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THE RESPONSIBILITY TO PROTECT – NEW BEGINNING OR END OF THE ROAD FOR HUMANITARIAN INTERVENTION?

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Abstract: This article examines the mutual relationship between the new concept of the Responsibility to Protect (R2P) and the much older doctrine of humanitarian intervention. It shows that since the establishment of R2P in 2001, this relationship has passed through three distinct stages: the stage of the direct inclusion of humanitarian intervention into R2P in the early 2000s, the stage of mutual coexistence of the two in the mid-2000s, and the stage of the indirect exclusion of humanitarian intervention by R2P in the late 2000s. This progression could seem to indicate that humanitarian intervention is gradually disappearing from the international scene. This article cautions against such an interpretation, arguing that R2P does not fully resolve the underlying dilemma of how to react to those large-scale violations of human rights that are not dealt with by the UN Security Council. Auguring the death of humanitarian intervention may therefore prove to be largely premature.

Resumé: Článek se zamýšlí nad vzájemným vztahem mezi novým konceptem odpovědnosti za ochranu (R2P) a starší doktrínou humanitární intervence. Ukazuje, že tento vztah prošel od zformování konceptu R2P v roce 2001 třemi odlišnými fázemi, a to fází přímého zapojení humanitární intervence do R2P na počátku desetiletí, fází jejich vzájemné koexistence kolem roku 2005 a fází nepřímého nahrazení humanitární intervence konceptem R2P na konci desetiletí. Tento vývoj by mohl naznačovat, že humanitární intervence pomalu opouští mezinárodní scénu. K danému závěru je ovšem třeba přistupovat opatrně. Vzhledem k tomu, že základní dilema jak postupovat v případech, kdy dochází k rozsáhlému porušování lidských práv a Rada bezpečnosti OSN zůstává nečinná, není v R2P řešeno komplexním způsobem, mohou se prognózy konce humanitární intervence ukázat jako předčasné.

Key words: humanitarian intervention, responsibility to protect, use of force

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Introduction

Does the new concept of the Responsibility to Protect (hereafter R2P) give yet another lease on life to the old and highly controversial doctrine of humanitarian intervention? Or does it on the contrary mean the final and definitive end of this doctrine and the inauguration of a new era based on preventive thinking and collective action? Both humanitarian intervention and R2P address the same general dilemma, namely how to react to massive and systematic violations of human rights occurring in a foreign country without threatening the stability of the international system. While humanitarian intervention seeks a solution in surgical military interventions carried out by like-minded states, R2P suggests to have resort to a more extensive set of tools, dividing responsibility between the territorial state and the international community. Do these two approaches complement one another or do they tend to be mutually exclusive?

The evolution of the relationship between R2P and humanitarian intervention since the establishment of the former in 2001 does not make it possible to answer these questions in an unequivocal manner. What it does clearly show, however is, that this relationship is a dynamic one. Over the course of the past decade, it has passed through three distinct stages, taking on a particular form in each of them. In the early 2000s, R2P sought to incorporate humanitarian intervention, making it part of a larger set of tools (stage of direct inclusion). In the mid-2000s, the two concepts began to draw apart from each other, each maintaining an independent status on the international scene (stage of coexistence). Finally, in the late 2000s, R2P gradually started displacing humanitarian intervention by making it appear obsolete (stage of indirect exclusion). At first sight, it may seem that there has been a clear shift from the previous mutual support between R2P and humanitarian intervention to a one-sided displacement of the latter by the former. Yet, since the R2P concept fails to address the underlying dilemma in a truly comprehensive manner and since its recent evolution additionally reveals certain alarming features, a prognosis claiming the death of humanitarian intervention could turn out to be largely premature.

Before 2001: Dilemma of Humanitarian Intervention

The Responsibility to Protect is a relatively new concept which only appeared on the international scene at the beginning of the 21st century.¹ Humanitarian intervention, on the other hand, has a longer, albeit quite controversial, history. Tracing this history is made difficult by the fact that throughout centuries the term

¹ For more on R2P, see A. J. Bellamy, *Responsibility to Protect. The Global Effort to End Mass Atrocities*, Polity Press, 2009; V. Bílková, *Odpovědnost za ochranu (R2P). Nová naděje, nebo staré pokrytectví?*, PF UK, Praha, 2010; G. Evans, *The Responsibility to Protect, Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press, Washington, 2008; *La responsabilité de protéger*, Colloque de Nanterre, Société française pour le droit international, Paris X-Nanterre, le 7-9 juin 2007, Pedone, Paris, 2008; and P. Niemela, *The Politics of Responsibility to Protect: Problems and Prospects*, The Erik Castrén Research Reports 25/2008, Helsinki, 2008.

