Some R2P proponents tie the implementation of the doctrine entirely with US military capacity, since it is the largest military power in the world. Surveying the evolution of R2P in 2006, Thomas Weiss lamented that "the political will as well as operational capacity for humanitarian intervention has evaporated because the United States, as the preponderant power, is unable to commit significant political and military resources for human protection"[248] due to its military engagements in Afghanistan and Iraq.

R2P thus creates a situation in which the only powers capable of carrying the military arm of the doctrine are also the powers that can never be held accountable under its principles. As author David Rieff points out, "a doctrine of intervention that both claims the moral high ground and clamors its universality but under which the interveners are always from the Global North and the intervened upon always from the Global South is not moral progress; it is geopolitical business as usual."[249]

1.7 A politically convenient doctrine

Proponents of R2P rarely address the fact that major powers cannot be held accountable under the doctrine, but they are quick to criticize lesser powers' resistance to R2P, which is automatically painted as suspicious and linked to dark motives. In a 2007 speech, Gareth Evans lambasted what he called "the enemies of R2P", noting that the assault against the norm "comes [...] from those countries who continue [to] have something to hide or

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239 As was the case in Libya, cf. Section I.4. of this report.
240 De Waal (2012).
241 Mamdani (2013).
242 De Waal (2012).
243 Bricmont (2009).
244 Kuperman (2008).

245 ICISS (2001), p. 37.
246 Ibid., p. 52.
247 Blair (1999).
248 Weiss (2006), p. 747.
249 Rieff (2011b).

be ashamed about in terms of their own internal behaviour and are deeply reluctant to acknowledge, as a result any limitations on their sovereignty."[250]

Major powers (in particular France, the UK, and the US, known as the "Permanent 3" or "P3") and NGOs have made commitment to R2P a measure of states' "responsibility" and "leadership" in the international arena. In this context, the opposition of emerging powers to the doctrine is used to discredit their aspirations to increased status. In an op-ed written following the intervention in Libya, the head of the GCR2P argued that "all three IBSA countries [India, Brazil, and South Africa, which were elected members of the Council at the time][251] want to demonstrate their capacity to serve as permanent members of a reformed and expanded UN Security Council. But their track record on R2P so far has been uneven."[252] P3 Ambassadors have used similar language to portray the IBSA countries as irrelevant, "less-experienced" members, emerging powers that aspire to a Council seat but are refusing to take an important stand on R2P.

Such discourse, which allows major powers to present themselves in a favorable light, tends to frame R2P as a "yes or no" endorsement and ignores nuance. For instance, although some African countries have not enthusiastically endorsed the R2P concept and are sometimes presented as "enemies" of R2P, these countries have all signed on to the Constitutive Act of the African Union, which states in Article 4 that "the Union shall function in accordance with the following principles: […] the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."[253] The Act, which predated R2P, is very much aligned with the concept except for one important difference: it recognizes the role of the African Union, not the "international community," in intervening in its member states' affairs. In other words, what some African countries may be rejecting with R2P is the possibility of major power intervention in their affairs, not the possibility of an intervention decided by their peers.

Calls for emerging powers to show "responsibility" echo language used by the Bush administration in the lead up to the Iraq War. Indeed, as opposition to the war mounted, President Bush repeatedly urged the UN to meet its "responsibilities" regarding Iraq, underlining that the organization risked becoming irrelevant if it failed

to do so.[254] R2P proponents have often argued that R2P was misused in Iraq, but it is clear that the Bush administration borrowed its rhetoric from the ICISS report. The report argued that "if the Council – and the five permanent members in particular – fail to make the Council relevant to the critical issues of the day then they can only expect that the Council will diminish in significance, stature and authority."[255]

Using R2P as a measure of "responsibility" and "relevance" allows major powers to bully recalcitrant opponents into compliance while discarding tough questions about other measures of "legitimacy," such as the lack of representativeness of the Security Council and the use of the veto by the P5. It also conveniently obscure that they have their own political interest.[256] By tying the UN's "relevance" and "legitimacy" to its ability to authorize R2P operations, R2P may weaken the organization. Indeed, "there are two main ways to ruin the UN: to ignore its relevance in war/peace situations, or to turn it into a rubber stamp for geopolitical operations of dubious status under international law or the UN Charter."[257]

1.8 An elastic doctrine with little oversight

R2P proponents have repeatedly argued that the notion of "responsibility" is supposed to reframe the debate, from the right of outside powers to intervene (under "humanitarian intervention") to the right of local populations to be protected. But the R2P doctrine remains weak or even fails to hold accountable those who are supposed to protect. Outside powers face no "responsibility" if they fail to intervene, or for the way they intervene. José Alvarez states: "If there is such a thing as a responsibility to protect, the legal mind naturally assumes that a failure to exercise such responsibility is an internationally wrongful act entailing the usual panoply of potential remedies, including the legal liability of the wrongful actor and the potential for countermeasures against that actor by others."[258] Whereas human rights treaties can help insure that states comply with their "responsibility to protect" their populations, R2P does not provide similar mechanisms to hold the "international community" and major powers accountable for failing to protect populations at risk.

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250 Evans (2007a).
251 Brazil and India abstained from adopting the resolution that formed the legal basis for military intervention in Libya (together with Germany, China and Russia). Cf. e.g. Paech (2013).
252 Adams (2012).
253 African Union (2000).

254 "The United Nations Security Council has not lived up to its responsibilities, so we will rise to ours" [www.cnn.com/2003/WORLD/meast/03/17/sprj.irq.bush.transcript/].
255 ICISS (2001), p. 51.
256 Mallavarapu (2013).
257 Falk/Krieger (2002).
258 Alvarez (2008), p. 282.

Despite claims to the contrary, R2P does not create an enforceable right of populations to be "protected" by the international community. And although R2P supporters argue that the doctrine puts more constraints on would-be intervening powers, it can be understood as doing exactly the opposite. Indeed, whereas the UN Charter principle of non-intervention puts the burden of justification for military intervention on the powers intervening, the concept of "sovereignty as responsibility" puts the burden of justification on the state intervened in to substantiate its claims to legitimacy.[259] Linking a state's right to enjoy its sovereignty to a malleable determination of whether the state respects "human security" is not a positive or necessarily "progressive" development of the law.[260]

The emphasis on the concept of "legitimacy" rather than legal criteria to justify intervention also makes accountability under R2P elusive. How can states be held accountable for acting or failing to act under such criteria? For instance, the background document for the ICISS report offers the following reflection on when the military option should be considered: "it is certainly not the case that all other available options must actually have been pursued and failed, but rather that other options will have been considered seriously."[261] But how are we supposed to ascertain that these options have been considered "seriously," and by whom? Will anyone be held accountable for failing to consider (or discarding) them? During the crisis in Libya, the P3 dismissed peace overtures by Gaddafi without seriously exploring them and privileged the military option.[262] And yet they have not been held accountable for this decision. In a context where there is no judicial review of Security Council decisions,[263] it is unlikely that major powers will be taken to task for discarding peaceful solutions to conflict.

In the absence of mechanisms for accountability, the imperative of "saving lives" can provide justification for many actions, making R2P a slippery slope. The ICISS report, for instance, notes that military intervention operations "will have to do whatever it takes to meet their responsibility to protect."[264] This is a position that NATO countries adopted in Libya, where they argued that protection of civilians required nothing less than the removal of Gaddafi. While many R2P proponents have argued that the doctrine is completely divorced from regime change, there are "strong causal relationships" between R2P and regime change in situations where military operations are aimed at protecting civilians against state or state-sponsored actors.[265] An op-ed by Human

Rights Watch's UN representative following the NATO intervention in Libya noted that "one could argue that when a leader is bent on committing mass atrocities against his population, the only effective way to protect civilians is to bring down the tyrant."[266] It would appear that under the rubric of "protection" nothing is impossible, in particular in a context where the "interveners" do not expect to be held accountable for their actions.

When it comes to the role of major powers, "the Commission seeks both to have its cake and to eat it. If states can only be guaranteed to act morally through their 'accountability' to international society and the threat of intervention, there can be no guarantee that major powers, immune to 'accountability' through such coercion, will not abuse their powers."[267]

1.9 A selective view of history and conflict

Although R2P aspires to be a universal norm, its view of history is strikingly selective. Indeed, the formulations of the doctrine (and its supporters) always use the examples of the Holocaust, Cambodia, Rwanda, and Srebrenica[268] to justify the need for a new norm and argue for "never again." These are certainly very important cases of dramatic loss of human life, but the choice of these key examples is somewhat arbitrary and colors the whole R2P analysis.

