

# Responsibility to Protest

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The discussions about ‘Responsibility to Protest’ (R2P), or its cousin ‘humanitarian intervention’, are regularly disturbed by the rattling of a skeleton in the closet: history, to the present moment. Throughout history, there have been a few principles of international affairs that apply quite generally. One is the maxim of Thucydides that the strong do as they wish while the weak suffer as they must. A corollary is what Ian Brownlie calls ‘the hegemonic approach to law-making’: the voice of the powerful sets precedents. Another principle derives from Adam Smith’s account of policy-making in England: the ‘principal architects’ of policy – in his day the ‘merchants and manufacturers’ – make sure that their own interests are ‘most peculiarly attended to’ however ‘grievous’ the effect on others, including the people of England – but far more so, those who were subjected to ‘the savage injustice of the Europeans’, particularly in conquered India, Smith’s own prime concern. A third principle is that virtually every use of force in international affairs has been justified in terms of R2P, including the worst monsters. Just to illustrate, in his scholarly study of ‘humanitarian intervention’, Sean Murphy cites only three examples between the Kellogg-Briand pact and the UN Charter: Japan’s attack on Manchuria, Mussolini’s invasion of Ethiopia, and Hitler’s occupation of parts of Czechoslovakia, all accompanied by lofty rhetoric about the solemn responsibility to protect the suffering populations, and factual justifications. The basic pattern continues to the present.

The historical record is worth recalling when we hear R2P or its cousin described

as an ‘emerging norm’ in international affairs. They have been considered a norm as far back as we want to go. The founding of this country is an example. In 1629, the Massachusetts Bay Colony was granted its Charter by the King, stating that rescuing the natives from their bitter pagan fate is ‘the principal end of this plantation’. The Great Seal of the Colony depicts an Indian saying ‘Come Over and Help Us’. The English colonists were thus fulfilling their responsibility to protect as they proceeded to ‘extirpate’ and ‘exterminate’ the natives, in their words – and for their own good, their honoured successors explained. In 1630, John Winthrop delivered his famous sermon depicting the new nation ‘ordained by God’ as ‘a city on a hill’, inspirational rhetoric that is regularly invoked to this day to justify any crime as at worst a ‘deviation’ from the noble mission of responsibility to protect.

There is no difficulty adding similar examples from other great powers in their day in the sun. It is understandable that the powerful should prefer to declare that we should forget history and look forward. For the weak, it is not a wise choice.

The skeleton in the closet made an appearance in the first case considered by the International Court of Justice sixty years ago, the Corfu Channel case. The Court determined that it ‘can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the defects in international organization, find a place in international law ...; from the nature of things, [intervention] would be reserved for the most powerful states, and might easily lead to perverting the administration of justice itself.’

The same perspective informed the first-ever meeting of the South Summit of 133 states, convened in April 2000. Its declaration, surely with the bombing of Serbia in mind, rejected ‘the so-called “right” of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law’. The wording reaffirms the important UN Declaration on Friendly Relations (UNGA Res. 2625, 1970). It has been repeated since, among others by the Ministerial Meeting of the Non-aligned Movement in Malaysia in 2006, again representing the traditional victims in Asia, Africa, Latin America, and the Arab world.

The same conclusion was drawn in 2004 by the high-level UN Panel on Threats, Challenges and Change. The Panel adopted the view of the International Court of Justice and the Non-aligned Movement, concluding that ‘Article 51 needs neither extension nor restriction of its long-

understood scope'. The Panel added that 'For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all' – which is, of course, unthinkable.

The same basic position was adopted by the UN World Summit in 2005. While reaffirming stands that had already been accepted, the Summit also asserted the willingness 'to take collective action ... through the Security Council, in accordance with the Charter ... should peaceful means be inadequate and national authorities are manifestly failing to protect their populations' from serious crimes. At most, the phrase sharpens the wording of Article 42 on authorization for the Security Council to resort to force. And it keeps the skeleton in the closet – if, and it is a large *if*, we can regard the Security Council as a neutral arbiter, not subject to the maxims of Thucydides and Adam Smith, a matter to which I will return.

There have been efforts to draw a sharp distinction between R2P and its cousin. They may have some merit, but they go far beyond the evidence. There is a good reason why 'the right of humanitarian intervention' has been hotly contested, in substantial part along North-South lines, while R2P was affirmed – more accurately reaffirmed – by consensus at the Summit. The reason is that the Summit acceptance of R2P rhetoric adds nothing substantially new. The rights articulated in the crucial paragraphs 138 and 139 of the Summit declaration had not been seriously contested, and in fact had been affirmed and implemented, for example, with regard to apartheid South Africa. Furthermore, the Security Council had already determined that it can even use force under Chapter VII to end massive human rights abuses, civil war, and violation of civil liberties: Resolutions 925, 929, 940, June-July 1994. And as J. L. Holzgrefe observes, 'most states are signatories to conventions that legally oblige them to respect the human rights of their citizens'. The few successes of R2P that have been widely hailed, as in Kenya, had no need for the Summit resolution, though the terminology of R2P was invoked.

