

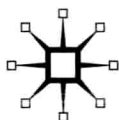
The Responsibility to Protect

Rhetoric, Reality and the Future
of Humanitarian Intervention

Aidan Hehir



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Introduction: Rhetoric and Reality

On 17 December 2010 Mohamed Bouazizi, a 26-year-old-street vendor, set himself alight outside the governor's office in Sidi Bouzid, Tunisia. Bouazizi, who later died from his injuries, sought to draw attention to his government's corruption and mismanagement. Within weeks, a wave of protests swept across North Africa and the Middle East leading to the removal of the regimes in Tunisia and Egypt. While many leaders sought to preempt the protestors by initiating democratic reforms, others were less conciliatory. The subsequent violence which erupted in Libya, Bahrain, Syria and Yemen, pitted unelected governments and their powerful military against pro-democracy protestors. These images of violence reinvigorated the debate on humanitarian intervention. While this debate continues to rage, two things are clear: first, that humanitarian intervention remains a pertinent and emotive issue. Second, that there is still much that needs to be done to improve the international community's response to intra-state crises.

Discussions of whether, how and when to intervene, have in recent years been dominated by the term 'responsibility to protect'. The concept, usually abbreviated to R2P, emerged from the debates on humanitarian intervention in the mid to late 1990s. Following the controversy surrounding NATO's intervention in Kosovo in 1999, the International Commission on Intervention and State Sovereignty (ICISS) was established by the Canadian Government. The ICISS published its report, *The Responsibility to Protect*, in December 2001. The report argued that sovereign states had certain responsibilities towards their own citizens which, if not honoured, should become a matter of international concern, and possibly grounds for external intervention. Though largely overshadowed by the events of September 11th, the report became a key focus for the debate on

humanitarian intervention and, thanks to the advocacy of many NGOs, academics and policymakers, soon made its way on to the international political agenda. At the 2005 World Summit the concept was formally recognized by all UN member states and it has been referred to since in both Security Council and General Assembly resolutions. In short the term has, undoubtedly, made a swift ascension from the periphery to the centre of international political discourse.

In the process of this ascension, R2P has dethroned the ostensibly old-fashioned and/or pejorative term 'humanitarian intervention'. Supporters of what would have previously been termed humanitarian intervention now invariably champion R2P. By default, to oppose R2P is to be perceived as a critic of humanitarian intervention. I believe, however, in the necessity of humanitarian intervention and while I share a number of the same core beliefs as R2P's many supporters, it is my contention that R2P cannot, in its present form and trajectory, significantly alter the cycle of inconsistency that has been the 'international community's' response to intra-state humanitarian crises. This book is a modest attempt to redirect this trajectory so that the momentum in favour of intervention and proscriptions against internal repression does not dissipate in the face of failure.

In his 2009 book, *What's Wrong With the United Nations and How to Fix It*, Thomas Weiss wrote, 'By not imagining a fundamentally different system, we make the continuation of the current lacklustre one all the more inevitable' (2009b, p. 225). Earlier in the book he declared, 'To halt at least some conscience-shocking future cases of mass suffering or to stabilize other kinds of international conflicts, there simply will be no viable alternative to international military forces' (ibid, p. 132). I agree wholeheartedly with both statements and this book is an explicit attempt to contribute to the imagining of a 'fundamentally different system', including the establishment of a standing UN military force, without lapsing into indulgent idealism. Weiss is, however, one of the most vocal supporters of R2P whereas I am not. This is illustrative of the fact that supporters of humanitarian intervention and UN reform need not be advocates of R2P. This book will hopefully go some way towards disproving the widely held perception that critics of R2P are recalcitrant purveyors of *realpolitik* and sovereign inviolability (Evans, 2008, p. 3). Some are, but not all.

There is clearly a broad constituency of activists, academics and policymakers who believe that there are circumstances when external intervention in the affairs of a sovereign state is necessary. This book seeks to constructively engage with this constituency by initially identifying the limitations of R2P, which is currently the pre-eminent pro-intervention framework. The critique of R2P, contained in Part I of this book, argues that while the concept has undeniably raised international consciousness regarding humanitarian intervention and the limits of sovereign inviolability, it has reached the limits of its utility and, in fact, come to obscure the structural barriers to effective humanitarian action. Part II advances an alternative strategy that seeks to re-orientate the focus of the pro-intervention constituency in the hope that a new, more effective movement for reform can be mobilized. This introductory chapter initially provides a succinct overview of the basis for my argument, which is developed in greater detail in subsequent chapters, and latterly an overview of each chapter.

