The Responsibility to Protect Reexamined

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With the end of the Cold War and the politics of “blocks”, the proxy wars and proxy peaces created all over the world got replaced by re-shaping of geo-political borders and new aspirations for independence or “ethnic” re-unification. Tensions frozen for years were now let wild and the century that Power so illustratively depicted was getting its final bloody hour. All over the world weapons were being put to their use and the victims were counted in millions. Some of the most horrific slaughters in the modern human history were proceeding uninterrupted and no one was ready to take any responsibility for it. In 1999, Secretary General Kofi Annan asked the General Assembly: “….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 affect every percept of our common humanity?” The Canadian Government, a leader in promoting human security, responded by sponsoring the International Commission on Intervention and State Sovereignty (ICISS) that took up the challenge posed by the Secretary-General in order to come up with a new approach to humanitarian intervention and sovereignty. Their response came in the form of the concept of responsibility to protect. “The concept was borne out of frustration with the international community’s repeated failures to intervene in cases of on-going mass atrocity, in particular in Rwanda and Kosovo.” The paper will observe the concept as a part of the larger movement of overcoming the nation-state as the sole player in international relations and law. However, the concept’s transformative power will be challenged and its impact reexamined.
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**List of Acronyms:**

AIDS – Acquired Immune Deficiency Syndrome  
ASEAN - The Association of Southeast Asian Nations  
CNN – Cable News Network  
DRC – Democratic Republic of Congo  
FUBU – “For Us By Us”  
G-77 – The Group of Seventy Seven  
G8 – The Group of Eight  
GA – General Assembly  
HRW – Human Rights Watch  
ICC – International Criminal Court  
ICG – International Crisis Group  
ICISS – International Commission on Intervention and State Sovereignty  
ICJ – International Court of Justice  
ICRC – International Committee of the Red Cross  
ICTR - International Criminal Tribunal for Rwanda  
ICTY - International Criminal Tribunal for the former Yugoslavia  
IMF – International Monetary Fund  
NGO – Non-Governmental Organization  
NSS – National Security Strategy  
R2P – Responsibility to Protect  
SAPGMA - Office of the Special Adviser on the Prevention of Genocide and Mass Atrocities  
SC – Security Council  
SG – Secretary General  
The UN – The United Nations  
The US – The United States of America  
UDHR – Universal Declaration of Human Rights  
UNDP – United Nations Human Development Program  
WSOD – World Summit Outcome Document  
WTO – World Trade Organization
“...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 affect every percept of our common humanity?” (2001).

Secretary-General Kofi Annan at the United Nations General Assembly, 1999

Introduction

The question above, posed by Secretary-General Kofi Annan at the United Nations General Assembly in 1999, was an articulation of frustration shared by many at the end of the bloody 20th century. The Canadian Government, a leader in promoting human security1 as a new approach to security during the 1990s, decided to sponsor the International Commission on Intervention and State Sovereignty (ICISS)2 that took up the challenge posed by the Secretary-General in order to come up with a new approach to humanitarian intervention and sovereignty.3 In the words of Alvarez: “The responsibility to protect concept was borne out of frustration with the international community’s repeated failures to intervene in cases of on-going mass atrocity, in particular in Rwanda and Kosovo”4

The end of the Cold War indeed opened a new era in the world of international relations. With the fall of Berlin Wall and the end to proxy wars around the world the United Nations as the collective security system got another chance since the long lasting division on the blocks and the gridlock at the Security Council came to an end. While traditionally security clearly meant national security and security studies were solely trying to understand how “…to secure the state against those objective threats that could undermine its stability and threaten its

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1 The ICISS document defines human security as “the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms.” Please see the discussion of different definitions of the concept in chapter I.
2 The ICISS was comprised of 12 independent members and co-chaired by Gareth Evans and Mohamed Sahnoun.
survival,” there was a major re-conceptualization of security after Michael Jackson recorded *Dangerous* in 1991.

Despite numerous “international community” fiascos in addressing the humanitarian catastrophes during the 1990s (Rwanda, Mogadishu, Srebrenica, Chechnya, to name just a few) human rights and humanitarian discourses did become a very important part of international affairs during the decade. “Once synonymous with the defense of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence.”

The emergence of the concept of the responsibility to protect without doubt has to be observed within a larger development of the idea of human security, use of force in international relations, security in general, and the current framework of nation-states and their sovereignty. Consequently, the paper will first look into the post-Cold war changes in political environment and mood and the emergence of the idea of human security. It will be argued that after the end of the Cold war the meaning of security has been transformed and that this very transformation, together with the change in the perception of humanitarian intervention, allowed for the development of the concept of responsibility to protect. The first chapter will therefore describe the environment and developments that preceded and “produced” the R2P concept. Specifically, it will provide an overview of the often neglected “development” of this concept. The fact is that the responsibility to protect was not simply a creation of the ICISS or a complete “conceptual leap”, to use the words of the then Secretary-General, but rather a crescendo of the complex

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6 At this point it shall be clarified that I observe what is often called “international community” solely as an imagined community, to borrow a famous phrase of Benedict Anderson (See Benedict Anderson. *Imagined Communities* (New ed.). (London, New York: Verso, 2006).) While Chapter IV of this paper will provide an elaborate discussion of the issue I found it important to explain why this linguistic construction in this paper will always be positioned within quotation marks.


8 The concept was for the first time defined by the International Commission on Intervention and State Sovereignty. The major component is the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unable or unwilling to do so, that responsibility must be borne by the broader community of states. Please see chapter II for an elaborate discussion of the concept.

process. Some of the ideas that shaped this process are the right to intervene *(droit d’ingérence)*\(^{10}\), sovereignty as responsibility\(^{11}\), the Blair Doctrine\(^{12}\) and human security as a larger framework, discussed in the second chapter. A number of the debates within this newly established framework of human security will be discussed; problems of defining the concept, relationship with traditional security, and the scope and limits of it, to mention just a few.

The second chapter will attempt to explain the concept of responsibility to protect as envisioned by the ICISS. A critical engagement with the text will be presented and major conceptual contributions of the commission discussed. However, likely limitations of the report will also be addressed, such as the composition of the commission. The major debates regarding the text of the ICISS report and the process by which the members of the commission arrived to the final document will also be presented.

According to Slaughter, “the ICISS sought to change the core meaning of UN membership from ‘the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations’ to recognition of a state ‘as a responsible member of the community of nations.’”\(^{13}\) Therefore, according to the ICISS “the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.”\(^{14}\)

\(^{10}\) Coined in the late 1980s by scholar Mario Bettati and French current minister of foreign affairs and the founder of Doctors Without Borders Bernard Kouchner


\(^{12}\) As communicated by former British Prime Minister Tony Blair in a much quoted speech to the Chicago Economic Club in April, 1999.


The Canadian Commission members, however, woke up to a changed world on September 11, 2001, a day after they finished their work on the report.\(^{15}\) Chapter three will look into the effects that the suicide attacks on New York and Washington, DC had on the further development of the concept. It will also include an elaboration of why the paper refers to it as a concept rather than a “norm”, an “emerging norm of international law”, a “principle” or an “emerging principle.” The larger goal of the chapter is to explain and comment the development of the concept since its inception until today. Specifically, there will be a comparison of the concept as described by the ICISS and the subsequent major “recognitions” of the concept. Ultimately, it will be argued that the concept, as recognized by the World Summit Outcome document only reconfirms the established practices on humanitarian intervention and that “R2P however politically attractive and motivated by the best of intentions may have become a victim and not merely a product of its time.”\(^{16}\)

Chapter four will be dedicated to the larger issues surrounding the questions about security and sovereignty. Critical examination of the current nation state system and the United Nations will be conducted through historical and theoretical analyses. The myth of the state as an eternal unit of social organization will be examined. The implications of the above mentioned re-definition of sovereignty, the crucial beacon of the existing inter-national system, will be addressed. In this analysis there will be an attempt to distinguish between the general idea of the state system, generally understood as post-Westphalian system,\(^ {17}\) and the post UN establishment system of sovereign equality. It will be argued that “it is the post-WWII sovereign state, with its underlying foundations of non-intervention, that is in fact the subject of critique”\(^ {18}\) and therefore the “myth of 1648”\(^ {19}\) will be tackled.

In wide terms it will be argued that the concept of responsibility to protect is a part of a larger movement of sidestepping a state and putting an individual in the center of debate. In many ways this could be considered a re-examination of the theories of human organizing and

\(^{15}\) Alvarez, 15.  
\(^{16}\) Ibid.  
\(^{17}\) While naming it “Post-Wesphalian” I am not attempting in any way to recognize it as such implicitly. The “myth of 1648”, to use Benno Teschke’s book title, has been the subject of numerous analyses and there has been a significant decrease in consensus on the historical developments in this area.  
\(^{19}\) Please see the reference to Benno Teschke’s book above.
the role and function of the state. Other recent conceptual and operational developments that are part of this movement will be discussed, namely human rights theories, human security, international criminal courts, and others. However, it will be argued that the concept of responsibility to protect, while surely made with the best of intentions, does not provide a necessary structural change and practically reconfirms the existing situation in international law and politics surrounding the question of humanitarian intervention. R2P never truly touched upon the foundations of the existing nation-state system that need to be changed in order to truly implement such noble improvements. Rather than blaming 1648, this paper will argue that the triumph of the nation-state was the establishment of the United Nations system in 1945 with its foundations of sovereignty and non-intervention.
"The end of the Cold War is held to illuminate the constructed and contingent nature of the international system. Rather than states being trapped in a cycle of behavior due to a system the nature of which was fixed (whether by the nature of the system or due to the nature of humankind), the system was (or could be), to paraphrase Wendt’s famous phrase (1992), what states make of it. The historical specificity of the state has formed an important part of a critical re-thinking of international relations and security.”

Tara McCormack, 2005

From National Security to Human Security?

Major changes in the conception of security and sovereignty started taking place with the end of the Cold War. “The concept of human security, which has been developed initially in the UN, has emerged as the most comprehensive alternative to state security”.20 The argument for human security, alike for the concept of responsibility to protect, stated that it was a step beyond state sovereignty and sole focus on national or territorial security. Human security focused on the complete protection of all human beings. “The idea was that whereas issues of state security had dominated international discourse in the past, what really ultimately mattered was how all this affected individuals’ lives.”21 “Furthermore state security has legitimated human insecurity, ‘Too often in the past, however, preserving the security of the state has been used as an excuse for policies that undermined the security of people’.”22

A number of authors describe the “explosion of activity around the concept of human security”23 in 1990s as one of the consequences of intertwining between two dominant strands of foreign policy – economic development and military security.24 While the consensus on the

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definitions of these two concepts will most likely never be achieved, this paper will observe economic development in its widest sense, including but not limited to economic growth\(^{25}\), distribution of income and wealth, access to health services, education, and the markets, political freedoms, life expectation, employment rates, gender equity, and leisure. At the same time the military security will be observed as security in the traditional, Cold War sense, in the words of Barry Buzan “The field was driven by the search for causes of war, and for prescriptions to prevent its recurrence.”\(^{26}\) “Without peace, there may be no development. But without development, peace may be threatened,”\(^{27}\) the reasoning of this group of academics explained.