Why is R2P silent on "the failure to prevent" the genocide in Guatemala, for instance? This is particularly striking, as Guatemala is one of the few cases in recent decades where genocide was legally determined to have occurred. Indeed, former Guatemalan President Ríos Montt was formally found guilty of genocide in 2013 (although the ruling was overturned and is currently pending). Investigations have found that hundreds of thousands of Mayans were killed by the Guatemalan military as part of a counter-insurgency campaign during the Guatemalan civil war (1960-1996). It is estimated that 100,000 to 150,000 Mayans were killed just during the two bloodiest years of the conflict (1981-1983).[269] And yet this is seldom mentioned as a tragedy on par with R2P's preferred examples. This is likely because the Guatemalan conflict fit into the Cold War framework, where each side had no qualms funding and

259 Chandler (2004), p. 65.
260 Alvarez (2007).
261 Weiss/Hubert (2001), p. 150.
262 This is acknowledged by Evans (2013).
263 ICISS (2001), p. 50.
264 Ibid., p. 57.
265 Breakey (2012); see also Brozus/Schaller (2013).

266 Bolopion (2011).
267 Chandler (2004), p. 76.
268 See, for instance: UN Secretary-General (2009), para. 5 ("The twentieth century was marred by the Holocaust, the killing fields of Cambodia, the genocide in Rwanda and the mass killings in Srebrenica"); and Weiss (2011b), p. 291 ("Libya suggests that we can say no more Holocausts, Cambodias, and Rwandas").
269 Jonas (2009), p. 381.

arming murderous governments to support or prevent the advance of "communism." The role of the US in supporting the Guatemalan military, even at the worst of the repression, is well-documented.[270]

The case of East Timor, to mention another example that is not used[271] by R2P proponents, raises similar questions. According to the Timorese Commission for Reception, Truth and Reconciliation, Indonesia's occupation of East Timor (1974-1999) resulted in the death of at least 100,000 Timorese from famine and violence, including at least 18,600 violent deaths or disappearances.[272] To put these numbers in perspective, the population of East Timor was estimated to be about 660,000 in 1974.[273] And yet the governments of the US, Australia, and the UK were supportive of Indonesia throughout its occupation of the country. Following the invasion, Australia was the only state (in addition to Indonesia) to recognize East Timor as an Indonesian province. Declassified documents reveal that Australia knew of Indonesian plans to invade Timor and chose to do nothing.[274] As one scholar underlines, Indonesia's invasion could have been prevented very easily by the "international community," in particular by the US. The withdrawal of economic and military assistance by foreign investors and international institutions would have crippled the Suharto regime, and would have likely forced Indonesia to reconsider its occupation, if the major powers had chosen to do so.[275]

These examples are rarely if ever invoked by R2P proponents because they do not fit into the narrative. Although instances where big powers sided with murderous regimes for political or economic reasons are sometimes mentioned in passing by R2P proponents, the focus is usually on the immorality of the passive bystander who fails to act to prevent other peoples' crimes.[276] This view of history is illustrated by Samantha Power in her influential book *A Problem from Hell*, which is more concerned with US failure to prevent or stop genocide than with cases in which the US made genocide possible. This framework allows Gareth Evans to claim that when the worst atrocities were committed in Iraq (during Saddam Hussein's regime) "the West turned a blind eye."[277] But the case of Guatemala and East Timor show that in many cases major powers did not "look the other way" but in fact actively made violence possible. In these cases and in the case of Iraq, the West did not just turn a

blind eye to what was happening. It actively funded and armed governments that went on to commit "atrocities" against their people and others.[278]

The idea that major powers often are "doing nothing" in the face of gross human rights violations is very much at the center of R2P analysis of contemporary crises and conflicts. Although R2P (in its ICISS version) acknowledges that major powers may play a role in the "root causes" of the crises, the doctrine tends to see the problem of domestic strife as existing uniquely "out there" in poor countries, due to their ethnic and religious fragmentation, age-old animosities, and repressive and dictatorial governments. The connections of these repressive governments to Western states and corporations are generally ignored. R2P is helping major powers, and in particular Western states, to evade responsibility for genocide and mass atrocities by advancing an "institutionalist" logic (promoting "good governance" as the solution to prevent and solve conflicts) that denies "economic, social and political frameworks which would inculcate Western powers in the problems and underdevelopment of post-colonial regimes,"[279] and, ultimately, masks their complicity in these crimes.[280]

1.10 A doctrine that does not ask the right questions

Historical examples suggest that R2P does not provide an adequate framework to understand inaction in the face of massive loss of human life. The doctrine hinges around the tension between "doing nothing" and intervening (through military intervention or non-military means), when in fact major powers are rarely "doing nothing." Rather than reflecting on the role that these powers play, the ICISS report frames the question in terms of the "ethical approaches to intervention" and the debate between non-interventionists and interventionists,[281] which turns the issue in a confusing theoretical direction. By focusing on whether states should act or not in other states' affairs, the Commission conveniently obscures the fact that powerful states act all the time in others' affairs.

Framing the debate as a tension between sovereignty and intervention (military or not) ignores that sovereignty has never prevented intervention when majors powers have deemed it fit to intervene. Although the ICISS

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270 Malkin (2013).
271 Except when it comes to the later UN-led intervention in the country.
272 Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste (2005).
273 Data from the World Bank [http://bit.ly/IXcgwt].
274 Hopkins (2000).
275 Simpson (2005).
276 Holmes (2002).
277 Evans (2003).

278 For a history of US and Western ties to Iraq, see for instance Lando (2007).
279 Chandler (2010), p. 134.
280 For a more in-depth discussion of this point, see Abugre (2008) and Bendaña (2008), on the historical account, see Chomsky (2011).
281 Weiss/Hubert (2001), pp. 131f.

report acknowledges that the norm against non-intervention was broken many times in the 20th century, it does not see a contradiction between this acknowledgement and building a doctrine that sees sovereignty as the major obstacle to saving human lives.[282]

Presenting inaction and disagreements among major powers as a theoretical debate on the meaning of sovereignty and the concept of non-intervention does nothing to illuminate what is at stake in a given crisis. At the time of the debate around Libya and Syria in 2011-2012, the P3, many NGOs, and the media portrayed disagreement in the Security Council as the result of tension over the concept of sovereignty and the role of the Security Council. A 2012 New York Times article on Syria, for instance, noted that "fundamentally, the argument over Syria reflects a deeper divide between those who would use the Security Council to confront nations over how their governments treat civilians, versus those who consider that it has no role whatsoever in settling domestic disputes."[283] This analysis conveys little about the history of the conflict and the web of great power interests and rivalries that contribute to shape it.

As the focus on sovereignty as an obstacle to saving lives shows, the R2P framework often fails to ask the right questions. In his 1999 challenge to the General Assembly, Kofi Annan asked: if a coalition of states was willing to use force to end the Rwandan genocide, should they have refrained from acting in the absence of express Council authorization?[284] This counterfactual ("what if…?") does not help to understand how to address and solve existing crises.

Lack of intervention in the past has generally been due to a lack of interest by major powers – or an interest in not solving the crisis – rather than a high regard for sovereignty. R2P does not explain how to solve this problem. How can we build an international system that can address violent conflicts and crimes when the permanent five members of the Security Council have no interest in stopping the violence, or an interest in keeping it going? The ICISS report correctly notes that there exists a

"critical gap between, on the one hand, the needs and distress being felt, and seen to be felt, in the real world, and on the other hand the codified instruments and modalities for managing world order."[285] But it fails to ask the right questions to remedy this gap. Instead of reflecting on how to make the international system work better, it focuses on building an extreme option (military intervention) when the system fails. This last resort option is bound to be the only workable solution if no effort is made to make the system functional. Although the background document for the ICISS report acknowledges that in the 1990s "UN resources dedicated to preventive diplomacy remain dwarfed by the resources dedicated to efforts after wars and especially to peacekeeping,"[286] it does not draw conclusions and recommendations from this observation.

Ultimately R2P is silent on what happens when major powers (through the Security Council or not) are not interested in preventing a crisis and intervening (non-militarily or militarily) in a given situation. The background document for the ICISS report acknowledges "the final link in the chain of prevention is political will. The overwhelming majority of studies cite lack of will as the major cause of failed prevention."[287] But it does not explain how R2P is supposed to fix this issue. Because R2P is not built to hold the major powers accountable for their failure to prevent, the doctrine cannot encourage political will where there is none. It just makes it easier to justify intervention where will already exists. As Human Rights Watch's UN representative pointed out with regards to the situation in Syria in 2011, "here we are, once again, with the Security Council standing virtually idle while mass atrocities are being committed, the very situation the responsibility-to-protect concept was designed to avoid."[288]

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282 ICISS (2001), p. 12.
283 MacFarquhar (2012).
284 Annan (1999).

