

The Birth of R2P: A Play in Three Acts

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Abstract

For all the difficulties in ensuring its effective implementation in recent years, R2P remains the only credible conceptual foundation – morally and politically – for achieving global consensus about how to respond to mass atrocity crimes committed behind sovereign state walls. But its birth was anything but inevitable, capable of being aborted at any of the three pivotal stages here described. First, finding common ground between global North and South, where none had previously existed around the concept of humanitarian intervention, which was achieved by the report of the Canadian-sponsored International Commission on Intervention and State Sovereignty in 2001. Second, ensuring that the Commission’s recommendations could not be ignored by crucial decision-makers, achieved by the UN Secretary-General’s High Level Panel on Threats, Challenges and Change in 2004. And third becoming, as a result of intensive diplomatic effort, one of the small handful of substantive resolutions to be endorsed by the UN 60th Anniversary World Summit, and subsequent General Assembly in 2005.

Keywords

R2P – mass atrocity crimes – humanitarian intervention – global governance – UN – history of ideas

It may be a stretch to call the unanimous embrace of the concept of the responsibility to protect by the United Nations General Assembly in 2005 as ‘the most significant adjustment to sovereignty in 360 years’, as the British historian Martin Gilbert rather excitedly described it at the time.¹ Two decades later, R2P continues to be subject to challenge, and is manifestly still work in progress when it comes to effective response to the hardest genocide and other mass atrocity crime cases. The reality still falls short of the dream, as I have described in these pages before.² But it is still the only conceptual approach which systematically addresses all the issues that have to be confronted if one is to be serious about both preventing and halting these most heinous assaults on our common humanity. And R2P is still the only approach which seems remotely capable of generating any global consensus about how to respond to mass atrocity crimes committed behind sovereign state walls.

For all its moral, logical and political force, and for all the hope it continues to inspire that the dream of ‘never again’ does become a reality, the birth of R2P was anything but inevitable. The

¹ Martin Gilbert, ‘The Terrible 20th Century’, *Globe & Mail*, 31 January 2007.

² Gareth Evans, ‘The Dream and the Reality’, *Global Responsibility to Protect*, 12(3) 363–365 (2020); ‘Atrocity Prevention and Response: Challenges to R2P’, *Global Responsibility to Protect*, 16, 325–332 (2024).

story of its conception, coming to term, and delivery – worth telling again³ in this anniversary year – can best be described as a play in three acts, any one of which could have ended with its protagonists limping off stage, dejected and defeated.

1 Act I: The International Commission on Intervention and State Sovereignty (ICISS) 2000–2001

ICISS was established by the Government of Canada, on the initiative of its then Foreign Minister Lloyd Axworthy in direct response to Kofi Annan’s General Assembly challenge in 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?’.⁴ Axworthy was, and remains, a fiercely principled Pearsonian liberal in the finest Canadian national tradition. He was responsible during his five years in office for a number of other significant international human rights initiatives, including the Ottawa Treaty aimed at banning landmines, which remains a sentimental favourite among Canadian diplomats, and was a wonderful source of inspiration to all of us involved in the R2P-creation enterprise.

The members of the commission proved to be a cast made in heaven for this demanding project, visibly representative of the whole world, in command of the issues, creatively minded, and highly tolerant of each other’s foibles. My co-chair, the hugely experienced and distinguished Algerian peacemaking diplomat Mohamed Sahnoun, had a delightful capacity to defuse likely tensions, usually with African parables involving lions, monkeys, crocodiles, scorpions, or all of the above – and an appropriate leavening influence on his sometimes overly exuberant antipodean colleague. Also from the global South were former Philippines President Fidel V. Ramos, the avuncular, cigar-chewing hero of his country’s People Power revolution; African National Congress head (and later South African President) Cyril Ramaphosa; Guatemalan Foreign Minister and later Vice-President Eduardo Stein; and the multi-talented and much-travelled Indian scholar and UN official Ramesh Thakur.

From the North there were former US Congressman Lee Hamilton, German NATO General Klaus Naumann, and two Canadians – one the legal specialist Gisèle Côté-Harper, and the other the Harvard-based human rights scholar Michael Ignatieff (who was to personally experience, in his later career as Liberal Party leader, what I told him at the time: politics was a dangerous trade, best avoided by normally sane and sensitive souls). Making up the balance were the Russian diplomat and parliamentarian Vladimir Lukin, and the Swiss diplomat and former long-serving President of the International Committee of the Red Cross, Cornelio Sommaruga, who rather liked my description of him as ‘a Northerner with Southern characteristics’.