While economic development as a concept is widely and daily disputed and constantly used in many different ways, we tend to assume that the phrase (and the clear idea of) “national security” has been around forever. “In fact it was only in 1945 that Secretary of Defense James Forrestal invoked the concept as a guiding principal of US foreign policy.”\(^{28}\) While Thakur argues that “its immediate and lasting popularity was the result of the way in which it encapsulated a world-view,” it is a curious thing at the very least that it was conceived and presented in the year when the United Nations were established. This paper therefore argues that it was just a logical outcome and approach to security in a system the core of which is non-intervention and state sovereignty.

Human Security was for the first time fully and explicitly defined by the United Nations Development Program report *New Dimensions of Human Security* in 1994 as follows:

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\(^{25}\) While economic growth is generally considered a crucial part of the development it is important to note the negative effects of the growth that arguably do not contribute to development. According to research done by Pritchett (in Lant Pritchett, "Divergence, Big Time," *Journal of Economic Perspectives* Summer 1997) the gap between the poorest and the richest countries in the world has been growing. The incessant global economic growth is continuously adding to the inequality of wealth. Also, growth arguably has negative effects on quality of life through increased pollution, crime rates, and continuous environment degradation. At the same time growth encourages the creation of artificial needs where consumers’ demand is often just a consequence of the market supply.


The concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people. The superpowers were locked in an ideological struggle - fighting a cold war all over the world. The developing nations, having won their independence only recently, were sensitive to any real or perceived threats to their fragile national identities. Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For many of them security symbolized protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards. With the dark shadows of the cold war receding, one can now see that many conflicts are within nations rather than between nations …Human security is not a concern with weapons - it is a concern with human life and dignity. Human security is people centered…first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life-whether in homes in jobs or in communities.29

Human Security, it has been argued by Surin Pitsuwan, current secretary of ASEAN, “is the primary purpose of organizing a state in the beginning”(2007). He supports his argument by referring to Hume, Rousseau, Locke, and Hobbes, the major theorists of social contract and state. United Nations Human Development Report in 1994 stated that “The idea of human security though simple, is likely to revolutionalize society in the 21st century.”30 While chapter four will address these larger questions in more detail, it is useful to show how the supporters of human security, alike those of responsibility to protect, indeed saw a transformational power in these concepts.

In the Security Council the Resolution 688 (1991) in a certain way recognized the inadequacy of the strict state centric system of non-intervention and in spite of the centrality of the idea of sovereignty it held that Iraqi treatment of its population represented a threat to international peace and security, and therefore was of concern for the other nation –states and the

“international community” as a whole. While most of the time overlooked, it is important to emphasize that the customary establishment of the “threat to international peace and security” as a traditional justification for the use of force under Security Council mandate is very different from what responsibility to protect, as conceived by ICISS, aspired to be. True application of responsibility to protect would not require any “spill over” of the conflict into neighboring countries or a “threat to international peace and security” in any such classical, territorial sense. Unfortunately, as it will be presented below, a series of quasi recognitions of the concept of responsibility to protect skewed it to the extent that it became just another confirmation of the existing system, possibly “a victim, and not merely a product of its time”\(^\text{31}\).

This development was continued in January 1992 at a Security Council meeting held at the level of Heads of State and Government at which there was an “explicit redefinition of international peace and security from the absence of inter-state war (as specified in the Charter) and towards a broader conception of security, encompassing issues previously in the domestic realm, and pertaining to development, such as poverty, and related economic and social problems.”\(^\text{32}\) It could be argued that the same session of the Security Council also provided the first explicit redefinition of its role:

> The members of the Security Council consider that their meeting is a timely recognition of the fact that there are new favorable international circumstances under which the Security Council has begun to fulfill more effectively its primary responsibility for the maintenance of international peace and security…(p2)
> The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security…(p3)

\(^{31}\) Alvarez,p.15.

\(^{32}\) McCormack, p. 4.
They recognize that peace and prosperity are indivisible and that lasting peace and stability require effective international co-operation for the eradication of poverty and the promotion of a better life for all in larger freedom.\textsuperscript{33}

The wording of the document in many ways explicitly provides an understanding of human security as discussed above; intertwining between economic development in its wide sense and military security. The move of the human security to the center stage in foreign policy debates was rapid and the concept has subsequently been included into all major UN reports and initiatives. While the reasons of such attractiveness will be discussed below, the fact that the concept was originally conceived at the United Nations, together with declarations like the one of the Group of Eight (G8) foreign ministers, provided a great institutional support for its rise and promotion. The ministers provided they are “determined to fight the underlying causes of multiple threats to human security…”\textsuperscript{34} However, it should be kept in mind that the primary mover of these developments was the space opened by the end of the Cold War and the larger movement towards an individual as an entity in inter-national law and affairs.\textsuperscript{35} As noted in the introduction to this chapter “The end of the Cold War is held to illuminate the constructed and contingent nature of the international system.”\textsuperscript{36}

It is important to constantly be aware of the fact that proliferation of human security was not an independent development. Rather, it was a part of the larger turn towards human rights, human development, and conceptual leap in international affairs from inter-national to supranational. In the field of human rights, for example, the work of Abdullahi An-Na’im, flawlessly connects into the ideas of human security. It goes to the very basic sameness that all people share. His approach includes all human rights - civil, individual, social, and economic - and shows how all human beings have the very same goal in realizing those rights. “All human beings everywhere are immediately and constantly vulnerable to the violation of their human rights, whether they live in developed or developing countries. We should therefore all be

\textsuperscript{35} While the literature diverges in many points on the appropriate vocabulary, I believe it would be correct to address the post Cold War international law as international and supranational for this very phenomenon – inclusion of an individual as a participant in it.
\textsuperscript{36} McCormack, 2005.
conscious of our individual and collective vulnerability,”\textsuperscript{37} An-Na’im argues. A very simple concept, vulnerability, is what connects us all on personal and group level; very similar attitudes are echoed by supporters of human security and responsibility to protect.

Thomas Pogge’s institutional understanding of moral human rights is also a great way of transcending or overriding the traditional division over civil rights and their supposed opposites; social and economic “pseudo-rights”. At the same time it should be employed in order to override the heated debate among the supporters of human security on Freedom from Fear v. Freedom from Want. On one side of this dispute are traditionally libertarians, the minimalists, who require rights to be limited exclusively to negative duties (to refrain from violating the right in question). Therefore, their view disqualifies the human rights to social security, work, rest and leisure, and adequate standard of living, education, and other social and economic rights, as they essentially entail positive duties. The maximalists, on the other side, believe that all human rights entail both negative duties (to avoid depriving) and positive duties (to protect and to help).

Pogge’s institutional understanding transcends the terms of this debate by observing human rights as “moral claims on the organization of one’s society”. “Persons share responsibility for official disrespect of human rights within any coercive institutional order they are involved in upholding.”\textsuperscript{38}

In the context of states and human security Pogge’s work provides interesting contribution on two levels: 1. By ingeniously presenting the indivisibility of human rights he answers the question of what kind of responsibility a state has towards its citizens. In other words, Pogge provides an end to the debate of Freedom from Fear v. Freedom from Want\textsuperscript{39}; 2. Pogge makes us wonder whether the same moral responsibility could be applied to states on the international level. If a couple of words in the citation above are substituted a sentence that could have found its place in the report of the ICISS results: “States share responsibility for official


\textsuperscript{39} Another very important and controversial debate is intrinsic to this discussion, namely whether a nation-state, as the largest violator of human rights, should be primarily entrusted with protecting and ensuring human rights? Especially while protected by the walls of sovereignty. While the question has been around for a while, concrete proposals of a different system only came with the end of the Cold War. Incredible rise of the transnational nongovernmental organizations concerned with human rights is one of the operational responses to this situation.
disrespect of human rights within “international community” they are involved in upholding”. Therefore, while human security is a larger framework out of which responsibility to protect emerged, it is also just a part of the larger developments triggered by the end of the Cold War.

Simultaneously during the early and mid 1990s another crucial development was taking place, in the sphere of international law. This development certainly goes hand in hand with the concepts of human security and responsibility to protect. As a reaction to the miserable failures of the international community and their peacekeeping missions the Security Council decided to use the article 41 of the Charter very creatively and create International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These ex post tribunals were clearly reactionary and did not have a significant impact on the conflicts themselves. However, these courts, together with Human Rights courts, which were going through their own rapid developments almost concurrently, stand as a clear historical precedent in international law. They established that an individual or group of individuals can stand in these courts and challenge the behavior of states versus them or, conversely, be tried for international criminal responsibility. These courts are often called trans-national or supra-national as they recognize individual as a party in international law. These occurrences clearly demonstrate the breaches of the strict walls of sovereignty and the movement from the state as the sole player on the inter-national scene towards an individual.

The Rome Conference and the subsequent creation of the International Criminal Court should also be observed in the light of the above mentioned developments. The establishment of a permanent international criminal court and its continuous progress towards universal jurisdiction show serious effort to institute global reach and full impartiality, significant move away in international law from strict sovereign non-interventionism. The proliferation of international and transnational courts has been called “the most significant recent development in international law” by Skouteris. When it comes to its reach, the ICC does not have primary jurisdiction over any crimes, but only “complementary” to national courts, when they are

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40 Thomas Skouteris, “Lecture at University for Peace” (Ciudad Colon, Costa Rica, 2009).
“unwilling and unable genuinely to carry out the investigation or prosecution,”\(^{41}\) practice that incredibly reminds us of the conditional transfer of responsibility to protect from sovereign government to international community as envisioned by the ICISS.

The above described Pogge’s institutional understanding of human rights is welcomed by the core idea of Universal Declaration of Human Rights, whose article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”\(^{42}\) While this article also arguably provides a basis for human security in its widest sense in Chapter four it will be argued that it is the very nature of the existing international system that prevents full realization of human rights, human development, and ultimately human security. It is also necessary to stress that the Universal Declaration of Human Rights as a product of the current inter-national system remains challenged as ideologically and systematically flawed and the universality of a number of rights enshrined in it remains contested.\(^{43}\)

Another witness to the increased political support and concern with human security issues was the 2000 UN Security Council discussion of AIDS in Africa, its first debate of a public health issue.\(^{44}\) While certainly a great recognition of the human security approach to security there seems to be no transformational power in it. It is rather a more intelligent and encompassing way of observing security. However, it would be hard to argue that it presents a transfer of focus from “international peace and stability” to human centered transnational and universal concern with human security, human rights, and human development. At this point it should be examined what human security really is or attempts to be.

In his (in)famous critical observation named *Human Security: Paradigm Shift or Hot Air?* Roland Paris explores the meaning and impact of human security. In an interesting manner

\(^{43}\) Examples that instantly come to mind are “the right to nationality” and “the right to property”. Therefore, according to UDHR, capitalism and nation state system are universal and intrinsic to human kind. A more elaborate critique of the topic will be provided in chapter four.
\(^{44}\) In King and Murray, p.590 and in Paris, p. 88
Paris calls it “the latest in the line of neologisms – including common security, global security, cooperative security, and comprehensive security – that encourage policymakers and scholars to think about international security as something more than the military defense of state interests and territory.” It is self-evident that by referring to human security as “the latest in the long line of neologisms” Paris made his point about the innovativeness of the concept and about its claimed transformative power. He particularly focuses on two problems that “limit the usefulness of the human security concept for students and practitioners of international politics”. First problem for him is the lack of a precise definition. “Human security is like ‘sustainable development’ – everyone is for it, but few people have a clear idea of what it means.” Gareth Evans certainly agrees with Paris on this point as he states that “The trouble with the concept of human security in the present context is not that it has produced too little consensus but rather, if anything, too much.” It is interesting that Evans never stated anything similar concerning the R2P although many commentators have.