285 ICISS (2001), p. 15.
286 Weiss/Hubert (2001), p. 29.
287 Weiss/Hubert (2001), p. 42.
288 Bolopion (2011).

2 – The political economy of R2P

2.1 R2P: A government project

Although many civil society organizations (CSOs) support and promote the R2P doctrine today, the project did not start as a grassroots mobilization but as a government initiative. The government of Canada played a key role in building civil society interest in the doctrine. The ICISS report was initially met coolly by NGOs, which were concerned that it would be used to justify military intervention.[289] After the publication of the report, Canada held roundtable meetings with NGOs to discuss the future of the doctrine "as part of the effort to involve civil society organizations in the process of promoting these important concepts and developing effective mechanisms to ensure their implementation."[290] Canada approached the WFM-IGP to hold a series of consultations with NGOs to get their views on the ICISS report and the concept of R2P.[291] Under Canada's request, WFM-IGP started reaching out to NGOs and other civil society actors.[292] In 2003, WFM-IGP launched the "Responsibility to Protect – Engaging Civil Society" (R2PCS) project to involve civil society in the advancement of R2P. The R2PCS project received support from the Governments of Canada, Sweden, and the United Kingdom; the John D. and Catherine T. MacArthur Foundation; the Oak Foundation; and the Arsenault Family Foundation.[293] According to a presentation for R2PCS, no fewer than four UK government entities provided funding to the program (the UK Government's "Global Conflict Prevention" Pool, the Department for International Development, the Foreign and Commonwealth Office, and the Ministry of Defense).[294] A report of WFM-IGP on the R2PCS project underlines the close link between the organization and Canada throughout the process, noting that "officials of the Government of Canada [...]

attended several of the roundtable meetings organized by WFM-IGP and met individually with WFM-IGP on several occasions throughout this consultation process."[295]

In addition to support for the WFM-IGP, the Canadian government also provided funding to Project Ploughshares to conduct civil society outreach to build consensus on R2P in Eastern and Western Africa.[296]

As the example of R2PCS suggests, government funding has been key to building a civil society movement around R2P. In 2009, the government of Australia, one of the main sponsors of the doctrine, announced that it had awarded AU$ 2 million to universities and NGOs for "research and outreach projects to advance the R2P principle in the Asia Pacific Region."[297] The AU$ 2 million "R2P Fund" was part of a package of AU$ 4.5 million over four years to advance the R2P concept at the regional and global level.[298]

Many of the most prominent R2P supporters have circulated from civil society to government positions (and vice-versa). Gareth Evans, for instance, was Australia's Minister for Foreign Affairs from 1988 to 1996 before becoming chief executive officer of the International Crisis Group from 2000 to 2009. Under his leadership, ICG grew from 25 to 130 staff members, and its budget from US$ 2 million to US$ 15 million.[299] Samantha Power followed a reverse trajectory, from civil society and academia to government. Before going to Harvard, Power had worked for the ICG in Bosnia in 1996. Another case is Justin Forsyth, who was policy director at Oxfam International from 1999 to 2004 (when the organization took a strong stance in support of R2P) and then went on to work on poverty and climate change for Tony Blair. Forsyth is now head of Save the Children UK.[300]

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289 See for instance Pace (2007).

290 World Federalist Movement-Institute for Global Policy (2003), p. 8.

291 Mpoumou (2010).

292 World Federalist Movement-Institute for Global Policy (2003), p. 9.

293 Website of the ICRtoP [www.responsibilitytoprotect.org/index.php/former-r2pcs-project].

294 According to a presentation available on the ICRtoP's website [www.responsibilitytoprotect.org/files/Responsibility%20to%20Protect%20Powerpoint%20Presentation.pdf].

295 World Federalist Movement-Institute for Global Policy (2003), p. 8.

296 Project Ploughshares (2004).

297 Australian Foreign Minister website [www.foreignminister.gov.au/releases/2009/fa-s090925a.html].

298 Ibid. For a list of organizations which were awarded money from the Fund, see www.foreignminister.gov.au/releases/2009/fa-s090925a-att.html.

299 Evans (2009).

300 Save the Children UK website [http://blogs.savethechildren.org.uk/author/jforsyth/].

The architects of the R2P doctrine were well aware that civil society support was key to disseminate the concept and give it legitimacy, in particular when it comes to the possibility of military intervention. The ICISS report lists NGOs as one of the "international actors whose roles are immensely relevant to the intervention issue," along with the media and regional and sub-regional organizations.[301] The report notes the important role of civil society in legitimizing the use of force, raising concerns that NGOs have sometimes proved "reluctant publicly (as distinct from privately) to endorse coercive measures which may be necessary, but which are not easy for governments or intergovernmental institutions to deliver without open support."[302]

In the wake of "humanitarian interventions" in the 1990s and the establishment of R2P, some NGOs have been more open to interventionist policies. Starting in the 1990s, the language of human rights was increasingly used to justify military intervention, sometimes with little push-back from human rights organizations. For instance, "[some] women's rights advocates opposed neither the U.S. invasion of Afghanistan nor the use of women's human rights to justify the invasion."[303] Oxfam, one of the major civil society supporters of R2P, has expressed support for the idea that military intervention can sometimes be used as a "last resort." At a conference in 2007, Oxfam's Deputy Director of Policy Krista Riddley stated that "Oxfam is one of the few humanitarian agencies that embraced R2P, and has no blanket policy stating that we cannot support military intervention."[304]

By couching military intervention in the language of human rights (and morality), R2P has made some NGOs more amenable to the possibility of the use of force. It has also created a logical alignment between countries that have endorsed R2P and are able to carry R2P interventions and civil society. The important role of Western governments in supporting and funding R2P advocacy has consolidated these ties. This alignment is well illustrated by the polarizing NGO discourse around crises like Darfur, Libya, and Syria, which usually pits the friendly, human-right-loving powers of the West against "spoilers" (states opposed to R2P) and human rights-violating regimes of the Global South. Because Western governments are seen as "allies" in the promotion and implementation of the doctrine, R2P-friendly NGOs have sometimes kept silent on the human rights impact of Western-led military interventions, such as in Afghanistan and Iraq, or their more covert actions, such as the role of the US, Canada, and France in the 2004 coup in Haiti and their deployment of troops to the country.[305]

The R2P-oriented NGOs sometimes appear more concerned about whether states adopt the concept than about actual state practice. Among the main achievements of civil society in 2010, the head of ICRtoP lists the following: contributing to two successful General Assembly deliberations on R2P, pushing for normative advancement of R2P at the international and regional levels, and increasing awareness of the norm among a broad range of actors.[306] The focus on the institutionalization of R2P obscures more difficult political questions.

2.2 Resistance to R2P

Proponents of R2P usually dismiss criticism of the doctrine as the result of either a "misinterpretation" of what R2P is supposed to be about or of an antiquated defense of national sovereignty. They often argue that opposition to R2P comes from a small minority of countries with suspicious motives. Former director of GCR2P Monica Serrano, for instance, claims that "while critics have claimed that the Responsibility to Protect (R2P) is a North-South polarising issue and is therefore controversial, this is a deliberate misrepresentation in a rhetorical war led by a small minority of UN member states."[307] Thomas Weiss similarly argues that "the overall debate on the responsibility to protect within the United Nations is often skewed because of the diplomatic skills and power of a few key Third World states."[308] Given that R2P is actively supported by some of the major powers, including the P3, complaining that "powerful" Third World states are skewing the debate seems rather oblivious to the reality of the power balance in the international order.

The 2005 World Summit outcome document was far from being a univocal endorsement of the R2P concept by UN member states. The R2P concept adopted in the outcome document is very different from the doctrine laid out in the ICISS report. Even R2P advocates recognize that the summit "achieved much less than had been envisaged."[309] UN-endorsed R2P did not adopt some of the more innovative (and controversial) elements of the ICISS report, including limitations on the use of the veto by the P5 and the possibility of unilateral intervention without a Security Council resolution.[310]

301 ICISS (2001), p. 73.
302 Ibid.
303 Engle (2007), p. 190.
304 Cited in Human Rights Center (2007), p. 4.
305 For an overview of US, Canadian and French involvement in Haiti, including the 2004 coup, see Farmer (2004) and Ives/Herz (2011).

306 Mpoumou (2010).
307 Serrano (2011), p. 101.
308 Weiss (2011b).
309 Bellamy (2009), p. 91.
310 Cf. Hehir (2010).

R2P proponents also acknowledge that many member states have displayed what Gareth Evans calls "buyer's remorse" after the World Summit.[311] Short of rejecting the doctrine, some governments have expressed concerns about its vagueness and the role of the use of force. At the General Assembly dialogues on R2P in 2012 and 2013, some states raised important caveats about its adoption and implementation. There was debate, for instance, on whether the three pillars should be "sequential" or "simultaneous." Several countries from the Global South argued for a chronological evolution of the pillars, with pillar three (coercive intervention) a last resort when the other two pillars have failed, while traditional R2P supporters claimed that the pillars were simultaneous.[312] Some states that have been supportive of R2P have also underlined the importance of food security and development in ensuring lasting peace,[313] an aspect of R2P that tends to be underplayed or dismissed by many of its Western supporters.