We also had an outstanding support staff led by Jill Sinclair, a very capable and imaginative diplomat who was wonderfully refreshing to work with, not least, perhaps, because she sidelined as a nightclub jazz singer, with a personal style owing more allegiance to Haight-Ashbury than the Champs-Élysées.

³ This account draws substantially on my *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution, 2008), Ch 2; and *Incorrigible Optimist: A Political Memoir* (Carlton, Vic.: Melbourne University Press, 2017), Ch 7 and other published articles quoted therein.

⁴ Kofi Annan, *We the Peoples: The Role of the United Nations in the Twenty-First Century*, A54/2000 (27 March 2000).

ICISS was launched in September 2000, and just over a year later, in December 2001 – after five commission meetings, eleven regional roundtables and national consultations across five continents – *The Responsibility to Protect* was born, with the publication, under that title, of our 90-page report, together with a 400-page supplementary volume of research essays, bibliography, and background material.⁵

Our objective was to find common ground where none had previously existed around ‘the right of humanitarian intervention’, the *droit d’ingérence* concept initiated by Bernard Kouchner in the late 1980s: widely advocated but rarely applied by the global North, and hated by the global South. None of the conceptual alternatives on offer had developed any traction. Tony Blair’s attempt in 1999 to identify criteria for military action had more soundbites than substance. The emergence of the concept of ‘human security’ in the 1990s, especially as promoted by Sadako Ogata, offered a welcome ‘people first’ perspective, but was too general to have operational utility. The idea of ‘sovereignty as responsibility’, articulated by Francis Deng and his Brookings colleague Roberta Cohen, was an important contribution to the development of what became the first two pillars of R2P (the responsibility of a state to protect its own people from atrocity crimes, and of others to assist those lacking the capacity to do so), but did not address at all the hard issue of external intervention when a state was manifestly failing to so act. And Kofi Annan’s idea in the late 1990s that ‘state sovereignty’ should be accompanied by recognition of ‘individual sovereignty’ was later acknowledged by him to be just restating the problem.

The ICISS report made five crucial, ground-breaking, contributions. First, changing the language of the debate, with the ‘responsibility to protect’ intended to be, and proving, much less inherently abrasive than the ‘right to intervene’. Second, emphasising that multiple actors shared that responsibility, not just the big military players, as was the case with humanitarian intervention. Third, strongly emphasising preventive strategies, not just reactive ones. Fourth, supporting a whole continuum of reactive measures, not just military ones, as was the case with humanitarian intervention, but including diplomatic isolation, sanctions and embargoes, and threats of international criminal prosecution. And finally, insisting that the bar for any military intervention be set very high, with legality dependent on Security Council endorsement, and legitimacy dependent on satisfying clear prudential criteria, including proportionality and doing, on balance, more good than harm.

Somewhat miraculously, the final ICISS report had in it not a single line of recorded dissent. But along the way just about everything was contestable – and contested. The name of the report, and of its sustaining theme, was no exception. At the first of the commission’s five meetings, in Ottawa in November 2000, I suggested in my opening remarks that what we needed was a strong new phrase. It should be one that would capture the flavour of what we all wanted to say about the moral imperative of responding to mass atrocity crimes, be succinct and memorable, and, while having some continuity with the debate of which we had all been part over the past decade, also mark an escape from its sterility and divisiveness. So far, so good.

But then, having spent a few mornings under the shower in the lead-up to our meeting toying with a score or more of different word combinations (including Francis Deng’s), I was adventurous enough to suggest that maybe, just maybe, there was such a phrase we could agree

⁵ The ICISS Report and Supplementary Volume *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), accessible at www.globalr2p.org.

met these specifications, and which could even work as the title of our report – ‘the responsibility to protect’. This was met by what I can only describe as a collective, incredulous intake of breath: ‘Well, we’ll have to think long and hard about *that*’ was the hardly unreasonable general response. To suggest the report’s title before we had even begun to discuss its content, let alone taken any soundings in the dozen consultations that were scheduled to take place around the world, was considered a little presumptuous, even for an Australian.