To this problem it should be added that numerous attempts to define human security were mostly unsuccessful and there has clearly never been any consensus on it. Canadian government, for example, a major supporter of human security that under the leadership of Lloyd Axworthy as foreign minister explicitly made it a major pillar of its foreign policy, defines it as “safety for people from both violent and non-violent threats”. While certainly lacking specificity, this definition is more conservative and narrower than the UNDP version. According to Lloyd Axworthy, human security does not replace national security; rather, they are mutually supportive. “According to this limited definition, human security is freedom from fear, and human development is freedom from want. They are mutually reinforcing but distinct concepts.” Japanese government, another major proponent of human security, defines it differently from UNDP or Canadian government. According to them “human security comprehensively covers all the menaces that threaten human survival, daily life and dignity….”

46 Evans, p. 35.
48 King and Murray, p.590
49 Ibid.
that “even some of the strongest proponents of human security recognize that it is at best poorly defined and unmeasured, and at worse vague and logically inconsistent slogan.”\textsuperscript{50}

The second problem that Paris emphasizes is that “the most ardent backers of human security appear to have an interest in keeping the term expansive and vague.” He describes it as the “glue that holds together a jumbled coalition of ‘middle power’ states, development agencies, and NGOs…,”\textsuperscript{51} and concludes by stating that “as a unifying concept for this coalition, human security is powerful precisely because it lacks precision and thereby encompasses the diverse perspectives and objectives of all the members of the coalition. The term, in short, appears to be slippery by design.”\textsuperscript{52} As the next two chapters will show, most of the claims above could as well be applied to the concept of responsibility to protect. However, it should be kept in mind that “one can support the political goals of the human security coalition while recognizing that the idea of human security itself is a muddle.”\textsuperscript{53}

The ICISS document specifically introduces us to the “New Approach: The Responsibility to Protect” in its second chapter. The subheadings of this chapter are: The Meaning of Sovereignty, Human Rights, Human Security and Emerging Practice, and Shifting the Terms of the Debate. This layout of the chapter clearly depicts how the authors have arrived to the concept of responsibility to protect. The document defines human security as “the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms.”\textsuperscript{54} While this chapter has not addressed a great number of the debates within the concept of human security it is important to highlight and continuously keep in mind that it was these developments that set stage for the ICISS’s attempt to redefine sovereignty and intervention in international law and politics. Similar debates that during the 1990s were led about the human security, a couple of years later will be addressed within the concept of responsibility to protect.

\textsuperscript{50} Ibid., p.591.  
\textsuperscript{51} Paris, p. 88.  
\textsuperscript{52} Ibid.  
\textsuperscript{53} Ibid., p.89.  
\textsuperscript{54} ICISS Report, p. 10-19.
The perception of humanitarian intervention has also changed as a consequence of the above described developments. Authors like Kanti Bajpai argued that the protection of human security did involve a certain commitment to the use of force for humanitarian intervention.\textsuperscript{55} His claim showed to be correct and responsibility to protect is an elaboration of that particular commitment. While under the traditional security paradigm the idea of humanitarian intervention was clearly illegal, in many opinions this was not the case anymore. Udombana in his paper “When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan” reflects similar attitudes. He “denounces the apparent posture of neutrality by the international community to these atrocities, stressing that such neutrality helps the killers and not the victims”\textsuperscript{56}. The fact that his paper was written in 2005 wonderfully shows us how the below described events shifted the terms of this debate, revived some 1990s attitudes and introduced new and unexpected participants.

Evans correctly asserts that “The 1990s was the decade in which every one of the central questions surrounding humanitarian intervention was, for the first time, exposed with real clarity.”\textsuperscript{57} “Humanitarian intervention has been controversial both when it happens, and when it has failed to happen.”\textsuperscript{58} As an important participant in international affairs during the 1990s as a minister of foreign affairs of Australia and one of the “fathers” of responsibility to protect, he concludes: “Battle lines were drawn, trenches were dug, and verbal missiles flew. The debate was intense and very bitter, and the twentieth century ended with it utterly unresolved in the UN or anywhere else.”\textsuperscript{59} The second chapter will look into the response of the International Commission on Intervention and State Sovereignty and their attempt to move beyond old discussions towards new ways of addressing humanitarian crises.

\textsuperscript{57} Evans, p.30.
\textsuperscript{58} ICISS Report, p. xiv
\textsuperscript{59} Evans, p.30.
The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.

Boutros Boutros-Ghali, in *An Agenda for Peace*, 1992

Many in the South do not recognize what the international community calls the universality of humanitarian values as such...Humanitarian action is viewed as the latest in a series of imposition of alien values, practices, and lifestyles. Northern incursions into the South – from the Crusades to colonialism and beyond – have historically been perceived very differently depending on the vantage point.

Feinstein International Famine Center, 2004

**Bloody End of a Bloody Century**

With the end of the Cold War and the politics of “blocks”, the proxy wars and proxy peaces created all over the world got replaced by re-shaping of geo-political borders and new aspirations for independence or “ethnic re-unification”. Tensions frozen for years were now let wild and the century that Power60 so illustratively depicted was getting its final bloody hour. All over the world weapons were being put to their use and the victims were counted in millions. Some of the most horrific slaughters in the modern human history were proceeding uninterrupted and no one was ready to take any responsibility for it. In 1994, 800,000 Rwandans were butchered in barely 100 days – a faster rate of killing than even the Holocaust.61 In the Democratic Republic of Congo (DRC), far removed from the CNN cameras and tourist destinations, more than five million people were killed during the wars that continued into the current century. Other places in Africa were suffering appalling violence, including Sudan, Burundi, and West Africa. In Asia, a number of former republics of the Soviet Empire were stuck in violent conflicts and Indonesia’s rule over East Timor ended in a bloody fashion. Europe was not spared either. In the collapse of Yugoslavia more than a quarter of million people were killed in the middle of Europe while the newly established European Union was turning its head.

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61 Bellamy, p. 1.
away and looking for ways to become a new global superpower. Just a couple of hundred kilometers from Vienna and Rome genocide was taking place in a town of Srebrenica, where 8,000 men and boys were taken from a UN-"protected" "safe area" by Bosnian Serb forces and killed at once. Unfortunately, the most victims of those "uncivil wars" were civilians.

In 1992, while more than a third of Croatia was occupied by Serbian forces Croatian Band Aid sang "Europe you can stop the war, Stop the war in the name of children, Stop the war in Croatia." Europe did nothing. However, the consequences of that inaction in Croatia and Bosnia and Herzegovina are really important. In 1999, when the next blood tub in the Balkans, this time in Kosovo, started getting on television screens in Europe and the United States, political elites knew they had to react. The climate has changed in relation to the Balkans and globally as a consequence of shame and terror that the "international community" and its sponsors in the North had to face. Kofi Annan, Secretary-General of the United Nations and the head of peacekeeping operations during Rwandan and Srebrenica genocides and consequently one of the most immediately responsible, felt scarifying personal responsibility that subsequently led him so hard to insure that no Rwanda happened ever again. At the United Nations General Assembly in 1999, and again in 2000, Annan wept: "...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?"

62 In the United States the situation was not very different. A senior military advisor in the George H. W. Bush administration argued that the US intervention in Somalia was offered to the President as a means to get the conflict in the Balkans off American television screens. Lecture, Naval War College class, Washington, DC, 1994. As cited in Holt and Berkman, 16.
64 While the nature of many of the conflicts during the 1990s makes the estimates of the percentages of civilian deaths very difficult, it is clear it is terrifyingly high. However, a good reference is the International Rescue Committee estimate that while nearly four million people have died from the war in the DRC since August 1998 less than two percent of the fatalities are from direct violence. As cited in Holt and Berkman, 17.
65 Evans, p. 28.
Redefining Sovereignty - Previous Attempts

“The assertion that sovereignty involves responsibility is not new and can be traced back to ancient Eastern and Western political traditions.”\(^{67}\) At the same time there have been numerous attempts to talk about humanitarian intervention, especially during the post-Cold War boom of humanitarianism. Contrary to the belief that the ICISS “created” the idea of sovereignty as responsibility it has been, like most concepts, developed throughout time and with the participation of many actors.

The expression “humanitarian intervention” has been in use, very much in its modern sense of “military force deployed across borders to protect civilians at risk”\(^{68}\), since as early as early 19th century. In the late 1980s French scholar Mario Bettati and humanitarian worker Bernard Kouchner revived the discussion by introducing the expression “droit d’ingérence”, “the right to intervene”. After the “great success” of the Persian Gulf War, the idea of military intervention in the name of human rights and humanitarianism caught on quickly.\(^{69}\) “In making the response to mass atrocities the single most debated foreign policy issue of the decade, rather than one that could be comfortably ignored by policymakers, his [their] contribution was outstanding.”\(^{70}\) The most debated issue indeed, but the most controversial one as well. However attractive to some, especially in the global core, many saw the right to intervene as “the instrument of inconsistent, cruelly selective intervention policies, hijacked by the national interests and ethnocentrism of the more powerful states, in blatant contradiction to the principles of equality and sovereignty, and in dubious relationship to the principle of self-determination.”\(^{71}\)

\(^{68}\)Evans, p. 19-32. Evans explains how the military incursions into Greece in 1827 by militaries of France, England, and Russia to stop massacres by Turkey and by France into Syria in 1860 could be considered “humanitarian interventions”, together with another few examples. I personally recognize it as a justification used by European powers. However, I also find it necessary to consider their strategic interests as all five examples provided by Evans were incursions of European Powers into Ottoman empire, by then “the Poor Man on the Bosporus”.
\(^{69}\)Tanguy, p. 142.
\(^{70}\)Evans, p. 32.
\(^{71}\)Tanguy, p.143.
President Bouteflika of Algeria wonderfully depicted these suspicions by commenting that sovereignty is “our last defense in an unequal world.” His statement is a healthy reminder of how different the world is from different perspectives, and how the threat of imperialist incursions and missions civilsatrices, traditionally explained as a raison d’être for principles of non-intervention and sovereignty, is still perceived as real. Other critics argued that the idea of humanitarian intervention is self-contradictory in its very core.