humanitarian intervention has served to designate different concepts, while the concept of humanitarian intervention, as understood today, has been known under several terms. Currently, humanitarian intervention is mostly understood as “*the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights*”.² In a broader sense, it encompasses both collective actions authorized by the UN Security Council under Chapter VII of the UN Charter and unilateral actions devoid of such authorization. In a more common, narrow sense, which is also adopted in this text, it is limited to unilateral actions.

Until the 19th century, thinking about the legality and legitimacy of the use of force in international relations was mostly framed in terms of the just war tradition.³ Born originally under Roman law and subsequently developed by Christian theologians (Thomas Aquinas) and natural law theorists (Hugo Grotius), the just war tradition stemmed from the idea that waging war could be legitimate only if specific conditions were fulfilled. These conditions included the existence of a just cause, the presence of a legitimate authority, the exhaustion of other (non-violent) means, the right intentions on the side of the intervener, and the probability of success at the *ius ad bellum* level, together with the requirements of proportionality and necessity at the *ius in bello* level. Protection of human rights and/or liberation of oppressed people from tyranny belonged among the most frequently invoked just causes, although the term humanitarian intervention as such was unknown at the time. The just war regulation stayed outside the realm of positive international law, being confined to the areas of philosophy, theology or deliberations on natural law.

The 19th century saw the birth of the term “humanitarian intervention”. The term was used to describe military operations by states or groups of states that were aimed at protecting their own citizens or people of the same national, ethnic or religious affiliation. In practice, such operations were mostly carried out by European states in the territory of non-Western countries, especially the Ottoman empire, and were justified in terms of protecting Christian communities living there. Examples include the intervention by the United Kingdom, France and Russia in Greece (1827-1830) or the intervention by France in the territory of present-day Lebanon, in support of the Christian Maronite community (1860). Positive international law

² S. D. Murphy, *Humanitarian Intervention. The United Nations in an Evolving World Order*, University of Pennsylvania Press, Philadelphia 1996, pp. 11-12. For more on humanitarian intervention, see F. K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. Kluwer Law International, 1999; N. J. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society*, Oxford University Press, Oxford 2000; J. L. Holzgrefe, R. O. Keohane (Eds), *Humanitarian Intervention. Ethical, Legal and Political Dilemmas*, Cambridge University Press, Cambridge 2003.

³ For more on the just war tradition, see J. A. Bellamy, *Just Wars: from Cicero to Iraq*, Polity, Cambridge, 2006; M. Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*, Second Edition, Basic Books, New York 1992; or J. Boyle, *Traditional Just War Doctrine and Humanitarian Intervention*. Paper prepared for delivery at the 2002 Annual Meeting of the American Political Science Association, Boston, August 29-September 1, 2002.

of the period did not regulate humanitarian interventions in any comprehensive manner, although certain treaties of the late 19th century implicitly recognized the legality of such interventions in specific contexts.⁴

The gradual adoption of international legal rules on the use of force in the first half of the 20th century could have led to the legalization of humanitarian intervention. Yet, the effort to minimize inter-state wars and the negative precedents set by the abuse of the doctrine of humanitarian intervention by Japan in China, Italy in Ethiopia and Nazi Germany in Czechoslovakia, prevented this from occurring. Consequently, neither the 1928 Kellogg-Briand Pact nor the 1945 UN Charter allowed for unilateral military actions motivated by humanitarian concerns. In the course of the Cold War, humanitarian intervention had very few proponents. Perceived as a threat to the fundamental principles of sovereign equality and the non-use of force, as well as a potential destabilizer of the international system, it was denied legality and legitimacy by most players on the international scene. As a result, even cases that would most probably count as legitimate wars under the just war tradition, such as the Indian action in East Pakistan (1979), the Tanzanian intervention in Uganda (1979) or the Vietnamese intervention in Cambodia (1979), were justified as self-defence, not humanitarian intervention.