In substance, R2P as formulated at the South Summit is a sub-case of the 'right of humanitarian intervention', omitting the part that has been contested: the right to use force without Security Council authorization. That does not imply that there is no significance to the more explicit focus on rights that had already been widely accepted. The significance of the rhetorical shift will be determined by how it is implemented. On that

matter, there are few grounds for celebration.

There have been departures from the Corfu Channel restriction and its descendants. The Constitutive Act of the African Union asserts ‘The right of the Union to intervene in a Member State … in respect of grave circumstances’. That differs crucially from the Charter of the Organization of American States, which bars intervention ‘for any reason whatever, in the internal or external affairs of any other state’. The reasons for the difference are clear. The OAS Charter seeks to deter intervention by the ‘colossus of the North’ – and has of course failed to do so. But after the collapse of the apartheid states, the African Union faced no comparable problem.

If the African Union doctrine were to extend to the OAS or NATO, then they would be entitled to intervene within their own alliances. That idea yields interesting and revealing conclusions about the OAS and NATO, which should not need elaboration. But the conclusions would be inoperative, as in the recent past, thanks to the maxim of Thucydides.

I know of only one high-level proposal to extend R2P beyond the Summit consensus and the African Union extension, namely, in the Report of the International Commission on Intervention and State Sovereignty on Responsibility to Protect (2001). The Commission considers the situation in which ‘the Security Council rejects a proposal or fails to deal with it in a reasonable time’. In that case, the Report authorizes ‘action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council’ ((3) E, II).

At this point, the skeleton in the closet rattles quite loudly. One reason is that the powerful unilaterally determine their own ‘area of jurisdiction’. The Organization of American States and African Union cannot do so, but NATO can, and does. NATO unilaterally determined that its ‘area of jurisdiction’ includes the Balkans – but not NATO itself, where shocking crimes were committed against Kurds in south-eastern Turkey through the 1990s, off the agenda because of the decisive military and diplomatic support for them by the Clinton administration, with the aid of other NATO powers. NATO has also determined that its ‘area of jurisdiction’ extends to Afghanistan, and beyond. Secretary-General Jaap de Hoop Scheffer informed a NATO meeting in June 2007 that ‘NATO troops have to guard pipelines that transport oil and gas that is directed for the West,’ and more generally have to protect sea routes used by tankers and other ‘crucial infrastructure’ of the energy system. The expansive rights accorded by the International Commission are in practice restricted to

NATO alone, radically violating the principles of Corfu Channel and its descendants, and opening the door for resort to R2P as a weapon of imperial intervention at will.

The Corfu Channel principle provides considerable insight into both the timing of the rhetorical invocation of R2P and its cousin, and the selectivity of their application in this new incarnation. The ‘normative revolution’ declared by Western commentators took place in the 1990s, immediately after the collapse of the Soviet Union, which had, in earlier years, provided an automatic pretext for intervention.

The Bush Senior administration reacted to the fall of the Berlin Wall with an official exposition of Washington’s new course: in brief, everything will stay much the same, but with new pretexts. We still need a huge military system, but for a new reason: the ‘technological sophistication’ of third world powers. We have to maintain the ‘defense industrial base’ – a euphemism for state-supported high-tech industry. We must maintain intervention forces directed at the Middle East energy-rich regions – where the threats to our interests that required military intervention ‘could not be laid at the Kremlin’s door’, contrary to decades of pretense. New pretexts for intervention were needed, and the ‘normative revolution’ entered the stage – once again.

The natural interpretation of the timing gains support from the selectivity of application of R2P. There was of course no thought of applying the principle to the Iraq sanctions administered by the Security Council, condemned as ‘genocidal’ by the two directors of the oil-for-food programme, Denis Halliday and Hans von Sponeck, both of whom resigned in protest. Von Sponeck’s detailed study of the horrendous impact of the sanctions has been under a virtual ban in the United States and United Kingdom, the primary agents of the programmes. Similarly, there is no thought today of protection of the people of Gaza, also a UN responsibility, along with the rest of the ‘protected population’ (under the Geneva Conventions), denied fundamental human rights. Nothing serious is contemplated about the worst catastrophe in Africa, if not the world: Eastern Congo, where only a few days ago, BBC reported, multinationals are once again being accused of violating a UN resolution against illicit trade of valuable minerals and thus funding the murderous conflict.

In another domain, there is no thought of invoking even the most innocuous prescriptions of R2P to respond to massive starvation in the poor countries. The UN recently estimated that the number of those facing hunger has passed a billion, while the World Food Programme of the UN has just announced major cutbacks of aid because the rich countries are

reducing their meagre contributions, giving priority to bailing out banks. Several years ago UNICEF reported that 16,000 children die every day from lack of food, many more from easily preventable disease. The figures are higher now. In southern Africa alone it is Rwanda-level killing, not for 100 days, but every day. There is surely ample warning, but no thought of action under R2P, though it would be easy enough if the will were there.