The intellectual and political origins of the R2P lay in the concept of ‘sovereignty as responsibility’, developed by the UN Special Representative on Internally Displaced Persons, Francis Deng, and by Roberta Cohen, A Senior Fellow at the Brookings Institution.” While working within a human security framework, Cohen and Deng arrived to the conclusion, explicitly spelled out in their article in Foreign Affairs in 1998, that a failure to fulfill that responsibility carried international consequences. However, it should be acknowledged that the conception of sovereignty as responsibility goes all the way back to Hugo Grotius, whose major assumption was that “the rules governing the organization and behavior of states exist ultimately for the benefit of the actual subjects of the rights and duties concerned, individual human beings. Grotius even maintained that it would be just to resort to war to prevent a state from maltreating its own subjects.” In setting the stage for the establishment of the ICISS Lloyd Axworthy in his speech at New York University Law School endorsed Deng’s positive approach to sovereignty and argued that “international promotion of human security does not weaken sovereignty, but strengthens it by reinforcing democratic, tolerant, open institutions and behavior.” At the same time others were trying to bring to an end this “enduring struggle between sovereignty and human rights,” among them U.K. Prime Minister Tony Blair with his “doctrine of international community” and the Secretary General Kofi Annan, who saw the end of the conceptual impasse

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73 Bellamy, p. 2. The same point is also explicitly recognized in Evans, p. 42.
77 Bellamy, p .8.
in the argument that there are actually two kinds of sovereignty. He argued that the *national sovereignty* had to be balanced with *personal sovereignty*, as defined by numerous human right instruments. In his often quoted article in *The Economist* he wrote:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of human rights. When we read the Charter today, we are more than even conscious that its aim is to protect individual human beings, not to protect those who abuse them.  

**ICISS as a Response to Annan’s Cry**

Ramesh Thakur persuasively argues that “the threats posed by the administrative, judicial, police, paramilitary, and military structures to individual and group rights are central, not incidental, to human security studies.” This claim is supported by the shocking statistics. During the twentieth century the number of battle deaths for all international and civil wars was 30 million and 7 million respectively while the total number of civilians killed by governments (excluding wars) was 170 million. It is opinion of many in the mainstream academic and political circles that “The single most important recent development in this regard was the creation, adoption, and emerging operationalization of a new international principle: the Responsibility to Protect (R2P).” The ICISS commission “took on nothing less than the redefinition of sovereignty itself.”

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79 Thakur, p.79.
80 Thakur, p.79.
81 Bellamy, p. 2.
In setting up the stage for the ICISS Lloyd Axworthy argued it would provide broader understanding on the questions of intervention and sovereignty and “foster global political consensus”. Axworthy expressed his hopes that the ICISS could achieve a similar success to the so called Brundtland Commission that in the late 1980s reconciled, at the time perceived as irreconcilable, concerns of economic development and environmental protection. The reconciliation at the time came in creation of the phrase “sustainable development”, a buzz word to this day, that stressed the interdependence of environmentalism and development. Long before the Commission was established Lloyd Axworthy understood that, to be effective, any commission with such ambitions would need “serious political sponsorship” and persuaded Annan to endorse the Commission and accept its report.

International Commission on Intervention and State Sovereignty was launched in September 2000 as a response to a challenge and a call of desperation by the Secretary-General Kofi Annan quoted above. The Commission consisted mostly of the ruling elites allegedly representative of the whole world. This paper, however, argues that they might have been representative of the “international community” from different geographical regions of the world. Gareth Evans, a former minister of foreign affairs of Australia and Mohamed Sahnoun, a well known Algerian diplomat were co-chairing the Commission. Of the other 10 members of the Commission 5 were from “the West” – Gisele Côte-Harper and Michael Ignatieff (Canada), Lee Hamilton (US), Klaus Neumann (Germany) and Cornelio Sommaruga (Switzerland) – and there were single representatives from Africa (Cyril Ramaphosa (South Africa)), East Asia (Fidel Ramos (the Philippines)), South Asia (Ramesh Thakur (India – but also Australian citizen)), and Latin America (Eduardo Stein Barillas (Guatemala)). The Russian member was Vladimir Lukin – deputy speaker of the Duma. Besides obvious underrepresentation of certain parts of the world, the biggest obvious bias is the gender one – of 12 members of the Commission only one

83 Bellamy, p. 36.
84 Ibid., p. 35.
85 While the construct of “international community” as an imagined community has been presented above, it should further be understood as an imagined community created by international ruling elites for international ruling elites, closely following the FUBU (“for us by us”) concept.
86 It is often ignored that the position was first offered to another Algerian, Chair of the UN Special Panel on Peace Operations Lakhdar Brahimi, who declined it “owing to his concerns about interventionism and the expansion of the UN’s role in the domestic affairs of states,” in Bellamy, p. 37.
87 Bellamy, p. 37.
is a woman. It would certainly be interesting and beneficial to fund the creation of an outcome document by a similar commission that would include only one man.

The foreword to the report states that the central theme, “reflected in the title, is “The Responsibility to Protect”, the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unable or unwilling to do so, that responsibility must be borne by the broader community of states.”

The first chapter of the Report is concerned mostly with the policy challenges in the changing international environment and the intervention dilemma. It intelligently and elaborately discusses the changing nature of most conflicts and new demands and expectations from “international community” and the implications of state sovereignty. Bellamy summarizes the ICISS reasoning by stating that “The whole concept of the R2P rests on the idea that sovereignty and human rights are two sides of the same coin, and not opposing principles locked in interminable struggle, as it is often portrayed.”

The report argues that state sovereignty was never a claim of the unlimited power of a state to do what it wants to its own people and concludes that “Sovereignty as responsibility has become the minimum content of good international citizenship.”

It is doubtful that was Professor Shen Dingli’s understanding of sovereignty when he commented that “China has used tanks to kill people on Tiananmen Square. It is Myanmar’s sovereign right to kill their own people, too.”

In this respect Slaughter makes a crucial point when she asserts that “the ICISS sought to change the core meaning of UN membership from ‘the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations’ to recognition of a state ‘as a responsible member of the community of nations.’” Therefore, according to the ICISS report “the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature. There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved:

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88 ICISS REPORT, p. viii.
89 Bellamy, p.33.
90 ICISS Report, p. 8.
91 Shen Dingli. “Shanghai” USA Today, October 2, 2007.
from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.”

Evans argued that the ICISS report made four major contributions to the international policy debate that he believes seem likely to have a lasting impact. The same classification will be followed here. The first, and according to Evans most useful politically, was inventing a new way of talking about “humanitarian intervention”. As presented above, numerous discussions around “the right to intervene” turned ugly during the 1990s and one of the major goals of the ICISS was to revive the discussion. In other words, they found a way to talk about humanitarian intervention without talking about “humanitarian intervention”. This process included re-conceptualization of intervention as a “right” of states to do anything to a responsibility to protect the population at grave risk. This, in effect, changed the focus from the state to population for whose well-being the states actually exist, in theory at least. It was in this element that the ICISS commission hoped to repeat the success of the Brundtland Commission. Another reason for such change in terminology was that the expression “humanitarian intervention” had become irreversibly linked with the use of military force.

The second big conceptual contribution of the ICISS, very much linked with the first, was re-defining of sovereignty itself. As discussed above, building up on Cohen and Deng’s ideas, the commission argued that the essence of sovereignty should not be seen as “control” but rather as “responsibility”. The starting point is that every state has responsibility to protect the individuals within the state. However, if the state shows unable or unwilling to exercise its responsibility, a secondary responsibility to protect falls on to wider “international community”. The third contribution was to spell out what the responsibility to protect should mean in practice. Rather than solely focusing on reaction, and consequently its extreme - military intervention, the report is divided into three components: responsibility to prevent, to protect, and to rebuild. This clearly places the responsibility to protect into the wider framework of human security. The commission insisted that the responsibility to prevent is the most important of the three layers of

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94 Evans, p. 39-43.
responsibility and that at every point the process “should always involve less intrusive and coercive measures being considered before the more coercive and intrusive ones are applied.”

The fourth major contribution of the report was to identify a set of guidelines that could be adopted by the Security Council and that would arguably be of practical utility to decision makers. Somewhat confusingly, the first criterion was legality. While the report is explicitly reconfirming that prior to any military intervention Security Council authorization should be sought - either by going directly to it or through requesting that the Secretary-General exercise his or her powers under Article 99 of U.N. Charter, it provides alternatives in the case the authorization is not obtained. The first one is for the General Assembly to hold an emergency session under the “Uniting for Peace” procedure, under which a decision to intervene can be made by a two-thirds majority vote. The second alternative is for regional organizations to obtain Security Council authorization under Chapter VIII of the Charter. While the report does not explicitly support the unilateral intervention in the case of Security Council inaction in the face of mass atrocity crimes, it does leave a window open for that possibility. According to the ICISS report “the task is not to find alternatives to the Security Council as a source of authority, but to make the Council work better than it has.” A major element for such improvement is proposal that when there is otherwise majority support for intervention, a permanent member of the Council should abstain from using its veto power to block it, unless their vital national interest is in question. The report also outlined the criteria for legitimacy that would arguably make the consensus more likely: the seriousness of harm being threatened, the motivation or primary purpose of the military action, whether there were reasonably available peaceful alternatives, the proportionality of the response, and the balance of consequences – whether more harm than good would be done by the intervention.

As promised, Kofi Annan endorsed the report a couple of weeks after its publishing. He called it “the most comprehensive and carefully thought-out response we have seen to date”. In his address to the International Peace Academy Annan commented:

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95 ICISS Report, p. xi. As spelled out in the Synopsis of the ICISS Report. Full text included as Appendix I.
96 Although the General Assembly decision under “Uniting for Peace” procedure would not directly legalize intervention it would have a strong legitimizing effect and it would additionally invite Security Council to reconsider its initial failure to authorize.
97 ICISS Report, p. xii.
I admire your diplomatic skill in redirecting the debate, and – believe me – I wish I had thought of this myself. It would have saved me quite a few explanations of just what I was proposing in my speech.

I say this because your title really describes what I was talking about: the fact that sovereignty implies responsibilities as well as powers; and that among those responsibilities, none is more important than protecting your citizens from violence and war.⁹⁸

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The concept of the responsibility to protect does not exist except in the minds of Western imperialists.

Head of UN mission of a major G-77 country, New York, 2007

The consensus reached in 2005 was—to be frank—more broad than deep.


Is It a Bird, Is It a Plane?

The inherent lack of clarity in the concept of responsibility to protect made it a perfect victim of political opportunism. The concept aided justifiers of illegal occupation (Iraq) and did not aid proponents of horribly needed humanitarian intervention (Darfur). What is this concept really and what was it intended to be? As Griffin curiously remarks, it has been described in many different terms: “as a “norm” (World Federalist Movement, Gareth Evans, 2008); an “emerging norm” (High-Level Panel Report, High Commissioner for Human Rights, Global Centre for the Responsibility to Protect); a “principle” (Gareth Evens, ICG); an “emerging principle” (HRW) and a “concept” (SG)”. While its creators can certainly be very proud of themselves as very few concepts in international relations and international law stir so much passion in such a short period, this concept is simply not clear and focused enough to become any kind of norm of international law. In the words of Alvarez “It means too many things to too many different people”. According to Edward Luck, the “dilemma of comprehensiveness” is a problem inherent in conflict prevention, where “it appears as if the advocates of prevention have tried to make it be all things to all people; but in the process it could end up meaning very little to anybody.” The same stands true for the concept of the R2P.