R2P supporters have been quick to dismiss opposition from countries such as Russia, China, Pakistan, India, Bangladesh, Indonesia, Malaysia, Egypt, Bolivia, Venezuela, and Ecuador (to mention some of the states that have expressed reservations about R2P) as a knee-jerk reaction from more or less undemocratic regimes overly attached to sovereignty. But they have rarely addressed the fact that Médecins Sans Frontières, a well-respected humanitarian organization, has expressed strong criticism of R2P. In 2010, Fabrice Weissman of MSF's "CRASH"[314] published a lengthy article in which he explained why MSF refused to adhere to the R2P doctrine.[315] According to the article, entitled "Not in Our Name," MSF is concerned that R2P is a new doctrine of "just war" effectively legalizing a new form of imperialism. Weissman argues that the use of armed force, even as a "last resort" in extreme cases, is likely to lead to human suffering. Therefore, "if the purpose of humanitarian action is to limit the devastation of war, it cannot be used as a justification for new wars."[316] Already in 2002, as the ICISS report had just been launched, MSF had raised concerns about how the doctrine aligned humanitarian, military, and political activities, arguing that "when humanitarian action is coopted or subsumed into broader military and political intervention, it may be perceived as interference."[317] Interestingly, MSF started as decidedly pro-interventionist organization under the leadership of its founder, Bernard Kouchner, who was one of the first proponents of the "droit d'ingérence" (right to intervene). MSF's change of policy and its current rejection of R2P should raise tough questions for the doctrine's supporters.

There is evidence that MSF is not the only organization attempting to dissociate its work from R2P, with some humanitarian workers in the field also wary of seeing their activities linked to what they fear is a highly political and contested concept driven by states.[318] The resistance of some aid organizations to link humanitarian activities with R2P contrasts with attempts by the UN and some R2P supporters to depict humanitarian assistance as a key aspect of the conceptualization and operationalization of R2P.[319]

Resistance to R2P has also come from what its proponents probably consider an unlikely source: citizens in countries (often Western) that have adopted and promoted the doctrine. Indeed, citizens in some of the most R2P-friendly states have demonstrated suspicion for the doctrine and have at times been quite reticent to endorse it. The "democratic legitimacy crisis" of R2P became obvious at the time of the debate on a potential military intervention in Syria, when the British Parliament voted against such an intervention and the US Congress rejected the plan. In addition, a 2013 study by the Pew Research Center found that a majority of US citizens agreed with the statement that the US should "mind its own business internationally and let other countries get along the best they can on their own."[320] In a column for the New York Times following the debates on Syria, Michael Ignatieff noted that "democratic peoples are reluctant to authorize their leaders to use force to protect civilians in countries far away," and acknowledged that part of the reason was that citizens often feel like they are being manipulated by appeals to "save lives."[321] And yet, Ignatieff urged liberals to continue to support humanitarian intervention under the banner of R2P, even if they had been lied to in the past.

Not surprisingly, R2P has been the subject of heated debates among academics, with many taking a critical stance against the concept. Some, like David Chandler

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311 Bellamy (2010), p. 28.

312 For instance, the European Union argued that the three pillars are parallel, not chronological (Delegation of the European Union to the UN (2012)), while Brazil (Permanent Mission of Brazil to the UN (2012)) and Malaysia (Permanent Mission of Malaysia to the UN (2012)) argued the opposite.

313 Permanent Mission of Brazil to the UN (2013).

314 The CRASH (Centre de Réflexion sur l'Action et les Savoirs Humanitaires – Reflection Center on Humanitarian Action and Knowledge) is a think tank-like organization created by MSF in 1999 which carries out in-depth studies and analysis of MSF's activities.

315 Weissman (2010).

316 Ibid., p. 199.

317 See the speech delivered by Catherine Dumait-Harper, MSF Delegate to the UN, at a launch event in 2002 (Dumait-Harper (2002)).

318 This was the conclusion of a researcher after interviews with aid workers in Sudan in 2008 (Okeke, (2011)).

319 See, for instance, Luck (2008), p. 7: "Efforts to operationalize R2P principles would necessitate closer collaboration between headquarters and the field and between the United Nations and its various partners, as has happened in humanitarian affairs."

320 Lewis (2013).

321 Ignatieff (2013b).

and Aidan Hehir of the University of Westminster, have underlined the severe gap between the doctrine's stated aspirations and its application in practice. According to Tufts University's Alex de Waal, R2P fails to provide a correct analysis of conflict dynamics and thus the correct tools to solve them. Mahmood Mamdani of Columbia University and Makere University (Uganda) has underlined the neo-colonialist undertones of R2P's ideological basis and the way it depoliticizes international relations. Others have explored alternatives, including the Kroc Institute's (University of Notre-Dame) Mary O'Connell, who proposes to redefine R2P as "Responsibility to Peace."[322] Public intellectuals such as Noam Chomsky and David Rieff have also forcefully spoken out against the doctrine.

2.3 R2P in historical context

Although R2P supporters present the doctrine as a revolutionary advance in international relations, R2P in fact has many historical predecessors. When Gareth Evans claims that "a visceral discomfort with the use of military force has traditionally been a defining characteristic of the political left,"[323] he ignores a long history of liberal and left support for colonialism and military intervention. The research background for the ICISS report does acknowledge that humanitarian concerns have been invoked by states in the past to justify military interventions (and concludes that, in the ten pre-1990s intervention cases under review, "humanitarian justifications were most robust in cases where purely humanitarian motives were weakest").[324] However, it does not dwell on the fact that civil society often played a key role in endorsing and supporting such claims.

There is considerable historical record of "humanitarian" reasons being invoked by progressive, left-of-center groups to justify colonial takeover of territories and occupation. As Martti Koskenniemi explores in his book *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, international lawyers in the 19th and early 20th centuries saw colonization not only as a historical necessity whose worst aspects should be mitigated, but also as a moral duty to create a worldwide federation of sovereign states, governed by humanitarian laws.[325] Many humanitarians and philanthropists argued that "savages" needed to be raised to the status of civilized people to benefit from the protection of inter-

national humanitarian law, thus providing a justification for colonization.[326] The defense of women's rights – an important component of the R2P advocacy – was also used to justify British colonialism (as an attempt to save "brown women from brown men") and the US military interventions in Cuba (1898), the Philippines (1899-1902), and Hawaii (1893).[327]

R2P does not acknowledge this history. It ignores the fact that progressively-minded groups were mobilized in favor of colonial intervention and enthusiastically endorsed the idea that colonialism would lift native people out of ignorance, backwardness, and misery.[328] Today, the wide gap between the well-meaning beliefs of liberal politicians and intellectuals in the center and the actual practice of intervention and colonialism in the periphery is of course painfully apparent.[329] Few would argue against the conclusion that appeals to humanitarian motives in the 19th and early 20th centuries were used cynically to win over the liberal intelligentsia and a section of liberal public opinion that would not otherwise have supported the colonial enterprise. Conservatives, who supported colonialism and intervention for other reasons, did not need such justifications.

The shadow of this history, although not acknowledged, looms large over R2P. The language used to justify colonization a century ago sometimes eerily echoes in the R2P doctrine today. The ICISS report, for instance, explores the benefits of installing a "trusteeship"[330] in a country suffering from conflict, or at least occupying the country long enough "to ensure sustainable reconstruction and rehabilitation."[331] The Commission also extolls the benefits of military occupation as a civilizing process, noting that "apart from, hopefully, removing or at least greatly ameliorating, the root causes of the original conflict and restoring a measure of good governance and economic stability, such a period may also better accustom the population to democratic institutions and processes if these had been previously missing from their country."[332] With the insight of what happened in Iraq following the US-led invasion, this prediction sounds grimly ironic.

R2P was first supported by liberal and left-of-center governments, including the Liberal government of Jean Chrétien in Canada and Tony Blair's Labour government in the UK. R2P has also resonated well with the liberal desire to restore a "positive" US role in the world and

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322 See O'Connell (2011). Cunliffe (ed) (2011) provides a good overview of critical academic perspectives on R2P.
323 Evans (2003).
324 Weiss/Hubert (2001), p. 67.
325 Koskenniemi (2002).