The victory of liberal democracy in the Cold War and the rapid development of human rights ideology in the second half of the 20th century created the conditions for a reassessment of this approach. The early 1990s saw the UN Security Council, after decades of paralysis, assuming its “*primary responsibility for the maintenance of international peace and security*”⁵ and extending its Chapter-VII powers to intra-state situations involving large-scale violations of human rights. State sovereignty ceased to be viewed as an absolute barrier to outside interference and UN-authorized military actions for humanitarian purposes became an integral, though still relatively random, part of international life. Yet, the increased activism of the UN Security Council was not a panacea. It left unresolved the dilemma of how to proceed in cases when man-made humanitarian catastrophes occurred and the UN Security Council was unwilling, due to a blockage of the Council by a permanent member’s veto, to intervene.

This dilemma, materializing during the 1999 Kosovo crisis, was aptly described by the then UN Secretary-General Kofi Annan in a series of statements made in the late 1990s.⁶ In these statements, he asked two interrelated questions: “*If in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act /.../, but the Council had refused or delayed giving the green*

⁴ See, for instance, the *Treaty between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey*, Berlin, July 13, 1878.

⁵ Article 24, par. 1, of the UN Charter.

⁶ See, for instance, K. A. Annan, *Reflections on Intervention*, The 35th annual Ditchley Foundation Lecture, Ditchley Park, United Kingdom, 26 June 1998; and K. A. Annan, *Two Concepts of Sovereignty*, Address to the 54th session of the UN General Assembly, New York, 18 September 1999.

light, should such a coalition have stood aside and allowed the horror to unfold?“ and *“Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the second world war, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?”* The attempt to answer these questions in a coherent and concurrently original manner gave birth to the concept of the Responsibility to Protect.

Early 2000s: Direct Inclusion of Humanitarian Intervention into R2P

The concept of the Responsibility to Protect was proposed by the *International Commission on Intervention and State Sovereignty* (hereafter ICISS), which was created in 2000 by Canada in response to Annan’s appeal. In December 2001, the ICISS published its report, entitled *The Responsibility to Protect*,⁷ in which it came forward with the idea of reconceptualizing the whole debate. It suggested that attention should be shifted from the right of states to use military force to save non-nationals to their responsibility to protect the lives and well-being of their own nationals.⁸ Moreover, the report wished to broaden the perspective, firstly by focusing not only on the reaction to ongoing violations of human rights but also, and most importantly, on the prevention of such violations and on the rebuilding of societies which were impacted by them; and secondly by complementing and, if possible, replacing the use of military force by non-military means of a political, economic, or humanitarian nature.

The ICISS did not exclude the option of using force for humanitarian purposes. It, however, saw it as the last resort scenario, one that should be resorted to only *“when a state is unable or unwilling to redress the situation”*.⁹ Even then, *“less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied”*.¹⁰ Military intervention should therefore be carried out only if other means have proven to be either unavailable or ineffective. Furthermore, the use of force for humanitarian purposes always needs to meet six cumulative criteria. The criteria are taken from the classical just war doctrine and include just cause, legitimate authority, right intention, last resort, proportional means and reasonable prospects. When applying and interpreting these criteria, states ought to seek to respect as much

⁷ ICISS, *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, The International Development Research Center, Ottawa, December 2001. For a review, see S. N. MacFarlane, J. Welsh, C. Thielking, *The responsibility to protect: assessing the report of the International Commission on Intervention and State Sovereignty*, International Journal, Vol. 57, Iss. 4, 2002, p. 489-512.

⁸ *“The concept sought to deflect attention from the controversial ‘right’ of some states to intervene, to the duties of all states to protect their own citizens from avoidable catastrophes, and for third parties to come to the rescue.”* J. E. Alvarez, *The Schizophrenias of R2P*, in P. Alston, E. MacDonald (eds), *Human Rights, Intervention, and the Use of Force*, Oxford University Press, Oxford, 2008, p. 275.

⁹ ICISS, *The Responsibility to Protect*, op. cit., p. 29.

¹⁰ Ibid.

as possible the norm of non-intervention, which is “*the equivalent in international affairs of the Hippocratic principle – first, do no harm*”.¹¹

The just cause criterion is satisfied if the use of force is aimed at halting or averting “*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 “*large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape*”.¹² The legitimate authority is not limited solely to the UN Security Council, though the ICISS believes that “*there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes*”.¹³ In the event that the Council is unable or unwilling to intervene, other parties could step in and act. The circle of these parties includes, in the following order of preference: the UN General Assembly, regional organizations and, in exceptional cases, individual states or groups of states. Moreover, the intervention has to be carried out with a primary humanitarian motivation (right intention), must follow the exhaustion of every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis (last resort), must be proportionate in scale, duration and intensity to the pursued aim (proportional means), and must have a reasonable chance of succeeding (reasonable prospects).

