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Edited by Ramesh Thakur and William Maley

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Part I

Context

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1 Introduction: theorising global responsibilities

Ramesh Thakur and William Maley

One of the most important developments in world politics in the last decade has been the spread of the twin ideas that state sovereignty comes with responsibilities – both domestic and international – as well as privileges, and that there exists a global responsibility to protect people threatened by mass atrocity crimes. The 2001 report of the International Commission on Intervention and State Sovereignty entitled *The Responsibility to Protect* put these ideas into active circulation, and United Nations resolutions in 2005 on the sixtieth anniversary of the establishment of the United Nations gave the idea further substance. More recently, the justification of NATO action in Libya on the strength of Security Council Resolutions 1970 and 1973, which made explicit reference to the principle of the Responsibility to Protect, has put this particular notion at the centre of discussion of some of the most challenging political dilemmas of our times. As international leaders struggle to find ways to deal with mounting political violence in Syria and more recently with the emergence of the self-styled ‘Islamic State in Iraq and Syria’, the idea of the Responsibility to Protect, now increasingly labelled simply R2P, is never far below the surface.

These concrete political developments have helped to generate a substantial scholarly literature concerned with the genesis of the idea of the Responsibility to Protect, and with the way in which it has been refined through multilateral deliberation. Through mainstream as well as dedicated journals such as *Global Responsibility to Protect*, researchers have sought to explore the ambit of the Responsibility to Protect doctrine, discussing, for example, whether it can properly be applied in circumstances where a population is threatened by the ravages of natural disaster. Nonetheless, in a real sense the doctrine remains under-theorised, or at least only weakly related to existing bodies of theory concerned with the nature and foundations of political and international order. Its implications for ideas about the appropriate scope, strength and legitimacy of the state have received relatively little attention. The aim of this collection is to help to fill this gap.

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First, however, it is necessary to set the scene by exploring the context within which the idea of a responsibility to protect took shape. One key element of this context was a critical weakness in the normative framework determining how states should relate to each other and to international organisations. This weakness arose because of the unsatisfactory nature of ideas about ‘humanitarian intervention’ that had found their way into circulation. The other key element was a sequence of events in which ordinary people were brutalised in ghastly ways in various parts of the world. While the Holocaust had already provided an unprecedentedly horrific example of mass murder on an industrial scale, there had been hopes in the aftermath of the Second World War that the new architecture of the United Nations, the development and anathematisation of the idea of genocide and the capacity of media to expose horrendous acts of cruelty would put a stop to such events. Yet they persisted, and in the post-Cold War period, developments such as ethnic cleansing in the Balkans, and above all the Rwandan genocide of April–June 1994, made it a matter of urgency to find a better way of protecting the vulnerable.

The problem of humanitarian intervention

The use of the vocabulary of humanitarianism to justify political measures – up to and including the use of force – is hardly a novel development.¹ It is relatively straightforward to identify specific impulses in different contexts that one might class as ‘humane’: the activities of the Knights Hospitaller from the eleventh century, the enactment by the English Parliament of the *Statute of Charitable Uses* of 1601, the Abolitionist activities of figures as diverse as William Wilberforce and John Brown and the establishment of the Red Cross in 1863 all come to mind. The genesis of these impulses was often to be found in religion, and, in this sense, they were not particularly a product of the rationalism and individualism associated with the Enlightenment. Unfortunately, the claim to be acting on humanitarian grounds was open to being used in other ways. The grimmest example of this was provided by Germany in the 1930s, where Berlin frequently sought to justify the expansionism of Germany by reference to alleged infractions of the rights and freedoms of ethnic Germans living in other countries such as Czechoslovakia and Poland.

¹ See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000); Ramesh Thakur, ‘Humanitarian Intervention’, in Thomas G. Weiss and Sam Daws, eds, *The Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2007), pp. 387–403.