326 Weissman (2010), p. 200.
327 Engle (2007), p. 218 and Weissman (2004).
328 See also Melber (2008).
329 For an interesting take on the disillusionment of a supporter of colonialism after visiting the colonies, see Mario Vargas Llosa's novel on the life of human rights advocate and Irish nationalist Roger Casement (Vargas Llosa, 2010).
330 ICISS (2001), p. 43.
331 Ibid., p. 44.
332 Ibid.

moral leadership in the protection of human rights and other universal values. This aspiration found echo in the UK as well, as expressed in an Oxfam report that calls on the British government to lead the way and "act to uphold its responsibility to protect civilians" around the world.[333]

Supporters of R2P in academia have similarly come from a liberal and sometimes left-leaning background. Princeton professor Anne-Marie Slaughter, for instance, has penned several pieces for the liberal website open-Democracy[334] and writes a monthly column for Project Syndicate, a liberal-leaning publication that "provides readers with original, engaging, and thought-provoking commentaries by global leaders and thinkers".[335]

Conversely, right-wing conservative politicians have generally rejected the R2P concept. They often argue that their government has a right to intervene in its own self-interest, and they are suspicious of moral rhetoric that could constrain the use of military power. For instance, the Heritage Foundation, a conservative US think tank, argues that the US should not embrace R2P as it would restrict its military. An article on the foundation's website argues that "if the United States intervenes in the affairs of another nation, that decision should be based on U.S. national interest, not on any other criteria such as those set forth by the R2P doctrine or any other international 'test'."[336] The political divide over support for R2P is well illustrated by the fact that the conservative government of Stephen Harper withdrew support for R2P after Canada had played such an important role in the establishment of the concept.

However, there has been overlap between the liberal aspirations of R2P and more traditionally conservative concerns. Indeed, the R2P discourse intersects with the discourse on "counterterrorism" in many ways. The ICISS report, for instance, notes that the "destabilizing effects" of crises in the developing world "are felt in the developed world in everything from globally interconnected terrorism to refugee flows, export of drugs, the spread of infectious disease and organized crime."[337] The concept of "failed states," the danger they pose to world order and the need for "pre-emptive" intervention are central to both R2P and the discourse on "the war on terrorism."[338] Both the ICISS' allusion to "just cause" and the Bush doctrine of preemptive force harkens back to the "just war" doctrine.[339] The Bush administration's

definition of the attributes of a "rogue state" included, in addition to support for terrorism, governments that "brutalize their own people."[340]

Michael Ignatieff, one of the most high-profile supporters of R2P, also happens to be a theorist of the "lesser evil" concept, which addresses how democracies are supposed to fight terrorism. In his book on the issue, he argues that democracies must not shrink from the use of violence to fight "terror," as force is sometimes necessary, but that they most do so in a measured way.[341] Discussing the concept of the "lesser evil" in the New York Times in 2004, Ignatieff finds himself examining what constitutes acceptable forms of torture ("permissible duress might include forms of sleep deprivation that do not result in lasting harm to mental or physical health, together with disinformation and disorientation (like keeping prisoners in hoods) that would produce stress") and lamenting that "even terrorists, unfortunately, have human rights."[342] Ignatieff also applied the concept of "lesser evil" to the Iraq US-led invasion, which he supported. Writing before the war in early 2003, Ignatieff reflected that "the disagreeable reality for those who believe in human rights is that there are some occasions – and Iraq may be one of them – when war is the only real remedy for regimes that live by terror [...] The choice is one between two evils, between containing and leaving a tyrant in place and the targeted use of force, which will kill people but free a nation from the tyrant's grip."[343]

R2P is tightly linked to "liberal hawks" and "liberal interventionists" who have made the possibility of military intervention more palatable by couching it in the language of human rights and morality. In an acidic commentary on liberal calls for intervention in Syria, David Rieff notes: "Nothing is wrong with intervention, it seems (just as there is nothing wrong with drone strikes), just as long as it is done by good U.N.-loving, multilateralism-oriented Democrats from the coasts, rather than by ignorant, war-worshipping, vulgarly nationalistic Republicans from flyover country."[344] In promoting R2P, these intellectuals and policy makers have spearheaded a dangerous covert re-militarization of world affairs that has won the support of many human rights groups. Rather than a "misinterpretation" of R2P, this outcome was inherent in the R2P project from the very start.

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333 Oxfam Great Britain (2007).
334 Cf. www.opendemocracy.net/author/anne-marie-slaughter.
335 Cf. www.project-syndicate.org/about.
336 Groves (2008).
337 ICISS (2001), p. 5.
338 Chandler (2004), p. 74.
339 Alvarez (2007), p. 9.

340 White House (2002), p. 12.
341 Ignatieff (2004a).
342 Ignatieff (2004b).
343 Ignatieff (2003).
344 Rieff (2012).

Part IV: Conclusions and recommendations

R2P does not give a satisfying answer to the key ques-tion it is supposed to address: how best to prevent and, if prevention fails, respond to large-scale human rights violations and killings? The concept remains ill-defined, relies on untested and unrealistic assumptions, fails to ask the right (and tough) questions, and remains centered on the last-resort option of military interven-tion. For this reason, R2P is not only open to abuses, but actually invites them.

Focusing on military intervention as a last resort tends to inhibit reflection on meaningful prevention. In order to achieve real progress on how to prevent violent conflict in all its forms, this option has to be put aside. Although R2P addresses other measures for preven-tion, the concept's truly innovative contribution is the justification of international military intervention for protection purposes. Therefore, R2P cannot be "saved" by just removing this problematic aspect. The concept is particularly dangerous because it amalgamates argu-ments and proposals, mixing uncontroversial and widely accepted notions (that states have a responsibility towards their citizens) with more dubious claims (that military intervention is an appropriate tool to protect civilians). Because of this confusion, calls to operationalize the doctrine and integrate it into international law should be rejected.

"Rather than advocating military intervention, a surer way to support the flourishing of human rights is through the promotion of peace and the rule of law in the world."[345] Rather than unhelpfully pitting one in-ternationally agreed principle (non-intervention) against another (the protection of human rights) and focusing on building a last resort option for when all else fails, there is a dire need to devote attention and energy to ensuring that the system does not fail to begin with.

Rather than focusing solely on enhancing the capacity of the "international community" to act as a firefighter, we should enhance its capacity to build stable founda-tions.

In the debates around R2P, it often seems as if the only sources of guidance for international policy aimed at preventing conflict and protecting people were the UN Charter and a handful of conventions. But documents like the Millennium Declaration, the outcome docu-ment of the United Nations Conference on Environ-ment and Development in Rio de Janeiro in 1992, and others contain principles that should be used to shape international policies. These include the principles of solidarity, of doing no harm, and of common but dif-ferentiated responsibilities; the polluter pays principle; the precautionary principle; principles on subsidiarity and free prior and informed consent; and the principle of peaceful dispute settlement.[346]

Rather than trying to "blackmail" the international system into action by presenting it with alternatives (protecting human rights vs. sovereignty) and calling into question its legitimacy when it fails to act on the ultimatum, we should think of strengthening parts of the system that are promising: existing legal instruments and institutions that fulfill many of the functions of R2P without undermining the principles of peaceful dispute settlement and of the equal sovereignty of states. This paper presents an overview of alternatives that deserve more reflection and action. To follow the original prem-ise of R2P, these alternatives are classified according to the steps of prevention, reaction, and reconstruction. As the ICISS report and subsequent R2P debates have focused on reaction and reconstruction, this paper gives more consideration to preventive efforts. It also high-lights a few issues that are rarely addressed when

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345 O'Connell (2011), p. 71.

346 Cf. Civil Society Reflection Group on Global Development Perspec-tives (2012), pp. 23-27.

discussing the responsibility to react and to rebuild. These are not meant to be exhaustive but to provide potential paths for further reflection.

Almost everyone agrees that the absolute emphasis must be placed on avoiding and preventing violent conflict. We are of the opinion that this can only be done if we do not discuss reactive – and especially coercive – measures at the same time. This would be confusing and possibly counter-productive, as the two sides can be mutually exclusive, particularly in light of the scarcity of resources that governments put at the disposal of the international system. Resources that are invest

reactive mechanisms – such as a UN Stand-by Force or a United Nations Emergency Peace Service, which is promoted by both proponents and critics of R2P[347] – cannot be spent on prevention. What is true for the budget of every national state is true for international institutions as well. Every dollar spent on military infrastructure is one dollar lost for building social justice, protecting the ecosystem, and transforming the economy.