The R2P concept, as defined in the 2001 ICISS report, not only encompasses UN-authorized military operations with humanitarian aims but also provides for, albeit with some reluctance, unilateral humanitarian interventions.¹⁴ It can even be stated that promoting the legal and political status of humanitarian intervention was one of the main goals of the ICISS, which simply saw in such interventions the only solution to a Kosovo-type dilemma. At the same time, the Commission, well aware of the risks entailed in the doctrine, sought to “package it” in a way that would make it look more acceptable. Humanitarian intervention was placed into a larger toolbox of measures aimed at averting or halting serious violations of human rights. In this toolbox, priority was accorded to preventive and/or collective measures, and the unilateral use of force remained the option of last resort, one to be resorted to only if no other measure has proven (or promises) to be effective. Moreover, the exercise of humanitarian intervention was subject to strict conditions that were hoped to prevent or at least minimize unwanted consequences. Thus, the ICISS conceptualized the relationship between humanitarian intervention and R2P in terms of the direct inclusion of the former into the latter, coupled with making any unilateral action subject to a series of restrictive conditions.

¹¹ Ibid.

¹² Ibid., p. 32.

¹³ Ibid., p. 49.

¹⁴ See also G. Evans, *The Responsibility to Protect: Rethinking Humanitarian Intervention*, ASIL Proceedings, 2004, pp. 78-89; or G. Evans, M. Sahnoun, *The Responsibility to Protect: Rethinking Humanitarian Intervention*, Foreign Affairs, Vol. 81, Iss. 6, November-December 2004, pp. 99-110.

Mid-2000s: Coexistence of Humanitarian Intervention and R2P

The ICISS report could hardly have appeared at a less propitious time. Published just three months after the 9/11 terrorist attacks on the USA, in December 2001, when the entire world was absorbed in the imaginary war on terror and the real war in Afghanistan, it seemed to be almost naturally doomed to fail. Yet, active campaigning by Canada and other like-minded states, international NGOs and UN Secretary General Kofi Annan saved it from disappearing into oblivion. Moreover, only a few years later, Kofi Annan managed to have references to R2P incorporated into two international reports: the 2004 report titled *A More Secure World: Our Shared Responsibility*, which was authored by the High-level Panel on Threats, Challenges and Change,¹⁵ and his own 2005 report entitled *In Larger Freedom: Towards Development, Security and Human Rights For All*.¹⁶ Furthermore, in September 2005, supporters of R2P succeeded in persuading the UN World Summit, the largest gathering of world leaders in history, to endorse this emerging concept in the World Summit Outcome Document.¹⁷

Yet, this success had a price. Already in the course of the negotiations preceding the World Summit, it became clear that the unilateral use of force, despite all the checks and restrictions imposed upon it, remained one of the most controversial elements of the R2P concept.¹⁸ There was a clear division between a large group of mostly non-Western states, for which any option of extending the possibility of unilateral use of force beyond self-defence was simply unacceptable, and a smaller but powerful group of predominantly Western states, which conversely hoped that the Summit would either directly authorize humanitarian intervention or would at least leave the door open to such intervention. In an effort to find a balance between these two approaches and to make the R2P concept acceptable to as many states as possible, the UN Secretary General began compromising on the elements of R2P concerning the use of force. This was visible already in his 2004 and 2005 reports. On the one hand, the right to resort to military action “*in the event of genocide and other*

¹⁵ UN Doc. A/59/565, *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2 December 2004.

¹⁶ UN Doc. A/59/2005, *In Larger Freedom: Towards Development, Security and Human Rights For All*, Report of the Secretary-General, 21 March 2005.

¹⁷ UN Doc. A/60/L.1, *2005 World Summit Outcome*, 20 September 2005, paras. 138-140. The Document defined the three pillars of R2P, namely the primary responsibility of the State to protect its population from serious crimes (first pillar), the responsibility of the international community to encourage and help States exercise this responsibility (second pillar), and the subsidiary responsibility of the international community to protect the population of the State which manifestly fails in its responsibility to protect (third pillar). All three pillars are of equal status and the relationship between them is of a complementary (first and second pillars) and subsidiary (first and third pillars) nature.