The illusion of progress?

A major inspiration for writing this book was the obscure phrase, 'eirenic munificence' which appears on the final page of Simon Chesterman's *Just War or Just Peace* (2002, p. 236). In the context of humanitarian intervention, Chesterman warned of the dangers of moving away from international law towards a more subjective regulatory framework, which would necessarily be influenced by the prevailing distribution of power and the temporal whims of those who wield it, both regionally and internationally. The broader implications of Chesterman's warning impelled me to look at the issue of humanitarian intervention with a view to determining whether it was possible to move towards a system more responsive to intra-state humanitarian crises while avoiding the fate of a world without international law, or rather a world where, 'international law is deprived to become just one policy justification among others' (ibid, p. 236). Simply put, I believe that humanitarian intervention is too important an issue to be dependent on the exigencies of the Great Powers; the only viable solution to the near perennial problem of how we should respond to man-made intra-state humanitarian

crises is a strengthening of international law involving significant reform of the UN. This book's primary aim is to defend this contention and outline the parameters of reform.

Another inspiration was my growing concern at the trajectory of the debate on humanitarian intervention precipitated in recent years by the rise of R2P, particularly since the 2005 World Summit. Effusive appraisals of R2P abound; Alex Bellamy cites R2P as 'the single most important development' on the question of intra-state humanitarian crises (2009, p. 2); Anne-Marie Slaughter describes the recognition of R2P in the 2005 World Summit Outcome Document as 'an enormous normative step forward, akin to an international Magna Carta' (2011); while Gareth Evans claimed R2P has made 'major contributions that seem likely to have a lasting impact' (2008, p. 39) and more effusively characterized R2P as 'a brand new international norm of really quite fundamental importance and novelty ... that is unquestionably a major breakthrough' (2009, p. 16). The number of books and articles published on the subject in recent years is remarkable: as UN Special Adviser on R2P, Ed Luck, exclaimed, 'The ever-expanding literature on the responsibility to protect could now fill a small library. The number of graduate theses alone devoted to the topic has been nothing less than staggering' (2010). Whether this popularity, if not ubiquity, is evidence of R2P's efficacy, real and/or potential, is less clear.

It would be disingenuous, and perhaps gratuitously cynical, to deem the popularity of the concept as being indicative of its weakness. Nonetheless, this popularity is, in many respects, a function of at least one characteristic of R2P which I contend *does* undermine its utility, namely its ambiguity. As Carsten Stahn noted, R2P is, 'a multifaceted concept with various elements'. This diversity has certainly broadened the constituency of 'R2P advocates' and generated a more inclusive, pluralist debate about related issues but this broadening has (arguably) come at a cost. Accordingly, Stahn wrote: 'The notion became popular because it could be used by different bodies to promote different goals' (2007, p. 118). The various tangents increasingly emanating from the concept is reflected in the diverse applications of the term and the extent to which 'R2P' has become an obligatory reference point in academic discourse on the issue of humanitarian intervention. The burgeoning literature on R2P could be said to have diluted the focus of an idea

which really stemmed from a debate on how to *respond* to mass atrocities within states. This dilution has been made possible, I contend, because R2P has failed to consolidate its identity since its initial formulation. With the exception of the agreement at the World Summit in 2005 on the four crimes that constitute grounds for intervention, R2P has added surprisingly little clarity or innovative proposals to the pre-existing debate on humanitarian intervention. Its malleability has enabled a plethora of authors and advocacy groups to declare that their work on, for example, climate change, education reform and mental health, constitute R2P-type initiatives. This is certainly testimony to the goodwill which is associated with the term but this would seem to constitute the instrumental usage of R2P as a slogan, a means by which pre-existing theories and concerns garner increased publicity. This is not unique to R2P of course; many initiatives have, quite understandably, sheltered under the umbrella of the prevailing catch-phrase, be it, ‘Never Again!’ or ‘Make Poverty History’. The history of temporarily popular rallying cries suggests popular usage and tangible influence cannot be readily conflated. As I discuss in Chapter 2, R2P does have certain referent points and key moments in its evolution, but the contested issues and difficult questions which inspired the debate on humanitarian intervention in the 1990s remain, sadly, largely unanswered.