1 – Prevention

As this paper has demonstrated, R2P features a very limited vision of conflict prevention. While the ICISS concept acknowledges the need for root cause prevention, it has an extremely narrow and even patronizing understanding of prevention. The ICISS report frames prevention in terms of "helpers and those helped" and the issues that "developed countries" should be aware of when taking action.[348] This suggests that prevention is something that poor countries must undertake with the help of developed countries. This view underestimates the responsibility of rich and powerful countries not just in helping others, but also in changing their own behavior. "There should be a new accounting of the causes of conflict and violence in Africa, one that breaks from the still-dominant post-Cold War image in which conflict in Africa is indigenous and politically meaningless. This image implies that the West has withdrawn from Africa and is innocent of causing or contributing to conflict there, and consequently, implies that the West only relates to Africa through a humanitarian model."[349]

To be fair, the ICISS report does recognize that prevention is a multi-faceted issue that entails political as well as economic and legal dimensions (and a military one). The report names some very important aspects of building a conflict-free future (democratic institutions and strong civil societies, development cooperation, equal distribution of resources, better terms of trade and economic and structural reform, the rule of law),[350] but it

does not elaborate on how to achieve any of these goals. Rather than just pointing at these issues and elaborating in detail the conditions for military operation, there is a need for investing more capacities in pushing for that structural change. Alternatives are discussed all the time – it is high time to foster the political will to also enact them. Here are just a few examples of possible first steps.

1.1 The role of transnational corporations

During consultations around the ICISS report carried out by the WFM-IGP, participants raised concerns that the Commission failed to mention the role of corporations: "[An] issue that generated discussion was the Report's failure to consider the role of the corporate sector in both the analysis of the causes of conflict and the recommendations to address it. There was a strong expression of the need to examine the economic and commercial dimensions of conflict, reflecting the increasing awareness that corporations are often at the heart of conflict."[351]

This is not the right space to delve into the various and complex ways in which corporations are integral parts of conflicts and in some cases may even be driving them – by displacing people, providing funding to one of the parties, and using military and security forces to protect their own operations. Many civil society (and government) reports have highlighted the role that corporations

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347 Cf. e.g. Zuber (2007).
348 ICISS (2001), p. 23.
349 Branch (2011), p. 121.
350 Cf. ICISS (2001), pp. 22f.

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351 World Federalist Movement-Institute for Global Policy (2003), p. 13.

– and, through the international web they constitute, their home countries and associated companies – and the value chains they operate play in conflicts.[352]

Although there have been a number of initiatives in the past few years to increase the accountability of corporations for their activities worldwide, these efforts have often taken the form of voluntary, self-regulating mechanisms, such as the UN Global Compact or the UN Guiding Principles on Business and Human Rights. While these initiatives have sometimes had positive effects, they do not provide for mandatory reporting of corporations' financial transactions or their human rights and ecological impacts. The idea of an international binding instrument to regulate transnational corporations (TNCs) has circulated around the UN for a long time. It was a project of the UN Center on Transnational Corporations, but the Center was disbanded in 1992 as the UN moved to a more business-friendly attitude. The idea was put on the table again at the World Summit for Sustainable Development in Johannesburg in 2002[353] and, in 2013, a group of more than eighty countries spearheaded by Ecuador introduced the idea at the Human Rights Council. The initiative was supported by dozens of NGOs.[354]

1.2 Extraterritorial obligations of states

R2P at times seems oblivious to the fact that there is an existing body of international law outlining the responsibility of all states (the "international community") not only to their own citizens but to people in third countries. This responsibility could be better implemented, in particular in the sphere of economic and social rights.

According to the provisions of Article 2 of the International Covenant on Economic, Social and Cultural Rights, states have the duty to fulfill their human rights obligations either individually or through international assistance and co-operation. In the so-called Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,[355] human rights experts and scholars have spelled out the obligations to respect, protect and fulfill human rights and the necessary accountability mechanisms for governments, in particular in their international actions.

In their extraterritorial obligations, states are bound by human rights and must abstain from violating the human rights of citizens of third countries. Under these obligations, states must "refrain from adopting measures, such as embargoes or other economic sanctions, which would result in nullifying or impairing the enjoyment of economic, social and cultural rights,"[356]

"must take necessary measures to ensure that non-State actors which they are in a position to regulate, […] such as private individuals and organizations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights,"[357] and

"must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfillment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation."[358]

All these obligations are derived from existing international law. If states were to comply with them, it is likely that this would reduce the incidence of conflict worldwide.

1.3 Development cooperation that deserves that name

As current discussions around the "Post-2015 Development Agenda" make clear, there is general agreement among UN member states that international cooperation is necessary to achieve development – which is in turn necessary to ensure peaceful and stable societies. The problem, however, is that discourse on development cooperation – just like the discourse on R2P – tends to focus on symptoms rather than root causes. The Millennium Development Goals (MDGs), established by the UN in 2000, set a series of development goals and targets to reduce poverty, improve health, and achieve sustainability, but they did little to address the structural root causes of poverty and inequality. There is concern that the Post-2015 process will result in a similar outcome.

The new agenda will need to tackle pressing issues, such as the nexus between preserving the ecosystem and social development and reform of trade and financial systems. If they do not address these issues, international development policies will be caught in the old (and

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352 See, for instance, Global Witness' work on the link between natural resource extraction and conflict [www.globalwitness.org/].
353 Cf. www.twnside.org.sg/title/twr145c.htm.
354 Cf. www.stopcorporateimpunity.org/?p=3830.
355 Maastricht University (ed) (2012).

356 Ibid., Art. 22.
357 Ibid., Art. 24.
358 Ibid., Art. 29.

rather ineffective) dynamics of "donors" and "partners," and the largely binary worldview that comes with it. The Post-2015 Agenda, if it follows the MDG model, might leave behind many of the root causes of conflicts.[359]

"Stable and peaceful societies" are currently being discussed as an important area of the new agenda. The definition of what "stable and peaceful societies" mean, however, has so far been limited. The Secretary-General's High-level Panel of Eminent Persons on the Post-2015 Development defines the concept in terms of violent deaths, justice institutions, organized crime, and the capacity and quality of security forces.[360] To be successful, the Post-2015 Development Agenda will have to consider a much more holistic definition of peaceful societies.

1.4 Fair finance and trade systems

Financial and trade systems can cause economic and social conditions that in turn trigger violent outbursts. The 2007-2008 food crisis, generated by an increase in food prices fueled by trade liberalization, speculation, the demand for biofuels, and extreme climate events, led to food riots in many countries and played an important part in the beginning of the "Arab Spring." These situations, however, have often been addressed through a security lens, leading to the deployment of foreign forces (especially in Africa), to heightened security on the borders of Western countries, and to increased investments in so-called security sector reforms. An argument can be made that, rather than taking those reactionary measures, the "international community" should have prevented the crisis by stopping trade and financial practices that were instrumental (although not the only factor) in fueling instability and public unrest.

Reform proposals in this area include an end to speculation on food commodities and the financialization of food markets more generally.[361] In addition, the need for a restructuring of the banking system has not lost its urgency since the financial crisis of 2008. Recent scandals around the manipulation of interest rates (Libor and Euribor), gold prices, and even currency exchange rates by banks have led even the most liberal experts to call for more governmental control.[362] Furthermore, the expansionary monetary policies of the European and US central banks are putting the economies of the

Global South at risk.[363] A new regulatory framework for the financial system has been debated for many years, with little results to date. A meaningful reform of competition and anti-trust policies, higher minimum capital requirements and risk prevention, the safety of financial products, stricter standards for hedge funds and private equity funds, the public control of rating agencies, and the de-privatization of international accounting standard setting are some of the steps that governments could take in cooperation or unilaterally to stabilize the financial system and make it more just to those who are dependent on it.[364]

1.5 Food sovereignty

Many civil society and grassroots organizations, including the worldwide farmers' movement La Via Campesina, have long argued for "food sovereignty," the ability for people to define their own food systems, grow the food they want, and not be dependent on external forces.[365] Food sovereignty was in part a response to the concept of "food security," which emphasizes the need to "feed the world" and presents access to adequate nutrition as a service performed not by nation-states, but by transnational corporations through the world market.[366]

This particular concept of "sovereignty" does not clash with the idea of protecting people but rather very much enhances it. The opposition between "food sovereignty" and "food security" shows that R2P has often failed to consider that national (or local) sovereignty has an important role to play in the social and economic sphere to protect the human rights of citizens. If taken seriously, food sovereignty would mean an end to the "land grabbing" that is undermining the living conditions of millions of smallholder farmers.[367] It would lead to the promotion of local food production, rather than reliance on global oligopolies that dominate the seed and fertilizer markets. And it would privilege ecological farming over industrial agriculture based on monoculture, chemical fertilizers, and genetically modified organisms. This could have a very important impact on the creation (and preservation) of jobs, the availability and price of food, and the general stability of societies.

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359 For a more in depth analysis, cf. Civil Society Reflection Group on Global Development Perspectives (2013).
360 High-level Panel of Eminent Persons on the Post-2015 Development Agenda (2013), p. 52.
361 Cf. e.g. Bass (2013).
362 Cf. Wagstyl (2013), Nissen/Freeman (2013) and Treanor/Rushe (2013).