Achieving final agreement on the text was a close-run thing. Our distinguished American colleague, Congressman Lee Hamilton, was the very last to join the consensus, in the last hour of our last meeting. His Alamo issue was the exceedingly difficult one – not least for a very public United States figure acutely attuned to the public mood of the time – of whether *coalitions of the willing* should be able, without breaching international law, to bypass the Security Council if a veto blocked action that most of the world thought appropriate and defensible. Our colleagues thought that the two former politicians among us should fight it out in a private back room, and we did. The extended arm-wrestle Lee and I had to find a formula which we each could live with left us both a little misty-eyed for our previous careers. All that was missing was the smoke.

The essence of our compromise was to accept the primacy of a rules-based order, but recognise that there were occasions when the rules might be broken for good cause. This was expressed in a rather tortured way in the final text of our report: if an intervention which clearly satisfied all the prudential criteria we identified (gravity of threat, right motivation, last resort, proportionality, and balance of consequences) failed to be supported by the Security Council, but was then successfully implemented by a coalition of the willing, this would negatively impact on credibility of UN. I now think a simpler and better argument would be to apply the functional equivalent of what a great many domestic legal systems around the world accept as sentence-reducing ‘pleas in mitigation’ – along the lines of ‘I accept I broke the law in running that red light, but my wife was having a baby in the back seat’. Be that as it may, our UN-at-risk formula, for all its limitations, enabled unanimous sign-off, very important for its subsequent credibility.

2 Act II: The UN Secretary-General’s High Level Panel on Threats, Challenges and Change 2003–2004

The Commission’s report had the misfortune to be published in November 2001 in the immediate aftermath of the tragedy of 9/11, and with public and professional foreign policy attention now focused wholly on the issue of international terrorism, it seemed likely to disappear without trace. The crucial transition mechanism, which kept it alive, was the creation by Kofi Annan in 2003 of the High Level Panel on Threats, Challenges and Change – charged by him with making recommendations to feed into the forthcoming 2005 World Summit on a host of geopolitical and security issues.

Having been lucky enough to be appointed to the panel myself, I made it my priority to make sure that support for R2P was one of those recommendations. In the event our 2004 report did endorse, and urge that the forthcoming Summit embrace, what we described as ‘the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorising military intervention as a last resort, in the event of genocide and other

large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent'.⁶

The 16-member panel was a fine example of the contribution that these kinds of blue ribbon panels and commissions can, at their best, make to international policymaking, full of 'formers' though they tend to be. Its most engaged members on the R2P issue were the former Norwegian Prime Minister Gro Harlem Brundtland, as tough-minded as she was principled; the former US National Security Adviser Brent Scowcroft, a standing reminder of the time when Republican administrations were decent; the former High Commissioner for Refugees, Sadako Ogata, who brought, as always, a sturdily practical cast to the debate (I can still hear her asking 'What does all this language actually mean for suffering people on the ground?'); the former Organisation of African Unity Secretary-General Salim Salim; and the Indian former UN force commander Satish Nambiar.

My closest ally of all – although he was something of a sceptic at the outset – was the United Kingdom diplomat, former Ambassador to the United Nations, and now very independent member of the House of Lords, David Hannay. In his 2008 book on the United Nations after the Cold War, he is kind enough to describe me as 'throwing off ideas like sparks from a circular saw cutting through stone' – but then rather spoils the effect, for me at least, by adding to the latter description 'and sometimes made people feel that that was what he was'.⁷

The panel member whose support mattered most for the future of the R2P recommendation – passive though it was at the time – was undoubtedly former Chinese Vice-Premier and Foreign Minister, and my old colleague and sparring partner in Cambodian and other regional diplomacy enterprises, Qian Qichen. Without his immense prestige in Beijing being in play, it is difficult to believe that, given the traditional strength of its concerns about non-intervention, China would have been quite as relaxed on this issue as it proved to be at the subsequent World Summit. During the panel discussions of R2P, the Chinese foreign ministry staffers accompanying Qian were visibly troubled by the emerging resolution, with its clear message that not everything that happened behind sovereign state walls was the business of that state alone, and periodically touched the great man's sleeve to try to convey their anxiety to him.