¹⁸ See also A. L. Bannon, *The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism*, Yale Law Journal, Vol. 115, No. 5, March 2006, pp. 1157-1165; T. G. Weiss, *R2P After 9/11 And the World Summit*, Wisconsin International Law Journal, Vol. 24, No. 3, 2006, pp. 741-760; and N. J. Wheeler, *A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit*, Journal of International Law and International Relations, Vol. 2, 2005-2006, pp. 95-105.

*large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent*¹⁹ was accorded to the UN Security Council only.²⁰ On the other hand, humanitarian intervention was not explicitly declared illegal. The criteria of the legitimate use of force were retained, albeit in a somewhat redrafted way,²¹ to serve as a corrective element to Security Council actions.

This solution gave rise to many objections among states. To satisfy these objections, often contradictory in nature, the World Summit Outcome Document opted for an even more cautious wording, which neither prohibits nor condones humanitarian intervention. In fact, the Document contains no direct reference to the use of force, and merely declares the preparedness of the international community *“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 manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity”*.²² The deletion of the passages on the use of force also led to the removal of the legitimacy assessment criteria, which seemed too stringent to some and too loose to others.

In its new redrafted form, endorsed by the 2005 UN World Summit, the R2P concept leaves unilateral humanitarian intervention out of its scope. It is the prevention actions and collective mechanisms provided for in Chapters VI, VII and VIII of the UN Charter that make it to the forefront of international attention. Reaction and, particularly, unilateral steps involving the use of force, on the other hand, are removed from the scene. The Outcome Document is reluctant to acknowledge the legality of even those actions that are authorized by the UN Security Council. It is therefore not surprising that it remains completely silent on the issue of non-authorized humanitarian interventions.

There have been attempts to read this silence as a sign of either the legality or the illegality of such intervention. Yet, such interpretations seem to be missing the point. In this case the silence reflects a total lack of consensus, which forced states, willing to move on with R2P but unable to agree upon humanitarian intervention, to simply abandon the effort to integrate the unilateral use of force under the R2P umbrella. In this way, the World Summit rang the death knell for the direct inclusion approach suggested by the ICISS and started the stage of mutual coexistence between humanitarian intervention and R2P. Under this new point of view, the existence of R2P had no implications for the legal status of humanitarian intervention. The two

¹⁹ *A More Secure World*, op. cit., par. 203.

²⁰ See *ibid.*, and *In Larger Freedom*, op. cit., par. 129.

²¹ The Panel's Report uses five basic criteria of legitimacy, namely seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences (*A More Secure World*, op. cit., par. 207). The Secretary General's Report draws attention to the seriousness of the threat, proper purpose, last resort, proportionality and reasonable chance of success (*In Larger Freedom*, op. cit., par. 126).

²² *World Summit Outcome*, op. cit., par. 139.

debates, though closely related in substance, became separated from a formal point of view: the one on humanitarian intervention continued to assess the pros and cons of a new unilateral exception to the general prohibition on the use of force, while the debate on R2P focused on other means of preventing and reacting to humanitarian crises.

From a strictly pragmatic point of view, this solution may appear reasonable, at least on a short-term basis. Yet, when assessed from a more theoretical and/or long-term perspective, it reveals considerable weaknesses. The most fundamental of these consists of the fact that it (again) leaves un-addressed the original underlying dilemma of how to react when a state manifestly fails to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and the UN Security Council is unwilling or unable to act in an adequate manner. Is an individual state, a group of states or a regional organization entitled in such a situation to intervene without the UN mandate? And if so, under what conditions and with which restrictions? The 2005 version of the R2P concept does not seek to answer these questions. It simply hopes to discard them as irrelevant by placing emphasis on (and faith in) the responsibility of the territorial state, the smooth functioning of the UN mechanism, and the effectiveness of preventive measures. This leads to a paradoxical situation in which a concept which was originally created to address a certain dilemma suddenly starts to ignore the possibility that any such dilemma could arise. Yet, as the developments in Darfur and other areas have clearly shown over the past few years, the dilemma remains as real as ever and cannot be simply ignored as being unimportant.²³