While the rise of the R2P industry – which today comprises many advocacy groups and centres across the world – is an interesting phenomenon in itself, a more pressing reason for my seeking to expose the concept’s limitations is the fact that R2P has deflected attention away from potentially useful avenues of research and indeed advocacy, most particularly UN reform. Frustration with the ostensibly vacuous nature of R2P has led certain observers, not opposed to the idea of humanitarian intervention, to become disillusioned by what they see as the hype surrounding R2P (Reinold, 2010; Strauss, 2010). The time, money and effort expended on R2P would be better focused elsewhere; those who genuinely seek to resolve the problem posed by intra-state humanitarian crises, as the majority of R2P advocates surely do, would be more fruitfully employed in exploring truly innovative approaches to this issue and this book seeks to contribute to building an alternative pro-intervention constituency.

The limits of moral advocacy

That intra-state crises occasionally demand military intervention is, I argue in Chapter 6, axiomatic. That R2P has come to dominate the debate on intervention is equally irrefutable. The confluence of these truisms has, perhaps naturally, led many to champion R2P and to articulate their views through R2P's rhetorical framework. There is an increasing sense that R2P is the only viable solution to the problem posed by humanitarian intervention, and that, while it has its flaws, we must 'try to make it work'.

It is the contention of this book, however, that this is a misplaced strategy. Those eager to see an end to the spectre of inertia that has too often characterized the international 'response' to intra-state crises need not, and I believe they should not, seek to achieve these aims by adhering to the prevailing strategy currently employed by R2P's most vocal champions. R2P has changed international political discourse, perhaps irrevocably, but it has not changed the practice of international politics, nor will it do so as long as the focus is on generating moral pressure to act. The term may have achieved an enviable ubiquity in international political discourse but close examination of R2P reveals a discursiveness that comprises a medley of less important abstractions from 'pillars' to 'thresholds' which obscure the real problem. At its core R2P is a reassertion of the status quo and an eloquent appeal to behave in accordance with moral norms. Of course, moral advocacy is not new and its influence, though not negligible, has always been limited.

Gary Bass's *Freedom's Battle* does much to explode the myth that humanitarian advocacy, including for military intervention, is a post-Cold War phenomenon. Bass points to a number of cases during the nineteenth century when egregious oppression and violence compelled both individuals and states to advance arguments in favour of what we now call humanitarian intervention. He writes:

emotional pleas were a regular feature of international politics throughout much of the nineteenth century, resulting in several important military missions. The basic ideas go all the way back to Thucydides, who, horrified at bloody ancient civil wars, hoped for the endurance of 'the general laws of

humanity which are there to give a hope of salvation to all who are in distress'. (Bass, 2008, p. 4)

The nineteenth century, as Bass notes, is today synonymous with imperialism and hardly a particularly rich source of evidence for humanitarian concern. Bass's analysis, however, identifies a tension between the proponents of *realpolitik* and the agitation of what he calls 'the atrocitarians' which has obvious parallels with contemporary debates (ibid, p. 6). Bass argues that as a consequence of the emergence of the free press and the lobbying of groups like the London Greek Committee established in 1823, 'Humanitarian intervention was once a relatively familiar European practice, and was understood as such' (ibid, pp. 4–5). Again the parallels with today's 'CNN effect' and 'global civil society' are clear.

Nonetheless, while many people in the nineteenth century did eloquently espouse cosmopolitan ethics, their existence and vocal advocacy does not constitute proof that they compelled states to look beyond their narrowly defined national interests. The most one can deduce from Bass's analysis is that in the nineteenth century, as today, there were those who argued that states *should* do something about suffering overseas, and occasionally statesmen did advance humanitarian justifications for their military interventions. Yet, in the context of Britain and France's wilful imperial excesses, the periodic expression of humanitarian concern appears glaringly hypocritical. Indeed, Bass notes that many of the more powerful and vocal exponents of enlightened rhetoric who aligned themselves with 'the atrocitarians' in the nineteenth and early twentieth centuries, such as William Gladstone, Theodore Roosevelt, David Lloyd George and Woodrow Wilson, 'held loathsome racial attitudes that played out in the subjugation of countless people' (ibid, p. 343). Evidence for the influence of humanitarian activists on European and US foreign policy during this era of rampant colonialism and the subjugation of human rights under the banners of the 'white man's burden' and the '*mission civilisatrice*' is, however, modest. This contrast between the policies of the colonial powers and their benign rhetoric should constitute a salutary lesson for those who equate the increased usage of R2P in international discourse with its increased influence.