363 Sánchez (2013).
364 Cf. e.g. Civil Society Reflection Group on Global Development Perspectives (2013), pp. 80f.
365 See for instance http://viacampesina.org/en/index.php/main-issues-mainmenu-27/food-sovereignty-and-trade-mainmenu-38.
366 McMichael (2009), p.151.
367 See for instance the work of UN Special Rapporteur on the Right to Food Olivier de Schutter on this issue [www.srfood.org/en].

1.6 Planetary boundaries and climate change

The destruction of the world's ecosystem is progressing at increasing speed. In addition to experiencing the impact of climate change, the world is also reaching a number of "planetary boundaries" identified by international scientists: the use of fresh water reserves, land use, the loss of biodiversity, the destruction of the ozone layer, chemical pollution, acidification of the oceans, global nitrogen and phosphorus cycles, and the amount of aerosols in the atmosphere.[368] The transgression of these "planetary boundaries" is putting human life at risk.

And yet action at the national and international levels to prevent such a catastrophe has been limited. Too often, market-driven mechanisms have been proposed as the only solution. "'Bio-capitalism' or 'green-washed capitalism' is no more economically sustainable than any other form of unregulated capitalism. […] Yet at the centre of the official approaches to climate change and other environmental challenges we find newly created markets for pollution or emission permits […]. There is increasing evidence that the design of some of these market-based instruments is seriously flawed."[369]

There is an urgent need for stronger public policy instruments of taxation and regulation, as well as a more holistic approach to human-environment relations. The environment and eco-systems are shaped to a great extent by humans and their production and consumption patterns – and these are driven primarily by power structures, economic dependencies, and corporate advertising strategies. Concepts such as ecological justice deserve more weight in the debates on how to protect and rebuild functioning ecosystems. Or, to frame it more practically: "[B]uilding strong and robust public social protection systems within the limits of the available resources is a key tool for addressing people's vulnerability and promoting their resilience to crises, including the consequences of climate change and other environmental crises."[370]

1.7 Illicit financial flows and lost taxes

Illicit financial flows stemming from corruption, tax avoidance schemes, tax evasion, capital flight and other sources are estimated at between US$1 and 1.6 trillion per year.[371] This significant amount of money, which is growing every year, never makes it into the coffers of poor countries or the social welfare systems of the richer ones. The Washington based research institute Global Financial Integrity estimates that "developing countries" lost almost US$950 billion to illicit financial flows in 2011.[372] The loss of these resources also undermines the ability of prosperous states to fulfill their human rights obligations and create social security for their populations. In addition, these illicit financial flows can be used to fund the purchase of illegal weapons or for various forms of trafficking, potentially affecting stability and fueling conflict.

Governments could take numerous steps in international cooperation to stop harmful tax competition, which has created loopholes exploited by large transnational corporations such as Google, Apple, or Starbucks. The G20 and the Organisation for Economic Co-operation and Development (OECD) have already taken some of these steps with a program to counter the erosion of the tax base and profit shifting.[373] But there is still more to do. Transparency on the tax contributions of transnational corporations can be improved, as legislation in the US and the European Union has done for resource extracting companies.[374] Other provisions could include better cooperation among tax administrations (with the automatic exchange of information) and a reshaping of the global corporate tax regime.[375] All of these measures could lead to better financial situations for countries in both the Global North and South. They could prevent situations such as the sovereign debt crisis in Europe and ongoing debt problems in many countries of the Global South, which have led to human suffering and sometimes violent conflicts.

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368 Rockström et al. (2009).
369 Schillinger (2012).
370 Ibid.

371 Baker (2005), pp. 162ff.
372 Global Financial Integrity (2013).
373 ActionAid et al. (2013).
374 Cf. Murphy (2012) and Publish What You Pay (2013).
375 Tax Justice Network (2013).

1.8 Arms trade and proliferation

The circulation of weapons is a key factor in fueling conflicts and instability worldwide. The ICISS report, however, addressed the question of arms trade and proliferation mainly at the national level, through the lens of security sector reform within the state, which is seen as part of root cause prevention efforts. These efforts, according to the ICISS, include "promoting arms control and disarmament and non-proliferation regimes, including control over the transfer of light weapons and small arms, and the prohibition of landmines."[376] This issue, however, must primarily be addressed at the international level to prevent transfer of weapons in countries that are experiencing conflict.

UN Secretary-General Ban Ki-Moon has clearly established the link between arms trade and R2P. As negotiations for the Arms Trade Treaty were underway in 2013, Ban stated in a speech to the Security Council that "we all have a responsibility to protect [...]. Violence against civilians is also unquestionably abetted by the free flow of weapons [...]. We urgently need a robust and comprehensive agreement that addresses the humanitarian impact of the poorly regulated trade in arms."[377]

So long as major powers continue to arm the world, their endorsement and promotion of R2P will have little meaning. A 2013 Amnesty International report entitled "Major Powers Fueling Atrocities: Why the World Needs a Robust Arms Trade Treaty" demonstrated how all five permanent members of the Security Council and Germany, which happen to be the largest arms traders globally,[378] have recently engaged in arms deals that fueled killings and human rights violations in Libya, Syria, Sudan, and Yemen.[379]

As a first step, the General Assembly adopted the Arms Trade Treaty in April 2013. By February 2014, it had been signed by 116 countries. The treaty specifies that, before exporting weapons, states must ensure that they would not "undermine peace and security" and be used to "commit or facilitate a serious violation of international humanitarian law."[380] However, before the treaty enters into force, it has to be ratified by 50 member states, and, as of February 2014, only eleven have done so. None of the permanent members of the Security Council have ratified it so far.[381]

1.9 Building a truly multilateral international system

The UN system is central to prevention efforts. But the R2P discourse tends to focus attention on the reactive capacities of the organization (through humanitarian assistance and peacekeeping) rather than on its preventive functions.

In recent years, member states have failed to provide the necessary resources to the UN for its development work. Indeed, the UN development system faces major long-term challenges in financing that are seriously eroding its multilateral character. Since the 1980s, donor contributions, while increasing substantially in amount, have shifted away from "core funding" towards earmarked funds – mostly for projects from a single or small group of donors, on program-specific topics. An increasing amount of funding comes from non-governmental sources, such as NGOs, philanthropic foundations, and the corporate sector.

This change of funding practices has deep implications for global governance. Earmarking tends to turn UN agencies, funds, and programs into contractors for bilateral or public-private projects, eroding the multilateral character of the system and undermining democratic governance. Donors earmark funding according to their interests and "pet projects," rather than according to the needs of the populations the UN is supposed to help and empower. As earmarked projects multiply, necessary multilateral mandates become increasingly difficult to be carried out. This can generate fragmentation and incoherence, weaken accountability, and risk the capture of UN bodies by a limited number of institutional donors.

Member states should provide the UN system with the capacities to fulfill its current mandates. Better financial contributions to the multilateral system would strengthen the UN's development work and peacebuilding capacities.

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376 ICISS (2001), p. 23.
377 UN Regional Information Centre for Western Europe (2013).
378 Cf. www.sipri.org/yearbook/2013/05.
379 Amnesty International (2013).
380 UN General Assembly (2013), art. 7.
381 Cf. http://disarmament.un.org/treaties/t/att.

2 – Action and reconstruction

2.1 Helping refugees rather than creating barriers

R2P tends to overlook the question of refugees and who should be responsible for welcoming them. It makes no reference to the global norm of refugee protection, enshrined in the UN Refugee Convention of 1951, which lays out refugees' rights and the legal obligations of states towards them. The cornerstone of the 1951 Convention is the principle of "non-refoulement" (Article 33), which states that a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom. This could be an important element for effective help in conflict situations.

And yet the right of refugees and policies on taking refugees to shelter them from human rights abuses and killings are "curiously absent from the R2P 'mass atrocities tool boxes'."[382] In recent years, African countries have opened their borders to refugees and have usually borne the greater part of the economic cost of hosting them. Meanwhile, Western countries – and staunch R2P supporters – including the US, Europe, and Australia have implemented increasingly stringent refugee laws and policies.[383] Alex de Waal notes: "At the same time as norms on humanitarian assistance and R2P have been raised, norms on asylum have been lowered. Could the principle of R2P become a pretext whereby developed nations condemn poor and weak countries, legitimize their own (diplomatic, political, military) engagement in the affairs of these countries, and give themselves a pretext for maintaining their fortress-like immigration and asylum policies?"[384]

2.2 Create an enabling environment for non-partisan humanitarian assistance

As highlighted in section III.2.2, humanitarian organizations have sometimes been weary of being associated with the R2P label for fear that it will politicize their activities. The R2P discourse, with its emphasis on "victims" and "perpetrators," can make it more difficult to consider all actors in a given crisis or conflict in an impartial and neutral way. The case of Darfur showed that the use of R2P language made it easier for the Sudanese government to argue that NGOs were using propaganda and that they were agents of Western powers and ultimately to justify their expulsion. The often polarizing discourse around R2P can alienate key actors necessary to resolve and mitigate a crisis.