Late 2000s: Indirect Exclusion of Humanitarian Intervention by R2P

The late 2000s witnessed a rapid evolution in the area of R2P. The concept, now devoid of any connection with unilateral humanitarian intervention, was gaining increasing support on the international scene. In 2006, a reference to “*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*”²⁴ appeared in UN Security Council Resolution 1674 on the protection of civilians in armed conflict. Later on that year, a similar reference was added to the preamble of Resolution 1706²⁵ dealing with the situation in Darfur. In December 2008, the Security Council held its first informal meeting on R2P. The meeting showed that states were still seriously divided with regard to the possibility of a unilateral use of force for humanitarian purposes. This, together with a narrow mandate confined to the R2P definition in the 2005 Outcome Document, prevented the UN Secretary General’s Special Advisor on the Responsibility to Protect, Edward

²³ See N. J. Wheeler, *Operationalising the Responsibility to Protect. The Continuing Debate over where Authority should be Located for the Use of Force*, NUPI Report Responsibility to Protect No. 3, 2008.

²⁴ UN Doc. S/RES/1674 (2006), *Protection of Civilians in Armed Conflict*, 28 April 2006, par. 4.

²⁵ UN Doc. S/RES/1706 (2006), *Reports of the Secretary-General on Sudan*, 31 August 2006.

Luck, from dwelling on the issue of unilateral use of force in his report *Implementing the responsibility to protect*,²⁶ presented in January 2009.

The issue was discussed, on the other hand, in the course of the UN General Assembly Plenary Debate on the Responsibility to Protect²⁷ which took place in July 2009. Some one hundred speakers, representing 180 UN member states in total and two entities with observer status (the Holy See and Palestine), participated in the debate, whose outcome took many by surprise. Almost all states of the world, with just a few exceptions (Cuba, Nicaragua, North Korea, Pakistan, Sri Lanka, Sudan and Venezuela) concurred in expressing their support for the R2P concept. Many of them, including several Western states (Australia, Switzerland etc.), additionally made it clear that in their view R2P has been gradually replacing the “discredited notion”²⁸ of humanitarian intervention. Although this shift has not yet been incorporated into any international document, there seems to be a tendency for it to materialize. This evolution has to be read in light of recent events which, on the one hand, have diverted attention from humanitarian catastrophes to other problems (especially, in the aftermath of 9/11, the war on terror) and, on the other hand, have shown the risks of abuse and misapplication of the unilateral use of force (the US intervention in Iraq in 2003).

The emerging approach would replace coexistence between humanitarian intervention and R2P with the indirect exclusion of the former by the latter. Here the term “exclusion” does not merely refer to the fact that humanitarian intervention is no longer incorporated in the R2P concept. It also indicates that R2P, by its virtually all-encompassing character, seeks to make the unilateral use of force appear obsolete. The term “indirect” shows that it is not R2P itself but rather its implications which influence the legal status of the doctrine of humanitarian intervention. With R2P gaining in strength and bringing with it the attendant emphasis on preventive thinking and collective action, there seems to be less and less need, or scope left, for any unilateral action. However, this view could be somewhat hasty, more on the order of wishful thinking than a true perception of the prevailing international reality. Claiming that there are no situations in which large-scale violations of human rights occur and are not dealt with by the UN Security Council, is – in the current state of international relations – simply naïve. Declaring that if such a situation arose, there would be no legal solution, is – without further elaboration upon the available options – absurd.

²⁶ UN Doc. A/63/677, *Implementing the responsibility to protect*, Report of the Secretary General, 12 January 2009.

²⁷ See ICRT, *General Assembly Debate on the Responsibility to Protect and Informal Interactive Dialogue*, available at [http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2p-topics/2493-general-assembly-debate-on-the-responsibility-to-protect-and-informal-interactive-dialogue-\(20/11/2009\)](http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2p-topics/2493-general-assembly-debate-on-the-responsibility-to-protect-and-informal-interactive-dialogue-(20/11/2009)).

²⁸ *Implementation of the Responsibility to Protect*, Statement by H.E. Mr Gary Quinlan, Ambassador and Permanent Representative of Australia to the United Nations, Plenary, New York, 23 July 2009.