Yet, this appears to have been overlooked in the rush to

proclaim that a new era is within our reach. In his book *The Responsibility to Protect*, Gareth Evans outlines a litany of atrocities, genocide, mass rape and human cruelty which he attributes to the principle of sovereignty. States, jealously possessive of their sovereign rights, are portrayed as morally bankrupt, introverted and implacably disposed to singularly pursue the national interest. And perhaps Evans is right; human history from 1648 to 1992 can make for depressing reading with acts of altruism exceedingly rare. It is difficult to understand, however, why this disposition, embedded in statecraft for the previous 350 years, should suddenly dissipate in the early 1990s. The contemporary foreign policy change required to achieve Evans' goal – as per his book's sub-title – of *Ending Mass Atrocity Crimes Once and for All* would be of such a magnitude that it would constitute a veritable revolution. Yet, this putative revolution, quite uniquely, involves no constitutional or institutional change. The revolution, it seems, will, to borrow Gil Scott-Heron's line, 'not be televised' as it will be one which takes place not in a tangible, observable way, but rather in the hearts and minds of statesmen across the world leading to the proliferation of 'good people, good governments, and good governance' (Evans, 2008, p. 7). This belief in the capacity of 'good' to triumph over 'evil' is on one level somewhat inspiring but it is also laden with normative assumptions that undermine its utility. Instances of intra-state crises are the result, we must assume, of 'bad' people perpetrating 'bad' deeds while others look on, thereby behaving 'badly'. There is little, if indeed any, engagement with other possible factors such as the potentially deleterious influence of the structure of the international system in its various forms, namely economic, political and legal. The 'bad' people commit these acts, it seems, because of their nature while the observers who do not intervene are by definition behaving badly; countervailing circumstances, context and the possible existence of a hierarchy of responsibilities are essentially discounted in this near Manichean world view. The solution – namely the allegedly normative power of R2P – is, ultimately and essentially, the global dispersal of individual benevolence and what Robert Drinan calls 'the mobilization of shame' which he defines as, 'the moral power which, more than laws or economic sanctions, will induce nations to follow the less followed road that leads to democracy and equality' (2001, p. 32).

This faith in the power of words and ideas to effect momentous change is illustrative of what Reinhold Niebuhr criticized as 'bourgeois individualism'. This view, based on an unshakeable faith in progress, overlooked, and still overlooks, the fact that within any society personal and group interests differ; the inevitable plurality of interests always necessitates structures – economic, political and judicial – to regulate interactions because promises are unreliable and unity of purpose and interests, though not impossible, is only ever temporal. Niebuhr decried those who exhibited, 'a touching faith in the possibility of achieving a simple harmony between self-interest and the general welfare on every level' (1986, p. 164). This melding of self-interest and general welfare – which if realized would obviously remove the need for legal codes – is precisely what R2P advocates seek to achieve, and indeed, appear to expect to realize.

Of course, most progressive political, legal and social changes have been catalysed by the insights of certain figures and groups who have converted masses to their cause; there is nothing unusual about calling for a new way of thinking and behaving. Where these ideas have succeeded, however, they have been accompanied by institutional change so as to codify the new system/paradigm. For example, exposing Eastern European 'communism' as morally and economically bankrupt and generating mass societal opposition to the ruling elite was obviously not enough; the system, including the constitution and the institutions, had to be changed to consolidate the revolution. R2P, on the other hand, aspires to achieve hugely expansive aims but calls for little tangible change: instructional, legal or structural.