100 Alvarez, p. 15.
Since each of the terms mentioned above confers a different status upon the R2P it is important to understand the meaning behind these words. Luck, a leading American scholar in the field and the UN Secretary-General’s Special Adviser on matters related to R2P, “also describes the R2P as a “concept”, arguing that there is no consensus on whether the R2P has become a norm. Originating from the Latin participle conceptus meaning ‘conceived’, the term ‘concept’ typically refers to an ’abstract idea’. Therefore, when governments, organizations, or individuals, refer to R2P as a concept, they mean it is an “idea”. Arguably, however, there are problems with describing R2P solely as a concept following the World Summit recognition in 2005. While there was a significant departure from R2P as defined in the ICISS report, as further discussed below, the World Summit Outcome document arguably required a certain pledge by all countries, regarding their relations with their own citizens, and as members of the “international community”. Also, the R2P has been incorporated into the practice of a number of countries and regional organizations, and vaguely into the UN practices as well.

R2P is sometimes referred to as a “principle”. “A ‘principle’ is commonly understood as a fundamental truth or a proposition which serves as the basis for belief leading to action.” Therefore, labeling R2P as such implies that “it has acquired a status of shared understanding and that there is sufficient consensus to allow it to function as a foundation for action.” Bellamy argues that “Clearly the distinction between R2P as a concept and R2P as a principle is important. Conceptually, it determines whether the R2P is subordinate to traditional principles of sovereignty and non-intervention or whether – as a principle in its own right – it has the effect of altering the meaning of sovereignty itself. Practically, it has the effect of determining whether R2P remains primarily in the realm of rhetoric and deliberation for the next few years (the corollary of thinking of R2P as concept) or becomes the guide to institutional reform and behavioral change envisaged by UN Secretary-General Ban Ki-moon.”

102 Bellamy, p. 5.
103 Most governments, supporters and critics of the R2P alike, do refer to it as a “concept”, numerous examples provided in Bellamy, especially Chapters 3 and 5.
104 Bellamy, p. 6.
105 Ibid.
106 Ibid.
often refer to R2P as a norm. Norms are usually understood as “collective understandings of the proper behaviors of actors.”  

Discussion of norms, emerging and embedded, brings with it a whole series of concepts, principles, and methods. It is a discussion quite separate from the one of concepts and principles and it remains a very controversial one, especially among international lawyers.

**An Unexpected Turn - September 11, 2001**

Just about the time when the final version of the ICISS report was being send to print, when the hopes in global prosperity in the new century, universal reach of international law, human rights, and human security got raised, Wright’s famous assertion that the international sphere is the place of survival, once again stroke back. The attacks on the World Trade Center in New York and their aftermath reminded us that the new century might not be so different from the Power’s 20th century. We still live in the world that is closing its eyes in front of the genocide and failing to do anything about it. However, it is crucial to notice that the concepts of human security and responsibility to protect have not died out. Something much worse happened to them as they indeed turned into victims rather than merely products of its time. A clear example of this is the (ab)use of the responsibility to protect concept to support the pre-emptive military action and justify the “war on terror”, the accompanying human rights abuses and finally Agamben’s “permanent state of exception”.

The concept of human security in the eyes of many in the post September, 11 world, became just a model for understanding root causes of terrorism. Simple and wrong assumptions were made like the one that impoverished people with lack of access to education are increasingly inclined to terrorism. To the dismay of many proponents of human security and

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108 Alvarez, p. 15.

responsibility to protect Bush’s National Security Strategy 2002 took over a lot of human security concerns and used them to analyze terrorism and “new threats” to the United States’ security. The document rightly asserted that weak and failed states plagued with corruption and incomplete control of their territory are safe heavens for “terrorist” networks and drug cartels. However, the document never even attempted to address the root cause of state failure; the analysis was very shallow and extremely politicized. At this point the concepts of human security and responsibility to protect showed to be extremely useful in justifying military operation in Afghanistan and the occupation of Iraq.

The Report of the High Level Panel on Threats, Challenges, and Change in 2004 interestingly talks about human security and its relationship to the September 11 attacks. While talking about the 1990s, the report states: “Although the United Nations gave birth to the notion of human security, it proved poorly equipped to provide it.” In the following paragraphs it provides that “The attacks of 11 September 2001 revealed that States, as well as collective security institutions, have failed to keep pace with changes in the nature of threats.” While these assertions are correct the Panel was arguably 15 years late in recognizing and acknowledging this. The motive of these discussions was clearly in continuous focus and some very dramatic language, reminiscent of Bush’s 2002 National Security Strategy, was used to explain human security issues: “International terrorist groups prey on weak States for sanctuary. Their recruitment is aided by grievances nurtured by poverty, foreign occupation and the absence of human rights and democracy; by religious and other intolerance; and by civil violence – a witch's brew common to those areas where civil war and regional conflict intersect”. Needless to say, these human security issues and the responsibility to protect were now put together to justify Bush’s preemptive war and the mechanisms of “the war on terror”. While Gareth Evans, among others, argued continuously that responsibility to protect, properly understood, could never

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112 Ibid.
justify Operation Iraqi Freedom, the concept became a victim to its own attractiveness and gained a life on its own.

**From ICISS to World Summit Outcome Document**

As depicted above the concepts of responsibility to protect and human security did not disappear after the September 11, 2001. They were heavily manipulated and abused. Tara McCormack accurately concludes that “Rather than understanding post 9/11 security as a reversal of the human security agenda, post 9/11 policies and statements build upon representation of the human being who seems to be little more than a biological representation, driven by basic needs to fight for resources, or seduced by radical groups.”

In his 2007 paper called *The Schizophrenias of R2P* Jose Alvarez interestingly presents the range of (ab)uses of responsibility to protect after 2001. He includes the “scholars and others as entailing a duty to protect national artifacts”, “policymakers (such as UK Foreign Secretary Jack Straw or President Bush) and scholars (such as Fernando Teson) to justify the 2003 invasion of Iraq – either as part of duty to protect people from tyrannical rule or to punish a regime for prior mass atrocities”, “policymakers (such as US Attorney General Alberto Gonzalez) and scholars who suggest that states have a duty to protect their peoples from terrorist acts”, and other policymakers “(such as the authors of the United States’ National Security Strategy) and scholars (such as Anne Marie Slaughter and Lee Feinstein) who contend that there is a duty to prevent states and non-state actors, including through the use of force, from acquiring WMDs”, “other “liberal” scholars (such as Allan Buchanan and Robert Keohane) who argue for the “cosmopolitan” use of military force to promote democracies and the rule of law”, and “Canadian liberals who assert that Canada failed in its duty to protect its citizens from the excesses of the US’s war on terror when it did not protect Canadian nationals who were allegedly transferred by the U.S. government into the hands of those who would torture them”. Alvarez correctly concludes that many defenders of responsibility to protect were horrified by these

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113 See Evans, 2008.
114 McCormack, p. 11.
115 Alvarez, p 12.
suggestions. On the other side there was also a fear among the R2P supporters that the concept was going to disappear altogether now that terrorism took over all the attention in the world of international affairs and international law communities.\footnote{Michael Ignatieff, “Is the Human Rights Era Ending?” \textit{New York Times}, February 5, 2002, p. A25.}

The ICISS report was followed by three major recognitions, but also significant reformulations, of the concept of the responsibility to protect. In many ways the rise of the R2P was due to the combination of the political support ensured by its sponsors from the very beginning and its attractiveness and flexibility, and specifically by avoiding taking “a final stance on the question of the legality/legitimacy of unauthorized interventions.”\footnote{Stahn, p. 104.}

Describing the 2005 World Summit recognition of the R2P Susan Rice, current American ambassador to the United Nations, commented: “The consensus reached in 2005 was—to be frank—more broad than deep.”\footnote{Anthony Clark Arend, "Susan Rice on the ‘Responsibility to Protect,’” Anthony Clark Arend, http://anthonyclarkarend.com/humanrights/susan-rice-on-the-responsibility-to-protect/ (accessed July 11, 2009).} Arguably, the creators, proponents, and promoters of the R2P consciously gave the whole process of collecting support for the R2P width rather than depth. This is made obvious by Evans’s statements of support for all subsequent recognitions of the concept, despite major reformulations included that arguably take away from it its very core and consequently the concept loses any “transformational power”. Stahn correctly asserts that “None of the four main documents in which responsibility to protect has been treated in depth can be regarded as generating binding international law under the classic sources of international law set forth in Article 38 of the Statute of the International Court of Justice (ICJ).”\footnote{E.g., “International conventions,” “international custom, as evidence of a general practice accepted as law,” and “general principles of law”.}

While contemporary understanding recognizes the importance of resolutions of General Assembly and sometimes even expert bodies’ and Secretary-General’s reports in the creation of “soft law”, they are usually evaluated in combination with more traditional sources (treaties or state practice).\footnote{Stahn, p. 101 provides that the assessment of “soft law” may be based on an analysis of such sources.} The text of the World Summit Outcome Document, arguably the most authoritative of the four documents in terms of its legal and political value, leaves considerable doubt whether and to what extent states intended to create a legal norm.\footnote{Ibid.} Subsequent reactions to such interpretations
by the actors of the World Summit clearly depict the grand compromise that the document was.
Stahn argues that “something is wrong here” and explains that “the concept of responsibility to
protect should be understood partly as political catchword that gained quick acceptance because
it could be interpreted by different actors in different ways, and partly as “old wine in new
bottles”.”

The concept of the R2P is treated differently in the four documents directly elaborating it.
Major ideas of the R2P were considered in 2004 in the context of the debate on United Nations
reform. Pointing to repeated humanitarian disasters from the 1990s, the High-Level Panel on
Threats, Challenges and Change acknowledged in its report A More Secured World: Our Shared
Responsibility that: “…there is a growing acceptance that while sovereign Governments have the
primary responsibility to protect their own citizens from such catastrophes, when they are unable
or unwilling to do so that responsibility should be taken up by the wider international community
– with it spanning a continuum involving prevention, response to violence, if necessary, and
rebuilding shattered societies.” It is important to note that the UN High-Level Panel went so
far as to speak of an “emerging norm of a collective international responsibility to protect.”
In March 2005 another major endorsement of the concept appeared. UN Secretary-General issued
the report named “In Larger Freedom: Towards development, Security and Human Rights for
All” and included a reference to “an emerging norm of a collective responsibility to protect”.
Annan reaffirmed his commitment and provided that “while I am well aware of the sensitivities
involved in this issue…I believe that we must embrace the responsibility to protect, and, when
necessary, we must act on it.” Considered the biggest triumph of the R2P among its
proponents was its inclusion in the outcome document of the 2005 World Summit, the high-

122 Ibid. p. 102.
123 A More Secured World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges, and
[hereinafter High-Level Panel Report]
124 Id. para. 202
125 In Larger Freedom: Towards Development, Security, and Human Rights for All, Report of the Secretary-General,
Report of the Secretary-General].
126 2005 World Summit Outcome, GA Res. 60/1, paras. 138-139 (Oct. 24, 2005) [hereinafter Outcome Document].
level meeting of the General Assembly. The first reference to the concept at the Security Council was in Resolution 1674 on the protection of civilians in armed conflict.\textsuperscript{127}

For the purposes of this essay the formulation of the R2P by the ICISS is considered the original formulation. The ICISS report is undoubtedly using a “rhetorical trick” to move away from undesirable debate about humanitarian intervention and therefore failing to recognize that changing the language does not “absolve the ICISS from having to deal with the debates that have always existed regarding intervention. In particular, a fundamental problem with intervention is that no matter what criteria is established, the decisive factors will always be “authority, political will, and operational capacity…,”\textsuperscript{128} Some critics commented that the report does not add anything to the discussion of humanitarian intervention and one even argued that it is nothing more than the revival of Saint Augustine’s “Just War” theory of the 400s.\textsuperscript{129} While avoiding taking a final stance on legality and legitimacy of unauthorized interventions the report provided that the “Security Council should be the first port of call on any matter relating to military intervention for human protection purposes,”\textsuperscript{130} and that in the case that the Security Council fails to act it should be determined whether more harm lies “in the damage to the international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered,”\textsuperscript{131} therefore leaving the space for unauthorized intervention open. It is certainly disappointing that the bottom line and the central focus of the report, despite its claims, are not human life and human security, but “international order” and its preservation and stability. This certainly brings us closer to understanding why the concept was able to adapt so well into the existing order and gather such wide, if shallow, support.