This conclusion becomes all the more urgent in view of the recent evolution of R2P. Growing importance is attached to structural prevention, at the expense of the other elements of the concept (direct prevention, reaction, rebuilding).²⁹ Structural prevention is directed at the root causes of violence, which may at the first sight seem to be the right orientation. Yet, since “*we still know too little about the paths that lead to mass atrocity*”,³⁰ states tend to identify root causes with topics that are high in their political agenda anyway, such as the struggle against underdevelopment, the promotion of human rights and the spreading of democracy. In this way, structural prevention becomes “*everything for everyone*”³¹ and consequently risks turning into “*nothing for no one*”.³² Such a move threatens the effectiveness of R2P and its capacity to contribute to halting or averting large-scale man-made catastrophes. Moreover, the recent evolution of this concept tends to place excessive focus on the primary responsibility of the territorial state, de-emphasizing the subsidiary responsibility of the international community. This again increases the risk that R2P could prove to be insufficiently equipped to address serious humanitarian crises. All of the foregoing indicates that the stage of indirect exclusion may not be the final stage in the evolution of the relationship between humanitarian intervention and R2P.

Concluding Remarks

The Responsibility to Protect belongs among the most innovative concepts that have appeared on the international scene after the end of the Cold War. It aims to address the much older dilemma of how the international community should react to situations in which large-scale violations of human rights occur in a foreign country and there is no superior authority to intervene. In the past, this dilemma was addressed primarily within the framework of the just war tradition, which introduced several criteria to limit the (unilateral) use of force in international relations, and, since the 19th century, within the framework of the doctrine of humanitarian intervention. This doctrine, itself drawing from the just war tradition, was never seen as unproblematic. After the adoption of the UN Charter, which introduced the prohibition of the use of force as one of the fundamental principles of international relations, this doctrine began to be perceived as illegal, due to being in contravention of international law, and illegitimate, because it threatened international stability. The evolution of human rights in the 20th century, together with the end of the Cold War, challenged that view and, when the UN Security Council’s increased activism proved to be no panacea, brought humanitarian intervention, with all its controversial aspects, back to the centre of international attention.

²⁹ See E. Starnes, *Operationalising the Preventive Aspects of the Responsibility to Protect*, NUPI Report Responsibility to Protect No. 1, 2008.

³⁰ *Remarks by the USA*, General Assembly Debate, New York, 23 July 2009.

³¹ E. Luck, *Prevention: Theory and Practice*, in F. O. Hampson, D. Malone (eds), *From Reaction to Conflict Prevention: Opportunities for the UN System*, Lynne Rienner, Boulder, 2001, p. 256.

³² *Ibid.*

The concept of the Responsibility to Protect, formulated in 2001 by the *International Commission on Intervention and State Sovereignty*, sought to resolve the dilemma associated with humanitarian intervention by, on the one hand, making the unilateral use of force only one of the measures available for averting or halting large-scale violations of human rights, while, on the other hand, turning it into an instrument of last resort (with priority accorded to prevention and to collective measures) and making it subject to strict conditions (again carried over from the just war doctrine). Nevertheless, suspicions towards and fear of any unilateral use of force beyond self-defence, manifested by a large part of the international community, led to the exclusion of humanitarian intervention from the R2P framework. For some time, the two concepts coexisted side by side but in the late 2000s, due to the further development of R2P and the changed international climate after the terrorist attacks of 9/11 and the attack on Iraq in 2003, humanitarian intervention started losing ground.

Yet it would be premature to claim that the doctrine has become entirely obsolete. Large-scale violations of human rights still occur in the world, as the recent Darfur example has shown beyond any reasonable doubt. The R2P concept offers useful tools for preventing or responding to such violations, but it places too much faith in the effectiveness of the collective security mechanism and fails to address the situation in which this system (more precisely its main protagonist, the UN Security Council) is either unable or unwilling to act. Moreover, the shift in emphasis to structural prevention and to the responsibility of the territorial state, coupled with a certain neglect of the other aspects of R2P, contribute to the weakening of the capacity of R2P to effectively avert or halt humanitarian catastrophes. Kosovo-like situations may reappear, and with them, the old dilemma of humanitarian intervention would most probably be with us again. While humanitarian intervention has been pushed aside for the moment, it would be imprudent to claim it is gone forever. Unless the R2P concept is made stronger and comes to be regularly applied in practice, humanitarian intervention will bide its time in the place to which it has been presently relegated, in the shadow of international politics, always ready to reemerge upon the invocation of the two questions posed more than ten years ago by UN Secretary General Kofi Annan. Two questions which still – or rather once again – remain unanswered.