R2P also tends to enroll humanitarian efforts as part of a continuum of action ranging from prevention to military intervention, thus threatening the independence of aid workers. This fits into a broader evolution where humanitarian organizations (including NGOs and the UN) have become an appendix to "hearts and minds" counter-insurgency campaigns, leading to the politicization and militarization of humanitarianism. [385] This has affected their capacity to reach all populations in need.

Humanitarian organizations have an important role to play in protecting populations in need, but they must ensure that their activities remain independent and are motivated by the need of populations rather than donors' priorities.

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382 Weissman (2010), p. 204.
383 De Waal (2009).
384 Ibid.

385 Donini et al. (2008).

2.3 Reconciliation rather than judgment

One of the most difficult tasks after a conflict is to bring former opponents back together in order for them to build a common future. Many countries have gone through this experience, be it South Africa, Peru, Guatemala, or Cambodia. There are numerous lessons to be learned from those countries in terms of reconciliation commissions. To achieve reconciliation, the judicial process should not feature traces of "victor's justice." Only if crimes and felonies by all sides in a conflict – including, if applicable, occupying forces or international interveners – are being met with the same scrutiny and with the same force of law, can "reconciliation" be more than just a term.

Another important feature of reconciliation is that it should occur in the country where the conflict happened, not somewhere in the international arena. Although there are risks that the process could be manipulated, a local justice process is likely to be more transparent than an anonymous court thousands of miles away. It can also create a sense of the community being able to tackle its own issues, without excluding the possibility of international assistance. But assistance is different from taking over a whole process. While human rights may be universal in nature, their enactment should first and foremost be left with the communities where violations have occurred.

According to Mahmood Mamdani, "[t]hose who face human rights as the language of an externally driven 'humanitarian intervention' are required to contend with a legal regime where the very notion of human rights law is defined outside of a political process […] that includes them as meaningful participants. Particularly for those in Africa, more than anywhere else, the ICC heralds a regime of legal and political dependency, much as the Bretton Woods institutions pioneered an international regime of economic dependency in the 1980s and 1990s. The real danger of detaching the legal from the political regime and handing it over to the human rights devotees […] is that it will turn the pursuit of justice into revenge-seeking, thereby obstructing the search for reconciliation and a durable peace."[386]

2.4 Reconstruction that is not just a business venture

Who gets to rebuild a country after a major disaster, a civil war, or an international intervention has proven to be a key question in recent years. Reconstruction is often carried out by international donors and occupying forces, as most countries that have just gone through such a crisis usually lack the capacity to organize and finance reconstruction themselves. However, the lack of local participation and ownership in reconstruction efforts can have a negative impact on future stability.

The case of Iraq is illustrative in this regard. After a decade of reconstruction efforts in the country, billions of dollars in reconstruction funds have vanished in dark channels, providing fertile ground for corruption and organized crime. Furthermore, reconstruction efforts did not actively involve Iraqi society, as reconstruction contracts were usually awarded to corporations from the occupying forces and nationals from third countries were brought in to fill contractor jobs. In this context, local companies and Iraqi citizens by and large did not profit from reconstruction efforts that should have worked in their favor.[387]

As Naomi Klein shows in her book *The Shock Doctrine*, for-profit reconstruction in the aftermath of conflict and natural disasters has become the norm, from Iraq, to Sri Lanka in the wake of the tsunami of 2007, to New Orleans after Hurricane Katrina. As reconstruction becomes a business venture, it tends to privilege the interests of foreign corporations over the interests of local populations, who are often displaced and lose their means of subsistence and income.[388]

International NGOs can sometimes take over government functions not only in the short term (to provide urgent relief) but also in the long term, thus undermining local ownership and society's recovery prospects. In Haiti, for instance, the international relief effort after the 2010 earthquake excluded Haitians from their own recovery, and NGOs did not involve or even consult the Haitian government in carrying out their activities.[389] According to an official from the UN Stabilization Mission in Haiti, "[y]ou cannot complain about failures of the Haitian state if you don't support it to grow stronger. For decades, we have not invested in that very much."[390] Such policies can have serious repercussions for the long-term stability of the society that is supposed to be "reconstructed."

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386 Mamdani (2011), p. 137.

387 Special Inspector General for Iraq Reconstruction (2013).
388 Klein (2007).
389 Klarreich/Polman (2012).
390 Ibid.

3 – The way forward

The R2P prism tends to focus on people once they begin to starve or kill each other. It is less concerned with what happens to these people when their land is taken away from them, their environment is destroyed, or they lose their means of subsistence. R2P assumes that major powers will be moved to act in cases of large scale human rights violations, but it does not see these powers' responsibility in creating conditions that lead to conflict and instability.

At best, R2P is a way of drawing attention to unfolding crises that are leading to mass killings and gross human rights violations. At worst, it is a "feel good" distraction, a morality tale that makes its proponents feel like they are "doing something" but does not force them to address tough questions about the role of their own government and the current economic model in fueling conflict.

It is a form of moral progress that citizens in many countries do not feel it is acceptable to stand by while massacres are occurring anywhere in the world. Unfortunately, the R2P doctrine does not tackle the tough problems and provides no real solution to actually prevent and stop violence. What are the alternatives, then, if R2P is failing to live up to its promises? Citizens of democratic countries can and should demand accountability from their governments. They can push for a more transparent and more democratic foreign policy and ask in whose interest these foreign policies are adopted. They can require that, above all, their own governments "do no harm" to citizens of other countries. This will require a re-politicization of the debate and a hard look at the powerful interests shaping international policymaking. While this may not be as attractive as the simple message offered by R2P, it is much more likely to succeed in building a more peaceful world.

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Acronyms

AMIS	African Union Mission in Sudan
AU	African Union
cf.	compare to
CIA	Central Intelligence Agency
CRASH	Centre de Réflexion sur l'Action et les Savoirs Humanitaires – Reflection Center on Humanitarian Action and Knowledge
CSO	Civil Society Organization
DFAIT	Department of Foreign Affairs and International Trade of Canada
e.g.	for example
et al.	and others
EU	European Union
f.	following page
ff.	following pages
G20	Group of 20 (of the world's largest economies, incl. the EU)
GCR2P	Global Centre for the Responsibility to Protect
HRW	Human Rights Watch
ibid.	in the same place
IBSA	India, Brazil, South Africa
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
ICRtoP	International Coalition for the Responsibility to Protect

IDP	Internally Displaced Person
MARO	Mass Atrocity Response Operation
MDG	Millennium Development Goals
MSF	Médecins Sans Frontières
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
P3	"Permanent three" members of the UN Security Council (United States, United Kingdom, France)
P5	Permanent five members of the UN Security Council (United States, United Kingdom, France, China and Russia)
R2P	Responsibility to Protect
R2PCS	Responsibility to Protect – Engaging Civil Society
RtoP	Responsibility to Protect
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNISOM II	United Nations Operation in Somalia II
UNITAF	Unified Task Force (US-led, UN-sanctioned multinational force which operated in Somalia between 5 December 1992 – 4 May 1993)
US	United States of America
WFM-IGP	World Federalist Movement-Institute for Global Policy

In whose name?
A critical view on the Responsibility to Protect

In the face of mass-scale killings and humanitarian disasters in the 1990s, the "international community" often failed to take decisive action to protect civilians at risk. Many observers and policymakers concluded that a shift in the international relations framework was needed to offer a proper response to these crises. In situations where states proved unable or unwilling to halt human suffering, their right to sovereignty should be discarded to allow interveners to protect populations under threat. In 2001, the report of the International Commission on Intervention and State Sovereignty laid out what such a "responsibility to protect" would entail. The Commission placed particular emphasis on when and how military intervention should be authorized for protection purposes.

This paper provides an overview of the history and content of R2P, its positive contributions and its flaws. It concludes that R2P does not give a satisfying answer to the key question it is supposed to address: how best to prevent and, if prevention fails, respond to large-scale human rights violations and killings? The concept is particularly dangerous as it amalgamates arguments and proposals, mixing uncontroversial and widely accepted notions (that states have a responsibility towards their citizens) with more dubious claims (that military intervention is an appropriate tool to protect civilians).

Rather than building a last resort option – military intervention – for when all else fails, there is a dire need to devote attention and energy to prevention and to ensuring that the international system does not fail to begin with. Existing legal instruments and institutions for crisis prevention and management fulfill many of the functions of R2P without undermining the principles of peaceful dispute settlement or the equal sovereignty of states. The paper ends with an overview of alternatives that deserve more reflection and action.

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