The High-Level Panel Report, of which Gareth Evans was appointed a member and, according to his own narrative, worked hard on the inclusion of the concept, related the R2P to

\begin{footnotes}
\item[127] SC Res. 1674, para. 4 (Apr. 28, 2006), (the text provides: “reaffirming 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”).
\item[130] ICISS Report, p. 53.
\item[131] Ibid.
\end{footnotes}
the institutional reform of the United Nations, specifically as a means of strengthening the
collective security system under the Charter. While this report was very unclear about the scope
of the R2P it spoke of the collective and individual responsibility to protect of “every state”
when it comes to mass atrocity crimes\textsuperscript{132}. This reference, of course, left room for interpretation.
While it could be seen as a simple restatement of \textit{erga omnes} obligations in cases of genocide,
torture, and grave breaches of Geneva Conventions, it could also be read as assigning a much
wider responsibility to all states and detaching “the idea of responsibility of a sovereign from the
traditional criteria of nationality and territoriality.”\textsuperscript{133} It is crucial to emphasize that, according
to the panel; the collective responsibility to protect was only exercisable by the Security Council.
The Panel at least followed the ICISS formulation by inviting the permanent members “to pledge
themselves to refrain from the use of veto in cases of genocide and large-scale human rights
abuses.”\textsuperscript{134} The Report of the Secretary-General provided very similar proposals if taking the
R2P another step away from humanitarian intervention by making it a responsi-
bility to “use
diplomatic, humanitarian, and other methods to help protect the human rights and well-
being of
civilian populations.”\textsuperscript{135} Secretary-General also provided that the use of force should be carried
out exclusively by Security Council and only as an extreme measure. Stahn argues that “thus,
from a legal point of view there was no substantive change with respect to the treatment of
humanitarian interventions.”\textsuperscript{136}

As it could have been expected, the 2005 \textit{World Summit Outcome Document} recognition
of the responsibility to protect had little to do with the original ICISS document and its
intentions. “The ICISS version stands out others in that it places the focus on armed military
intervention for humanitarian purposes and it does not rule out legitimate authority being granted

\textsuperscript{132} The expression and the usage taken from Evans, 2008 and argued previously by David Scheffer, 2006. The
expressions “mass atrocities” and “mass atrocity crimes” are mostly used interchangeably to refer to the what is
often encompassed by the description “genocide, war crimes, ethnic cleansing, and crimes against humanity,” which
is basically the scope of “the responsibility to protect” as embraced by the United Nations General Assembly during
the 2005 World Summit. Scheffer has argued that “for all policy discussion purposes one should just use the generic
expression “atrocity crimes” and leave it to the prosecutors and judges in international courts, or courts exercising
international jurisdiction, to work out which tag is most legally appropriate for particular cases.”

\textsuperscript{133} Stahn, p. 105.

\textsuperscript{134} High-Level Panel Report, \textit{supra} note 3, para. 256.

\textsuperscript{135} Report of the Secretary-General, para. 135.

\textsuperscript{136} Stahn, p. 107.
by bodies other than the SC (e.g. regional organizations, coalitions of the willing, the GA)."

On the other side, the World Summit Document from 2005, the most widely accepted formulation of the concept by the states, ignores this major intent of the ICISS report creators. It also ignores the criteria for intervention, brings the complete power back to the hands of the Security Council and fails to include even the call for the Permanent Five not to use the power of veto in the case of resolutions related to genocide and mass atrocities. The formation of the consensus included numerous reservations about the concept and even outright rejections. An example from the global North is certainly the U.S. ambassador John Bolton, who stated that the United States would “not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law.” While this certainly sharply contrasts with the position by current ambassador to the United Nations Susan Rice who recently stated that “the Responsibility to Protect is a duty that I feel deeply,” it shows that the divide was clearly not solely along the North-South lines. The paragraphs 138 and 139 of the document, concerned with the R2P, are written in discursive fashion and present a heavy political compromise. Concerning the collective action, not only that the Outcome Document only recognizes it through the Security Council, but it is merely expressing preparedness by states to take such action on a voluntary basis, and the commitment is only to review and act “on a case-by-case basis” through the Council. The idea of the criteria for intervention was dropped entirely. The final stipulation, later used by states critical of the concept, was the insertion of the text stating “the need for the General Assembly to continue consideration of the responsibility to protect…,” that basically recognizes that the concept is not yet sufficiently clear and serves as a sort of disclaimer on the text. The final reference that states “…bearing in mind the principles of the Charter and international law,” Stahn argues “almost suggests that the drafters of the Outcome Document had some doubts whether their own proposal was consistent with international law and the Charter.”

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137 Griffin, p. 6.
138 Outcome Document. Please see the complete text of the paragraphs 138 and 139 in Appendix II.
139 Ibid.
140 Ibid, para 139.
141 Ibid.
142 Stahn, p. 110.
The post-World Summit reactions to the R2P and its recognition in the Outcome Document were mixed, to say the least. Numerous commentators, especially proponents of the concept, saw it as a historical moment. Evans even went so far to claim that “the language of the relevant paragraphs…differs a little from all the previous formulations in the ICISS, High-Level Panel, and secretary general’s report, but it does not vary from core R2P principles in any significant way…,”¹⁴³ and Bellamy called it “one of the few real achievements of the 2005 World Summit.”¹⁴⁴ However, the head of the UN mission of a major G-77 country recently argued that “The concept of the responsibility to protect does not exist except in the minds of Western imperialists,”¹⁴⁵ and in “recent discussions on the appointment of the “Special Adviser” in the GA Fifth Committee a number of states (Cuba, Venezuela, Nicaragua, Egypt, Morocco, Sudan, Bangladesh and Iran) argued that the concept means nothing and that all the WSOD actually does is refer the issue for further consideration to the GA.”¹⁴⁶ The appointment of Edward Luck as a “Special Adviser on the Responsibility to Protect” in February, 2008, a part of the wider strengthening of the Office of the Special Adviser on the Prevention of Genocide and Mass Atrocities (SAPGMA), is another indicator of the real lack of consensus on the topic. The appointment was followed by furious reactions by a number of states who challenged the Secretary-General’s competence for creating such a post; they argued it could only be created by the General Assembly decision. As a consequence the Secretary-General was forced to change the name of the post to “Special Adviser” in March, 2008. “States also used the opportunity to express their opposition to the proposition that anything was actually agreed upon in the WSOD in relation to the responsibility to protect.”¹⁴⁷ Considering the opposition to the concept, and the true global reality of the lack of consensus, Barnett’s statement in a somewhat different context certainly stands true here: “Indeed, if humanitarianism is increasingly reflective of globalization and westernization, then there are good reasons why those in the South view these agencies as the ‘mendicant orders of empire’.”¹⁴⁸

¹⁴³ Evans, p. 47.
¹⁴⁴ Bellamy, p. 2.
¹⁴⁵ Evans, p. 55.
¹⁴⁶ Griffin, p. 5.
¹⁴⁷ Ibid., p. 3.
“Although the R2P was initially conceived – and is, still often, presented – as a way of guiding policy-makers in their deliberations about whether or not to respond to genocide and mass atrocities with non-consensual military intervention, this is not where the principle has made its biggest difference; nor is it likely to do so in the future.”¹⁴⁹ Rather, Bellamy believes that “Where the R2P can make a real difference is in reducing the frequency with which world leaders are confronted with the apparent choice between doing nothing and sending in the Marines.” He explains his point by following the argument that prevention is the single most important element of R2P, the point that has been continuously expressed by Evans and other ICISS members but equally often ignored by a wider community. It is hard to disagree with this conclusion. However, this approach is just another recognition of human security framework and it ignores the question whether the concept of the responsibility to protect has the transformative power in the terms of re-defining sovereignty and providing principles and rules for humanitarian intervention. It is simply focusing on the positive side-effects of the concept, which certainly exist. Possibly this is the true reach of the concept and positive pragmatic use of it. However, R2P might be another “moderator” of the existing system rather than fundamental change; it possibly makes it another bit more digestible, and therefore prevents the intellectual and structural re-conception necessary. Chapter four will explore the myth of the nation-state and the system that R2P is claimed to be challenging, but rather might be upholding.

¹⁴⁹ Bellamy, p.3.
“What is the State? Everyone seems to make an idol of it. Some regard it as the most beneficent of deities, which men should worship with all their heart and with all their soul, while to others it is the worst of devils, the curse of mankind, and deserves to be sent back to the hell from which it came.”

Oppenheimer, 1927

The Nation-State System Revisited

States like to pretend that they are eternal, that their creation always has a mythological dimension, and that their future is never questionable. In reality, all states are clearly and utterly ephemeral. Deliberate actions and adapted interpretations of history are at the core of the creation of nationhood. “The problem is that the nation-state system requires a concept of nationhood, whether or not that concept is real.” In order to understand the true ephemeral nature of every nation state we should go back into recent history and look into the deliberate creation of states and statehood. Arguably the best place to observe the creation of nation and nationalism is its cradle - Europe. An Italian politician after the Risorgimento said: “We created Italy, and now we are going to create Italians”. As Lord Acton explains, nation-building can happen parallel with state-building or it can precede it. In both cases it serves as a doctrine that explains to people why the state should be created. In France at the time of the French Revolution only thirteen per cent of the people living on the territory of today’s France spoke what came to be called French and were able to understand each other. It is a matter of fact that the decision of one man, Otto von Bismarck, to opt for a Großdeutsche Lösung (“Greater German Solution”) as opposed to The Kleindeutsche Lösung (“Lesser German Solution”), would result in many of the nations surrounding Germany today calling themselves Germans. Charlemagne is considered the founder of the French state, and the German state as well, is he to be called Charlemagne or Karl der Große? Is he a French hero or rather German, or maybe Dutch? There are dozens of nations that claim to be “the chosen people” or “God’s people”. Who

are the real people of God? Japanese or Persians, Israelis or Serbs? What nation has the right to claim Aristotle and Jesus, Mohammad and Confucius?