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While earlier conflicts had certainly attracted attention in terms of their humanitarian implications,² and statesmen in the 1920s had sought to outlaw war as an instrument of policy,³ in the aftermath of the Second World War, a new framework of norms and rules was developed to deal with the use of force in international relations, a framework centred on the Charter of the new United Nations. At one level, the framework was a simple one. Article 2.4 provided that ‘all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’. Article 51 provided *inter alia* that ‘nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security’. Article 39 sought to head off unilateral impulses by stating that ‘the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security’. Article 41 provided that ‘the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions’, and, critically, Article 42 provided that ‘should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.’⁴

As can be seen, the United Nations Charter codified both the law and the new normative consensus. One crucial problem, however, remained. When the Charter was being drafted, its authors were haunted by the knowledge that the League of Nations that had been established in 1920 had proven impotent in dealing with the challenges of the 1930s because

² See Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca: Cornell University Press, 2003), pp. 58–66; Gary J. Bass, *Freedom’s Battle: The Origins of Humanitarian Intervention* (New York: Alfred A. Knopf, 2008).

³ See William Maley, ‘Norms as frames for institutions: The Pact of Paris, Nuremberg and the international rule of law’, in Charles Sampford and Ramesh Thakur, eds, *Institutional Supports for the International Rule of Law* (New York: Routledge, 2015), pp. 116–131, at pp. 119–121.

⁴ For a detailed discussion of these provisions’ operation, see Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006).

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its membership was far from universal, and there were no particular costs for states that chose to abandon their membership. Ensuring the widest possible subscription to the new international organisation and the norms that it was setting out to foster was therefore of crucial importance. Yet at the same time, there was no prospect whatever that the great powers would relinquish their own security to the dictates of an untested multilateral organisation. For this reason, the Charter granted permanent membership of the Security Council to five states – the United States, the United Kingdom, the Soviet Union, France and China – and with it, the power to veto any non-procedural resolutions. When the Cold War broke out, leading to decades of tension between United States and the Soviet Union, the Security Council became one of the theatres for their confrontation, and a degree of paralysis afflicted the Council, at least when issues of concern to the two superpowers, the United States and the Soviet Union, were potentially on the agenda.

The possibility that the Council could prove impotent – either because of a stand-off between the superpowers or by virtue of a simple lack of interest in some remote part of the world – raised the question of what should be done when some horror seemed to require action, but action could not be justified by reference to self-defence or to explicit Security Council authorisation. An answer came with the idea of ‘humanitarian intervention’, which might be morally justifiable even if legally indefensible. Different scholars offered somewhat varying definitions. Jennifer M. Welsh, for example, explicitly defined humanitarian intervention as ‘coercive interference in the internal affairs of the state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering’.⁵ Adam Roberts, on the other hand, defined it as ‘coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants’.⁶ Various examples of state behaviour were from time to time cited as examples of humanitarian intervention, including the Indian intervention in East Pakistan in December 1971, the Vietnamese invasion of Cambodia in December 1978 that resulted in the displacement of the genocidal Khmer Rouge regime and the Tanzanian overthrow of the Amin regime in Uganda in April 1979.

⁵ Jennifer M. Welsh, ‘Introduction’, in Jennifer M. Welsh, ed, *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p. 3. In 2013 Welsh succeeded Edward Luck as the special adviser to the UN secretary-general on R2P.

⁶ Quoted in Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity Press, 2007), p. 5.

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Yet while a number of observers welcome the consequences of these specific actions, many at the same time voiced very considerable unease about the principles involved. A wide range of criticisms surfaced. One related to sincerity of purpose. Did Vietnam *really* invade Cambodia on the basis of humanitarian motives, or did such claimed motives simply provide convenient cover for an intervention carried out for quite different purposes? Another related to consistency, and to the fear that the doctrine of humanitarian intervention would simply magnify asymmetries of power in the international system, with states that had long seen themselves as meeting some standard of ‘civilisation’⁷ becoming moral policemen for younger states only recently freed from colonial domination, and acting with considerable hypocrisy to boot. Yet another criticism drew on the ethics of consequences to suggest that humanitarian intervention provided no guarantee that the ‘beneficiaries’ would ultimately be better off than if no intervention had occurred. None of these objections was trivial, and in large parts of the world they undermined any claim to legitimacy that humanitarian intervention might have sought.