The first point on the list of aims advanced by the ICISS in *The Responsibility to Protect* was, 'to establish clearer rules, procedures and criteria for determining whether, when and how to intervene' (2001a, p. 11). This explicit focus on clearer rules is a worthy, and surely reasonable, aim. It is striking, however, how this has been largely abandoned by contemporary advocates of R2P. As discussed in Chapters 3 and 8, R2P has not changed international law or suggested the codification of new binding guidelines on intervention and this reform strategy is in fact no longer even seen as necessary. Immense faith has been placed in the capacity of 'good' people to convince states to behave in certain ways by publicizing atrocities and 'shining a light' on unacceptable inaction through the media. The willingness of the

international media, however, to highlight crises and publicize the advocacy of the 'good' people calling for action is not assured. In the context of the conflict in Darfur, Steve Crawshaw of Human Rights Watch highlighted the hypocrisy of the media's position:

There was much editorial soul-searching in April [2004] over the failures to chronicle the Rwandan genocide that had taken place 10 years earlier. That soul-searching was, however, accompanied by an almost complete disregard for the crimes against humanity that were being committed in Darfur at the very same time ... Even when the UN Secretary-General, Kofi Annan, used his Rwanda anniversary speech on April 7 to address the subject, few newspapers took much notice. A colleague noted: 'The international media don't seem to send reporters to cover genocides. They cover genocide anniversaries.' (Crawshaw, 2004)

Eventually, of course, the international media did take up the issue of Darfur but even then the effect on the Security Council was hardly appreciable (Bassiouni, 2009). The lesson is surely that the mobilization of moral pressure to intervene is not readily achievable and even if realized, such pressure can be resisted by the permanent five members of the Security Council (P5).

The critique offered above and throughout this book will no doubt be challenged by many. One oft-repeated rebuttal to the above charges is the claim that it is too early to write off R2P: that we must wait for it to take root and to gradually increase its influence. There is merit to the argument that changes in international politics take time, though periodically sudden shifts also do occur. Nonetheless the 'let's give it time' refrain is neither convincing nor applicable in this context because, paradoxical though it may seem, R2P existed before R2P was formally created. At its core, R2P constitutes an appeal for states to treat their citizens better and to be ready to take action to protect citizens of other states. This principle, as Bass noted, can be traced back at least two millennia to Thucydides (2008, p. 4). Such moral advocacy has also been a constant feature of the post-Charter era. The utility of R2P is further undermined by the fact that the existing agreement as to its meaning is shallow and thus its ostensible power as a 'norm' is inherently weak. As Theresa

Reinold notes, beyond the general, and relatively modest, consensus that states should not commit certain acts against their citizens and that the international community may get involved if they do, the concept is underdeveloped. She argues that R2P lacks both conceptual clarity and consistent application in state practice and therefore, 'norm internalisation cannot occur ... the responsibility to protect clearly has not evolved into a norm, that is, an intersubjectively shared standard of appropriate behaviour' (Reinold, 2010, p. 74).

The paradox is, however, that the R2P industry has reached a point where it has become seemingly impossible for some to admit that the strategy has not worked, and cannot work within the confines of the current systemic structure. Inconvenient instances when R2P demonstrably failed to effect change – such as the international community's response to both the conflict in Darfur and the massacres in Sri Lanka – are downplayed in favour of those cases where R2P ostensibly played a role (see Chapter 4).

What is to be done?

I do not reject R2P on the basis of a theoretical (or personal) rejection of the very idea of humanitarian intervention, nor do I suggest that power politics is so pervasive that it is inconceivable that norms governing the use of force can evolve and ultimately effect change both in positive law and normative ideals. Rather, I argue that the issue of humanitarian intervention has highlighted the profound need for fundamental structural reform of the UN. Lofty declarations proscribing certain acts are insufficient; if they were not then how do we explain the many instances of unabated genocide since the signing of the 1948 Genocide Convention? Somewhat ironically, Evans criticizes the Genocide Convention on the basis that it constituted little more than empty rhetoric: 'It was almost as if, with the signing of the Genocide Convention', he wrote, 'the task of addressing man-made atrocities was seen as complete: it was rarely invoked and never applied' (2009, p. 17). Why R2P, which has significantly less legal character and is more nebulous and contested than the Genocide Convention, should avoid this faith is unclear.

To simply criticize R2P, however, would be to add little of any constructive value to the debate. To this end, Part II of this book