The rise of the nation state is often said to have started with the Peace of Westphalia in 1648. However, the world becomes exclusively nation-state centered only during the 20th century when all the territories of the world in one way or another have become parts of nation states. In 1914, there were fifty-five recognized national states. In 1919 there were fifty-nine and in 1950 the number had reached sixty-nine. Ten years later, after the realization of independence in much of Africa, ninety were called nations. After many other territories of the “Third World” had become independent and after the collapse of the Soviet Union and Yugoslavia the number of nations jumped to over 190.\(^\text{152}\) It is important to notice this occurrence as the Charter of the United Nations with its special stress on national sovereignty, non-intervention, and equality of its members, which we find in articles 2 (1), 2(4), and 2 (7), is in line with these developments. The Charter formally provided exclusivity of nation-state as the only and ultimate way of organization, pretending not only that it was eternal and “natural”, but also that it was universal and universally accepted. The system was organized following the FUBU principle, created For Us By Us, for nation-states by nation-states, therefore “international community” self-legitimizing itself. Security perceived strictly as national security was a reasonable consequence of the centrality of national sovereignty and the nation state as the entity in inter-national law and inter-national relations. The major overt change that the founding of the United Nations brought was the outlawing of the use of force in international disputes. While prior to 1945 the states would need no justification for the use of force over another state, with the Charter of the United Nations this became illegal. Therefore, during the Cold War security studies mainly just attempted to find out how “…to secure the state against those objective threats that could undermine its stability and threaten its survival.”\(^\text{153}\)

We can give the above theory more historical context by examining the customary international law governing the acquisition of territorial sovereignty. “In prior centuries, western nations considered much of the world “unoccupied”—that is, not controlled by powerful states. States would obtain sovereignty over these areas by “discovering” them and then announcing their claim to the rest of the world. Although states frequently fought over newly discovered territory, a convention arose through which states would respect each other’s prior claims as long as these claims conformed to an always shifting and frequently ambiguous set of rules. These rules governed such issues as: how a claim would be made—did the discovering state need to plant a flag, set up a police station, or just sail by the territory in question? How far could sovereignty extend—could the discovering state claim an entire continent by planting a flag on a corner of it?" It is important to stress that the claims would be respected only by one nation-state to another, therefore any other form of organization was unacceptable and ignored, and as a consequence the colonial powers mostly just recognized each other.

There was a fascinating study done by Roussel on the topic of nation-states. The general conclusion of it was that the number of nations may be anywhere between 168 and 254, depending simply on who is doing the counting. As of 1996, when the study was done, Roussel reports that there were 168 different currencies in the world, 239 two-letter country codes recognized by the International Standards Association, and 185 participants in the Universal Postal Union. When Germany was establishing a list of nations for its diplomatic corps, the study says, it contained 281 names, but 65 names carried a notation that another nation is sovereign over its territory. Apparently that gives the number of 216 sovereign states. Roussel also reports that, as of 1994, France recognized 190 states, Switzerland 194, and Russia 172. In the 1996 Atlanta Olympics 197 national teams competed. This context invites us to reexamine our perceptions of the United Nations and its nation-state members’ recognition as the determent of the statehood and the sovereignty. Current protracted situation with Kosovo’s recognition and statehood asks us to rethink whether we are following the constitutive theory or declaratory theory.

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154 It is important to wonder how this inter-national customary law could have been applied to territories that were non-nation states. The obvious conclusion is that other forms of organization were ignored and treated as non-existent or illegitimate.
theory as the approach to statehood. The worrisome but likely outcome of such examination could be that we are following none. To paraphrase the 2005 World Summit Outcome Document it seems “determined by the ‘international community’ on the case-by-case basis.”

With the Peace of Westphalia, a new concept of unlimited power of the king indeed came into existence. This new concept of sovereignty was first introduced by the French philosopher Jean Bodin in his book *De La République*. He described it as the absolute, indivisible, and complete power of the king or queen over the people in his or her territory. He also argued that there should be no higher, religious authority. Thereafter ended an almost thousand years long period of the dominance of the feudal state and Papal bless in European history and the rise of the “modern” nation-state began. For the next three hundred years European nation-states grew and prospered. They engaged in wars, arms races, colonialism, state building, assumed wide specter of social and economic programs, sent people to the moon, competed in sports and genocides, and finally destroyed and created other nation-states. Their ubiquity was taken for granted and they achieved the status of given, immutable, inevitable, omnipotent, and eternal political organizations. In the last 25 years this nature of the nation-state was challenged as states are weakening, shrinking, failing, collapsing, and sinking under pressure “on two fronts”. Evans is absolutely right when he concludes that “In the history of ideas, there have been few that have prevailed to more destructive effect” than the nation-state.

**Failed States**

A “phenomenon” often associated with the concepts of the responsibility to protect and human security is that of the “failed states”. Since they are often presented as the grounds where R2P should be put in use, their nature and characteristics should be re-examined. “Failed states have made a remarkable odyssey from the periphery to the very center of global policy.” The

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157 Coulter, p. 32-43.
158 The reference is on the pressure “from above”, meaning global capital and general “globalization”, and “from the bottom” including secessionism, failed states, non-functioning states, and numerous forms of resistance to states.
159 Evans, p.16
occurrence that was widely ignored during the Cold War and observed solely through the prism of “the fight of the elephants” has finally come to the central stage. It is the exports that often accompany the failed states, including terrorist groups and drug and weapons trafficking, that forced the attention of the “international community” to this trend. However, it is crucial to examine whether the “failed state” is just a manifestation of a simple imperfection of the existing international system or an indication of the inexorable continuing evolution of the world order. In other words, the failed states are not failing because of terrorism or non-state actors, nor drug lords or poverty; these are just indicators and partially consequences of their failing. Rather, they are failing because they were never supposed to be created. Unfortunately, current development theory “still maintains that failed or collapsed states will become “normal states” after an uncertain period.”  

Most commentators provide descriptive analyses of the phenomenon and fail to identify root causes. Rotberg recognizes a hierarchy of political goods and states that “none is as critical as the supply of security, especially human security.”  

Baker, on the other side, concludes that in a “failed state” the population does not any longer see the state as their legitimate representative. The historical, political, and economic context for “state failure” was arguably created in two major phases and catalyzed by a general process of so-called modernization. As the “failed states” are essentially “Third World” areas, they have usually been affected by these three factors:  

- the heritage of colonial regimes which had lasted long enough to destroy traditional social structures, but not long enough to replace them with Western constitutional structures and an effective identity as a new State;  

- the end of the Cold War, during which the two superpowers had often kept shallow-rooted regimes artificially in power, preserving them as potential allies through supplies.
of arms or through ideology-based power structures which kept the unity of the State intact by force; and lastly

- general processes of modernization which encouraged social and geographical mobility but were not counterbalanced by nation-building processes capable of placing the State on a firm foundation.\textsuperscript{164}

The “failed states” are in reality failed attempts by the Western elites, later known as the “international community”, who exercised coercion in order to create a stable and controllable global system of nation-states, the framework for the political, economic, judicial, and social life. While many of the countries were directly coerced by cutting out territories and created by colonizing powers, most other states were coerced into it by two processes, often happening simultaneously: 1. Slave mentality of the elites in the non-Western countries and their adherence to Western elites’ academia, legal systems, economics, ideas of nationality, nationhood, private property, wage labor etc.; 2. The aspiration to “participate”, or in reality, to have a voice and independence. These developments remind us of Facebook\textsuperscript{165} – as a non member of Facebook one is exposed to various things – like libels and pictures put up by various members without ones consent and “tagged” with personal information attached. The only way for a person to protect her privacy is to become a member of that club. Therefore, people in different territories and socio-political structures around the world realized that in order to be able to protect themselves and their way of life, their territory, natural resources, and other things, they themselves had to become a nation state and a member of the “inter-national” club. The belief that becoming a nation-state will provide choices was often created by the ideas of sovereignty and non-intervention as established by the UN Charter.

\textsuperscript{165} The reference is to a widely used social networking web site. Please see www.facebook.com or http://en.wikipedia.org/wiki/Facebook for more information.
R2P and “Modern Humanitarianism” – Paradigm Shift or Hot Air?166

Security is always at the center of the traditional story, “a history”, as some like to call it, of how the state came into existence, and this story relentlessly implies certain social contract. The state, however, instead of being the source of security, became the main source of insecurity for the majority. At the point where the nation state was coercively being imposed on populations and territories globally, that function of security for receiving population was lost. It rather became, it was believed by the western elites, creation of the security, stability, and predictability for them, in the West/North. The rise and the global conquer of the West, elucidated by the United States as a sole global hegemon after the end of the Cold War, was therefore not solely due to the European naval and technological achievements, or due to the industrial revolution or the capitalism, it was to a large extent also due to the global implementation of the system of nation-states as a controllable and fitting framework for western ideas and private property based ideologies.

The nation-state system that we know today and that is problematized in this paper was established in 1945 with the establishment of the United Nations. While the pre-1945 period could be described as the rise of the nation state as an organizational unit, it is the United Nations founding that is its triumph through the creation of the global nation-state system. While earlier various forms of organization and systems overlapped, now there was only one system and the members were exclusively nation states. While interesting arguments have been made that Russia, China, or even the US could be observed as empires still, the crucial is that they have to pretend they are nation-states, even if they are not. The same is valid for failed and non-functioning states. While nation state was created in Europe during centuries (there were similar ways of organization earlier) the system was organized and cemented into the dominance only with the foundation of the UN.

166 Emphasizing the vagueness of the R2P through adopting the earlier cited title of Roland Paris’s work Human Security: Paradigm Shift or Hot Air?
Barnett explains the origins of modern humanitarianism and provides fascinating insights into the importance of media\textsuperscript{167} and the reactionary but controlling role of the state. As the improvements in military technology were making war more brutal by the mid-19\textsuperscript{th} century, Barnett explains, the emerging profession of war reporting was spreading horrifying pictures and accounts of soldiers left to languish and die on the battlefield. Publics started rebelling at these sights and expressing pacific sentiments. “In response, state and military elites coopted Dunant’s\textsuperscript{168} platform, removed its more radical proposals, accepted new rules governing how to tend to wounded soldiers on the battlefield, and thus demonstrated to their publics their commitment to humanize war. Humanitarianism, in other words, helped to rescue those on the battlefield – as well as the system of war. In fact, decades after founding ICRC, Dunant concluded that humanitarianism has been coopted by the states-system, walked away from reformism, and embraced pacifism.”\textsuperscript{169} Many developments in international (humanitarian) law can be interpreted as serving similar function as they lessened the demand for more radical change in the global(-military) order. It is an honest fear that the recent successes of human security approach, namely the discussion on AIDS at the Security Council, founding of the International Criminal Court, the Anti land mines treaty, and even the quasi embracing of the responsibility to protect, might be just serving the same function, strengthening the existing system and therefore preventing a structural change necessary. While certainly rephrasing the concept of sovereignty innovatively, the ICISS commission “still frames it within what James Camilleri and Jim Falk call the “sovereignty discourse” – “a way of describing and thinking about the world in which nation-states are the principal actors, the principal centers of power, and the principal object of interest” – carefully avoiding a challenge to the state as the core of the

\textsuperscript{167} For another work that in a similar manner assigns a great importance to the media in the development of humanitarianism see Victoria K. Holt and Tobias C. Berkman. The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations (Washington D.C.: The Henry L. Stimson Center, 2006).