Theory and practice

Despite these inadequacies in the concept of humanitarian intervention, it did seem in some ways to fill a need. At the beginning of the 1990s, specifically following the ejection of Iraqi forces from Kuwait in early 1991 pursuant to UN Security Council Resolution 678, President George H. W. Bush’s envisioning of a ‘new world order’ struck something of a chord for those who had hoped to see the day when the Cold War paralysis of the Security Council would be surmounted and the Council might begin to function more as its architects had intended. Alas, this was not how things worked out. The first half of the new decade was dominated (or perhaps stained) by a number of developments that seemed to create anew the need for some morally defensible form of international action to shelter the vulnerable. With the attention of the wider world focused on the holding of the first multiracial elections in South Africa, extremists in Rwanda embarked on the genocidal slaughter of those they conceived to be enemies.⁸ And, as Yugoslavia disintegrated, Bosnia-Herzegovina became the theatre for hideous exercises in ‘ethnic

⁷ See Gerrit W. Gong, *The Standard of ‘Civilization’ in International Society* (Oxford: Oxford University Press, 1984); Brett Bowden, *The Empire of Civilization: The Evolution of an Imperial Idea* (Chicago: University of Chicago Press, 2009).

⁸ See Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto: Random House, 2003); Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

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cleansing',⁹ and the United Nations itself was comprehensively humiliated by the massacre of men and boys in Srebrenica in July 1995.¹⁰ Yet there were distinct and chilling differences between the two cases. The crisis in Bosnia, a European state, became a major preoccupation for the Security Council and for Western capitals. The Rwandan genocide, by contrast, was not an event about which key Western capitals wanted to know, and it was only through the determined efforts of figures such as UN Force Commander General Roméo Dallaire of Canada and UN Security Council President Colin Keating of New Zealand that it attracted attention at all. The killing of Africans seemed to weigh very differently in the moral calculus of key Western leaders than did the killing or displacement of people in Europe who looked rather like them. NATO's February–June 1999 intervention in Kosovo without Security Council authorisation added to this impression.¹¹

The combination of problems crying out for attention and a doctrinal response, the weaknesses of which seemed to undermine its legitimacy, set the scene for conceptual innovation. Two other factors, however, also proved to be of critical importance. One was the commitment of the Canadian government to promote the informed discussion of alternative approaches. Lloyd Axworthy, Canada's foreign minister from 1996 to 2000, was a dynamic advocate of innovative approaches to complex international challenges, and on 14 September 2000 he launched the International Commission on Intervention and State Sovereignty, the Advisory Board of which he subsequently chaired. Canada provided and mobilised the material support which was necessary for a commission of this kind to be able to operate. The other factor was the fortuitous assembling of Commission members: a remarkable mix of scholars and practitioners, while the choice of Gareth Evans and Mohamed Sahnoun as co-chairs was particularly inspired. Given the complexity and sensitivity of the issues involved, the Commission's members performed quite remarkably in producing a consensus report that broke ground both practically and theoretically. The historian Sir Martin Gilbert has described the idea of the responsibility to protect as 'the most significant adjustment to national sovereignty in 360 years'.¹² One reason why this

⁹ See David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (New York: Touchstone, 1996).

¹⁰ See *Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica*, Document A/54/549 (New York: United Nations, 15 November 1999).

¹¹ For reflections on this case, see Albrecht Schnabel and Ramesh Thakur, eds, *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (Tokyo: United Nations University Press, 2000).

¹² Martin Gilbert, 'The Terrible 20th Century', *The Globe and Mail* (Toronto), 31 January 2007.

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could be the case is that the work of the Commission's members did not cease when it presented its report. On the contrary, a number of the members of the Commission have been active contributors to ongoing debates about the evolution of the idea of a responsibility to protect, not simply as 'keepers of the flame', but as sources of further innovative thinking.¹³

Theorising R2P

The title of this volume is *Theorising the Responsibility to Protect*, but, given the multiple understandings of theory, it is important to clarify some of the ways in which theory and theoretical reflection might illuminate a doctrine of this kind and enhance an understanding of the ways in which it might contribute normatively to international relations. R2P is not a positive social science theory of the kind that might be used to attempt to predict the course of specific political events. Theories of this kind have a venerable history in international thinking, ranging from older ideas about power balancing as a source of political stability to much more recent theories about liberal or democratic domestic political arrangements as bases for peace.¹⁴ Those who wish to theorise the responsibility to protect will need to focus their attention on a quite different set of theoretical issues. Fortunately, there are a number which cry out for attention, and which contributors to this book take up in different ways.