In these and numerous other cases the selectivity conforms with painful precision to the maxim of Thucydides, and the expectations of the International Court of Justice 60 years ago.

Perhaps the most striking illustration of the consistent radical selectivity was in 1999, when NATO bombed Serbia, an attack featured in Western discourse as the jewel in the crown of the ‘emerging norm’ of humanitarian intervention, when the US was at the ‘height of its glory’ in leading the ‘enlightened states’, and the ‘idealistic New World bent on ending inhumanity’ opened a new era in history by acting on ‘principles and values’, to cite just a few of the accolades by Western intellectuals.

There are a few difficulties confronting this flattering self-image. One problem is that the traditional victims of Western intervention vigorously objected. I have already quoted the stand of the Non-aligned Movement; Nelson Mandela was particularly harsh in his condemnation. That was unproblematic: the views of the unworthy are easily ignored. Furthermore, the bombing plainly violated the UN Charter. That problem too was easily put to rest. Some resorted to legalistic maneuvering, but as the Goldstone Commission more forthrightly determined, the bombing was ‘illegal but legitimate’, a conclusion reached by reversing the chronology of bombing and atrocities. That leads to a third problem: the facts, which happen to be richly documented from impeccable Western sources. What they reveal is unequivocal. The NATO bombing did not end the atrocities but rather precipitated by far the worst of them, as had been anticipated by the NATO command and the White House. The conclusions that are so richly documented by the Western records are reinforced by the indictment of Milosevic, issued by the International Tribunal at the height of the bombing. With a single exception, the crimes charged follow the bombing. And we can be confident that the one pre-bombing charge – the Racak massacre – was of little principled concern to the US and Britain, if only because at the very same time they were not merely condoning but actively supporting much more serious crimes in East Timor, where the background of atrocities was incomparably more grotesque than anything that had happened in the Balkans. And that is only one of many examples right at that time.

This problem too was overcome quite simply: by virtual suppression of

the ample record.

The case of East Timor is particularly instructive. On a personal note, I testified about it at the Fourth Committee in 1978, when atrocities reached the level of ‘extermination as a crime against humanity committed against the East Timorese population’, in the words of the later UN-sponsored Truth Commission, and Britain and France joined the US in supporting them, along with Australia and others, continuing to do so right through 1999 as atrocities sharply mounted again. After the final paroxysm of state terror in September 1999, which destroyed most of what remained of the country, National Security Adviser Sandy Berger said that the US would continue its support for the aggressors, explaining that ‘I don’t think anybody ever articulated a doctrine which said that we ought to intervene wherever there’s a humanitarian problem’. R2P vanished in the familiar way.

To end the atrocities in this case would not have required bombing, or sanctions, or indeed any act beyond withdrawal of participation. That was demonstrated shortly after Berger’s reaffirmation of Western policy, when, under strong domestic and international pressure, Clinton formally ended US participation. The invaders immediately withdrew, and a UN peacekeeping force was able to enter facing no army. That could have been done any time in the preceding quarter-century. Astonishingly, this horrendous story was soon reinterpreted as vindication of R2P, a reaction so shameful that words fail.

I mentioned that the consensus of the World Summit adheres to the Corfu principle and its descendants only if we assume that the Security Council is a neutral arbiter. It plainly is not. The Council is controlled by its five permanent members, and they are not equal in operative authority. One indication is the record of vetoes – the most extreme form of violation of a Security Council Resolution. The relevant period is from the mid-1960s, when decolonization and recovery from wartime destruction gave the UN at least some standing as representative of world opinion. Since then, the US is far in the lead in vetoes, Britain second, no one else even close. In the past quarter-century, China and France together vetoed seven resolutions, Russia six, the UK ten, and the US 45, including even resolutions calling on states to observe international law. The skeleton in the closet nods in recognition as the maxim of Thucydides strikes again.

One way to mitigate this defect in the World Summit consensus would be to eliminate the veto – incidentally, in accord with the will of most Americans, who believe that the US should follow the will of the majority and that the UN, not the US, should take the lead in international crises.

But here we run up against Adam Smith's maxim, which ensures that such heresies are unthinkable, as much so as applying R2P right now to those who desperately need protection but are not on the favoured list of the powerful.

American public opinion brings up a further consideration. The maxims that largely guide international affairs are not graven in stone, and, in fact, have become considerably less harsh over the years as a result of the civilizing effect of popular movements. For that continuing and essential project, R2P can be a valuable tool, much as the Universal Declaration of Human Rights has been. Even though states do not adhere to the Universal Declaration, and some formally reject much of it (crucially including the world's most powerful state), none the less it serves as an ideal that activists can appeal to in educational and organizing efforts, often effectively. My suspicion is that a major contribution of the discussion of R2P may turn out to be rather similar, and with sufficient commitment, unfortunately not yet detectable among the powerful, it could be significant indeed.



# Troops out of Afghanistan

**Billy Hayes**  
General Secretary

**Jane Loftus**  
President