\textsuperscript{168} Reference is to Henry Dunant, the patriarch of modern humanitarianism. Dunant was a Swiss citizen who, appalled by the atrocities resulting from the fierce fighting between “French” and “Austrian” forces in Solferino (in today’s Italy), in June 1859, appealed to a local population to assist thousands of suffering soldiers. Dunant went on to write about his experiences and moved European elites to consider his proposals for regulating war. The discussions that followed produced the Geneva Conventions, which was the establishment of humanitarian law, and the International Committee for the Red Cross (ICRC) (In Barnett, 13).

international system and a discussion of new interpretations of the self-determination principle. The principle of sovereignty is no longer absolute, but, paradoxically, it remains sacrosanct.”¹⁷⁰

In elaboration of the transformation of humanitarianism, Barnett sensibly argues that “Although their transcendental, universal, and cosmopolitan commitments might appear to threaten an international society organized around the nation-state, in fact most of their activities do not challenge the states-system but instead are designed to create a more stable, legitimate state organized around these supposedly universal principles. Humanitarian organizations may or may not be part of neoliberal agenda, and they may or may not resemble the missionaries of the nineteenth centuries. But by their own admission, they view their social purpose as promoting liberal values in order to make the world safer, more humane, and more just.”¹⁷¹ What comes to mind is the function of aid in current humanitarianism, for example, in respect to which authors like Iqbal Quadir claim that Aid empowers authorities and NOT people.¹⁷² The question remains: Whom does the humanitarian intervention empower?

A Different Approach

While numerous influential commentators have recognized the oppressive functioning of the sovereign state-centric system, most of them never managed to escape the same “sovereignty discourse”. Rather, their work and supposedly “revolutionary” proposals often serve as reaffirmation of the existing system and consequently extend its life. It is impossible to disagree with Booth’s argument that “…the price for old thinking about world security is paid, daily, in the death, disease, poverty and oppression of millions.”¹⁷³ The real question is whether concepts like human security and the responsibility to protect are self defeating by their re-affirmation of

¹⁷¹ Barnett, p. 31.
the existing framework that is simply incompatible with their core – focus on human being, irrespectively of her class, nationality, gender, race, etc.\textsuperscript{174} The fact that President Bush’s 2002 National Security Strategy fits continuously and impeccably into the human security framework is at least worrisome. It reminds us that the way to hell is paved with good intentions.

McCormack establishes the connection between the critical security perspectives and the human security framework through the shared understanding of the system of the sovereign state and non-intervention as a barrier to the security and freedom of the individual. “For critical security perspectives the ontological status of the sovereign state in thinking and theorizing about security simply obscures the fact that, ‘To countless millions of people in the world it is their own state, and not "The Enemy" that is the primary security threat.’ The sovereign state, through the creation of an exclusionary order is a major source of insecurity, and the emancipation of the individual can only be achieved if the state is removed, both from our understanding of the world and security, and through overcoming the actual state.”\textsuperscript{175} The existing system developed elaborate structures of self-preservation that include numerous myths (nationalism, private property, race, etc), systems of indoctrination (formal and informal education, media, etc.), and inter-national structures (The UN, IMF, WTO), however, the most powerful of all is the myth of eternity of the state system that prevents us from being able to think of a different kind of politics. As Walker argues, “The security of states dominates our understanding of what security can be, and who it can be for, not because conflict between states is inevitable, but because other forms of political community have been rendered almost unthinkable.”\textsuperscript{176} Critical approaches need to be understood as going beyond simply questioning whether the modern state is obsolete. “In an inversion of the traditional framework of security, whereby states react to the anarchical system in which they exist, the security practices of states create the state and the system.”\textsuperscript{177} Violence is vital to the practices of maintaining the state and the state system, which is kept in existence by a constant process of inclusion and exclusion. This point is fundamental to critical theorists of all approaches. “State security permits, or even demands, violence against those on

\textsuperscript{174} Feminist theorist J Ann Tickner argues; “The unitary state actor model favored by realists conceals the extent to which individuals' insecurities are dependent on race, class and gender, categories that also cross state and regional boundaries.” (1995: 192).
\textsuperscript{176} Ibid. Citing R. J.B. Walker, The Subject of Security.
\textsuperscript{177} Ibid, p. 12.
the outside in the name of survival and serves as a rationale for terrible violence, there is a '…complicity of modern accounts of security with practices of intolerable violence in the modern world.’‖”

Graeber explains the relation of power to ignorance and stupidity, therefore playing of Foucault’s argument that identifies knowledge and power. He argues that “violence, particularly structural violence, where all the power is on one side, creates ignorance. If you have the power to hit people over the head whenever you want, you don’t have to trouble yourself too much figuring out what they think is going on, and therefore, generally speaking, you don’t…This is why violence has always been the favored recourse of the stupid: it is one form of stupidity to which it is almost impossible to come up with an intelligent response. It is also of course the basis of the state.”

Chapter one of the ICISS document includes an incredible leap of thinking. While explaining the historical establishment of the UN system and sovereignty as a crucial part of it, the commission states that “It is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared.” As proponents of human security and human rights the members of the commission should be more aware of the realities of the current system. It is an outrageous claim in a world where year after year the poor are becoming poorer and rich are becoming richer. It is ridiculous to describe as equitable the world where the borders restrict even from seeking opportunities. Once a child from DRC has access to German health care, Dutch education, French museums, Swedish social security, and the European Union passport, we might be able to talk about equity. David Graeber provides suggestions that would take us closer to a more equitable and peaceful world. He recommends:

- an immediate amnesty on international debt (An amnesty on personal debt might not be a bad idea either but it’s a different issue.)
- an immediate cancellation of all patents and other intellectual property rights related to technology more than one year old

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180 ICISS Report, p. 7.
• the elimination of all restrictions on global freedom of travel or residence

It is crucial to understand that the effacement of nation-states and elimination of national borders will allow for the genuine globalization. In a Freudian sense the nationalist says to the individual: “You must grow from the id to the ego stage and become a good citizen of the nation-state, but you must not proceed to the stage of the superego. It is wrong to identify with all human beings, because humanity consists of different cultures and different ideas, and people can never be united into a single life form.” Nationalism imposes upon the citizens of the nation a limitation on growth of the human personality, Hartmann argues. It is so because identifying with all human beings makes people question the legitimacy of the nation. Graeber argues that the moment “the average resident of Tanzania, or Laos, was no longer forbidden to relocate to Minneapolis or Rotterdam, the government of every rich country in the world would certainly decide there was nothing more important than finding a way to make sure people in Tanzania or Laos preferred to stay there.” In the same way that the “free trade” is dysfunctional without free movement of labor, the “global progress” is so without the free movement of all people. However, as presented above, the national borders restrict much more than the movement of people. The concept of R2P is an attempt to modify those boundaries. Unfortunately, the walls of sovereignty are not the root cause of the problems that the ICISS commission attempted to address; they are just the supporting walls of the system ready to tolerate a lot in its own defense.

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181 Graeber, p. 76-77.
182 Coulter, p. 32-43.
183 Graeber, p. 78.
Conclusion

The ICISS Commission members have probably never imagined through what kind of transformations and (ab)uses would the concept they crafted go through. It would be wrong, however, to claim that the events of September 11, 2001 made the responsibility to protect a victim of its time. These events were only a catalyst for the abuse that the concept was inherently open to. The paper discussed the environment and historical events that motivated and allowed for the development of the concept of the responsibility to protect in year 2001. It also analyzed some strengths and weaknesses of the concept which allowed us to understand the effects of September 11, 2001 and its aftermath on the responsibility to protect.

The paper placed the emergence of the concept of the R2P within a larger development of the idea of human security, use of force in international relations, security in general, and the current framework of nation-states and their sovereignty. It discussed the post-Cold War changes in political environment and the emergence of the idea of human security. It was argued that after the end of the Cold War the meaning of security has been somewhat transformed and that this transformation, together with the change in the perception of humanitarian intervention and the strong feelings of “never again”, allowed for the development of the concept of the responsibility to protect. The paper also looked into the recognitions but concurrently significant re-formulations of the concept resulting from the process of building international consensus. The major conclusions were drawn in the last chapter where R2P concept was placed into the larger context of the system it has been attempting to influence.

Responsibility to protect will remain a hot topic in international relations and law circles for quite some time. It will continue to be (ab)used by many and in very different ways. There will never be an agreement on the clear and complete definition of the concept and it will never
change the way the nation-state system operates. It was an honest attempt to address some of the major fallacies of the system. However, it was rather another corrective mission for preservation of the system than the true transformative re-conceptualization of it. In his much quoted speech to the General Assembly in 1999, former Secretary-General Kofi Annan prodigally but realistically warned the “international community” that “if the collective conscience of humanity -- a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples -- cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice.” Indeed, there is a great hope that people will soon overcome the “sovereignty discourse” and the sacrosanct nation-state and look into different organizational forms, in which peoples’ lives, rights, freedoms, and opportunities will not be pre-determined by the place of their birth, their skin color, gender, religion of their parents, or their social and economic class. The grand compromise of the UN and international legal framework will be preserved for some time. The change is coming quietly in the form of pockets of innovatively organized communities around the world. There will be no loud revolutionary songs or screams. There will be no grand armies or battlefields. R2P, human security, failed states, supranational law, over-national and non-national communities, and “globalization” are all just indicators of the inexorable continuing evolution of the world order. The only things certain are that the climate change will be the major regulator of our future and that, to play off the Keynes’s famous statement; in the long run, the nation-state is dead.


Appendix I

Synopsis of the ICISS Report

THE RESPONSIBILITY TO PROTECT:

CORE PRINCIPLES

(1) Basic Principles

A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

(2) Foundations

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:
A. obligations inherent in the concept of sovereignty;
B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
D. the developing practice of states, regional organizations and the Security Council itself.

(3) Elements
The responsibility to protect embraces three specific responsibilities:

A. **The responsibility to prevent**: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B. **The responsibility to react**: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C. **The responsibility to rebuild**: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

(4) Priorities

A. **Prevention is the single most important dimension of the responsibility to protect**: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.

B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

**Principles for Military Intervention:**

(1) **The Just Cause Threshold**

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

A. **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
B. large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

(2) The Precautionary Principles

A. Right intention: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
B. Last resort: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
C. Proportional means: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
D. Reasonable prospects: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

(3) Right Authority

A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.
B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.
C. 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. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.
D. The Permanent Five members of the Security Council should agree 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.

E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:

I. consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and

II. 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.

F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

(4) Operational Principles

A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.

B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.

C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.

D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.

E. Acceptance that force protection cannot become the principal objective.

F. Maximum possible coordination with humanitarian organizations.
Appendix II

2005 World Summit Outcome Document – Paragraphs related to the Responsibility to Protect

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 to 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 are manifestly failing 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.
Appendix III

PERMISSION FOR USE OF INDEPENDENT STUDIES PAPER OR MASTER’S DEGREE PROJECT

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Full title of Independent Studies Paper or Master’s Degree Project
The Responsibility to Protect Reexamined

Degree: International Law and the Settlement of Disputes

Year of submission: 2009

University Department: International Law and Human Rights

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