A first and very important set of issues relates to conceptual clarification. This has two dimensions at least. A doctrine such as R2P is formulated in the words and sentences of a natural language. There is abundant scope for clarifying exactly what these words and sentences actually connote. Words can be ambiguous in their meaning, or susceptible to multiple interpretations by different audiences. As the R2P doctrine has passed through different sets of hands, it has on a number of occasions been refined and clarified, sometimes in ways that augment its prospects of securing a wider degree of support. This has consequences. Anne Orford, for example, has pointed out that the 'vocabulary of

¹³ For their reflections on what makes international commissions and high-level panels successful, see Gareth Evans, 'Commission Diplomacy', in Andrew F. Cooper, Jorge Heine and Ramesh Thakur, eds, *The Oxford Handbook of Modern Diplomacy* (Oxford: Oxford University Press, 2013), pp. 278–302; Ramesh Thakur, 'High-Level Panels', in Jacob Cogan, Ian Hurd and Ian Johnstone, eds, *The Oxford Handbook of International Organizations* (Oxford: Oxford University Press, forthcoming).

¹⁴ See Richard Little, *The Balance of Power in International Relations: Metaphors, Myths and Models* (Cambridge: Cambridge University Press, 2007); Michael W. Doyle, *Liberal Peace: Selected Essays* (New York: Routledge, 2011).

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“responsibility” works here as a language for conferring authority and allocating powers rather than as a language for imposing binding obligations and commanding obedience’.¹⁵ Another dimension of conceptual clarification, which remains largely unexplored, relates to the challenges of moving from English as the language in which R2P was originally formulated into other languages which may not be endowed with exact equivalents of some of the key terms that figure in the 2001 report of the International Commission on Intervention and State Sovereignty, or in subsequent documents formulated within the UN system such as the 2005 World Summit Outcome.¹⁶ For example, there is no particular reason to assume that the two key words ‘protect’ and ‘responsibility’ have direct equivalents in all languages, and it may be necessary to draw on semantic theory in order to be able to explain to different audiences what these English terms mean.¹⁷

A second set of issues is related to the elaboration of normative justifications for R2P. The R2P doctrine is fundamentally normative. It is offered as a set of proposals about what should be done in certain circumstances, namely those in which vulnerable people are faced by the threat of mass atrocity crime. It is directed at shaping the behaviour of actors who might be called upon to engage in preventative action, or in reacting, or in rebuilding. But if it is to carry weight, it cannot simply be because it was articulated in 2001 by an eminent group of scholars and practitioners. Something else is required, and what this ‘something else’ might be is a matter that can be illuminated from a range of theoretical perspectives, whether based on deontological or consequentialist ethics, or some logic of the institutional structure of the international system, or the normative implications of some particular political philosophy.

A third set of issues is concerned with the relationship of R2P to wider social phenomena. The R2P doctrine began its life as a set of ideas, but at maturity it may be more important as a behaviour-shaping norm in an environment in which many other norms are also to be found. The theorising that is involved here relates to wider discussions about what Jon Elster once called the ‘cement of society’¹⁸ – only in this case, it is perhaps international society rather than a single community that is the focus of our attention.

¹⁵ Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011), p. 26.

¹⁶ See *World Summit Outcome*, Document A/RES/60/1 (New York: United Nations, 24 October 2005), paragraphs 138–139.

¹⁷ See Anna Wierzbicka, *Imprisoned in English: The Hazards of English as a Default Language* (New York: Oxford University Press, 2014).

¹⁸ Jon Elster, *The Cement of Society: A Study of Social Order* (Cambridge: Cambridge University Press, 1989).