Qian remained totally unmoved by these attentions, and his silence, when the consensus was tested, was taken as assent. But he was ageing, his health was manifestly not robust, and his engagement with all the issues being debated was much less intense than I had remembered from our encounters in earlier years. To this day I am not totally sure whether the assent on R2P which we here received from him, and which was absolutely crucial to the doctrine's future, was the result of deliberate decision (as I think, on balance, it probably was) – or rather what I might, politely, describe as inattention. Such are the slender threads on which so much history hangs.

3 Act III: The UN 60th Anniversary World Summit 2005

The crucial next step was for the High Level Panel's recommendations to be picked up in the UN Secretary-General's own report to the World Summit: Kofi Annan duly obliged in his 88-page report, published in early 2005, saying that 'while I am well aware of the sensitivities

⁶ High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), para. 203.

⁷ David Hannay, *New World Disorder – The UN after the Cold War: An Insider's View* (London; New York: I.B. Taurus, 2008), p. 213.

involved in this issue ... I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it'.⁸ And the Summit did: while very little of substance was agreed on anything else, R2P survived almost unscathed.

This agreement was anything but inevitable. Nothing much else of any significance was agreed by the Summit, despite all the preparatory build-up and high expectations: a major contributing factor was the wrecking-ball role played by the new US Ambassador John Bolton – probably the least diplomatic diplomat I have ever come across – who came armed with some 700 spoiling amendments.

On R2P a fierce rearguard action was fought almost to the last by a small group of developing countries, joined by Russia, who basically refused to concede any kind of limitation on the full and untrammelled exercise of state sovereignty, however irresponsible that exercise might be. There was consistent support from the European Union, and more belatedly from the United States.

But much more important was persistent supportive advocacy by sub-Saharan African countries, led by South Africa, who made it clear to their developing country friends that, when it came to mass atrocity crimes, they saw indifference as a greater sin than intervention. This was supplemented by a clear, and historically quite significant, embrace of limited-sovereignty principles by the key Latin American countries. There was also some very effective last minute personal diplomacy directed to leaders of major wavering countries, notably India, by Canada's Paul Martin: this demonstrated the importance of seriously committed follow-through, which does not always happen, by countries commissioning policy-initiating reports.

Although I did not directly participate personally in the Summit negotiations, travelling widely in my then capacity as President of the International Crisis Group I was actively involved in lobbying quite a number of countries, as were some other members of the commission, notably Ramesh Thakur, in the lead-up to the Summit decision. But the credit for squeezing it through rests overwhelmingly with the Secretary-General himself, one or two activist leaders like the Canadian Prime Minister, some very dedicated diplomats like the Australian Permanent Representative John Dauth working tirelessly in the engine room – and above all the sub-Saharan Africans.⁹

It has to be acknowledged that, as so often with the products of drawn-out and complex multilateral negotiations, the actual language in which the R2P decision was expressed in paragraphs 138 and 139 of the World Summit Outcome Document was an almost impenetrable dog's breakfast.¹⁰ It was another indefatigable champion of R2P, and the first occupant of the UN Special Adviser role, Ed Luck, who in crafting the Secretary-General's report to the 2009 General Assembly made the inspired choice to crisply and succinctly articulate the contents of those paragraphs in terms of the 'Three Pillars' with which we are all now so familiar.¹¹ Individuals really do matter.

⁸ Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005, para. 135.

⁹ For a full account of the diplomatic negotiations, see Alex J. Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Ethics and International Affairs*, 20(2) 143–169 (2006).

¹⁰ 'World Summit Outcome 2005', UNGA Res. A/RES/60/1, 24 October 2005.

¹¹ Ban Ki-moon, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009.

So was born the new international norm of R2P. Not everything in the ICISS and High Level Panel reports was picked up – most importantly our recommended prudential criteria for military action – but the really critical themes all were. There is no substance in the occasionally recurring criticism that the World Summit Outcome Document somehow fell short of the Commission’s aspirations, and achievement. That R2P has come as far as it has, and still – for all the disappointments of recent years – commands the support that it does, owes an enormous amount to the efforts of all those I have described who contributed to its creation, many of them sadly no longer with us. One can only hope that the next generation of politicians and diplomats will step up, and complete the task that we started.